

The Burger Court Opinion Writing Database

Northcross v. Board of Education of Memphis City Schools

397 U.S. 232 (1970)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

March 6, 1970

MEMORANDUM TO THE CONFERENCE:

Re: No. 1136 - Northcross v. Bd. of Educ.
of Memphis City Schools

Just before departing on Thursday I put together the thought expressed in the attached draft. I think it is desirable for several reasons, not all of which are related to the particular case.

W.E.B.

To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
~~Mr. Justice Fortas~~
Mr. Justice Marshall

No. 1136 - Northcross v. Bd. of Educ. of Memphis City Schools

From: The Chief Justice

MR. CHIEF JUSTICE BURGER, concurring in the

Circulated: 3/6/70

Recirculated: _____

result.

Save for one factor, I would grant the writ and set the case for argument. The factor which is a barrier to taking this step now in this particular case is that Mr. Justice Marshall would not be able to participate due to having been involved with this particular situation while he served as Solicitor General. I would do this on the basis that the time has come to clear up what seems to be some confusion, genuine or simulated, concerning this Court's prior mandates. In No. 944, Carter v. West Feliciana Parish School Board, _____ U.S. _____ (1969), Mr. Justice Stewart and I indicated we preferred to hear arguments before decision, even though in some cases briefs and arguments are not imperative. These school cases present widely varying factors. Some have plans for desegregating schools, others have only partial plans; some have engaged in rezoning and others have not; some use traditional busing such

Supreme Court of the United States
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CHAMBERS OF
THE CHIEF JUSTICE

March 6, 1970

MEMORANDUM TO THE CONFERENCE:

Re: No. 1136 - Northcross v. Bd. of Educ.
of Memphis City Schools

I am circulating a revised opinion herewith.
Changes are marked in the margin.

W. E. B.

To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
~~Mr. Justice Marshall~~
Mr. Justice Marshall

From: The Chief Justice
No. 1136 - Northcross v. Bd. of Educ. of Memphis City Schools

Circulated: _____

MR. CHIEF JUSTICE BURGER, concurring in the result 3/6/70

Save for one factor, I would grant the writ and set the case for argument. The factor which is a barrier to taking this step now is that one member of the Court is not participating in this particular case. I would do this on the basis that the time has come to clear up what seems to be some confusion, genuine or simulated, concerning this Court's prior mandates. In No. 944, Carter v. West Feliciana Parish School Board, _____ U.S. _____ (1969), Mr. Justice Stewart and I indicated we preferred to hear arguments before decision, even though in some cases briefs and arguments are not imperative. These school cases present widely varying factors. Some have plans for desegregating schools, others have only partial plans; some have engaged in rezoning and others have not; some use traditional busing such as began with consolidated schools where busing was imperative; others use busing on a different basis.

The suggestion that the Court has not defined a unitary school system is not supportable. In Alexander v. Holmes County Board of

To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
~~Mr. Justice Fortas~~
Mr. Justice Marshall

From: The Chief Justice

No. 1136 - Northcross v. Bd. of Educ. of Memphis City Schools

Circulated:

Recirculated:

3/9/70

MR. CHIEF JUSTICE BURGER, concurring in the result.

Save for one factor, I would grant the writ and set the case for expedited argument at a special sitting, if necessary. The factor which is a barrier to taking this step now in this particular case is that one Justice would not be able to participate, thus limiting the Court to seven justices. I would do this on the basis that the time has come to clear up what seems to be a confusion, genuine or simulated, concerning this Court's prior mandates. By the time of No. 944, Carter v. West Feliciana Parish School Board, U.S. (1969), Mr. Justice Stewart and I indicated we preferred not to reach a decision without arguments on a record.

These school cases present widely varying factors: some records reveal plans for desegregating schools, others have none or only partial plans; some records reflect rezoning of school districts, others do not; some use traditional bus transportation such as began with consolidated schools where such transportation was imperative,

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

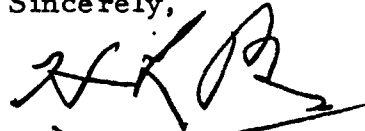
March 4, 1970

Re: No. 1136 - Northcross v. Board of Education
of the Memphis City Schools

Dear Bill,

I am very happy to agree.

Sincerely,

A handwritten signature in dark ink, appearing to be 'H. L. B.', written over a horizontal line.

H. L. B.

Mr. Justice Brennan

cc: Members of the Conference

nb

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas ✓
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

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SUPREME COURT OF THE UNITED STATES

October Term, 1969

From: Brennan, J.

NORTHCROSS ET AL. v. BOARD OF EDUCATION
OF THE MEMPHIS, TENNESSEE,
CITY SCHOOLS ET AL.

Concurred: _____

Recirculated: _____

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

No. 1136. Decided March —, 1970

PER CURIAM.

In 1966 the District Court for the Western District of Tennessee approved a plan of respondent Board of Education for the desegregation of the Memphis school system. In July 1968 petitioners made a motion that the court order the Board to adopt a new plan prepared with the assistance of the Title IV Center of the University of Tennessee; the Center is funded by the Department of Health, Education, and Welfare. The 1966 plan permitted unrestricted free transfers, and petitioners desired a plan without such a provision, and that would also provide among other things for complete faculty desegregation. The District Court denied the motion as filed but on May 15, 1969, in an unreported opinion, directed respondent Board to file a revised plan which would incorporate the existing plan (as respondent proposed during the hearing to supplement it), and which also would contain a modified transfer provision, a provision for the appointment of a Director of Desegregation charged with responsibility to devise ways and means "of assisting the Board in its affirmative duty to convert to a unitary system in which racial discrimination will be eliminated root and branch," and provision for faculty desegregation. The court also directed that, prior to January 1, 1970, the Board file a map of proposed revised zone boundary lines and enrollment figures by race

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

March 5, 1970

Re: No. 1136 - Northcross v. Memphis

Dear Bill:

I agree with your proposed per curiam, which
accords with my original view as to the disposition of the case.

Sincerely,


J.M.H.

Mr. Justice Brennan

CC: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 2, 1970

RE: No. 1136 - Northcross v. Memphis School Board

Dear Potter and Byron:

I thought our conference might move along better if we had something on paper to discuss. Accordingly I enclose a proposed per curiam which reflects my thoughts about a disposition. Attached to it is a Chronology of Events as I cull them from the record. Ed Cullinan tells me that the January 1, 1970 revised zone map has been filed in the District Court and that a copy is on its way here. He also advises that the District Court is deferring further action on the Court of Appeals remand pending our action on the petition for certiorari and the motion.

Sincerely,

W. J. B. Jr.

Mr. Justice Stewart

Mr. Justice White

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SUPREME COURT OF THE UNITED STATES

No. 1136 - Deborah A. Northcross, et al. v. Board of Education
of the Memphis, Tennessee City Schools

Motion to Advance and Petition for Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PER CURIAM.

In 1966, the District Court for the Western District of
Tennessee approved a plan of respondent Board of Education
for the desegregation of the Memphis school system. In July 1968,
petitioners made a motion that the court order the Board to adopt
a new plan prepared with the assistance of the Title IV Center of
~~the University of Tennessee; the Center is funded by the Depart-~~
ment of Health, Education and Welfare. The 1966 plan permitted
unrestricted free transfers, and petitioners desired a plan without
such a provision, and that ^{would} also provide among other things for
complete faculty desegregation. The District Court denied the
motion as filed but on May 15, 1969, in an unreported opinion,
directed respondent Board to file a revised plan which incorporated

March 4, 1970

MEMORANDUM TO THE CONFERENCE

RE: No. 1136 - Northcross v. Board of Education of the
Memphis City Schools

The attached Per Curiam was drafted by Potter, Byron
and me as our view of an appropriate disposition of this case.

I also enclose a Chronology of Events culled from the
Record.

