

# The Burger Court Opinion Writing Database

*North Carolina State Board of Education v  
Swann*

402 U.S. 43 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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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

Circulated: APR 2 1971

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No. 498.—OCTOBER TERM, 1970

North Carolina State Board  
of Education et al.,  
Appellants,  
v.  
James E. Swann et al.

On Appeal from the United  
States District Court for  
the Western District of  
North Carolina.

[April —, 1971]

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

This case is here on direct appeal pursuant to 28 U. S. C. § 1253 from the judgment of a three-judge court in the United States District Court for the Western District of North Carolina. The District Court declared unconstitutional a portion of the North Carolina General Statutes known as the Anti-Busing Law,<sup>1</sup> and granted an injunction against its enforcement.<sup>2</sup> The proceeding before the three-judge court was an ancillary proceeding connected with the school desegregation case heretofore discussed, *Swann v. Charlotte-Mecklenburg, supra*, p. —.

<sup>1</sup> So far as here relevant, North Carolina General Statute § 115-176.1 reads as follows:

"No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of creating a balance or ratio of race, religion or national origin. Involuntary busing of students in contravention of this Article is prohibited, and public funds shall not be used for any such busing."

<sup>2</sup> 312 F. Supp 503 (1970). The opinion as printed grants only declaratory relief. However the District Court amended its original opinion by withdrawing Part V and entering an order dated June 22, 1970, which enjoined all parties "from enforcing, or seeking the enforcement of," the portion of the statute found unconstitutional.

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

BOB  
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CHAMBERS OF  
JUSTICE HUGO L. BLACK

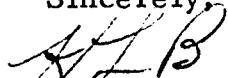
April 5, 1971

Dear Chief,

Re: No. 498- N. C. State Bd.  
of Education, et al. v. Swann.

I agree to your opinion in  
the above case.

Sincerely,



H. L. B.

The Chief Justice

cc: Members of the Conference

April 3, 1971

Dear Chief:

In No. 498 - Board of Education  
v. Swann, please join me.

W. O. D.

The Chief Justice

WJ  
Ad-2

April 6, 1971

Re: No. 498 - North Carolina v. Stevens

Dear Colle:

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

Sincerely,

J. M. H.

The Chief Justice

cc: The Conference

Re ✓

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 7, 1971

RE: No. 498 - North Carolina State Board  
v. Swann.

Dear Chief:

Please join me.

Sincerely,

*W. J. B. Jr.*  
W. J. B. Jr.

The Chief Justice

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 5, 1971

No. 498 - North Carolina State Board of  
Education v. James E. Swann

Dear Chief,

I am glad to join your opinion for the  
Court 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. 498 - North Carolina State  
Bd of Education v. Swann

Dear Chief:

Please join me.

Sincerely,

*Byron*

The Chief Justice

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 7, 1971

Re: No. 498 - North Carolina State Board of  
Education v. Swann

Dear Chief:

Please join me

Sincerely,

  
T.M.

The Chief Justice

cc: The Conference

OBM  
April 6, 1971

Re: No. 498 - North Carolina State Board  
of Education v. Swann

Dear Chief:

Please join me.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference