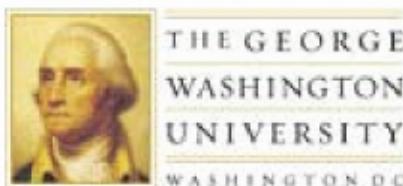


# The Burger Court Opinion Writing Database

*Johnson v. Mississippi*

421 U.S. 213 (1975)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

May 6, 1975

Re: No. 73-1531 - Johnson v. Mississippi

Dear Byron:

Please join me.

Regards,

W.B.

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 9, 1975

RE: No. 73-1531 Johnson v. Mississippi

Dear Thurgood:

Please join me in the dissenting opinion you  
have prepared in the above.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 1, 1975

73-1531, Johnson v. Mississippi

Dear Byron,

I am glad to join your opinion for the  
Court in this case.

Sincerely yours,

P. S.

Mr. Justice White

Copies to the Conference

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

From: White, J.

Circulated: 4-1-75

Recirculated: \_\_\_\_\_

## 1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 73-1531

Albert Johnson et al.,  
Petitioners,  
v.  
State of Mississippi et al. } On Writ of Certiorari to the  
United States Court of Appeals for the Fifth Circuit.

[April —, 1975]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case concerns the application of 28 U. S. C. § 1443 (1), permitting defendants in state cases to remove the proceedings to the federal district courts under certain conditions, in the light of Title I of the Civil Rights Act of 1968, § 101 (a), 82 Stat. 73, 18 U. S. C. § 245.

I

During March 1972, petitioners, six Negro citizens of Vicksburg, Mississippi, along with other citizens of Vicksburg, made various demands upon certain merchants and city officials generally relating to the number of Negroes employed or serving in various positions in both local government and business enterprises. In late March, petitioners began picketing some business establishments in Vicksburg and urging, by word of mouth and through leaflets, that the citizens of Vicksburg boycott those establishments until such time as petitioners' demands were realized.<sup>1</sup> On May 2, May 13, May 14, and May 21 of that year, petitioners, along with 43 other Negroes, were

<sup>1</sup> With respect to these business establishments, the specific demands made by the petitioners were that 40% of their employees and managers should be drawn from the Negro community.

STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 5

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

From: White, J.

2nd DRAFT

Circulated:

SUPREME COURT OF THE UNITED STATES

Argued: 4-4-75

No. 73-1531

Albert Johnson et al.,  
Petitioners,  
v.  
State of Mississippi et al. } On Writ of Certiorari to the  
United States Court of Appeals for the Fifth Circuit.

[April —, 1975]

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φ 15

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

From: White, J.

Circulated:

Recirculated: 4-14-75

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1531

Albert Johnson et al.,  
Petitioners,  
v.  
State of Mississippi et al. } On Writ of Certiorari to the  
United States Court of Appeals for the Fifth Circuit.

[April —, 1975]

MR. JUSTICE WHITE delivered the opinion of the Court.

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p. 10

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

From: White, J.

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

Recirculated: 4-24-75

## 4th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-1531

Albert Johnson et al.,  
Petitioners,  
v.  
State of Mississippi et al. } On Writ of Certiorari to the  
United States Court of Appeals for the Fifth Circuit.

[April —, 1975]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case concerns the application of 28 U. S. C. § 1443 (1), permitting defendants in state cases to remove the proceedings to the federal district courts under certain conditions, in the light of Title I of the Civil Rights Act of 1968, § 101 (a), 82 Stat. 73, 18 U. S. C. § 245.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

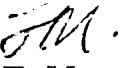
April 1, 1975

Re: No. 73-1531 -- Albert Johnson v. State of Mississippi

Dear Byron:

In due course, I shall circulate a dissent in  
this case.

Sincerely,

  
T. M.

Mr. Justice White

cc: The Conference

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

From: Marshall, J.

Circulated: APP R 19

Recirculated: \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-1531

Albert Johnson et al.,  
Petitioners,  
v.  
State of Mississippi et al. } On Writ of Certiorari to the  
United States Court of Appeals for the Fifth Circuit.

[April —, 1975]

MR. JUSTICE MARSHALL, dissenting.

I believe the dissenters in *City of Greenwood v. Peacock*, 384 U. S. 808 (1966), correctly construed the civil rights removal statute, 28 U. S. C. § 1443. See *New York v. Galamison*, 342 F. 2d 255, 275 (CA2), cert. denied, 380 U. S. 977 (1965) (MARSHALL, J., dissenting). On that broader view of the statute, removal would plainly be proper here, and if the Federal District Court determined that the state proceedings were being used to deny federally protected rights, it would be required to dismiss the prosecution. See *City of Greenwood v. Peacock*, *supra*, 384 U. S., at 840-848 (DOUGLAS, J., dissenting). Even under *Peacock* and its companion case, *Georgia v. Rachel*, 384 U. S. 780 (1966), however, I think that removal should have been available on the particular facts of this case.

As the Court today observes, *Rachel* and *Peacock* imposed sharp limitations on the scope of the removal statute. The statute was held to permit removal only in the rare case in which (1) the federal right at issue stemmed from a law providing expressly for equal civil rights; (2) the conduct with which the removal petitioners were charged was arguably protected by the federal law in question; and (3) the federal law granted the further right not only to engage in the conduct in

Wm. Taylor  
Oct 77

To: The Chief Justice

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

From: Marshall, J.

Circulated:

Recirculated: APR 16 19

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-1531

Albert Johnson et al.,  
 Petitioners, } On Writ of Certiorari to the  
 v. } United States Court of Ap-  
 State of Mississippi et al. } peals for the Fifth Circuit.

[April —, 1975]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, dissenting.

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W.M. Lyle  
 Oct 74

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

From: Marshall, J.

Circulated:

Recirculated: APR 28 1975

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-1531

Albert Johnson et al.,  
Petitioners, } On Writ of Certiorari to the  
v. } United States Court of Ap-  
State of Mississippi et al. } peals for the Fifth Circuit.

[April —, 1975]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, dissenting.

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6 Wm. Douglas  
Apr 28 1975

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 14, 1975

Re: No. 73-1531 - Johnson v. Mississippi

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 1, 1975

No. 73-1531 Johnson v. Mississippi

Dear Byron:

Please join me.

Sincerely,

*Lewis*

Mr. Justice White

1fp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 1, 1975

Re: No. 73-1531 - Johnson v. Mississippi

Dear Byron:

Please join me.

Sincerely,

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 1, 1975

Re: No. 73-1531 - Johnson v. Mississippi

Dear Byron:

Please join me.

Sincerely,

Mr. Justice White

Copies to the Conference

P.S. (BRW only) I think I disagree with the nomenclature used in your footnote 7, which has nothing whatever to do with the treatment of the merits of the case. You say in that footnote that the Court of Appeals "granted an application for a stay of its mandate to petitioners for purposes of their seeking a writ of certiorari in this Court, that stay being effective until disposition of the case by this Court, and having the effect of preventing the prosecution of petitioners on the indictments handed down by the grand jury from going forward."

Your footnote 6 indicates that the District Court had denied a stay of its mandate remanding the cause to the state

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ON WAR, REVOLUTION AND PEACE



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- 2 -

courts, and further indicates that the record does not show whether a stay was sought from the Court of Appeals. Apparently, according to the additional text in your footnote 6, grand jury proceedings continued after the ruling of the District Court.

I would think with the case in this posture that a mere stay of its mandate by the Court of Appeals would not have the effect of "preventing the prosecution of petitioners on the indictments handed down by the grand jury from going forward". The mandate of the Court of Appeals was that the judgment of the District Court be affirmed, and a stay of that mandate would not prevent further prosecution in the state court unless at some earlier point in the proceedings a stay of the District Court's order of remand had been granted. Absent that, I would think that in order for an order of the Court of Appeals to stay the proceedings in the state court it would have to actually be a stay of those proceedings, rather than simply a stay of its own mandate.

Further your affiant sayeth not.

WHR