W. J. B. Jr.

inner city;" (2) "should appoint a full time Director

CHRONOLOGY OF EVENTS

- JULY 29, 1966 - District Court approved Board's modified Plan of Desegregation.
- JULY 22, 1968 - Petitioners filed Motion for Further Relief requiring Board to adopt a new plan.
- AUGUST 1968 - Motion denied for 1968 school year because of imminence of opening of school term
- NOVEMBER 1968 - Hearings on Motion open.
- FEBRUARY 1969 - Hearings concluded in five day session
- MAY 15, 1969 - District Court filed its opinion on Motion. Request for cancellation of unrestricted transfer privilege denied but provision modified pending reconsideration after filing by January, 1970 of map of revised zone lines and up-dated enrollment figures. However, Court expressly finds that although Board "has acted in good faith" "existing and proposed plans do not have real prospects for dismantling the state-imposed dual system at the 'earliest practicable date'" as required by Green v. School Board. Therefore Board should revise plan to add provisions (1) to "remove discrimination in all schools, not just school in the inner city;" (2) "should appoint a full time Director of Desegregation who shall be charged with investiga-

SUPREME COURT OF THE UNITED STATES

October Term, 1969

NORTHCROSS ET AL. v. BOARD OF EDUCATION
OF THE MEMPHIS, TENNESSEE,
CITY SCHOOLS ET AL.MOTION TO ADVANCE AND PETITION FOR WRIT OF CERTIO-
RARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 1136. Decided March —, 1970

PER CURIAM.

In 1966 the District Court for the Western District of Tennessee approved a plan of respondent Board of Education for the desegregation of the Memphis school system. In July 1968 petitioners made a motion that the court order the Board to adopt a new plan prepared with the assistance of the Title IV Center of the University of Tennessee; the Center is funded by the Department of Health, Education, and Welfare. The 1966 plan permitted unrestricted free transfers and petitioners desired a plan without such a provision, and that also provided among other things for complete faculty desegregation. The District Court denied the motion as filed but on May 15, 1969, in an unreported opinion, directed respondent Board to file a revised plan which incorporated the existing plan (as respondent proposed during the hearing to supplement it), and which also contained a modified transfer provision, a provision for the appointment of a Director of Desegregation charged with responsibility to devise ways and means to convert to a unitary system, and provision for faculty desegregation. The court also directed that, prior to January 1, 1970, the Board file a map of proposed revised zone boundary lines and enrollment figures by race within the revised zones to enable the Court then to "reconsider the adequacy of the transfer plan." The District Court expressly found that such further steps were necessary

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SUPREME COURT OF THE UNITED STATES

October Term, 1969

NORTHCROSS ET AL. v. BOARD OF EDUCATION
OF THE MEMPHIS, TENNESSEE,
CITY SCHOOLS ET AL.

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

No. 1136. Decided March —, 1970

PER CURIAM.

In 1966 the District Court for the Western District of Tennessee approved a plan of respondent Board of Education for the desegregation of the Memphis school system. In July 1968 petitioners made a motion that the court order the Board to adopt a new plan prepared with the assistance of the Title IV Center of the University of Tennessee; the Center is funded by the Department of Health, Education, and Welfare. The 1966 plan permitted unrestricted free transfers, and petitioners desired a plan without such a provision, and that would also provide among other things for complete faculty desegregation. The District Court denied the motion as filed but on May 15, 1969, in an unreported opinion, ~~directed respondent Board to file a revised plan which~~ would incorporate the existing plan (as respondent proposed during the hearing to supplement it), and which also would contain a modified transfer provision, a provision for the appointment of a Director of Desegregation charged with responsibility to devise ways and means "of assisting the Board in its affirmative duty to convert to a unitary system in which racial discrimination will be eliminated root and branch," and provision for faculty desegregation. The court also directed that, prior to January 1, 1970, the Board file a map of proposed revised zone boundary lines and enrollment figures by race

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SUPREME COURT OF THE UNITED STATES

October Term, 1969

NORTHCROSS ET AL. v. BOARD OF EDUCATION
OF THE MEMPHIS, TENNESSEE,
CITY SCHOOLS ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

January 30, 1970

MEMORANDUM TO THE CONFERENCE

No. 1136 - Northcross v.
Memphis Board of Education

The attached motion for injunction has been presented to me in my capacity as Circuit Justice, along with a petition for certiorari and a motion to advance. I suggest that we take the matter up for consideration at our Monday Conference.

P.S.
P.S.