

The Burger Court Opinion Writing Database

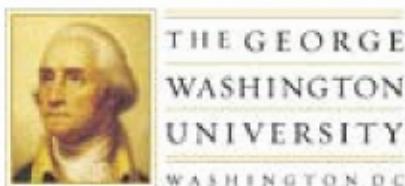
Johnson v. New York State Education Department

409 U.S. 75 (1973)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



B

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

CHAMBERS OF
THE CHIEF JUSTICE

November 14, 1972

Re: No. 71-5685 - Johnson v. New York State Education Dept.

Dear Bill:

Please join me.

Regards,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

November 14, 1972

Dear Bill:

Please join me in your Per Curiam
in No. 71-5685 - Johnson v. New York.

EW/D
W. O. D.

Mr. Justice Brennan

cc: Conference

3

Dear Bill
for due time & will
initiate a dissent in
this case

2nd 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.

Circulated: 11-14-72

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 71-5685

Daisy Johnson et al., Petitioners, } On Writ of Certiorari
v. } to the United States
New York State Education } Court of Appeals for
Department et al. } the Second Circuit.

[November —, 1972]

PER CURIAM.

We granted certiorari to review the judgment of the United States Court of Appeals for the Second Circuit, 449 F. 2d 871 (1971), affirming the District Court's dismissal of petitioners' complaint challenging the constitutionality of New York Election Laws §§ 701 *et seq.* (1971). 405 U. S. 916 (1972). However, respondents' brief states that "[o]n May 3, 1972, the qualified voters of the respondent school district elected by majority vote to assess a tax for the purchase of *all* textbooks for grades one through six in the schools of the district." In light of this fact, and given the suggestion at oral argument that the books themselves have a life expectancy of five years, the judgment is vacated and the case is remanded to the United States District Court for the Eastern District of New York to determine whether this case has become moot.

113.8
8-20-72

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 14, 1972

71-5685 - Johnson v. New York
State Education Dept.

Dear Bill,

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

Sincerely yours,

BS

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 14, 1972

Re: No. 71-5685 - Johnson v. New York State
Education Department

Dear Bill:

Join me, please.

Sincerely,

Brennan

Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 14, 1972

Re: No. 71-5685 - Johnson v. N. Y. State

Dear Bill:

In due time I will circulate a
dissent in this case.

Sincerely,



T.M.

Mr. Justice Brennan

cc: Conference

Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Marshall, J.

Circulated: NOV 17 1972

No. 71-5685

Recirculated:

Daisy Johnson et al., Petitioners.
v.
New York State Education
Department et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Second Circuit.

[December --, 1972]

MR. JUSTICE MARSHALL, concurring.

While I join the Court's decision, I feel obliged to state somewhat more fully what I view to be the reasons for and meaning of this remand.

The New York statutory scheme here under attack effectively denies textbooks to indigent elementary public school children unless the voters of their district approve a tax especially for the purpose of providing the books.¹ Petitioners who are indigent recipients of public assistance allege, *inter alia*, that the statute, as applied to their children, creates a wealth classification violative of the Equal Protection Clause.

When this action was initiated in September 1970, respondent Board of Education of Union Free School District No. 27 was not providing free textbooks to petitioners' children, although textbooks were available upon the payment of a fee, which petitioners were unable

¹ Under New York law, local school districts are required to loan textbooks free to students in grades seven through 12. N. Y. Education Law § 701 (1971). No such provision is made for children in grades one through six; free textbooks are to be made available to children in those grades only upon the vote of the majority of the district's eligible voters to levy a tax to provide funds for the purchase of the textbooks, N. Y. Education Law § 703 (1971).

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 14, 1972

Re: No. 71-5685 - Johnson v. New York State
Education Department

Dear Bill:

Please join me in your proposed opinion.

Sincerely,

H.A.B.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

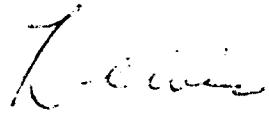
November 14, 1972

Re: No. 71-5685 Johnson v. New York State
Education Department et al.

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

lfp/ss

cc: The Conference

B

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 14, 1972

Re: No. 71-5685 - Johnson v. New York State Education
Dept.

Dear Bill:

Please join me in your Per Curiam.

Sincerely,

WW

Mr. Justice Brennan

Copies to Conference