10-1975

Drew Municipal Separate School District v. Andrews

Lewis F. Powell Jr.

D

DISCUSS

School Supt.'s rule, approved by School Bd., prohibited employment of teachers (& other school personnel) who were parents of illegitimate children.

CA 5 affirmed a DC holding of invalidity.

Altho reasons of CA 5 may be questioned (I'm not sure of this),

PRELIMINARY MEMO

I think result was right. The Rule was not tailored to serve a legitimate state interest. I see no purpose in taking this.

I tend to agree with CA5 rather than the memo. If the school is concerned with morality, it should use the established hearing procedure rather than a rule as broad and potentially unfair as this one.

Penny

Summer List 1, Sheet 2

No. 74-1318

DREW MUNICIPAL SEPARATE SCHOOL DISTRICT v. ANDREWS

Cert to CA 5 (Bell, Simpson, Ingraham)

Federal/Civil Timely

1. SUMMARY: This case involves the constitutionality of petr's rule against employing parents of illegitimate children. In an attack by resps, two black female teacher aides, the DC (N. D. Miss., Keady, C. J.) found the rule void under (a) the traditional equal protection test (an irrational classification); (b) due process (an irrebutable presumption of immorality); and (c) strict equal protection (a suspect sex-based classification). CA 5 affirmed on the first two, not reaching (c).

2. FACTS: In spring of 1972, school superintendent Pettey (a petr), disturbed by knowledge that some teacher aides were parents of illegitimate children, promulgated unwritten instructions to Mrs. McCorkle, administrator in charge of the teacher aide program, that parentage of an illegitimate child would henceforth disqualify instructional personnel,[1] incumbent or applicant, from employment. The School Board, unaware of the rule until suit was filed, later ratified it and the actions taken against resps. Resps Rogers and Andrews were both unmarried mothers of an illegitimate child. Rogers, an incumbent in '71-72, was not rehired; Andrews, an applicant after the rule's promulgation, was not hired for the Jan. '73 semester. Both were otherwise qualified; as to each, the actions were based solely on the rule.

Three rationales were offered below, through which the rule was said to advance the permissible end of fostering a proper moral climate in petr's schools: (1) such parenthood is prima facie proof of immorality; (2) such parents present improper role models for students; and (3) their employment materially contributes to the problem of schoolgirl pregnancies. The DC ruled the first invalid as a classifying mechanism, since teachers with present and demonstrable good moral character are automatically included on the basis of a past, irrevocable event; whereas those whose present illicit sexual behavior might render them unfit were excluded from the class if no child resulted or if an abortion were procured. Similarly, under due process, the rule was void for establishing an arbitrary and irrebuttable presumption of bad

yes

No

---

[1] Testifying, Pettey elaborated on the scope of the rule, stating that it would include, e.g., secretaries, librarians, cafeteria workers, volunteers, and PTA presidents, but probably not bus drivers, janitors, and maids.

moral character from the proven fact of illegitimate parentage. CA 5 adopted the DC's reasoning, citing Cleveland Bd. of Educ. v. LaFleur, 414 U. S. 632 (1974). CA 5,, noting that a state statute was available to remove or suspend teachers for immoral conduct, after a public hearing, also held that to deny those affected by th petr's rule the benefit of that proceeding is itself to violate equal protection.

As to (2) and (3) above, the DC, noting that the conflicting expert testimony was of a "judgmental nature" unsupported by solid factual basis, found the likelihoc of inferred learning by students from such a teacher/parent "highly improbable". Further,. there was no evidence that resps publicized their status or proselytized a its desirability. CA 5 agreed, distinguishing McConnell v. Anderson, 451 F. 2d 19 (CA 8 1971),, where university regents declined to hire a teacher not because he wa homosexual but because of his activist role in advocating same, such that to have h him would have indicated tacit approval by the university. Examining (3) above, CA 5 found no factual support in the record.. CA 5 did not reach the DC's finding th the rule as applied created a suspect sex classification, as to which no compelling state interest had been shown.

3. CONTENTIONS:

(a) Petr contends that resps' claim fails if they have no constitutional right bear illegitimate children, since they otherwise have no claim to continued employment under Bd. of Regents v. Roth, 408 U. S. 564 (1972). Resps assert that the interest at stake is within the 14th A.'s protection of "liberty"; and that the rule impinges on the fundamental right to bear children. Further, apart from any 14th A. right,. the equal protection clause is a barrier against irrational classifications.

