

The Burger Court Opinion Writing Database

Wisconsin v. Yoder

406 U.S. 205 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



B
M

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

CHAMBERS OF
THE CHIEF JUSTICE

April 7, 1972

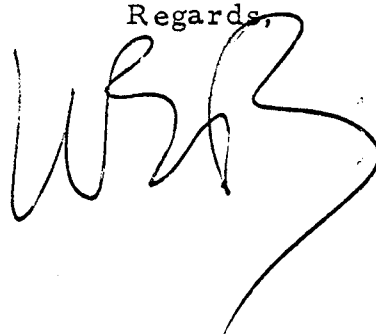
MEMORANDUM TO THE CONFERENCE:

Re: No. 70-110 - Wisconsin v. Yoder

I enclose proposed opinion in the above.
I have printed it because it is long and I did not
want to burden you with a typed version.

As usual, however, I welcome comments.

Regards,



To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: The Clerk of the Court
Circulated: APR 7 1972

No. 70-110

Recirculated: _____

State of Wisconsin, }
Petitioner, } On Writ of Certiorari to the Su-
v. } preme Court of Wisconsin.
Jonas Yoder et al. }

[April —, 1972]


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

On petition of the State of Wisconsin, we granted the writ in this case to review a decision of the Wisconsin Supreme Court holding that respondents' convictions for violating the State's compulsory school attendance law were invalid under the Free Exercise Clause of the First Amendment to the United States Constitution. For the reasons hereafter stated we affirm the judgment of the Supreme Court of Wisconsin.

Respondents Jonas Yoder and Adin Yutzy are members of the Old Order Amish Religion, and respondent Wallace Miller is a member of the Conservative Amish Mennonite Church. They and their families are residents of Green County, Wisconsin. Wisconsin's compulsory school attendance law required them to cause their children to attend public or private school until reaching age 16 but the respondents declined to send their children, ages 14 and 15, to public school after completing the eighth grade.¹ The children were not enrolled in any private school, or within any recognized

¹ The children, Frieda Yoder, aged 15, Barbara Miller, aged 15, and Vernon Yutzy, aged 14, were all graduates of the eighth grade of public school.

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


CHAMBERS OF
THE CHIEF JUSTICE

April 11, 1972

No. 70-110 -- Wisconsin v. Yoder

Dear Potter:

I have your memo of April 10.

Your points give me no difficulty at all.

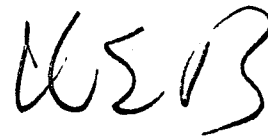
I will make explicit what is now clearly implicit on
the "14th."

As to "parental rights," that can be
converted into a looser observation as to the parental
interest that, in this case, is linked with the Religion
Clauses -- also via the 14th.

Regards,

Mr. Justice Stewart

Copies to the Conference



1, 3, 8-10, 16-17, 25-28
+ Stylistic changes

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Black
Mr. Justice Marshall
Mr. Justice Harlan
Mr. Justice Burger
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

For: Mr. Justice White

SUPREME COURT OF THE UNITED STATES

No. 70-110

Recirculated: APR 31

State of Wisconsin, }
Petitioner. }
v. } On Writ of Certiorari to the Su-
Jonas Yoder et al. } preme Court of Wisconsin.

[April —, 1972]

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

On petition of the State of Wisconsin, we granted the writ in this case to review a decision of the Wisconsin Supreme Court holding that respondents' convictions for violating the State's compulsory school attendance law were invalid under the Free Exercise Clause of the First Amendment to the United States Constitution made applicable to the State by the Fourteenth Amendment. For the reasons hereafter stated we affirm the judgment of the Supreme Court of Wisconsin.

Respondents Jonas Yoder and Adin Yutzy are members of the Old Order Amish Religion, and respondent Wallace Miller is a member of the Conservative Amish Mennonite Church. They and their families are residents of Green County, Wisconsin. Wisconsin's compulsory school attendance law required them to cause their children to attend public or private school until reaching age 16 but the respondents declined to send their children, ages 14 and 15, to public school after completing the eighth grade.¹ The children were not enrolled in any private school, or within any recognized

¹ The children, Frieda Yoder, aged 15, Barbara Miller, aged 15, and Vernon Yutzy, aged 14, were all graduates of the eighth grade of public school.

