

SUPREME COURT OF LOUISIANA

No. 96-CC-0322

CLEMENT F. PERSCHALL, JR.

v.

THE STATE OF LOUISIANA

ON WRIT OF CERTIORARI TO THE NINETEENTH JUDICIAL
DISTRICT COURT, PARISH OF EAST BATON ROUGE,
STATE OF LOUISIANA

PITCHER, J. AD HOC, DISSENTING.

I respectfully dissent.

I first quarrel with the majority's decision to reach the merits in this case by very adroitly finding that the **Pullman** abstention doctrine overrides this court's long-standing policy of not giving advisory opinions. I also disagree with the majority's determination that Act 512 is an unconstitutional enlargement of the supreme court.

In determining the constitutionality of Act 512, the majority noted that Act 512 created a conflict between article V, § 3's numerative limit of seven supreme court justices and article V, § 5(A)'s investiture in the supreme court of power to assign sitting or retired judges to any court. In its attempt to harmonize these provisions, the majority reviewed the constitutional history behind this court's assignment power set forth in article V, § 5(A) and concluded that "the power to assign judges temporarily to this court or any lower court under its supervisory jurisdiction is broad, but always was intended to effectuate temporary assignment, as that term is generally understood, which judge would serve at this court's direction under our supervisory jurisdiction."

I see no such limitation on this court's power to assign judges. As noted by the majority, in **State v. Bell**, 392 So.2d 442, 442-443 (La. 1981), this court stated as follows:

The court's power to assign judges to assist courts other than their own within the judicial branch in furtherance of the administration of justice is explicit and unfettered. Article 5, § 5(A) of the Louisiana Constitution of 1974 provides without qualification that the Supreme Court 'may assign a sitting or retired judge to any court.' All efforts to limit this plenary power during the 1973 constitutional convention were decisively rejected. STATE OF LOUISIANA CONSTITUTIONAL CONVENTION OF 1973 Verbatim Transcripts August 15, 1973 at 50-76. This court's supervisory jurisdiction and assignment powers under the Constitution of 1921 were expressly retained and strengthened by the 1974 Constitution. See Hargrave, The Judiciary Article of the Louisiana Constitution of 1974, 37 La.L.Rev. 765, 786 et seq. (1977). (Footnote omitted).

See also **State v. Petterway**, 403 So.2d 1157 (La. 1981).

Furthermore, I do not believe that Act 512 effectively imposes an eighth justice on the supreme court. Section 312.4 does nothing more than establish an additional judgeship for the Court of Appeal for the Fourth Circuit, to temporarily increase the number of judges for the court of appeal for the circuit to thirteen judges.

The assignment of a judge who is elected to the Fourth Circuit Court of Appeal to the supreme court for a period of time not to exceed seven years is in accord with this court's power under Article V, § 5(A).