As to the "improper model" rationale, the lower courts conclusion that it wa an irrational basis for the rule remains open for question: a school board might we reasonably find that the presence of a teacher, known by impressionable students to such a parent, does impart a degree of cultural learning and perhaps tacit approval the "authority" represented by the school itself. Tending to erode the judgment of reasonableness, however, is Pettey's testimony that he would include, e.g., cafete workers within the rule. That students might look to them as role models seems highly questionable. I view rationality under traditional equal protection as a close question.

LaFleur's reasoning would initially appear unavailable here under Weinberge v. Salfi, No. 74-214 (June 26), which seems to reserve "irrebuttable presumption" analysis for those cases where the statute "constitute[s] a heavy burden on the exercise of . . . . protected freedoms," namely, "freedom of personal choice in matters of marriage and family life [as] one of the liberties protected by the . . . Fourteenth Amendment." Slip Op. at 19, quoting from LaFleur, 414 U.S. at 639-6 The crucial issue, then, under Salfi's interpretation of LaFleur (and Stanley v. Illinois, 405 U.S. 645 (1972)) is whether resps have a protected freedom to bear, by design or inadvertence, a child out of wedlock, exercising that "choice" in lieu of contraception or abortion. The general power of the States over matters of morals specifically to prohibit fornication, militates against protected status; the ongoing emergence of alternative life styles --open marriage, no marriage, or even child-raising by single persons — points in the opposite direction. See Eisenstadt v. Ba 405 U.S. 438, 453-454 (1972).

This seems to be a solid candidate for cert.

Conference 9-29-75

Court CA - 5 | Voted on ....., 19... | No. 74-1318

Argued ....., 19... | Assigned ....., 19...

Submitted ....., 19... | Announced ....., 19...

DREW MUNICIPAL SEPARATE SCHOOL DISTRICT, ET AL., Petitioners

vs.

KATIE MAE ANDREWS, ET AL.

4/21/75 Cert. filed.

Rehnquist, J. would grant if relevant

Grant

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING	
		G	D	N	POST	DIS	AFF	REV	AFF	G	D			
Rehnquist, J.		✓												
Powell, J.			✓											
Blackmun, J.		✓												
Marshall, J.			✓											
White, J.		✓												
Stewart, J.		✓												
Brennan, J.			✓											
Douglas, J.		✓												
Burger, Ch. J.		✓												

Dissent

DISCUSS

DENY
Mem

November 7, 1975 Conference
List 3, Sheet 3

No. 74-1318

Joint Motion to Dispense with Printing the Appendix

DREW MUNICIPAL SEPARATE SCHOOL DIST.

v.

ANDREWS

But given their alleged financial condition, I see no real harm in granting the motion.

Deny (?)
DKP

Hopefully requiring the Appx. will force them to reach some type of agreement.

On October 6, the Court granted cert to CA 5 in this case to consider the constitutionality of petr's rule against employing parents of illegitimate children.

The parties now move to dispense with the requirement of an appendix and to proceed on the original record. See Rule 36(8). The parties note that the record in this case consists of 1,128 pages and that "[a]fter conferences with attorneys for all parties, it appears that the entire record would have to be printed as the single Appendix." They approximate that the cost of printing the entire record would be $5,500. Of this amount, about half would have to be

advanced by resps, apparently because petr does not consider that parts designated by resps are necessary. See Rule 36(3). Resps assert that they are paupers. (They have not filed a motion to proceed IFP.) Petr states that it is a small rural school district with a limited budget. They note that the case proceeded in CA 5 on the original record. Both parties urge that they would incur great financial hardship if required to bear the cost of printing the Appendix.

Should the Court deny their motion, the parties seek additional time in which to designate and cross-designate the portions of the record to be printed.

DISCUSSION: For some reason, the Court has had a rash of these motions lately. See, e.g., motions in American Motorists Ins. Co. v. Starnes, No. 74-1481, List 1, Sheet 4, this Conference and TSC Industries v. Northway, Inc., No. 74-1471, List 3, Sheet 3, this Conference.

The parties appear to be misconstruing the purpose of the Court's Rule. Basically, a printed appendix is for the convenience of the members of the Court in studying the case. (It also helps in storing, filing, binding, etc.) Rule 36(1) requires that the appendix contain (1) relevant docket entries; (2) relevant pleadings, findings, opinions, etc.; (3) the judgment, order or decision in question; and (4) "any other parts of the record to which the parties wish to direct the Court's particular attention." (emphasis added) The Rule also provides the mechanisms for designation and cross-designation and specifically admonishes:

> "In designating parts of the record for inclusion in the appendix, the parties shall have regard for the fact that the record on file with the clerk is always available to the court for reference and examination and shall not engage in unnecessary designation." Rule 36(2).

As pointed out by Messrs. Boskey and Gressman, by this provision the Court had hoped that the printed appendix would be kept to a minimum. Boskey and Gressman, The 1967 Changes in the Supreme Court's Rules, 42 F.R.D. 139, 151. The authors warned, however:

> It may be inevitable that the natural tendency of lawyers is to seek to protect their clients' interests by printing more than is necessary, simply out of an abundance of caution. But if the bar discerns the Court's purpose from the clear statement in the 1967 rules, there is ground for hoping that the appendix system will result in substantially fewer pages of the certified record being printed." Ibid.

The members of the bar obviously have not "discerned" the Court's purpose.

If there is nothing in the record which the parties wish to direct the Court's particular attention, then they should say so and state as their ground for dispensing with a printed appendix that the judgment and opinion below are already printed in the petition, as is the case. This is the ground on which the Court traditionally has granted such motions. To assert that the parties can only agree that the appendix should contain the entire record and, therefore, that the appendix should be dispensed with because of costs is somewhat of a nonsequitor. And, in any event, high printing costs are one way of encouraging compliance with the spirit of Rule 36.

As to the parties alternative motion for an extension of time in which to file an appendix, this would appear to fall within the province of the Clerk. See Rule 36(a).

This is a joint motion.

11/5/75 Ginty

PJN

Court ..... *Voted on* ....., 19...

Argued ....., 19... *Assigned* ....., 19... No. 74-1318

Submitted ....., 19... *Announced* ....., 19...

Drew Municipal Separate School Dist.

VS.

Andrews

Motion

Ask Neikel to discuss with others

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING	
		G	D	N	POST	DIS	AFF	REV	AFF	G	D			
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Rehnquist, J.	.....	...	...	...	...	...	...	...	...	...	...	...	...	.....
Powell, J.	.....	...	...	...	...	...	...	...	...	...	...	...	...	.....
Blackmun, J.	.....	...	...	...	...	...	...	...	...	...	...	...	...	.....
Marshall, J.	.....	...	...	...	...	...	...	...	...	...	...	...	...	.....
White, J.	.....	...	...	...	...	...	...	...	...	...	...	...	...	.....
Stewart, J.	.....	...	...	...	...	...	...	...	...	...	...	...	...	.....
Brennan, J.	.....	...	...	...	...	...	...	...	...	...	...	...	...	.....
Douglas, J.	.....	...	...	...	...	...	...	...	...	...	...	...	...	.....
Burger, Ch. J.	.....	...	...	...	...	...	...	...	...	...	...	...	...	.....

DENY
Stevens

yes
Phil

January 9, 1976 Conference
List 7, Sheet 2

No. 74-1318

Motion of Resps to Proceed Further Herein IFP.

DREW MUNICIPAL
SEPARATE SCHOOL DIST.

v.

ANDREWS

On October 6, the Court granted cert to CA 5 in this case to consider the constitutionality of petr's policy barring employment of unwed parents of illegitimate children as teachers and teachers aides.

Resps now seek leave to proceed IFP. They both attach affidavits that their respective incomes are $675.00 and $400.00 per month. They fear the potential assessment of the approximately $3,500 cost of preparing petr's brief and appendix, which figure represents 43% and 73% respectively, of their annual salaries. Resps ask that they be relieved of the potential obligation of paying any fees and costs, and that the United States pay the costs of printing their briefs.

See Rule 53(7). They state that they were granted leave to proceed IFP in the CA "for purposes of appealing on the record below."

