

# The Burger Court Opinion Writing Database

## *Spencer v. Kugler*

404 U.S. 1027 (1972)

Paul J. Wahlbeck, George Washington University  
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change throughout

2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

VIVIAN SPENCER ET AL. v. GEORGE F.  
KUGLER ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF NEW JERSEY

No. 71-519.\* Decided January —, 1972

MR. JUSTICE DOUGLAS.

The Black and Chicano students in these cases want nothing more than to receive the same quality of education from our public schools as is enjoyed by the Whites. To deny them that equality is to sanction the dispensation of public benefits according to the invidious classification of race.

No. 71-519. The appellants in *Spencer* are black students and their parents who sought to convene a three-judge District Court in order to challenge the constitutionality of New Jersey's statutory scheme establishing the boundaries of school districts. They argued that by establishing school district lines to coincide with the boundaries of the State's political subdivisions, cf. N. J. Stat. 18A:8-1, the State imposed upon the public schools patterns of racial imbalance in violation of the Civil Rights Act of 1871, 42 U. S. C. § 1983. It is said that New Jersey only prescribes school district boundaries in conformity with municipal boundaries. There is, however, a showing that at times a Black has to walk further to his school than the White school in his neighborhood. The remedy is redistricting. We have sponsored that process to protest the right to vote. *Reynolds v. Sims*, 377 U. S. 533. The right to education in the

\*Together with *Wilfred Keyes et al. v. School District No. 1, Denver, Colorado*, No. 71-507, on petition for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit.

To: The Chief Justice  
Mr. Justice Warren  
Mr. Justice Brandeis  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Marshall  
Mr. Justice Stewart  
Mr. Justice Thurgood Marshall  
Mr. Justice White

From: Vivian Spencer et al.

1/10/72

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*Stylistic changes  
throughout*

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Burger ✓

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

VIVIAN SPENCER ET AL. v. GEORGE F.  
KUGLER ET AL.

Circulated: \_\_\_\_\_

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF NEW JERSEY

Recirculated: 1-15

No. 71-519. Decided January 17, 1972

MR. JUSTICE DOUGLAS, dissenting.

The Black students in this case want nothing more than to receive the same quality of education from our public schools as is enjoyed by the Whites. To deny them that equality is to sanction the dispensation of public benefits according to the invidious classification of race.

Appellants who sought to convene a three-judge District Court in order to challenge the constitutionality of New Jersey's statutory scheme establishing the boundaries of school districts. They argue that by establishing school district lines to coincide with the boundaries of the State's political subdivisions, cf. N. J. Stat. 18A:8-1, the State imposed upon the public schools patterns of racial imbalance in violation of the Civil Rights Act of 1871, 42 U. S. C. § 1983. It is said in reply that New Jersey only prescribes school district boundaries in conformity with municipal boundaries. There is, however, a showing that at times a Black has to walk further to his school than the White school in his neighborhood. The remedy is redistricting. We have sponsored that process to protect the right to vote. *Reynolds v. Sims*, 377 U. S. 533. The right to education in the environment of a multi-racial community seems equally fundamental.

The result, according to appellants, is an inferior education for students of minority races—something this Court has long condemned. *McLaurin v. Oklahoma*

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