

The Burger Court Opinion Writing Database

Moore v. Charlotte-Mecklenburg Board of Education

402 U.S. 47 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

SUPREME COURT OF THE UNITED STATES

No. 444.—OCTOBER TERM, 1970

From: The Chief Justice
APR 2 1971
Circulated:

Mrs. Robert Lee Moore et al.,
Appellants,
v.
Charlotte-Mecklenburg Board
of Education et al. } On Appeal From the
United States District
Court for the Western
District of North Caro-
lina.

Recirculated:

[April —, 1971]

PER CURIAM.

Appellants seek review of the decision of the United States District Court for the Western District of North Carolina declaring a portion of the North Carolina anti-busing statute unconstitutional, and enjoining its enforcement. It is a companion case to No. 498, *ante*, *North Carolina State Bd. v. Swann*. We postponed decision on the question of jurisdiction, 400 U. S. 803 (1970), and after hearing on the merits we now dismiss the appeal for lack of jurisdiction.

At the hearing both parties argued to the three-judge court that the anti-busing law was unconstitutional and urged that the order of the District Court adopting the Finger plan should be set aside. We are thus confronted with the anomaly that both litigants desire precisely the same result, namely a holding that the anti-busing statute is constitutional. There is, therefore, no case or controversy within the meaning of Article III of the Constitution. *Muskrat v. United States*, 219 U. S. 346 (1911). Additionally, since neither party sought an injunction to restrain a state officer from enforcing a state statute alleged to be unconstitutional, 28 U. S. C. § 2281, this is not an appeal from "any civil action, suit or proceeding required . . . to be heard . . . by a district court of three judges," 28 U. S. C. § 1253, and hence no direct appeal to this Court is available.

Dismissed.

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

April 5, 1971

Dear Chief,

Re: No. 444 - Mrs. Robert Lee Moore,
et al. v. Charlotte-Mecklenburg Bd.

I agree to your Per Curiam in this case.

Sincerely,



H. L. B.

The Chief Justice

cc: Members of the Conference

April 3, 1971

Dear Chief:

In No. 444 - Moore v. Charlotte
Board, is not the word "unconstitutional"
in line 2 of paragraph 2 incorrect?
Should it not be "constitutional"?

Please join me.

W. O. D.

The Chief Justice

WD
Adm

April 6, 1971

Re: No. 444 - Moore v. Charlotte-Mecklenburg

Dear Chief:

I agree with and am glad to join your position
in this case.

Sincerely,

J. M. H.

The Other Justice

CC: The Conference

AP ✓ ✓

BB *2*
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. April 7, 1971

RE: No. 444 - Moore v. Charlotte-
Mecklenburg, etc.

Dear Chief:

Please join me.

Sincerely,

Bill
W. J. B. Jr.

The Chief Justice

cc: The Conference

CHAMBERS OF
JUSTICE POTTER STEWART

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

April 5, 1971

No. 444 - Moore v. Charlotte-Mecklenburg

Dear Chief,

I am glad to join the Per Curiam you
have prepared in this case.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 6, 1971

Re: No. 444 - Moore v. Charlotte-
Mecklenburg Bd of Education

Dear Chief:

Please join me.

Sincerely,

Byron

The Chief Justice

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 7, 1971

Re: No. 444 - Moore v. Charlotte-Mecklenburg
Board of Education

Dear Chief:

Please join me in your Per Curiam.

Sincerely,


T.M.

The Chief Justice

cc: The Conference

BBM
April 6, 1971

Re. No. 444 - Moore v. Charlotte-Mecklenburg
Board of Education

Dear Chief:

Please join me in the *Per Curiam* you have
prepared for this appeal.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference