

# The Burger Court Opinion Writing Database

*Davis v. Board of School Commissioners  
of Mobile County*

402 U.S. 33 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

March 23, 1971

No. 436 -- Davis v. Board of School Commissioners  
of Mobile County

MEMORANDUM TO THE CONFERENCE:

Enclosed is a proposed draft opinion in the above case.

Your comments are invited.

Regards,

WRB

The Conference

88  
Jewell 3/24  
To: Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall ✓  
Mr. Justice Blackmun

1st DRAFT

From: The Chief Justice

MAR 23 1971

Circulated:

Recirculated:

No. 436.—OCTOBER TERM, 1970

Birdie Mae Davis et al.,

Petitioners,

v.

Board of School Commissioners of Mobile  
County et al.

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

[March —, 1971]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

Petitioners in this case challenge as inadequate a school desegregation plan for Mobile County, Alabama. The county is large and populous, embracing 1,248 square miles and the City of Mobile. The school system had 73,500 pupils in 91 schools at the beginning of the 1969 academic year; approximately 58% of the pupils were white and 42% Negro. During the 1967-1968 school year, the system transported 22,000 pupils daily in over 200 school buses, both in the rural areas of the county and in the outlying areas of metropolitan Mobile.

The present desegregation plan evolved from one developed by the District Court in response to the decision of the Court of Appeals for the Fifth Circuit in *Davis v. Board of School Commissioners*, 414 F. 2d 609 (CA5 1969), that an earlier desegregation plan formulated by the District Court on the basis of unified geographic zones was "constitutionally insufficient and unacceptable, and such zones must be redrawn." The Court of Appeals held that that earlier plan had "ignored the unequivocal directive to make a conscious effort in locating

Supreme Court of the United States  
Washington, D. C. 20543CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

9/3/70

Dear Chief

In No 436. Name o Board  
of School Commissioners I am  
inclined, after study, to  
recommend to advance and not  
to oppose the motion to  
deny the motion to advance

W.W.

3P  
LJM  
3/16/71

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

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 436.—OCTOBER TERM, 1970

For Douglas, J.  
Circulated: 3/16/71

Birdie Mae Davis et al.,  
Petitioners,  
v.  
Board of School Commissioners of Mobile  
County et al. } On Writ of Certiorari to the  
United States Court of Appeals for the Fifth Circuit.

[March —, 1971]

MR. JUSTICE DOUGLAS, concurring.

While I join the opinion of the Court, the delays, seemingly encouraged by Judge Thomas of the District Court, and his apparent hostility to the desegregation of the public schools, lead me to suggest that on remand the Chief Judge of the Circuit or the Judicial Council of the Circuit (28 U. S. C. § 332) assign a different District Judge to hear the case. See *Cascade Nat. Gas v. El Paso Nat. Gas*, 386 U. S. 129, 142-143.

This history of this litigation can be briefly summarized:

Petitioners filed suit in the Southern District of Alabama in March, 1963, requesting a preliminary injunction against the maintenance of a segregated system and an order requiring the School Commissioners to file a desegregation plan for the 1963-1964 school year within 30 days. The motion to order the filing of the plan was denied by Judge Thomas and the request for the injunction was not ruled upon (8 Race Rel. L. Rep. 480). On June 24, he denied the preliminary injunction, found that it was not reasonably possible to integrate the system for the 1963-1964 school year, and set the trial on the issues for November 1963. At that time the Board

March 24, 1971

Re: No. 436 - Davis v. School Commissioners

Dear Chief:

I am glad to join your opinion in this case, which  
I think is a very good one.

Sincerely,

J. M. H.

The Chief Justice

CC: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

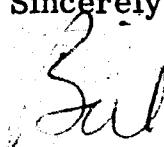
March 23, 1971

RE: No. 436 - Davis v. Board of School  
Commissioners of Mobile County

Dear Chief:

I think this is exactly right and I am very  
happy to join it.

Sincerely,

  
W.J.B. Jr.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

March 24, 1971

No. 436, Davis v. School Commissioners

Dear Chief,

Your opinion for the Court in this case is generally satisfactory to me. I would hope, however, that you might consider adding a word about the need to try to forestall foreseeable resegregation.

Specifically, I suggest that the following sentence be added as the next to last sentence in the first full paragraph on page 4:

Every practically feasible effort must be made to frame the decree so as to avoid resegregation through the movement of white parents out of predominantly Negro attendance zones.

I further suggest that in the 6th line from the bottom of the last paragraph on page 4, the period after the word "zoning" be changed to a comma, and that the following clause be added:

and that the severe problem of imminent resegregation was never fully taken into account.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

March 23, 1971

Re: No. 436 - Davis v. Board of  
School Commissioners of  
Mobile County

Dear Chief:

Please join me.

Sincerely,

B.R.W.

The Chief Justice

cc: The Conference

BBM  
V.C.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 24, 1971

Re: No. 436 - Davis v. Board of School  
Commissioners of Mobile County

Dear Chief:

Please join me.

Sincerely,



T.M.

The Chief Justice

cc: The Conference

March 24, 1971

Re: No. 436 - Davis v. Board of Commissioners  
of Mobile County

Dear Chief:

Please join me.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference