

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

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CHAMBERS OF
THE CHIEF JUSTICE

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

Your comments are invited.

Regards,

The Conference

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THE ADVANCE OF CONCRETE

PS 89

Joined 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

SUPREME COURT OF THE UNITED STATES

Circulated: MAR 23 1971

Recirculated: _____

No. 436.—OCTOBER TERM, 1970

Birdie Mae Davis et al.,
Petitioners,
v.
Board of School Com-
missioners of Mobile
County et al.

On Writ of Certiorari to the
United States Court of Ap-
peals 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 de-
veloped 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 Ap-
peals held that that earlier plan had “ignored the un-
equivocal directive to make a conscious effort in locating

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OFFICE OF THE CLERK OF THE SUPREME COURT

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

9/3/70

Dear Chief

In No 436 Board of
School Commissioners I am
inclined, after studying the
motion to advance and hear
the opposition to the motion, to
deny the motion to advance

WN

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

Mr. Justice 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

SP
LR JB
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.
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

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION
U.S. DEPT. OF JUSTICE

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

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