DISCUSSION: Resps not only fail to divide the $3,500 figure between them, but err in believing that they are potentially liable for the cost of printing petr's brief. The only costs taxable are those of printing the record and the appendix and the Clerk's $100 fee for filing. The awarding of costs is also a discretionary matter and, if the judgment below is reversed, the Court may decide not to award costs.

It is not clear what resps mean when they state they were allowed to proceed in forma pauperis "for purposes of appealing on the record below." Apparently, they did not proceed IFP in the trial court.

As to the "printing" of their brief, resps may not be aware of the relaxed standards set forth in Snider v. All State Administrators, 414 U.S. 685 (1974).

1/6/76 Ginty

PJN

Conference 1-9-76

Court ..... *Voted on* ....., 19...

Argued ....., 19... *Assigned* ....., 19... No. 74-1318

Submitted ....., 19... *Announced* ....., 19...

Drew Municipal Separate School Dist.

VS.

Andrews

Motion

D

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING	
		G	D	N	POST	DIS	AFF	REV	AFF	G	D			
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Rehnquist, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Powell, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Blackmun, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Marshall, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
White, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Stewart, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Brennan, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Douglas, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Burger, Ch. J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

CS/gg 2-23-76 Reviewed. I agree we should avoid deciding this silly case. See SG's amicus suggesting Dismiss as Improvidently granted because of EEOC Title IX Regs recently promulgated.

BOBTAIL MEMORANDUM

TO: Justice Powell

FROM: Carl R. Schenker DATE: January 23, 1976

No. 74-1318 Drew Municipal Separate School Dist. v. Andrews

I recommend that this case be dismissed as improvidently granted. If the merits must be reached I recommend affirmance.

1. Prelude. I consider the constitutional questions lurking around this case to be very difficult. Leaving aside the possible differential impact on women and blacks of the Pettey Rule, the case poses serious questions about the scope of the right to privacy and the legitimacy of the State's proselytizing for traditional moral values.

I doubt that a statute making it a crime to conceive a child out of wedlock would be constitutional. But different questions are posed by the power of the state to require that those in the especially sensitive job of teaching not lend credence to anti-establishment views on matters of morals. (In this respect compare the inability of the State to prosecute possession of obscenity within the home (Stanley v. Georgia) to the ability of the state to restrict commercial dissemination of obscenity (e.g., Miller).)

"what establishment" ? - since Mr. Chesterton etc. ?

If an appropriately narrow state policy were pursued to prevent school teachers from encouraging anti-establishment moral behavior, I think it might well be constitutional. We have here, however, no such appropriately narrow state policy. Here a yahoo promulgated a ridiculously overinclusive rule just because he didn't like having unwed parents around the school. I think the Court should be wary about getting dragged into such a case.

2. Improvident Grant. If you have not read the amicus brief by the National Education Assn, I suggest that you consult its Part II. There the NEA points out that there is no need for this Court to reach the constitutional questions posed in this case because of the recent promulgation of Title IX regulations. It appears that Drew is a recipient of federal educational funds (see note 12 of the NEA brief). Under the Title IX regulations sex-discriminatory employment practices cannot be followed at such schools unless they are shown to be demonstrably job related. These regulations were not in force when this case was decided below. But in the future a rule such as this - which the record establishes will be enforced primarily against women - must measure up to the requirements of Title IX. Since such regulations must meet statutory restrictions in the future, there is no need for this Court

to consider the constitutional difficulties.

Given the promulgation of the Title IX regulations and the tough constitutional questions involved here, I think the Court should dismiss the case as improvidently granted.*

3. The merits. The principal question on the merits is whether this rule is sufficiently related to promotion of a legitimate state interest. I presume for present purposes that the promotion of traditional moral values is a legitimate state interest at least in this context. Therefore an appropriately related state policy could be followed with regard to the employment of unwed parents. But it must be recognized that such a policy does impinge on sex-related areas of privacy. This Court has recognized (1) that policies affecting sexual privacy generally must have a significant justification (Roe v. Wade; LaFleur) and (2) that such privacy rights inhere in the unmarried as well as the married. (See Doe v. Bolton; Eisenstadt v. Baird.) As a result, the Pettey Rule should require rather impressive justification.

