The Burger Court Opinion Writing Database

Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.

477 U.S. 619 (1986)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

Personal
and Confidential

May 5, 1986

Re: No. 85-488, Ohio Civil Rights Comm'n v. Dayton Christian Schools

Dear Bill:

I have read your draft in this case and certainly agree with your views far more than the suggestions made by John and Bill Brennan. But I am wondering if there may be five votes here simply to affirm on the merits. I am sympathetic with the the school's position here, as, I believe, are Byron and Lewis. If you and Sandra are sympathetic as well, we can set this matter straight. After all, at oral argument the Ohio Attorney General's Office informed us that such a defense would not prevail; and certainly the Commission has never suggested to the school that any religious defense would be considered, let alone succeed. Thus, abstention in this case will probably lead simply to a couple of years of pointless litigation, after which the case will return to this Court, and we will affirm the school's religious defense.

If abstention is still the preferred course of action, I think we should flesh out our description of the school's position before this Court, just as in Aetna we explained that certain constitutional challenges presented "important" issues. If we adhere to the abstention disposition, would you consider adding something like this:

> The issues raised by the Dayton Christian Schools are undoubtedly important ones. Religious schools play an important part in the religious education of our nation's school children. And within those religious schools, the selection of proper teachers is critical, "for perpetuation of a church's existence may depend upon those whom it selects to preach its values, teach its message, and interpret its doctrines both to its own membership and to the world at large." Rayburn v. General Conference of Seventh-Day Adventists, 772 F.2d 1164, 1168 (CA4 1985). While the state's interest here in eliminating discrimination is a strong one, we

have held that "the Constitution may compel toleration of private discrimination in some circumstances." Norwood v. Harrison, 413 U.S. 455, 463 (1973). In concluding that abstention is proper and that we must stay our hand at this juncture of the proceedings, of course we in no way disparage the constitutional arguments advanced by the school. The judgment of the Court of Appeals is reversed and the case remanded for further proceedings consistent with this opinion.

Regards,

Justice Rehnquist

Copies to:

Justice White
Justice Powell
Justice O'Connor

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 27, 1986

85-488 - Ohio Civil Rights Commn. v. Dayton Christian School

Dear Bill:

I join.

Regards,

Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 2, 1986

Re: Ohio Civil Rights Commission
v. Dayton Christian Schools -
No. 85-488

Dear Bill:

I share John's reservations about your proposed disposition on the basis of Younger abstention. I agree with his suggestion that it would be preferable to reverse simply on the ground that the Commission does not violate appellee's First Amendment rights by asserting jurisdiction over the teacher's employment discrimination claim.

Sincerely,

Bill

Justice Rehnquist

Copies to the Conference

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

Supreme Court of the United States
Washington, D. C. 20543

June 11, 1986

Re: 85-488 - Ohio Civil Rights Commission v. Dayton Christian Schools

Dear Thurgood, Harry, and John:

Bill Rehnquist has proposed to set this case down for reargument next term to allow the parties to brief the Younger abstention issue. I do not believe that this should be done, as a majority (including we four) have clearly rejected abstention as a grounds for deciding this case. Contrary to what Bill Rehnquist asserts in his memo, there is no confusion about what the Court of Appeals should do on remand, since eight Justices (everyone with the exception of Byron) agree that the judgment below should be reversed and the complaint dismissed.

My understanding is that the four of us agree that abstention is inappropriate in this case, and that the judgment below should be reversed on the ground that the Commission's preliminary determination would not violate appellee's First Amendment rights. One of us should write an opinion concurring in the judgment setting forth our position. Do I have any volunteers for this?

Sincerely,

Bill

Justice Marshall
Justice Blackmun
Justice Stevens

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 19, 1986

No. 85-488

Ohio Civil Rights Commission
v. Dayton Christian School

Dear John,

Please join me in your opinion concurring in the judgment.

Sincerely,

Bill

Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 8, 1986

85-488 - Ohio Civil Rights Comm'n v. Dayton Christian School

Dear Bill,

I had not thought that abstention was an issue that we should consider. Your draft says that the Commission's abstention motion to dismiss was denied, but the Commission did not otherwise pursue it. The District Court did not mention it in its opinion, and if the Commission had pressed it in the Court of Appeals, I assume there would have been some mention of it in that court's opinion, which there was not. The Commission lost there, and if it had wanted to win here on abstention, our rules say it should have raised the issue in its jurisdictional statement, which, of course, it did not do. Neither did it argue the matter in its brief on the merits, and I doubt it had any intention of doing so in its oral argument until, at your urging, it stated that the District Court should have abstained. In this posture of the case, I am reluctant to deal with the issue, which is not jurisdictional and is one that the state may waive. It is also the case that the courts below have given no indication that the Commission is a competent and appropriate agency to deal with constitutional claims.

I do not suggest that the Commission had no jurisdiction to inquire concerning the basis for the discharge, but there was no question, as far as I can tell, that the school's position was grounded in sincere religious belief. As the State indicated in oral argument, Tr. of Oral Argument 10, "The state is not contending or not questioning that the school's decision to terminate Mrs. Hoskinson was based upon its sincerely held religious beliefs." The state repeated this observation at Tr. 11 and added that "the state does contend that the constitution does not require the state to accommodate the practice of a religious belief when to do so would require the state to abdicate its own compelling interest." It seems to me that the state decided to tender and have decided in the Court of Appeals and then in this Court, the constitutional issues raised by the school. I may well be wrong on the merits, but even so, the issue should be decided now.

If a majority of the Court thinks the abstention should be reached, I am not prepared, without briefing and oral argument, to hold that the District Court should have abstained. If it should have, the courts should abstain in every §1983 action when there is an administrative enforcement proceeding of any kind pending, and a fortiori any time there is a judicial enforcement proceeding in process, whether civil or criminal and whatever its nature. That may prove to be the logical and sensible end at which Younger was aimed, but this is squeezing more out of our cases than I thought was there; and sua sponte dredging up the issue in this case and deciding it without briefing and without the help of the lower courts is a doubtful way to reach that result.

Sincerely yours,

Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 20, 1986

85-488 - Ohio Civil Rights Comm'n
v. Dayton Christian School

Dear Bill,

I would prefer to reach the merits in this case and would rather not decide the abstention issue without briefs and argument. But a majority of the Court has other ideas; and having given the Younger issue further thought, I now join your opinion.

Sincerely yours,

Byron

Justice Rehnquist
Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 5, 1986

Re: No. 85-488-Ohio Civil Rights Commission v. Dayton Christian Schools

Dear Bill:

I would not extend Younger in this case.

Sincerely,

T.M.

Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 23, 1986

Re: No. 85-488-Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.

Dear John:

Please join me in your opinion concurring in the judgment.

Sincerely,

T.M.

Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 6, 1986

Re: No. 85-488, Ohio Civil Rights Commission v. Dayton Christian Schools

Dear Bill:

I agree with John and would not extend Younger abstention. It might come back to haunt us in the future.

Although the conference discussion of this case was sparse, it was not my impression that the Younger route was chosen. I understand, however, that some Justices since then have agreed that this is the way to dispose of the case. My own feeling is that, because DCS can raise its First Amendment claims both administratively and on judicial review in state court, means that § 4112 is not facially invalid. I would decide the case on that narrow ground rather than on abstention.

Sincerely,

HAB

Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 25, 1986

Re: No. 85-488, Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.

Dear John:

Please join me in your opinion concurring in the judgment.

Sincerely,

Harry

Justice Stevens

cc: The Conference

March 25, 1986

84-488 Ohio Civil Rights v. Dayton Christian Schools

Dear Bill:

Here is a memorandum prepared for me today by my clerk, Bill Stuntz, in which he identifies an important abstention issue that has not heretofore been raised in this case.

As I look to you as an authority on abstention as well as on the related subject of federal jurisdiction, I think you will be interested in Bill's memorandum. I am inclined to agree with him, but will give the question further thought.

It certainly would be advantageous if application of the abstention doctrine would limit §1983 suits in federal court where a state administrative proceeding is pending.

Sincerely,

Justice Rehnquist

lfp/ss

cc: Justice O'Connor

wjs 03/25/86

TO: Justice Powell
FROM: Bill
DATE: March 25, 1986
RE: Ohio Civil Rights Commission v. Dayton Christian Schools, No. 85-488
Appeal from CA6
Argument date: March 26, 1986 (Wednesday)
Free Exercise Issue

Yesterday's memo addressed the abstention question in this case. Following is a short discussion of the merits issue. This discussion assumes that you do not wish to decide the case on abstention grounds.