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2

25-26
+
stylistic changes

Please forward
HJ

- To: Mr. Justice Douglas
- Mr. Justice Brennan
- Mr. Justice Stewart
- Mr. Justice White
- Mr. Justice Marshall ✓
- Mr. Justice Blackmun
- Mr. Justice Powell
- Mr. Justice Rehnquist

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-110

Circulated: _____
Recirculated: MAY 3 1972

State of Wisconsin, }
 Petitioner, }
 v. } On Writ of Certiorari to the Su-
 Jonas Yoder et al. } preme Court of Wisconsin.

[April —, 1972]

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

On petition of the State of Wisconsin, we granted the writ in this case to review a decision of the Wisconsin Supreme Court holding that respondents' convictions for violating the State's compulsory school attendance law were invalid under the Free Exercise Clause of the First Amendment to the United States Constitution made applicable to the State by the Fourteenth Amendment. For the reasons hereafter stated we affirm the judgment of the Supreme Court of Wisconsin.

Respondents Jonas Yoder and Adin Yutzy are members of the Old Order Amish Religion, and respondent Wallace Miller is a member of the Conservative Amish Mennonite Church. They and their families are residents of Green County, Wisconsin. Wisconsin's compulsory school attendance law required them to cause their children to attend public or private school until reaching age 16 but the respondents declined to send their children, ages 14 and 15, to public school after completing the eighth grade.¹ The children were not enrolled in any private school, or within any recognized

¹ The children, Frieda Yoder, aged 15, Barbara Miller, aged 15, and Vernon Yutzy, aged 14, were all graduates of the eighth grade of public school.

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③
Reconcurs, w/ Stoo
AAB prius

To: The Chief Justice
Mr. Justice Warren
Mr. Justice Brandeis
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Marshall ✓
Mr. Justice Stewart
Mr. Justice Sutherland
Mr. Justice Tompkins

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-110

Circulated: 4-26

Recirculated: _____

State of Wisconsin, }
Petitioner, } On Writ of Certiorari to the Su-
v. } preme Court of Wisconsin.
Jonas Yoder et al. }

[April —, 1972]

MR. JUSTICE DOUGLAS, dissenting in part.

I

I agree with the Court that the religious scruples of the Amish are opposed to the education of their children beyond the grade schools, yet I disagree with the Court's conclusion that the matter is within the dispensation of parents alone. The Court's analysis assumes that the only interests at stake in the case are those of the Amish parents on the one hand, and those of the State on the other. The difficulty with this approach is that the parents are not seeking to vindicate their own free exercise claims, but those of their high-school age children.

That issue has never been squarely presented before today. Our opinions are full of talk about the power of the parents over the child's education. See *Pierce v. Society of Sisters*, 268 U. S. 510; *Meyer v. Nebraska*, 262 U. S. 390. And we have in the past analyzed similar conflicts between parent and State with little regard for the views of the child. See *Prince v. Massachusetts*, 321 U. S. 158. Recent cases, however, have clearly held that the State's *parens patriae* interest is not the sole limitation on parental control, and that the children themselves have constitutionally protectible interests in their own right.

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B
M

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Black
Mr. Justice White
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Burger
Mr. Justice Powell
Mr. Justice Rehnquist

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-110

From: Douglas, J.

Circulated: _____

State of Wisconsin,
Petitioner,
v.
Jonas Yoder et al.)

On Writ of Certiorari to the Supreme Court of Wisconsin.

recirculated: 4-28

[April —, 1972]

MR. JUSTICE DOUGLAS, dissenting in part.

I

I agree with the Court that the religious scruples of the Amish are opposed to the education of their children beyond the grade schools, yet I disagree with the Court's conclusion that the matter is within the dispensation of parents alone. The Court's analysis assumes that the only interests at stake in the case are those of the Amish parents on the one hand, and those of the State on the other. The difficulty with this approach is that the parents are seeking to vindicate not only their own free exercise claims, but also those of their high-school-age children.

The concurring opinion argues that the right of the Amish children to religious freedom is not presented by the facts of the case, as the issue before the Court involves only the Amish parents' religious freedom to defy a state criminal statute imposing upon them an affirmative duty to cause their children to attend high school.

First, the concurring opinion is incorrect in its assumption that the rights of the children are not before the Court. Respondents' motion to dismiss in the trial court expressly asserts, not only the religious liberty of the adults, but also that of the children, as a defense

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To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Goldberg

ps

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-110

Circulated: _____

Recirculated: 5-1

State of Wisconsin, }
Petitioner, }
v. } On Writ of Certiorari to the Su-
Jonas Yoder et al. } preme Court of Wisconsin.

[April —, 1972]

MR. JUSTICE DOUGLAS, dissenting in part.

I

I agree with the Court that the religious scruples of the Amish are opposed to the education of their children beyond the grade schools, yet I disagree with the Court's conclusion that the matter is within the dispensation of parents alone. The Court's analysis assumes that the only interests at stake in the case are those of the Amish parents on the one hand, and those of the State on the other. The difficulty with this approach is that the parents are seeking to vindicate not only their own free exercise claims, but also those of their high-school-age children.

The concurring opinion argues that the right of the Amish children to religious freedom is not presented by the facts of the case, as the issue before the Court involves only the Amish parents' religious freedom to defy a state criminal statute imposing upon them an affirmative duty to cause their children to attend high school.

First, the concurring opinion is incorrect in its assumption that the rights of the children are not before the Court. Respondents' motion to dismiss in the trial court expressly asserts, not only the religious liberty of the adults, but also that of the children, as a defense

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3
M

2, 3, 7, 9

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Burger
Mr. Justice White
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Marshall
Mr. Justice Stewart
Mr. Justice Souter
Mr. Justice Thomas

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-110

From: [unclear]

Circulated: _____

Recirculated: 5-11

State of Wisconsin,
Petitioner,
v.
Jonas Yoder et al.

On Writ of Certiorari to the Supreme Court of Wisconsin.

[April —, 1972]

MR. JUSTICE DOUGLAS, dissenting in part.

I

I agree with the Court that the religious scruples of the Amish are opposed to the education of their children beyond the grade schools, yet I disagree with the Court's conclusion that the matter is within the dispensation of parents alone. The Court's analysis assumes that the only interests at stake in the case are those of the Amish parents on the one hand, and those of the State on the other. The difficulty with this approach is that the parents are seeking to vindicate not only their own free exercise claims, but also those of their high-school-age children.

The concurring opinion argues that the right of the Amish children to religious freedom is not presented by the facts of the case, as the issue before the Court involves only the Amish parents' religious freedom to defy a state criminal statute imposing upon them an affirmative duty to cause their children to attend high school.

First, the concurring opinion is incorrect in its assumption that the rights of the children are not before the Court. Respondents' motion to dismiss in the trial court expressly asserts, not only the religious liberty of the adults, but also that of the children, as a defense

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

B
M

Y'

To: The Chief Justice
Mr. Justice Black
Mr. Justice Brennan
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Marshall
Mr. Justice Stewart
Mr. Justice Sutherland
Mr. Justice Tamm
Mr. Justice White
Mr. Justice Brandeis
Mr. Justice Burger
Mr. Justice Goldwater
Mr. Justice G. O. Roberts
Mr. Justice Rehnquist
Mr. Justice Stevens
Mr. Justice Thurgood Marshall
Mr. Justice Warren
Mr. Justice Chief Justice

7th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-110

From: [unclear]

Circulated: _____

State of Wisconsin,
Petitioner,
v.
Jonas Yoder et al.

On Writ of Certiorari to the
Supreme Court of Wisconsin.