That justification has not been forthcoming here, where it is sheer presumption that the children are at all aware of the unmarried status of the teachers. I am not sure at present what kind of rule I would find sufficiently related to the state purpose. Perhaps a hearing would be required in this

* The SG has filed a last minute amicus urging this course of action.

context before employment could be denied. (Cf. LaFleur.) In any event, there seems to be so little reason behind this particular rule that it should be found to be a violation of either due process or equal protection.

Carl

On cert to CA5

74-1318 DREW v. ANDREWS

Argued 3/2/76

CA5 invalidated a ~~Regulation~~ Policy adopted by School Supt. & ratified by School Bd, not to employ unwed mothers.

SG suggests Dunn as improvidently granted in view of EEOC Guidelines.

Miss. Code § 37-9-59 authorizes removal of teacher "for immoral conduct" after hearing.

Feeney (for Resp)

~~No individual~~
Not a class action. Pls (one a teacher's aid - notified she would not be given new ctt, & other was an applicant for a job).

Rule applies to any individual who has relationships with students - not limited to teachers & teachers aids. See p 38 of Appendix

No written Rule - actually was an employment policy.

No one was discharged - ~~only~~ Hee policy related only to ~~[redacted]~~ applicants & to renewal of ctts.

Altho policy is broad enough to encompass irrational results, this case involves only two applicants ~~whose~~ who status as current unwed mothers was ~~not~~ not disputed

Tierney (cont.)

Only 3 schools - elementary, junior high & high: all integrated abmt 80% black.

Policy applies even if mother subsequently marries.

McTear (for Resps)

Argues that policy was descriminatory vs Negroes.

Ms. Copelon (for Resps)

Argues descrimination vs females.

" policy contravenes "right not to obtain an abortion". Roe controls.

Responding to Stewart's Q as to basis of relief: Ms. answered two grounds (1) E/P clause, & (2) violation of fundamental rights.

Rule uninclusive - doesn't reach fathers. Also over inclusive - obviously!

Allain (Amt 4 & of Mim - Rebuttal)

3-5-76

To: LFP

From: CRS

Re: Drew Municipal School Dist. v. Andrews, No. 74-1318

A. Improvident Grant.

District Court decision--July 1973

CA5 decision--Feb. 1975

Promulgation of Title IX-regs--July 1975

Grant--October 1975

Petr filed 4/21/75

This case thus meets your criteria for an improvident grant: There has been a significant intervening event between the lower court decisions and the grant. That event was not reflected in the certiorari papers.

B. Merits.

I will not burden you with a lengthy memo this morning (and hopefully never).

1. ~~XXXX~~"Policy"v. Rule

You asked whether any difference would be made if we treated this case as simply several instances of refusals to hire, rather than as a state rule (since it has never been very formalized).

I believe this distinction would have only one relevance that would not make much difference in this case. As a general matter I think there is no requirement that state laws be written, so we should be hesitant to say this was not a law in any event. But even if we reached that conclusion, ~~xxxxxxxx~~ constitutional guarantees do not turn on the existence of a law. The administrative application of a neutral state law can arise to an equal protection violation. (In the famous Yick Wo case a facially neutral licensing

statute was used to discriminate against Chinese by the administrators.) Similarly, an administrative policy that was discriminatory in its application would violate equal protection even if there was no formalized state law that appeared neutral on its face. Thus, for example, if a law school run by the state merely had vague and unspecified admissions criteria but used them so as to exclude all black applicants, there would be an equal protection violation. (This is DeFunis in reverse.)

To summarize, three kinds of state behavior can rise to equal protection violations:

(a) a rule of law--whether formal or informal, written or oral

(b) the discriminatory application of an apparently neutral rule of law (Yick Wo)

(c) the discriminatory administration of a discretionary system (DeFunis)

As far as applying this scheme to this case, I come up with the following: (Remember that this goes only to an analytical framework, not to the merits) This case presents either an (a) or a (c) situation. That is, we either have Pettey's Rule as a rule of law or we have Pettey applying vague criteria for teacher hiring in such a way as to discriminate (though perhaps permissibly) against the parents of illegitimates.

