

The Burger Court Opinion Writing Database

Cook v. Hudson

429 U.S. 165 (1976)

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



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

Circulated: NOV 9 1976

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-503

Billy D. Cook et al., Petitioners, v. Roger W. Hudson et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
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[November —, 1976]

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted.

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

CHAMBERS OF
THE CHIEF JUSTICE

November 10, 1976

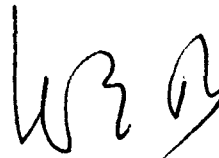
RE: 75-503 - Cook v. Hudson

Dear Bill:

My conference notes on this case are a blank on a
per curiam.

Will you draft what you would like?

Regards,

A handwritten signature in dark ink, appearing to be 'WRB', written in a cursive, stylized manner.

Mr. Justice Brennan

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To: Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall ✓
 Mr. Justice Blackmun
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall

From: The Chief Justice

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SUPREME COURT OF THE UNITED STATES

No. 75-503

Billy D. Cook et al.,
 Petitioners,
 v.
 Roger W. Hudson et al. } On Writ of Certiorari to the
 United States Court of Appeals
 for the Fifth Circuit.

[November —, 1976]

MR. CHIEF JUSTICE BURGER, concurring in the result.

I join in the Court's disposition of this case. In doing so, I emphasize that our decision to dismiss the writ of certiorari as improvidently granted intimates no view on the question of when, if ever, public school teachers—or any comparable public employees—may be required, as a condition of their employment, to enroll their children in any particular school or refrain from sending them to a school which they, as parents, consider desirable. Few familial decisions are as immune from governmental interference as parents' choice of a school for their children, so long as the school chosen otherwise meets the educational standards imposed by the State. See *Pierce v. Society of Sisters*, 268 U. S. 510; *Meyer v. Nebraska*, 262 U. S. 390; *Wisconsin v. Yoder*, 406 U. S. 205.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

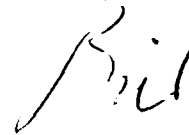
November 9, 1976

RE: No. 75-503 Cook v. Hudson

Dear Chief:

You may recall that I was reluctant to go along with a D.I.G. in the above unless there was a brief recital of reasons, particularly the new statute and our decision in Runyon v. McCrary. My impression was that others shared that view. Do not your conference notes indicate this?

Sincerely,



The Chief Justice

cc: The Conference

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

No. 75-503 Billy D. Cook, et al., Petitioners v. Roger W. Hudson, et al.

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

From: Mr. Justice Brennan

Circulated: 11/11/76

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Argued November 1, 1976

Decided November 1976

PER CURIAM.

Certiorari was granted to consider the question presented whether, consistently with the First and Fourteenth Amendments, a Mississippi public school board may terminate the employment of teachers not sending their children to public schools, but to a private racially segregated school. However, since the grant of certiorari, Runyon v. McCrary, U.S. (1976), held that 42 U.S.C. §1981 prohibits private, commercially operated, non-sectarian schools from denying admission to prospective students because they are Negroes. Moreover, a Mississippi statute, Miss. Code Ann. §37-9-59 (March 27, 1974), enacted after the school board action here complained of, prohibits school boards "from denying employment or re-employment to any person . . . for the single reason that any eligible child of such person does not attend the school system in which such [person] is employed." In light of these circumstances, though §37-9-59 was cited in the record at the time of granting the writ, examination of the merits on oral argument in light of Runyon v. McCrary, satisfies

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

Per: Mr. Justice Brennan

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-503

Billy D. Cook et al., Petitioners, v. Roger W. Hudson et al.	} On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
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[November —, 1976]

PER CURIAM.

Certiorari was granted to consider the question presented whether, consistently with the First and Fourteenth Amendments, a Mississippi public school board may terminate the employment of teachers not sending their children to public schools, but to a private racially segregated school. However, since the grant of certiorari, *Runyon v. McCrary*, — U. S. — (1976), held that 42 U. S. C. § 1981 prohibits private, commercially operated, nonsectarian schools from denying admission to prospective students because they are Negroes. Moreover, a Mississippi statute, Miss. Code Ann. § 37-9-59 (Mar. 27, 1974), enacted after the school board action here complained of, prohibits school boards "from denying employment or re-employment to any person . . . for the single reason that any eligible child of such person does not attend the school system in which such [person] is employed." Though § 37-9-59 was cited in the record at the time of granting the writ, examination of the merits on oral argument in light of *Runyon v. McCrary*, and § 37-9-59, satisfies us that the grant was improvident. Accordingly, the writ of certiorari is dismissed as improvidently granted. Cf. *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U. S. 70 (1955).

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 9, 1976

Re: No. 75-503, Cook v. Hudson

Dear Chief,

I agree with Bill Brennan that the
Per Curiam dismissing the writ in this case
as improvidently granted should contain a
brief recital of the reasons for doing so.

Sincerely yours,

P.S.
1.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 11, 1976

Re: No. 75-503, Cook v. Hudson

Dear Bill,

I agree with the Per Curiam you have circulated
in this case.

Sincerely yours,

P.S.
/

Mr. Justice Brennan

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

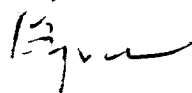
November 11, 1976

Re: No. 75-503 - Cook v. Hudson

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 15, 1976

Re: No. 75-503, Cook v. Hudson

Dear Bill:

I agree with your Per Curiam.

Sincerely,

T.M.
T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 11, 1976

Re: No. 75-503 - Cook v. Hudson

Dear Bill:

I, too, agree with your proposed per curiam in this case.

Sincerely,



Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 11, 1976

No. 75-503 Cook v. Hudson

Dear Bill:

I agree with your Per Curiam in the above case.

Sincerely,

L. F. P.

Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 11, 1976

Re: No. 75-503 - Cook v. Hudson

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

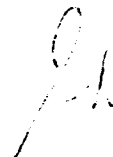
November 11, 1976

Re: 75-503 - Cook v. Hudson

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to the Conference