Submitted: 5-12

[April —, 1972]

MR. JUSTICE DOUGLAS, dissenting in part.

I

I agree with the Court that the religious scruples of the Amish are opposed to the education of their children beyond the grade schools, yet I disagree with the Court's conclusion that the matter is within the dispensation of parents alone. The Court's analysis assumes that the only interests at stake in the case are those of the Amish parents on the one hand, and those of the State on the other. The difficulty with this approach is that, despite the Court's claim, the parents are seeking to vindicate not only their own free exercise claims, but also those of their high-school-age children.

It is argued that the right of the Amish children to religious freedom is not presented by the facts of the case, as the issue before the Court involves only the Amish parents' religious freedom to defy a state criminal statute imposing upon them an affirmative duty to cause their children to attend high school.

deletions

First, respondents' motion to dismiss in the trial court expressly asserts, not only the religious liberty of the adults, but also that of the children, as a defense to the prosecutions. It is, of course, beyond question that the parents have standing as defendants in a crim-

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. April 12, 1972

RE: No. 70-110 - Wisconsin v. Yoder

Dear Chief:

I share Potter's view of your opinion in the above. I note your response to Potter's suggestion that you will revise your opinion accordingly.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 24, 1972

RE: No. 70-110 - Wisconsin v. Yoder

Dear Chief:

I am happy to join your opinion in
the above case.

Sincerely,



The Chief Justice

cc: The Conference

•? Wm Douglas Oct 71

70-110

is this the missing WJB letter?

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

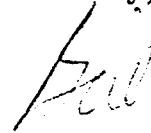
May 12, 1972

No. 70-110 - Wisconsin v. Yoder

Dear Byron:

Please join me in your concurrence
in the above.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 10, 1972

70-110 - Wisconsin v. Yoder

Dear Chief,

I am in basic agreement with your admirably thorough opinion, with two reservations that I trust you can satisfy without great difficulty:

(1) Since the case involves a constitutional attack upon state laws, I think there should be a specific reference to the Fourteenth Amendment in the first paragraph of the opinion and in the first paragraph of Part V on page 28.

(2) I am enough of a disciple of Hugo Black to be unable to agree that "parental direction" is a constitutional right. To be sure, our society has long been organized in terms of the monogamous family structure, and this Court's cases make clear that the interests arising from that structure enjoy procedural due process as well as equal protection immunity from governmental interference. But it is something else to say that those interests are substantive constitutional rights. My concern, specifically, is with some of the language on page 8 and on pages 26-27 of the opinion. I would hope that you could modify that language so as to make clear that the substantive reliance of the opinion is exclusively upon the right of free exercise of religion, conferred by the First and Fourteenth Amendments of the Constitution.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 24, 1972

70-110 - Wisconsin v. Yoder

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

6

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

Circulated: MAR 27 1972

No. 70-110

Recirculated: _____

State of Wisconsin, }
Petitioner, } On Writ of Certiorari to the Su-
v. } preme Court of Wisconsin.
Jonas Yoder et al. }

[May —, 1972]

MR. JUSTICE STEWART, concurring.

This case involves the constitutionality of imposing criminal punishment upon Amish parents for *their* religiously based refusal to compel their children to attend public high schools. Wisconsin has sought to brand these parents as criminals for following their religious beliefs, and the Court today rightly holds that Wisconsin cannot constitutionally do so.

This case in no way involves any questions regarding the right of the children of Amish parents to attend public high schools, or any other institutions of learning, if they wish to do so. As the Court points out, there is no suggestion whatever in the record that the religious beliefs of the children here concerned differ in any way from those of their parents. Only one of the children testified. The last two questions and answers on her cross-examination accurately sum up her testimony:

“Q. So I take it then, Frieda, the only reason you are not going to school, and did not go to school since last September, is because of *your* religion?”

“A. Yes.

“Q. That is the only reason?”

“A. Yes.” (Emphasis supplied.)

It is clear to me, therefore, that this record simply does not present the interesting and important issue discussed in Part I of the dissenting opinion of MR. JUSTICE DOUGLAS. With this observation, I join the opinion and the judgment of the Court.

