

STEVENS, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 04–698

BRIAN SCHAFFER, A MINOR, BY HIS PARENTS AND NEXT
FRIENDS, JOCELYN AND MARTIN SCHAFFER, ET AL.,
PETITIONERS *v.* JERRY WEAST, SUPERINTEN-
DENT, MONTGOMERY COUNTY PUBLIC
SCHOOLS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[November 14, 2005]

JUSTICE STEVENS, concurring.

It is common ground that no single principle or rule solves all cases by setting forth a general test for ascertaining the incidence of proof burdens when both a statute and its legislative history are silent on the question. See *Alaska Dept. of Environmental Conservation v. EPA*, 540 U. S. 461, 494, n. 17 (2004); see also *ante*, at 7; *post*, at 1–2 (GINSBURG, J., dissenting). Accordingly, I do not understand the majority to disagree with the proposition that a court, taking into account “policy considerations, convenience, and fairness,” *post*, at 1 (GINSBURG, J., dissenting), could conclude that the purpose of a statute is best effectuated by placing the burden of persuasion on the defendant. Moreover, I agree with much of what JUSTICE GINSBURG has written about the special aspects of this statute. I have, however, decided to join the Court’s disposition of this case, not only for the reasons set forth in JUSTICE O’CONNOR’s opinion, but also because I believe that we should presume that public school officials are properly performing their difficult responsibilities under this important statute.