In all likelihood, however, we do not have a (b) situation. That is, assuming that Pettey's Rule is a rule of law, there has been no real proof of its discriminatory application. In my mind this tends to take the sex discrimination and race discrimination claims out of the case. Such claims would be stronger if over a long period of time only black females were discharged under this rule, especially if it could be proved that whites and/or men were not moved against. It may be that the record supports some

sexual discrimination claim insofar as there was testimony from the administrators that they had not really investigated men.

2. Analysis on the merits.

Here I adhere basically to what I said in my first memo. Pettey's Rule zeros in on the parents of illegitimate The cases in this Court give considerable substance to the notion that procreation is a liberty interest that deserves protection whether one is single or married. (Roe; Doe; Eisenstadt; Griswold; Skinner; LaFleur.) When such an interest is impacted upon by a law, the state should be required to give substantial justification. Perhaps the best analysis of this problem would be to require that school boards can act against the parents of illegitimates only if they advocate unwed parenthood or undeniably communicate it to the children (e.g, by being pregnant during the school year).

I might add that on the merits, this can be analyzed more easily as a due process case in the Roe-Doe sense than as an equal protection case (unless we get into sex discrim.) But the generalized remarks about whether the Pettey Rule is a rule of law, etc., would apply in that context as well as in the context of equal protection analysis.

3-5-76 CRS for LFP

DREW CAPSULIZATION

1. Constitutional guarantees apply outside the realm of formally written statutes.

(a) There can be informal, written rules of law.

(b) /Even if there is nothing that can be characterized as a rule of law on its face, a pattern or practice of administrative behavior can operate de facto as a rule of law.

Here it is admitted that there is either a rule of law or a practice that focuses on the parents of illegitimates. Thus that focus must be justified. But there is no admission of a focus on women or blacks, so that practice need not be justified. (Some record of uneven application of the rule to women or blacks could be made over time however. (Yick Wo.)

2. Due Process. The best way to analyze this case is as a liberty interest in procreation. The state has a valid interest also. [I think that the state's interest should not overbear the parents unless the parents advocates unwed parenthood in the classroom or is demonstrably pregnant. Perhaps in a small town like Drew the schoolboard could prove children know about their teachers private lives, but that shouldn't be presumed.]

3. Equal protection.

(a) This is probably not an equal protection case unless we focus on the fact that the rule will usually get only women, and not men. There may be enough proof in the record to support a Yick Wo ruling on this point.

(b) This is not an Eisenstadt case. There there was a discrimination between married and unmarried people. But the discrimination was not relevant to the state purpose of preventing use of contraceptives. The discrimination here is relevant to the legitimate purpose or promoting morality.

The Chief Justice Pass
Reverse or DIG
Only teachers are here. As to them, the rule is reasonable & rational.
Not a E/P case.
Thus is not an ordinance or a statute. Only two specific cases involving recent unwed mothers — a S/Ct has right to conclude this is a disqualifying status.

xxxxxxxxx Stevens, J. DIG
If we have sub. majority for DIG will go along.
Thus is an E/P case + would affirm on merits. Would rely on DC + CA5 findings. Thus is not a clearly correct analysis.
If we DIG, say nothing.

Brennan, J. Dismiss (DIG) or Affirm
Would be permissible to Dismiss as Improvidently granted. (See Byrnes PC — Yorktown?)
If we reach merits, thus is an E/P case. There is sex discrimination plain & simple.

Stewart, J. DIG
The new Regs were not before lower cts + were not argued to us.
We should not intimate that Regs are applicable

White, J.

~~Affirm~~ Reverse
Different from
~~Yonkers~~ Yonkers (?)

If we reach merits, S/B entitled to have a rule like this. But this is a "shot-gun" rule that makes little sense.

Despite makeup of Rule, no ev. of denial of E/P.

~~Might give a D.I.G.~~

Marshall, J.

D I G or Affirm

Until case was argued did not realize there was no Rule. Discriminates vs. sex. Violates E/P.

Blackmun, J. Reverse

Lower cts did not reach E/P grounds.

Rule as applied is OK.

Powell, J. Dismiss as Improvidently Granted

See dates in Carl's memo.

If we reach merits, case presents difficult analysis choice. The "policy" is outrageously over-broad. But this is not a 1st Amend case. Nor does this record show race discrimination.

If viewed this in D/P terms, I find difficulty in finding Reeps were denied D/P on facts as presented.

