COOK ET AL. *v.* HUDSON ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 75–503. Argued November 1, 1976—Decided December 7, 1976

Certiorari is dismissed, where it appears, upon examination of the merits on oral argument in light of an intervening state statute and the intervening decision in *Runyon* v. *McCrary,* 427 U. S. 160, that the grant of certiorari was improvident.

Certiorari dismissed. Reported below: 511 F. 2d 744.

George Colvin Cochran argued the cause and filed a brief for petitioners.

Will A. Hickman argued the cause for respondents. With him on the brief was *S. T. Rayburn.**

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 sending their children not to public schools, but to a private racially segregated school. However, since the grant of certiorari, *Runyon* v. *McCrary,* 427 U. S. 160 (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 (Supp. 1976), enacted in 1974 after the school board action here complained of, prohibits school boards "from denying employment or reemployment to any person . . . for the single reason that any eligible child of such person

**Stephen J. Pollak, John Townsend Rich, Franklin D. Kramer,* and *David Rubin* filed a brief for the National Education Assn. as *amicus curiae* urging reversal.

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 Cemetery,* 349 U. S. 70 (1955).

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, in their sole discretion, 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 (1925); *Meyer* v. *Nebraska,* 262 U. S. 390 (1923); *Wisconsin* v. *Yoder,* 406 U. S. 205 (1972).