

The Burger Court Opinion Writing Database

Huffman v. Boersen

406 U.S. 337 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

May 12, 1972

No. 71-5097 -- Huffman v. Boersen

Dear Bill:

Please join me.

Regards,

LSB

Mr. Justice Brennan

Copies to the Conference

31
To: The Chief Justice
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

No. 71-5097

Circulated: 5-11

Recirculated: _____

Harold Eugene Huffman,
Petitioner, } On Writ of Certiorari to
v. } the Supreme Court of
Faye I. Boersen. } Nebraska.

[May —, 1972]

MR. JUSTICE DOUGLAS, concurring.

While I agree to either reversing the judgment below or vacating and remanding, I do so on somewhat different grounds.

This case is clearly controlled by *Boddie v. Connecticut*, 401 U. S. 371. It involves not a divorce, but an annulment and a claim concerning the paternity and custody of a child. The principles announced in *Boddie* are therefore clearly applicable no matter how closely *Boddie* is confined.¹

What the Supreme Court of Nebraska may do about the new statute that has recently been enacted is its

¹ I share the view of Justice Black, however, that

"the decision in *Boddie v. Connecticut* can safely rest on only one crucial foundation—that the civil courts of the United States and each of the States belong to the people of this country and that no person can be denied access to those courts, either for a trial or an appeal, because he cannot pay a fee, finance a bond, risk a penalty, or afford to hire an attorney.

"[T]he crucial foundation on which *Boddie* rests also forbids denial of an indigent's right of appeal in civil cases merely because he is too poor to pay appeal costs. Once the right to unhampered access to the judicial process has been established, that right is diluted unless the indigent litigant has an opportunity to assert and obtain review of the errors committed at trial." *Meltzer v. LeCraw*, 402 U. S. 954, 955, 958 (opinion of Black, J.).

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 8, 1971

MEMORANDUM TO THE CONFERENCE

RE: No. 71-5097 - Huffman v. Boersen

The petition in this case exceeded 50 pages and the Clerk sent it to me to prepare a memorandum. The memorandum is attached.

Personally, I have difficulty seeing why Boddie should be held not to require the relief he sought. Even for those who would limit Boddie to divorce cases, I should think an annulment proceeding comes within Boddie's reach. And I can't see any basis for distinguishing between an impecunious petitioner and an impecunious respondent. I shall therefore vote to grant the petition.

W. J. B. Jr.

Wm Powers
Oct 7'

Please forgive me

1st DRAFT

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

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: 4-28-72

No. 71-5097

Recirculated: _____

Harold Eugene Huffman,
Petitioner, } On Writ of Certiorari to
v. } the Supreme Court of
Faye I. Boersen. } Nebraska.

[May —, 1972]

PER CURIAM.

We granted certiorari to review the constitutionality of Rev. Stat. Neb. 1943 (R. I. 1964) § 25-1914¹ under which the Nebraska Supreme Court dismissed this indigent petitioner's appeal for his failure to deposit the \$75 cash or bond security for costs required of appellants by the statute. 404 U. S. 990, 998 (1971). The judgment appealed from annulled petitioner's marriage to respondent and dismissed his counter suit claiming paternity and custody of a child born to respondent. After our grant of certiorari, Nebraska enacted Legislative Bill 1120 providing, among other things, that the Nebraska courts "shall authorize . . . [an] appeal . . . without prepayment of . . . security, by a person who makes an affidavit that he is unable to . . . give security . . .," except that "An appeal may not be taken *in forma*

¹ "On appeal in any case taken from the district court to the Supreme Court the appellant . . . shall, within one month next after the rendition of the judgment or decree . . . sought to be reversed, vacated or modified, . . . file in the district court a bond or undertaking in the sum of seventy-five dollars to be approved by the clerk of the district court, conditioned that the appellant shall pay all costs adjudged against him in the Supreme Court; or, in lieu thereof, shall make a cash deposit with said clerk of at least seventy-five dollars for the same purpose"

Page 2.

Additional Wks

2nd DRAFT

To: The Chief Justice
Mr. Justice [redacted]
Mr. Justice [redacted]
Mr. Justice [redacted]
✓ Mr. Justice [redacted]
Mr. Justice [redacted]
Mr. Justice [redacted]
Mr. Justice [redacted]

From: [redacted]

Circular

Recirc

5-1-72 ✓

SUPREME COURT OF THE UNITED STATES

No. 71-5097

Harold Eugene Huffman,
Petitioner, } On Writ of Certiorari to
v. } the Supreme Court of
Faye I. Boersen. Nebraska.

[May —, 1972]

PER CURIAM.

We granted certiorari to review the constitutionality of Rev. Stat. Neb. 1943 (R. I. 1964) § 25-1914¹ under which the Nebraska Supreme Court dismissed this indigent petitioner's appeal for his failure to deposit the \$75 cash or bond security for costs required of appellants by the statute. 404 U. S. 990, 998 (1971). The judgment appealed from annulled petitioner's marriage to respondent and dismissed his counter suit claiming paternity and custody of a child born to respondent. After our grant of certiorari, Nebraska enacted Legislative Bill 1120 providing, among other things, that the Nebraska courts "shall authorize . . . [an] appeal . . . without prepayment of . . . security, by a person who makes an affidavit that he is unable to . . . give security . . .," except that "An appeal may not be taken *in forma*

¹ "On appeal in any case taken from the district court to the Supreme Court the appellant . . . shall, within one month next after the rendition of the judgment or decree . . . sought to be reversed, vacated or modified, . . . file in the district court a bond or undertaking in the sum of seventy-five dollars to be approved by the clerk of the district court, conditioned that the appellant shall pay all costs adjudged against him in the Supreme Court; or, in lieu thereof, shall make a cash deposit with said clerk of at least seventy-five dollars for the same purpose"

⑥
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 28, 1972

71-5097 - Huffman v. Boersen

Dear Bill,

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

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 28, 1972

Re: No. 71-5097 - Huffman v. Boersen

Dear Bill:

Please join me.

Sincerely,

Byron

Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 28, 1972

No. 71-5097 - Huffman v. Boersen

Dear Bill:

Please join me in your per curiam.

Sincerely,



T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 28, 1972

Re: No. 71-5097 - Huffman v. Boersen

Dear Bill:

Please join me in your proposed Per
Curiam.

Sincerely,

H. A. B.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 1, 1972

Re: No. 71-5097 Huffman v. Boersen

Dear Bill:

Please join me in your Per Curiam opinion.

Sincerely,

Lewis

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 28, 1972

Re: No. 71-5097 - Huffman v. Boersen

Dear Bill:

Please join me in your Per Curiam in this case.

Sincerely,

Mr. Justice Brennan

Copies to the Conference