

The Burger Court Opinion Writing Database

Hudgens v. NLRB

424 U.S. 507 (1976)

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

February 26, 1976

Re: 74-773 - Hudgens v. NLRB

Dear Lewis:

I joined Potter's opinion earlier this morning.

Please show me also as joining your concurring opinion.

Regards,

WEBB

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

February 27, 1976

Re: 74-773 - Hudgens v. NLRB

Dear Potter:

I join your proposed opinion dated February 20.

Regards,

W. B.

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 9, 1976

RE: No. 74-773 Hudgens v. N.L.R.B., et al.

Dear Thurgood:

Please join me in your dissenting opinion in
the above.

Sincerely,

Brennan

Mr. Justice Marshall

cc: The Conference

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

From: Stewart, J.

Circulated: DEC 16

Unpublished:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-773

Scott Hudgens, Petitioner, *v.* On Writ of Certiorari to the
National Labor Relations Board et al. United States Court of Appeals for the Fifth Circuit.

[January —, 1976]

MR. JUSTICE STEWART delivered the opinion of the Court.

A group of labor union members who engaged in peaceful primary picketing within the confines of a privately owned shopping center were threatened by an agent of the owner with arrest for criminal trespass if they did not depart. The question presented is whether this threat violated the National Labor Relations Act, as amended 61 Stat. 136, 29 U. S. C. § 151 *et seq.* The National Labor Relations Board concluded that it did, 205 N. L. R. B. 628, and the Court of Appeals for the Fifth Circuit agreed. 501 F. 2d 161. We granted certiorari because of the seemingly important questions of federal law presented. 420 U. S. 971.

I

The petitioner, Scott Hudgens, is the owner of the North DeKalb Shopping Center, located in suburban Atlanta, Ga. The center consists of a single large building with an enclosed mall. Surrounding the building is a parking area which can accommodate 2,640 automobiles. The shopping center houses 60 retail stores leased to various businesses. One of the lessees is the

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PP. 3, 13, 15

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

Mr. Stewart, J.

Recirculated: DEC 1 5 1976

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-773

Scott Hudgens, Petitioner,
 v.
 National Labor Relations Board et al. } On Writ of Certiorari to the
 } United States Court of Appeals for the Fifth Circuit.

[January —, 1976]

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PP. 13, 16

To: The Chief Justice
Mr. Justice Powell
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: _____

Recirculated: JAN 7 1976

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-773

Scott Hudgens, Petitioner, v. National Labor Relations Board et al. } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[January —, 1976]

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✓ P. 11

To: The Chief Justice
Mr. Justice Black
Mr. Justice Black
Mr. Justice Marshall
Mr. Justice Brennan
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: _____

Recirculated: FEB 2 1976

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-773

Scott Hudgens, Petitioner, v.
National Labor Relations Board et al. } On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit.

[January —, 1976]

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p. 13

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

From: Mr. Justice Stewart

Circulated: 2/10

Recirculated: FEB 18 1976

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-773

Scott Hudgens, Petitioner, *v.* National Labor Relations Board et al. } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[January —, 1976]

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 2, 1976

MEMORANDUM TO THE CONFERENCE

HELD FOR NO. 74-773, HUDGENS v. NLRB

No. 74-1032, HUDGENS v. LOCAL 315

This case arises from the same factual episode as Hudgens v. NLRB, 74-773. After Local 315 filed an unfair labor practice charge against Hudgens with the NLRB, Hudgens brought this suit in Georgia Superior Court seeking a declaratory judgment that the union would be in violation of the Georgia criminal trespass statute if it engaged in unauthorized picketing on Hudgens' shopping center property. The union filed a motion to dismiss on the ground that the state court's jurisdiction was preempted under San Diego Building Trades Council v. Garmon, 359 U.S. 236. The trial court ruled that jurisdiction of the dispute lay solely with the NLRB. The Georgia Court of Appeals affirmed, stressing that "at the time Scott Hudgens went into the Superior Court of Fulton County the controversy between him and the union with his stipulated concurrence was already being dealt with by the National Labor Relations Board." The question presented by this petition for certiorari is thus whether state courts are preempted by the National Labor Relations Act from determining whether the unauthorized entry of union pickets on private property violates state trespass laws.