1. The case is uncomplicated, though perhaps not easy. Linda Hoskinson was fired from her job as a teacher at a Christian school run by appees. Hoskinson's contract was not renewed when she became pregnant, on the ground that young mothers should stay at home with their children. When Hoskinson contacted a lawyer (to see if the non-renewal of her contract was legal), the school terminated her immediately, because she had violated the "Biblican Chain of Command" principle by going outside the school to resolve her employment dispute. The DC found that both (1) the idea that young mothers should stay home, and (2) the "Biblical Chain of Command," are sincerely held religious beliefs on appees' part. App to Juris Statement A-61 to A-65. The DC further found that the school was a pervasively religious institution, with the goals of "teach[ing] all subjects in a manner to create in each student an awareness of God's Supreme authority over all creation," and "present[ing] the Bible, God's Word, as

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 5, 1986

85-488 Ohio Civil Rights Commission v.
Dayton Christian Schools

Dear Bill:

I agree that this is not an easy case to write. Even if a different approach were permissible, however, your opinion is in accord with my understanding of the Conference discussion. Accordingly, I join you.

Bill Brennan and John suggest that this case could go off on a "simple" First Amendment ground rather than on Younger abstention. This suggestion, as I understand it, is that a "preliminary determination" by the state Civil Rights Commission of the First Amendment issue would not violate the First Amendment. But such an approach would not decide respondent's constitutional claim.

The Commission has charged the Dayton Schools with violating state law, and announced its intention to compel the Schools to reinstate Hoskinson as a teacher with back pay. The school claims that the conduct for which it is being prosecuted is protected by the Free Exercise Clause. Thus, as in such cases as Doran v. Salem Inn, Inc., 422 U.S. 922, and Steffel v. Thompson, 415 U.S. 452, there is a genuine threat to impose sanctions for allegedly constitutionally protected conduct. Those cases show that the threat of sanctions is enough to give rise to a constitutional claim.

The issue on the merits is whether these proposed sanctions may be imposed in this case - not whether a mere "preliminary determination" can be made. I agree, therefore, that we should decide the case on the Younger abstention question.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

May 9, 1986

85-488 Ohio Civil Rights Comm'n v. Dayton Christian School

Dear Bill:

I still think your disposition to reverse on Younger is the right one for this case.

In view, however, of what seems to be the impasse, there may be some merit to Byron's suggestion that we set the case for reargument next Term on the abstention issue.

In view of my own difficulty with Wygant I send you my sympathy. I suppose we all find ourselves in this unwelcome situation from time to time.

Sincerely,

Justice Rehnquist

LFP/vde

cc: Justice O'Connor

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 1, 1986

Re: No. 85-488 Ohio Civil Rights Commission v. Dayton Christian Schools

MEMORANDUM TO THE CONFERENCE

This has not been an easy opinion to write; a majority at Conference favored "abstention" in substance if not in form, and it seemed necessary to me to fit the case into one of the "abstention" pigeon holes.

Sincerely,

WHR

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: MAY 1 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-488

OHIO CIVIL RIGHTS COMMISSION ET AL., APPELLANTS *v.* DAYTON CHRISTIAN SCHOOLS, INC., ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[May ——, 1986]

JUSTICE REHNQUIST delivered the opinion of the Court.

Appellee Dayton Christian Schools, Inc. (Dayton) and various individuals brought an action in the United States District Court for the Southern District of Ohio under 42 U. S. C. §1983, seeking to enjoin a pending state administrative proceeding brought against Dayton by appellant Ohio Civil Rights Commission (Commission). Dayton asserted that the Free Exercise and Establishment Clauses of the First Amendment prohibited the Commission from exercising jurisdiction over it or from punishing it for engaging in employment discrimination. The District Court refused to issue the injunction on grounds that any conflict between the First Amendment and the administrative proceedings was not yet ripe, and that in any case the proposed action of the Commission violated neither the Free Exercise nor the Establishment Clause of the First and Fourteenth Amendments. The Court of Appeals for the Sixth Circuit reversed, holding that the exercise of jurisdiction and the enforcement of the statute would impermissibly burden appellees' rights under the Free Exercise Clause and would result in excessive entanglement under the Establishment Clause. We noted probable jurisdiction, and now reverse, holding that the District Court should have abstained under our cases beginning with *Younger* v. *Harris*, 401 U. S. 37 (1971).

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 7, 1986

Re: No. 85-488 Ohio Civil Rights Comm. v. Dayton Schools

Dear John,

We seem to be rapidly getting into a box canyon in this case which I would like to find my way out of; if there were some principled way to decide the case without reaching the merits -- which is what I took the votes of you, the Chief, Bill Brennan, Lewis, me, and Sandra at Conference to prefer -- without putting the decision on the basis of Younger, I would certainly take a careful look at it. In your letter to me of May 2nd, you say that "we could simply reverse on the ground that the preliminary determination by the Commission would not violate appellee's First Amendment rights." Bill has expressed his agreement with this position. As I have thought the matter through again, with the benefit of your observations as well as of Lewis' letter of May 5th, I tend to agree with Lewis that if the federal court is to decide the case, DCS has as much right to a decision on the merits as did the respondent in Doran v. Salem Inn, Inc., 422 U.S. 922, or the petitioner in Steffel v. Thompson, 415 U.S. 452. I agree with Harry's observation that the Ohio statute is not "facially invalid," but that was not the claim of DCS. It asserted that the proposed consent decree of the Commission, put forth after a rather complete investigation by the Commission, would violate the school's First Amendment rights insofar as it required the reinstatement of Mrs. Hoskinson.

I do not see that it is an answer to this claim to say that "the preliminary determination by the Commission would not violate appellee's First Amendment rights." The Commission had finished its investigation, and was prepared to cite the school for violation of the statute. Unless we are to reconsider Doran or Steffel, I think that to say that there is no constitutional impediment to the Commission proceeding beyond the stage it has already reached is in effect a decision on the merits; i.e., the First Amendment does not prevent the Commission from requiring Hoskinson's

reinstatement in the face of the school's claim that she was discharged by reason of her failure to adhere to the school's sincerely held religious belief that one member of the sect did not hale another into court.

I don't really think my circulating draft is an "extension" of Younger; I think it is simply an application of the doctrine already enunciated in Gibson v. Berryhill, 411 U.S. 564 (1973), and Middlesex County Ethics Committee v. Garden State Bar Association, 457 U.S. 423 (1982). But if there is some other way to reflect the Conference vote I am willing to listen in the interest of gathering a Court opinion.

Sincerely,

Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 8, 1986

Re: No. 85-488 Ohio Civil Rights Commission v. Dayton Christian Schools

Dear Chief,

I have given some thought to your letter of May 5th, since we are obviously at an impasse in this case and need to find some way of disposing of it. As you can tell from Byron's letter, he does not agree with my circulating draft based on abstention. If there were somewhere to find another vote for that draft, I would certainly be happy to make changes of the sort that you suggest in your letter of May 5th, but it seems pointless to revise to that end now unless there is some probability that the draft could ultimately command a majority.

With respect to the merits of the case, I think it is a very difficult call, and one reason that I favored abstention was that I feel very strongly that if this case came up through the Ohio Civil Rights Commission and the Ohio courts, we would not have such a totally abstract confrontation between the state's right to eliminate sex discrimination and the school's First Amendment rights. This is one of the unfortunate consequences of §1983 as elucidated by Mitchum v. Foster, 407 U.S. 225 (1972).

Sincerely,

WHR

The Chief Justice

cc: Justice White
Justice Powell
Justice O'Connor

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 10, 1986

MEMORANDUM TO THE CONFERENCE

Re: 85-488 - Ohio Civil Rights Commission v. Dayton Christian School

I said at Conference last week that this case seemed to be on dead center. My circulating draft holding that the District Court should have abstained on Younger grounds has been joined by the Chief, Lewis, and Sandra. Bill Brennan, Thurgood, Harry, and John, as I understand their positions, would reverse the Court of Appeals on the merits and reject the respondent's Religion Clause claim. Byron, I believe, would affirm the Court of Appeals on the merits, sustaining the respondent's Religion Clause claim, and the Chief and Lewis indicated at Conference that if they reached the merits they, too, would reach that result. Sandra and I have not voted on the merits.

I am sure that a reasonable argument can be made that once a majority has rejected abstention, everyone ought to vote on the merits. But the lateness of the Term, combined with the feeling that if the District Court had abstained and the case gone through the Ohio state court system we would not have this head-on conflict between state law and the First Amendment, make me reluctant to dispose of the case on the merits in its present posture. On the other hand, I think it would be a real reflection on the Court if the case came down the way the votes now stand, because neither the Court of Appeals nor the District Court would have any idea what they are supposed to do next.

I therefore move to set the case down for reargument next Term, and to request the parties to brief, inter alia, the abstention issue. Perhaps we could discuss and vote on this motion at Conference on Thursday.

Sincerely,

WHR

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: JUN 19 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85–488

OHIO CIVIL RIGHTS COMMISSION ET AL., APPELLANTS *v.* DAYTON CHRISTIAN SCHOOLS, INC., ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[June ——, 1986]

JUSTICE REHNQUIST announced the judgment of the Court and delivered an opinion in which THE CHIEF JUSTICE, JUSTICE POWELL, and JUSTICE O'CONNOR joined.

Appellee Dayton Christian Schools, Inc. (Dayton) and various individuals brought an action in the United States District Court for the Southern District of Ohio under 42 U. S. C. § 1983, seeking to enjoin a pending state administrative proceeding brought against Dayton by appellant Ohio Civil Rights Commission (Commission). Dayton asserted that the Free Exercise and Establishment Clauses of the First Amendment prohibited the Commission from exercising jurisdiction over it or from punishing it for engaging in employment discrimination. The District Court refused to issue the injunction on grounds that any conflict between the First Amendment and the administrative proceedings was not yet ripe, and that in any case the proposed action of the Commission violated neither the Free Exercise nor the Establishment Clause of the First and Fourteenth Amendments. The Court of Appeals for the Sixth Circuit reversed, holding that the exercise of jurisdiction and the enforcement of the statute would impermissibly burden appellees' rights under the Free Exercise Clause and would result in excessive entanglement under the Establishment Clause. We noted probable jurisdiction, and now reverse.

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: JUN 19 1986

STYLISTIC CHANGES THROUGHOUT

fp 1-2, 5

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-488

OHIO CIVIL RIGHTS COMMISSION ET AL., APPELLANTS *v.* DAYTON CHRISTIAN SCHOOLS, INC., ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[June ——, 1986]

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: 6/20/86

pp. 1 & 2

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85–488

OHIO CIVIL RIGHTS COMMISSION ET AL., APPELLANTS *v.* DAYTON CHRISTIAN SCHOOLS, INC., ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[June ——, 1986]

JUSTICE REHNQUIST delivered the opinion of the Court.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 25, 1986

MEMORANDUM TO THE CONFERENCE

The following cases were held for Ohio Civil Rights Commission v. Dayton Christian Schools, Inc., No. 85-488:

(1) No. 85-1071: Rayburn v. General Conference of Seventh-Day Adventists.

Petr applied for an associate in pastoral care internship with the Potomac Conference of the Seventh-day Adventist Church and for a vacancy on the pastoral staff of the Sligo Seventh-day Adventist Church, located in Takoma Park, Maryland. The pastoral staff of Sligo Church consists of a senior pastor and six associate pastors. The position of associate pastor may be held by an ordained minister (the denomination restricts ordination to males), a ministerial intern (an unordained male who has received seminary training), or an associate in pastoral care (a female who has received seminary training). The positions were both awarded to another woman.

Petr then sued the church under Title VII, alleging that her rejection was the result of sexual and racial discrimination. The DC granted summary judgment in favor of resp on the ground that the suit was barred by the religion clauses of the First Amendment.

The CA4 affirmed, holding that state scrutiny of the church's choice would infringe substantially on the church's free exercise of religion and would constitute impermissible government entanglement with church authority. After observing that civil courts are bound to accept the decisions of authoritative ecclesiastical adjudicatories on matters of "discipline, faith, internal organization, or ecclesiastical rule, custom, or law," Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696, 713 (1976), and that "[t]he right to choose ministers without government restriction underlies the well-being of the religious community," App. 16, citing Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 116 (1952), the court determined

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 2, 1986

Re: 85-488 - Ohio Civil Rights Commission
v. Dayton Schools

Dear Bill:

Your proposed disposition raises two problems that trouble me. First, a reversal on a ground not argued raises some of the concerns that the Chief Justice identified in his dissenting opinion in Batson. Second, your proposed extension of Younger abstention really goes a good deal farther than anything the Court has done before. What began as a pigeon hole could end up housing the whole zoo.

I had thought we could simply reverse on the ground that the preliminary determination by the Commission would not violate appellee's First Amendment rights. In all events, I am sufficiently uncertain about the case that I shall wait to see what others have to say.

Respectfully,

Justice Rehnquist

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-488

OHIO CIVIL RIGHTS COMMISSION ET AL., APPELLANTS *v.* DAYTON CHRISTIAN SCHOOLS, INC., ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[June ——, 1986]

JUSTICE STEVENS, concurring in the judgment.

Appellee Dayton Christian Schools, Inc., employed Mrs. Linda Hoskinson as a teacher. Shortly after learning that she was pregnant, the School refused to renew Mrs. Hoskison's teaching contract for the next academic year. The two reasons for this decision, according to the School, were (1) the School's belief that Mrs. Hoskinson should remain at home to supervise and care for her forthcoming child; and (2) the School's belief that Mrs. Hoskinson had violated the "Biblical chain of command" by consulting an attorney regarding her disagreement with the School's conviction that she remain at home. App. 115 (complaint of Dayton Christian Schools, Inc., et al.).

After her termination, Mrs. Hoskinson filed a sex discrimination charge against the School with appellant Ohio Civil Rights Commission. The Commission investigated her charge and, upon finding probable cause to believe that the School had violated § 4112 of the Ohio Revised Code,[1] sched-

[1] That section provides, in part:

"§ 4112.02 Unlawful discriminatory practices.

"It shall be an unlawful discriminatory practice:

"(A) For any employer, because of the race, color, religion, sex, national origin, handicap, age, or ancestry of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

1, 4-5

From: **Justice Stevens**

Circulated: _____

JUN 20

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-488

OHIO CIVIL RIGHTS COMMISSION ET AL.,
APPELLANTS *v.* DAYTON CHRISTIAN
SCHOOLS, INC., ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

[June ——, 1986]

with whom Justice Brennan joins,

JUSTICE STEVENS, concurring in the judgment.

Appellee Dayton Christian Schools, Inc., employed Mrs. Linda Hoskinson as a teacher. Shortly after learning that she was pregnant, the School refused to renew Mrs. Hoskison's teaching contract for the next academic year. The two reasons for this decision, according to the School, were (1) the School's belief that Mrs. Hoskinson should remain at home to supervise and care for her forthcoming child; and (2) the School's belief that Mrs. Hoskinson had violated the "Biblical chain of command" by consulting an attorney regarding her disagreement with the School's conviction that she remain at home. App. 115 (complaint of Dayton Christian Schools, Inc., et al.).

After her termination, Mrs. Hoskinson filed a sex discrimination charge against the School with appellant Ohio Civil Rights Commission. The Commission investigated her charge and, upon finding probable cause to believe that the School had violated § 4112 of the Ohio Revised Code,[1] sched-

[1] That section provides, in part:

"§ 4112.02 Unlawful discriminatory practices.

"It shall be an unlawful discriminatory practice:

"(A) For any employer, because of the race, color, religion, sex, national origin, handicap, age, or ancestry of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: _____

Recirculated: JUN 5 - 6

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-488

OHIO CIVIL RIGHTS COMMISSION ET AL., APPELLANTS *v.* DAYTON CHRISTIAN SCHOOLS, INC., ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[June ——, 1986]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, concurring in the judgment.

Appellee Dayton Christian Schools, Inc., employed Mrs. Linda Hoskinson as a teacher. Shortly after learning that she was pregnant, the School refused to renew Mrs. Hoskison's teaching contract for the next academic year. The two reasons for this decision, according to the School, were (1) the School's belief that Mrs. Hoskinson should remain at home to supervise and care for her forthcoming child; and (2) the School's belief that Mrs. Hoskinson had violated the "Biblical chain of command" by consulting an attorney regarding her disagreement with the School's conviction that she remain at home. App. 115 (complaint of Dayton Christian Schools, Inc., et al.).

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: _____

Recirculated: JUN 25 19--

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-488

OHIO CIVIL RIGHTS COMMISSION ET AL., APPELLANTS *v.* DAYTON CHRISTIAN SCHOOLS, INC., ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[June ——, 1986]

JUSTICE STEVENS, with whom JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE BLACKMUN join, concurring in the judgment.

Appellee Dayton Christian Schools, Inc., employed Mrs. Linda Hoskinson as a teacher. Shortly after learning that she was pregnant, the School refused to renew Mrs. Hoskison's teaching contract for the next academic year. The two reasons for this decision, according to the School, were (1) the School's belief that Mrs. Hoskinson should remain at home to supervise and care for her forthcoming child; and (2) the School's belief that Mrs. Hoskinson had violated the "Biblical chain of command" by consulting an attorney regarding her disagreement with the School's conviction that she remain at home. App. 115 (complaint of Dayton Christian Schools, Inc., et al.).

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"It shall be an unlawful discriminatory practice:

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 1, 1986

Re: 85-488 Ohio Civil Rights Commission v. Dayton Christian Schools

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 12, 1986

No. 85-488 Ohio Civil Rights Comm'n. v.
Dayton Christian School

Dear Bill,

I will go along with a reargument next Term on the Younger abstention issue if you agree, although I am willing to consider other approaches which you believe will provide a Court this Term.

Sincerely,

Sandra

Justice Rehnquist

cc: Justice Powell