I'd affirm if I can find basis.

Rehnquist, J. ~~Reverse or D I G~~

Neither Title VI nor IX create private Rt of action. But if we D I G a claimant could proceed under EEOSA.

If we D I G, must make clear that we imply nothing as to VI or IX

Not a Rule. This was ~~a fact~~ not even a thought out policy. We should treat as only two individual cases where S/B had right not to employ.

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 8, 1976

Re: No. 74-1318, Drew Municipal Separate School District v. Andrews

Dear Chief,

My preference in this case would be a one line order without elaboration: The writ is dismissed as improvidently granted.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

March 8, 1976

Re: 74-1318 - Drew Municipal Separate School District v. Andrews

MEMORANDUM TO THE CONFERENCE:

At Conference it was the consensus that I would send a memorandum calling for a DIG and await reaction.

Some who were for DIG conditioned it on there being no writing.

My sheet shows:

3 to affirm with DIG as alternative

4 to reverse with DIG as possible alternative of 2 of the 4

2 DIG

When the dust settles or one week passes, I will reassess. It may develop that a memorandum will help "settle the dust."

Regards,

WEB

March 9, 1976

No. 74-1318 Drew Municipal Separate School District v. Andrews

Dear Chief:

I prefer a dismissal as improvidently granted, without any opinion.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

Sally – Write the Chief

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 9, 1976

MEMORANDUM TO THE CONFERENCE

RE: No. 74-1318 Drew Municipal Separate School District v. Andrews

Dear Chief

~~I would join Potter's suggestion for a one line order without elaboration.~~

W.J.B. Jr.

If I prepare a ~~I agree with Potter~~'s ~~suggestion of a~~ dismissal as improvidently granted, without any opinion.

Sincerely,

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 10, 1976

Re: No. 74-1318 -- Drew Municipal Separate School District v. Andrews

Dear Chief:

I go for a one-liner in this one.

Sincerely,

T.M.

The Chief Justice

cc: The Conference

Sally - I've voted haven't I?

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 17, 1976

Re: No. 74-1318 - Drew Municipal Separate School District v. Andrews

Dear Chief:

Unless someone writes something that requires a response, I will join a simple dismissal as improvidently granted.

Respectfully,

JPS

The Chief Justice

Copies to the Conference

Gail write CJ

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: APR 21 1976

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1318

Drew Municipal Separate School District et al., Petitioners, v. Katie Mae Andrews et al. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[April —, 1976]

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted.

I approve of your P.C. for the Court.

April 21, 1976

No. 74-1318 Drew Municipal Separate School District v. Katie Mae Andrews

Dear Chief:

I approve of your Per Curiam for the Court.

Sincerely,

The Chief Justice

CC: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 21, 1976

Re: No. 74-1318, Drew Municipal Separate School District v. Andrews

Dear Chief,

I agree with the proposed order in this case.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 22, 1976

RE: No. 74-1318 Drew Municipal Separate School District
v. Andrews, et al.

Dear Chief:

Please join me.

Sincerely,

Bill

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 22, 1976

Re: No. 74-1318 -- Drew Municipal Separate School District v. Katie Mae Andrews

Dear Chief:

I agree with your Per Curiam in this case.

Sincerely,

T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 22, 1976

Re: No. 74-1318 - Drew Municipal Separate School District v. Katie Mae Andrews

Dear Chief:

Please join me.

Respectfully,

JPS

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 26, 1976

Re: No. 74-1318 - Drew Municipal Separate School District v. Andrews

Dear Chief:

I am content to dismiss the writ in this case as improvidently granted. I therefore join the per curiam you circulated on April 21.

Sincerely,

Harry

The Chief Justice

cc: The Conference

(Slip Opinion)

SUPREME COURT OF THE UNITED STATES

No. 74–1318

Drew Municipal Separate School District et al., Petitioners, v. Katie Mae Andrews et al.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[May 3, 1976]

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted.

JPS

THE C. J.	~~W. O. D.~~	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.
1st draft 4/21/76	Join CJ 4/22/76	Join CJ 4/22/76	Join CJ 4/21/76		Join CJ 4/22/76	Join CJ 4/26/76	Join CJ 4/21/76	Join CJ 4/22/76
					74-1318 Drew v. Andrews			