The issue was before the Court in Taggart v. Weinacker's, Inc., 397 U.S. 223, where certiorari was dismissed as

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

From: Mr. Justice White

Circulated: 1-6-76

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-773

Scott Hudgens, Petitioner,
v.
National Labor Relations Board et al. } On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit.

[January —, 1976]

MR. JUSTICE WHITE, concurring in the judgment.

While I concur in the result reached by the Court, I find it unnecessary to inter *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc.*, 391 U. S. 308 (1968), and therefore do not join the Court's opinion. I agree that "the constitutional guarantee of free expression has no part to play in a case such as this," *ante*, p. 13; but *Lloyd Corp. v. Tanner*, 407 U. S. 551 (1972), did not overrule *Logan Valley*, either expressly or implicitly, and I would not, somewhat after the fact, say that it did.

One need go no further than *Logan Valley* itself, for the First Amendment protection established by *Logan Valley* was expressly limited to the picketing of a specific store for the purpose of conveying information with respect to the operation in the shopping center of *that* store:

"The picketing carried on by petitioners was directed specifically at patrons of the Weis Market located within the shopping center and the message sought to be conveyed to the public concerned the manner in which that particular market was being operated. We are, therefore, not called upon to consider whether respondents' property rights could, consistently with the First Amendment, justify a

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 17, 1975

Re: No. 74-773-- Scott Hudgens v. National Labor
Relations Board

Dear Potter:

In due course I will circulate a separate opinion in
this case.

Sincerely,

J.M.
T. M.

Mr. Justice Stewart

cc: The Conference

FEB 9 1976

1st DRAFT

SUPREME COURT OF THE UNITED STATES

—
No. 74-773
—

Scott Hudgens, Petitioner,
v.
National Labor Relations Board et al. } On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit.

[February —, 1976]

MR. JUSTICE MARSHALL, dissenting.

The Court today holds that the First Amendment poses no bar to a shopping center owner's prohibiting speech within his shopping center. After deciding this far-reaching constitutional question, and overruling *Food Employees Local 590 v. Logan Valley*, 391 U. S. 308 (1968), in the process, the Court proceeds to remand for consideration of the statutory question whether the shopping center owner in this case unlawfully interfered with the Butler Shoe Company employees' rights under § 7 of the National Labor Relations Act, 29 U. S. C. § 157.

In explaining why it addresses any constitutional issue at all, the Court observes simply that the history of the litigation has been one of "shifting positions on the part of the litigants, the Board, and the Court of Appeals," *ante*, at 5, as to whether relief was being sought, or granted, under the First Amendment, under § 7 of the Act, or under some combination of the two. On my reading, the Court of Appeals' decision and, even more clearly, the Board's decision here for review, were based solely on § 7, not on the First Amendment; and this Court ought initially consider the statutory question without reference to the First Amendment—the question on which the Court remands. But even under the Court's reading of the opinions of the Board and the Court of Appeals, the

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

STYLISTIC CHANGES THROUGHOUT.

2, 6, 7-10

From: Mr. Justice Marshall

Circulated: _____

Recirculated: FEB 6 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-773

Scott Hudgens, Petitioner, | On Writ of Certiorari to the
 v. | United States Court of Ap-
 National Labor Relations | peals for the Fifth Circuit.
 Board et al.

[February —, 1976]

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STYLISTIC CHANGES THROUGHOUT.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Marshall

Circulated: _____

3rd DRAFT

Recirculated: FER 18 1976

SUPREME COURT OF THE UNITED STATES

No. 74-773

Scott Hudgens, Petitioner, | On Writ of Certiorari to the
v. | United States Court of Ap-
National Labor Relations | peals for the Fifth Circuit.
Board et al. |

[February —, 1976]

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February 19, 1976

Re: No. 74-773 - Hudgens v. NLRB

Dear Potter:

By separate note I am joining your opinion. I think it is a very good opinion and it serves to clear away some of the cobwebs that have developed in this area.

Although I join it, I should tell you that there is one detail which discomforts me. This is footnote 9 on page 13 of the recirculation of February 9. One, of course, should hesitate to quibble about the selection of cases to cite. Nevertheless, I would much prefer that Valentine not be cited when there are others (and, in my opinion, better ones) that could replace it. What about Chaplinsky v. New Hampshire, 315 U.S. 568? I might even mention Bigelow v. Virginia, 421 U.S. 809, 819; although I wrote that, you joined it. I am presumptuous enough to mention this because Valentine, as you know, has been under attack for some time (see 421 U.S., at 820 n. 6) and is in the crossfire in the Virginia Board of Pharmacy case which is pending.

I shall stay with you in Hudgens whatever you do about the citation of Valentine, but I strongly prefer to have it replaced with some other cited case.

Sincerely,

HAB

Mr. Justice Stewart

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

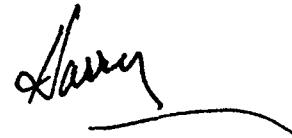
February 19, 1976

Re: No. 74-773 - Hudgens v. NLRB

Dear Potter:

I am glad to join your opinion in this case.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 22, 1975

No. 74-773 Hudgens v. NLRB

Dear Potter:

Please join me in your opinion.

Although I think we could continue to tip-toe around the precedents in this area, your opinion does have the great virtue of coming down clearly on an analysis that can be understood. It also distinguishes sharply, as it should, between the labor law and First Amendment issues.

As my effort in Lloyd to reconcile prior cases contributed to the confusion, I may write a few sentences in concurrence. I will let you know later whether I will undertake this.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: JAN 13 1976

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 74-773

Scott Hudgens, Petitioner, v.
National Labor Relations Board et al. } On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit.

[January —, 1976]

MR. JUSTICE POWELL, concurring.

Although I agree with MR. JUSTICE WHITE's concurring view that *Lloyd Corp. v. Tanner*, 407 U. S. 551 (1972), did not overrule *Logan Valley Plaza, Inc.*, 391 U. S. 308 (1968), and that the present case can be distinguished narrowly from *Logan Valley*, I nevertheless have joined the opinion of the Court today.

The law in this area, particularly with respect to whether First Amendment or labor law principles are applicable, has been less than clear since *Logan Valley* analogized a shopping center to the "company town" in *Marsh v. Alabama*, 326 U. S. 501 (1946). Mr. Justice Black, the author of the Court's opinion in *Marsh*, thought the decisions were irreconcilable.¹ I now agree with Mr. Justice Black that the opinions in these cases cannot be harmonized in a principled way. Upon more mature thought, I have concluded that we would have been wiser in *Lloyd Corp.* to have confronted this dis-

¹ In his dissent in *Logan Valley*, Mr. Justice Black stated that "Marsh was never intended to apply to this kind of situation The basis on which the *Marsh* decision rested was that the property involved encompassed an area that for all practical purposes had been turned into a town; the area had all the attributes of a town and was exactly like any other town in Alabama. I find very little resemblance between the shopping center involved in this case and Chickasaw, Alabama." 391 U. S., at 330, 331.

J
p. 1

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Rehnquist
 Mr. Justice Stevens

2nd DRAFT

SUPREME COURT OF THE UNITED STATES *Mr. Justice Powell*

No. 74-773

Circulated: _____

Recirculated: *JAN 14 1976*

Scott Hudgens, Petitioner,
v.
 National Labor Relations Board et al.

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

[January —, 1976]

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J. J

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
- Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: _____

Recirculated: MAR 1 1976

SUPREME COURT OF THE UNITED STATES

No. 74-773

Scott Hudgens, Petitioner, v. National Labor Relations Board et al. } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[March 3, 1976]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE joins, concurring.

Although I agree with Mr. Justice White's concurring view that *Lloyd Corp. v. Tanner*, 407 U. S. 551 (1972), did not overrule *Amalgamated Food Employees Union v. Logan Valley Plaza*, 391 U. S. 308 (1968), and that the present case can be distinguished narrowly from *Logan Valley*, I nevertheless have joined the opinion of the Court today.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 17, 1975

Re: No. 74-773 - Hudgens v. NLRB

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to the Conference