

# The Burger Court Opinion Writing Database

*Parker Seal Co. v. Cummins*

429 U.S. 65 (1976)

Paul J. Wahlbeck, George Washington University  
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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

October 18, 1976

Re: 75-478 Parker v. Seal

Memorandum to the Conference:

In this case I have decided to vote to reverse,  
which means affirmance by an equally divided count.

This is a developing area, and I am content to  
let it germinate a while until employers have a chance  
to develop solutions.

Regards,

WRB

✓✓

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

From: The Chief Justice

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-478

Parker Seal Company, Petitioner,  
v.  
Paul Cummins. } On Writ of Certiorari to the United  
States Court of Appeals for the  
Sixth Circuit.

[November —, 1976]

PER CURIAM.

The judgment is affirmed by an equally divided Court.

MR. JUSTICE STEVENS took no part in the consideration  
or decision of this case.

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

CHAMBERS OF  
THE CHIEF JUSTICE

November 4, 1976

RE: 75-1511 - Williams v. Southern Union Gas  
75-1105 - Reid v. Memphis Publishing Company  
75-1126 - Trans World Airlines v. Hardison

(Cases Held for Parker Seal Co.) 75-478

Dear Lewis:

For several reasons, I advised the Clerk yesterday to put these "holds" on next Friday's List.

Regards,

WBG

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

November 11, 1976

Re: Cases held for No. 75-478 - Parker Seal Co. v. Cummins

MEMORANDUM TO THE CONFERENCE:

We are holding the following cases for Parker Seal:

1. No. 75-1105 - Reid v. Memphis Publishing Co. - DENY

Petitioner, a Seventh-Day Adventist, was denied employment because he refused to work on Saturdays. As Lewis notes in his memorandum of November 4, the Court of Appeals held for the employer and the Establishment Clause question clearly is not before us. I will vote to DENY.

2. No. 75-1126 - Trans World Airlines, Inc. v. Hardison, et al. - Probable GRANT

Hardison was a TWA employee whose job was covered by a collective bargaining agreement with the International Association of Machinists. The agreement included seniority provisions related to days off and vacations. When Hardison began to study the teachings of the World-Wide Church of God, he discussed his need to have Saturdays off with the facility manager, who agreed to permit a "swapping" arrangement. Hardison then transferred to another shift to permit him to have Saturday off. Later, he bid for a position in another building since he desired a day shift position. This change cost him his relatively high seniority status and decreased his ability to select days off. He was, consequently, soon required to work on a Saturday. The manager and shop steward met with him in an attempt to reconcile the problem but Hardison did not report on three successive Saturdays. A discharge meeting was scheduled. The union advised him to ask for leniency but did not discuss waiver of the seniority rules. Hardison agreed to change to the "twilight shift" but, on the following Friday, left work before the end of that shift. At a discharge hearing, the union argued that the termination was too severe a penalty. However, Hardison was found insubordinate and discharged.

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

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CHAMBERS OF  
JUSTICE POTTER STEWART

November 8, 1976

MEMORANDUM TO THE CONFERENCE

No. 75-478, Parker Seal Co. v. Cummins

I agree with Harry that it would be wise in the future not to announce an affirmance by an equally divided Court in any case until we have thoroughly canvassed the cases being held for it. As presently advised, I further agree with Harry that No. 75-1126, TWA v. Hardison, would be a good candidate for the grant of certiorari.

P.S.  
P.S.

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 8, 1976

MEMORANDUM TO THE CONFERENCE

I feel we may have made a mistake in bringing down No. 75-478, Parker Seal Co. v. Cummins, with an affirmance by an equally divided Court. This is as much my fault as anyone's, but it seems to me to be the result again of irresistible pressure here to get cases down.

I submit that we should never bring down a case with an equally divided Court until we have considered the holds for that case. It is entirely possible that one of the held cases will present the issue adequately. If so, and if we have a full complement for the held case, then in my view the argued case should be restored to the calendar and disposed of after the new case has been decided. This, it seems to me, affords better treatment to the litigants. But the damage has already been done in Parker Seal.

I, for one, think that No. 75-1126, TWA v. Hardison, despite the presence of a collective bargaining agreement, adequately presents the issue in which we were interested. It presents both the statutory and the constitutional aspects. It is likely to have good counsel. I am not at all certain that the involvement of a CBA makes the case unique. As a practical matter, most efforts to accommodate the religious beliefs of an employee will impose a burden on either the employer or other employees. The TWA case is a good one because the other employees are represented by their union.

Whether or not we take one of the held cases, I say again that as a matter of institutional policy we should not bring down a case, as we did here, without prior review of all holds.

All this was, in part, brought to my attention because of the rather amazing headlines indulged in by both local newspapers with respect to Parker Seal. I am always somewhat surprised to learn from the local media what the Court has done the preceding day.

H.A.S.

November 4, 1976

Cases Held for Parker Seal Co. 75-478

Dear Chief:

According to my record, we are holding three cases for Parker Seal. As none of them has yet been put on the Discuss List, I write to inquire whether you wish to add them for tomorrow.

I do not view any of the three as a good vehicle for resolving the statutory and Establishment Clause issues. In brief summary, the cases are as follows:

Williams v. Southern Union Gas, No. 75-1511. CA10 approved a DC decision dismissing a complaint by a single employee who was discharged. The petitioner was a member of the World Wide Church of God, and company policy required all employees to be available on a seven-day week, 24-hour a day basis - although the regular work week was only 40 hours. The Establishment Clause issue is not clearly presented, although I suppose we could reach it.

Reid v. Memphis Publishing Company, No. 75-1105. This involved a refusal to hire rather than a firing. Again, a court of appeals held for the employer, reversing - in this case - a decision of the DC for the employee. The Establishment Clause issue was not pressed.

Trans World Airlines v. Hardison, No. 75-1126. This is a different case, as it involves a collective bargaining agreement. Although both the Title VII construction and the Establishment Clause issues were involved, the factual situation is complex and unique. The case also involves a question whether reasonable accommodation of an employee's religious practices may include depriving senior union members of their seniority rights.

(LFP)

I am inclined to deny in all three of these cases. The first two went for the employer, and neither would be helpful to us in resolving the Establishment Clause question. The TWA case could turn, in part at least, upon the collective bargaining agreement.

As you suggested in your memo to the Conference of October 18, I would be content to let this issue "germinate" at least until a better case is presented.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

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

  
CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

October 28, 1976

Re: No. 75-478 - Parker Seal Co. v. Cummins

Dear Chief:

The proposed per curiam which you have circulated, ordering that the judgment be affirmed by an equally divided Court, is agreeable to me.

Sincerely,



The Chief Justice

Copies to the Conference

*MS*  
Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

October 12, 1976

Re: 75-478 - Parker Seal Co. v. Cummins

Dear Chief:

Footnote 3 of the petitioner's brief has made me realize that the petitioner is a former client--a fact I did not appreciate when I participated in the decision to grant certiorari. Even though the Company was not an important client, since I handled some litigation for it personally, I believe that appearances dictate that I recuse myself from the argument this afternoon.

Respectfully,

*John*

The Chief Justice

Copies to the Conference