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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

Calculated: _____

No. 70-110

Recirculated: APR 27 1972

State of Wisconsin,)
Petitioner,)
v.) On Writ of Certiorari to the Su-
Jonas Yoder et al.) preme Court of Wisconsin.

[May —, 1972]

MR. JUSTICE STEWART, with whom MR. JUSTICE BRENNAN joins, concurring.

This case involves the constitutionality of imposing criminal punishment upon Amish parents for *their* religiously based refusal to compel their children to attend public high schools. Wisconsin has sought to brand these parents as criminals for following their religious beliefs, and the Court today rightly holds that Wisconsin cannot constitutionally do so.

This case in no way involves any questions regarding the right of the children of Amish parents to attend public high schools, or any other institutions of learning, if they wish to do so. As the Court points out, there is no suggestion whatever in the record that the religious beliefs of the children here concerned differ in any way from those of their parents. Only one of the children testified. The last two questions and answers on her cross-examination accurately sum up her testimony:

“Q. So I take it then, Frieda, the only reason you are not going to school, and did not go to school since last September, is because of *your* religion?”

“A. Yes.

“Q. That is the only reason?”

“A. Yes.” (Emphasis supplied.)

It is clear to me, therefore, that this record simply does not present the interesting and important issue discussed in Part I of the dissenting opinion of MR. JUSTICE DOUGLAS. With this observation, I join the opinion and the judgment of the Court.

May 12, 1972

70-110 - Wisconsin v. Yoder

Dear Byron,

Please join me in your concurring
opinion in this case.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

By

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES, J.

No. 70-110

Circulated: MAY 11 1972

Recirculated: _____

State of Wisconsin,)
Petitioner,)
v.) On Writ of Certiorari to the Su-
Jonas Yoder et al.) preme Court of Wisconsin.

[May —, 1972]

MR. JUSTICE WHITE, concurring.

Cases such as this one inevitably call for a delicate balancing of important but conflicting interests. I join the opinion and judgment of the Court because I cannot say that the State's interest in requiring two more years of compulsory education in the ninth and tenth grades outweighs the importance of the concededly sincere Amish religious practice to the survival of that sect.

This would be a very different case for me if respondents' claim were that their religion forbade their children from attending any school at any time and from complying in any way with the educational standards set by the State. Since the Amish children are permitted to acquire the basic tools of literacy to survive in modern society by attending grades one through eight and since the deviation from the State's compulsory education law is relatively slight, I conclude that respondents' claim must prevail, largely because "religious freedom—the freedom to believe and to practice strange and, it may be, foreign creeds—has classically been one of the highest values of our society." *Braunfeld v. Brown*, 366 U. S. 599, 612 (1961) (BRENNAN, J., dissenting).

The importance of the state interest asserted here cannot be denigrated, however:

"Today, education is perhaps the most important function of state and local governments. Com-

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
 Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

p. 1

2
1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

No. 70-110

Circulated: _____

Recirculated: 5-13-72

State of Wisconsin, }
Petitioner, }
v. } On Writ of Certiorari to the Su-
Jonas Yoder et al. } preme Court of Wisconsin.

[May —, 1972]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN and MR. JUSTICE STEWART join, concurring.

Cases such as this one inevitably call for a delicate balancing of important but conflicting interests. I join the opinion and judgment of the Court because I cannot say that the State's interest in requiring two more years of compulsory education in the ninth and tenth grades outweighs the importance of the concededly sincere Amish religious practice to the survival of that sect.

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The importance of the state interest asserted here cannot be denigrated, however:

"Today, education is perhaps the most important function of state and local governments. Com-

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

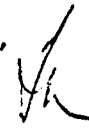
May 11, 1972

Re: No. 70-110 - Wisconsin v. Yoder

Dear Chief:

Please join me.

Sincerely,



T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 1, 1972

Re: No. 70-110 - Wisconsin v. Yoder, et al.

Dear Chief:

Please join me.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference