

# 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

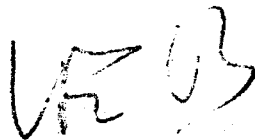
January 30, 1970

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.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

1

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.

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

Circulated: 1/28/70

Res. Court.:

[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

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 On Writ of Certiorari to  
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 Recirculated: 1-29

[February —, 1970]

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4

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 731.—OCTOBER TERM, 1969

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Recirculated: 2-2

[February —, 1970]

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January 29, 1970

Re: No. 731 - Jones v. State Board  
of Education

Dear Thurgood:

I agree with your per curiam.

Sincerely,

W. J. Brennan

W. J. Brennan

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Honorable  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Marshall  
Mr. Justice Stewart  
Mr. Justice Burger  
Mr. Justice Rehnquist  
Mr. Justice Souter  
Mr. Justice Ginsburg  
Mr. Justice Breyer  
Mr. Justice Alito  
Mr. Justice Kagan  
Mr. Justice Sotomayor  
Mr. Justice Roberts  
Mr. Justice Kennedy  
Mr. Justice Scalia  
Mr. Justice Thomas  
Mr. Justice Alito  
Mr. Justice Kagan  
Mr. Justice Sotomayor  
Mr. Justice Roberts  
Mr. Justice Kennedy  
Mr. Justice Scalia  
Mr. Justice Thomas

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 con-  
stitutional question in the absence of provision for  
a timely judicial determination of the First Amend-  
ment 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 pro-  
vided 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

WB



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

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

January 28, 1970

NO: No. 731 - Jones v. State Board  
of Education

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Dear Thurgood:

I join your opinion in  
this case.

Sincerely,

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,	}	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.
v.		
State Board of Education of		
and for the State of		
Tennessee et al.		

[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

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2

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: \_\_\_\_\_

No. 731.—OCTOBER TERM, 1969

Recirculated: 1-30-7

Kenneth R. Jones, Petitioner,	} On Writ of Certiorari to	
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