

The Burger Court Opinion Writing Database

Jones v. Board of Education of Tennessee
397 U.S. 31 (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

January 30, 1970

MEMORANDUM TO THE CONFERENCE

Re: No. 731 - Jones v. State Board of Education of and
for the State of Tennessee

Dear Thurgood:

Please join me.

W.E.B.

W.E.B.

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

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SUPREME COURT OF THE UNITED STATES

No. 731.—OCTOBER TERM, 1969 From: Douglas, J.

Kenneth R. Jones, Petitioner, v. State Board of Education of and for the State of Tennessee et al.

Circulated: 1/28/70

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

[February —, 1970]

MR. JUSTICE DOUGLAS, dissenting.

Petitioner, a student at Tennessee A. & I. State University, was dismissed from the school on charges preferred by a Faculty Advisory Committee and heard by it. One of the charges read as follows:

"You are charged with distributing literature and soliciting students, all of which was designed to boycott the registration at the University for the Fall Quarter 1967. This occurred during the Summer of 1967."

The literature urging a boycott of registration was a pamphlet which is printed in the Appendix to this opinion.

Petitioner, being suspended indefinitely, brought this suit in the District Court, which denied relief. 279 F. Supp. 190. The Court of Appeals affirmed. 407 F. 2d 834. Our failure to reverse is a serious setback for First Amendment rights in a troubled field.

The leaflet now censored may be ill-tempered and in bad taste. But we recognized in *Terminiello v. Chicago*, 337 U. S. 1, that even strongly abusive utterances or publications, not merely those polished and urbane pronouncements of dignified people, enjoy First Amendment protection. We said in *Terminiello*:

"... a function of free speech under our system of government is to invite dispute. It may indeed

p 1

To : The Chief Justice
 Mr. Justice Black
 Mr. Justice Harlan
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice ~~Wright~~
 Mr. Justice ~~John Marshall~~

2

SUPREME COURT OF THE UNITED STATES

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 and for the State of
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Circulated:

On Writ of Certiorari to
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Recirculated:

1-29

[February —, 1970]

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*versus
the Court*

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

3

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

No. 731.—OCTOBER TERM, 1969

1/31/70

Kenneth R. Jones, Petitioner,
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State Board of Education of
and for the State of
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p4

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 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice ~~Wortas~~
 Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 731.—OCTOBER TERM, 1969 Circulated:

Kenneth R. Jones, Petitioner, v. State Board of Education of and for the State of Tennessee et al.

Recirculated: 2-2

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

[February —, 1970]

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January 29, 1970

Re: No. 781 - Jason V. Steele Board

RECORDED

Post Office

I agree with your last message.

Very truly yours,

John C. Stennis

U.S. Senator

To: The White House
Mr. George H. W. Bush
Mr. George H. Bush
Mr. George H. Bush
Mr. George H. Bush

February 2, 1970

**RE: No. 731 - Jones v. State Board of Education of and for
the State of Tennessee, et al.**

Dear Bill:

What would you think of adding a sentence to the first full paragraph at page 4 along the lines of:

"At the least the suspension raises a serious constitutional question in the absence of provision for a timely judicial determination of the First Amendment claims. Cf. Freedman v. Maryland, 380 U.S. 51 (1965)."

My thought is that it might be helpful to introduce the notion that the principle of Freedman applies in other First Amendment contexts besides obscenity. If a State may not suppress the showing of a motion picture unless it has provided a procedure for timely judicial decision of the obscenity claim, I should think a State University cannot expel State University students unless similar timely provision is made for a judicial decision of their First Amendment claims.

Sincerely,

Mr. Justice Douglas

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 29, 1970

No. 731 - Jones v. Tennessee

Dear Thurgood,

I am glad to join your Per Curiam
in this case.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

January 23, 1970

No. 1 No. 731 - Jones v. State Board
of Education

DO NOT REMOVE

DO NOT REMOVE

DO NOT REMOVE

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

1

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 1-28-70

No. 731.—OCTOBER TERM, 1969

Recirculated:

Kenneth R. Jones, Petitioner,
v.
State Board of Education of
and for the State of
Tennessee et al.

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

[February —, 1970]

PER CURIAM.

Petitioner Jones was suspended indefinitely as a student at Tennessee A. & I. University in the summer of 1967. His indefinite suspension was confirmed after a hearing in September of that year, in which charges against him were specified, evidence taken, and findings made. He, along with two other suspended students, brought suit in the United States District Court for the Middle District of Tennessee, seeking to set aside the suspension on First Amendment and due process grounds. After a hearing, the District Court granted judgment on the merits to defendants with an opinion. 279 F. Supp. 190 (1968). On appeal the Court of Appeals for the Sixth Circuit affirmed. 407 F. 2d 834 (1969). We granted certiorari, 396 U. S. — (1969), primarily to consider the issues raised by Jones' claim that he had been separated from the university solely because of his distribution of leaflets urging a boycott of fall registration.

After oral argument, and on closer review of the record, it emerges—as it did not from the certiorari papers or the opinions of the District Court and the Court of

To: The Chief Justice
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Mr. Justice White
Mr. Justice Fortas

2

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated:

No. 731.—OCTOBER TERM, 1969

Recirculated: 1-30-7

Kenneth R. Jones, Petitioner,
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On Writ of Certiorari to
the United States Court
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