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

January 11, 1984

CHAMBERS OF
JUSTICE BYRON R. WHITE

Re: No. 82-738 -

Migra v. Warren City School Dt. Bd. of Educ.

Dear Lewis and Bill,

While I had earlier expressed some interest in drafting a separate opinion reflecting the view that a federal court is free to grant greater preclusive effect to a state court judgment than would the courts of the state rendering the judgment, further research on the issue has caused me to reconsider. Several commentators and a few lower courts have treated the issue as if it has never been resolved by this Court. Currie, Res Judicata: The Neglected Defense, 45 U. Chi. L. Rev. 317, 326-27 (1978), Vestal, Res Judicata/Preclusion by Judgment: The Law Applied in Federal Courts, 66 Mich. L. Rev. 1723, 1737-38 (1968), C. Wright, Law of Federal Courts, 690-91 (4th ed. 1983); Reimer v. Smith, 663 F.2d 1316, 1325-26 (CA5 1981); Gresham Park Community Organization v. Howell, 652 F.2d 1227, 1243 & n. 46 (CA 5 1981). However, in Union & Planters' Bank v. Memphis, 189 U.S. 71, 75 (1903), this Court held that a federal court "can accord [a state judgment] no greater efficacy" than would the judgment-rendering state. That holding has been adhered to on at least three occasions since that time. Oklahoma Packing Co. v. Oklahoma Gas & Electric Co., 309 U.S. 4, 7-8 (1940); Wright v. Georgia R.R. & Banking Co., 216 U.S. 420, 427 (1910); City of Covington v. First National Bank, 198 U.S. 100 (1905). The Court has also indicated that the states are bound by a similar rule under the full faith and credit clause. Public Works v. Columbia College, 17 Wall. 521, 528.

Although I doubt that the holding of these cases is necessary to achieve the purpose of the statute--and surely the cases articulated none--the issue is one of statutory construction, and I am not inclined in this case to propose that these cases be overruled unless either of you think there is some chance that the votes to do so would be there. Perhaps a concurrence, however, would stimulate some interest in amending the statute.

Sincerely yours,

Byron

Justice Powell
Justice Rehnquist