

The Burger Court Opinion Writing Database

Kush v. Rutledge

460 U.S. 719 (1983)

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

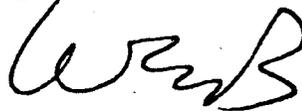
March 31, 1983

Re: No. 81-1675 - Frank Kush, et al. v. Kevin Rutledge

Dear John:

Confirming my memo of March 18th, I join.

Regards,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 14, 1983

RE: No. 81-1675 Kush v. Rutledge

Dear John:

I agree.

Sincerely,

Bul

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 11, 1983

Re: 81-1675 - Kush v. Rutledge

Dear John,

I agree.

Sincerely,



Justice Stevens

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cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 31, 1983

Re: No. 81-1675 - Kush v. Rutledge

Dear John:

Please join me.

Sincerely,

J.M.
T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 15, 1983

Re: No. 81-1675 - Kush v. Rutledge

Dear John:

Please join me.

Sincerely,

Harry

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 14, 1983

81-1675 Kush v. Rutledge

Dear John:

Please join me.

Sincerely,

Lewis

Justice Stevens

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

March 14, 1983

Re: No. 81-1675 Kush v. Rutledge

Dear John:

Please join me.

Sincerely,

WHS

Justice Stevens

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

MAR 11 '83

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1675

FRANK KUSH, ET AL., PETITIONERS *v.*
KEVIN RUTLEDGE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[March —, 1983]

JUSTICE STEVENS delivered the opinion of the Court.

The question presented is whether a white football player of unknown political affiliation may assert a cause of action under 42 U. S. C. § 1985(2) (1976) for an alleged conspiracy to intimidate potential witnesses in a federal lawsuit. Petitioners argue that the action must be dismissed because there is no claim that the conspiracy was motivated by the kind of "racial, or perhaps otherwise class-based, invidiously discriminatory animus" we held to be necessary in *Griffin v. Breckenridge*, 403 U. S. 88, 102 (1971). We reject their contention, because the critical language in § 1985(3), the statute that applied to the *Griffin* conspiracy, does not apply to the violation of the first part of § 1985(2) alleged in this case.

I

The issue before us is narrow and may be briefly stated. In both federal and state tribunals, respondent Rutledge has asserted a variety of common-law and statutory claims against Arizona State University and its officials arising out of incidents that occurred while he was a member of the college football squad. One of his claims is that three of the petitioners—the Arizona State University athletic director, head football coach, and assistant football coach—engaged in a conspiracy to intimidate and threaten various potential ma-

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

Circulated: _____

Recirculated: _____ MAR 2 '83

Handwritten notes:
✓ F.S.
T. Brennan
R.M.
me
§.1

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1675

**FRANK KUSH, ET AL., PETITIONERS v.
KEVIN RUTLEDGE**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[March —, 1983]

JUSTICE STEVENS delivered the opinion of the Court.

Respondent is a white football player of unknown political affiliation who seeks to recover damages under 42 U. S. C. § 1985(2) (1976) for an alleged conspiracy to intimidate potential witnesses in a federal lawsuit. Petitioners argue that the action must be dismissed because there is no claim that the conspiracy was motivated by the kind of "racial, or perhaps otherwise class-based, invidiously discriminatory animus" we held to be necessary in *Griffin v. Breckenridge*, 403 U. S. 88, 102 (1971). We reject their contention, because the critical language in § 1985(3), the statute that applied to the *Griffin* conspiracy, does not apply to the violation of the first part of § 1985(2) alleged in this case.

I

The issue before us is narrow and may be briefly stated. In both federal and state tribunals, respondent Rutledge has asserted a variety of common-law and statutory claims against Arizona State University and its officials arising out of incidents that occurred while he was a member of the college football squad. One of his claims is that three of the petitioners—the Arizona State University athletic director, head football coach, and assistant football coach—engaged in a conspiracy to intimidate and threaten various potential ma-

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

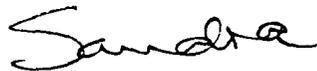
March 11, 1983

No. 81-1675 Kush v. Rutledge

Dear John,

Please join me.

Sincerely,



Justice Stevens

Copies to the Conference