

# The Burger Court Opinion Writing Database

## *Greenbelt Cooperative Publishing Association, Inc. v. Bresler*

398 U.S. 6 (1970)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

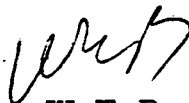
April 22, 1970

Re: No. 413 - Greenbelt Cooperative Publishing  
Association v. Bresler

Dear Potter:

Please join me in your opinion.

Regards,



W. E. B.

Mr. Justice Stewart

cc: The Conference

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Black  
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

No. 413.—OCTOBER TERM, 1969

Printed: March 3, 1970  
Circulated: 4-17-70

Greenbelt Cooperative Publishing Association, Inc., et al.,  
Petitioners.  
v.  
Charles S. Bresler.

Recirculated: \_\_\_\_\_  
On Writ of Certiorari  
to the Court of Appeals  
of Maryland.

[April —, 1970]

MR. JUSTICE BLACK concurs in the judgment of the Court for the reasons set out in his concurring opinion in *New York Times Co. v. Sullivan*, 376 U. S. 254, 293 (1964), in his concurring and dissenting opinion in *Curtis Pub. Co. v. Butts*, 388 U. S. 130, 170 (1967), and in MR. JUSTICE DOUGLAS' concurring opinion in *Garrison v. Louisiana*, 379 U. S. 64, 80 (1964).

SUPREME COURT OF THE UNITED STATES

No. 413.—OCTOBER TERM, 1969

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Fortas  
Mr. Justice Marshall

Greenbelt Cooperative Publish-  
ing Association, Inc., et al.,  
Petitioners,  
v.  
Charles S. Bresler.

From: Black, J.  
On Writ of Certiorari  
to the Court of Appeals  
of Maryland.

Circulated:  
APR 20  
Recirculated:

[April —, 1970]

MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS joins, concurs in the judgment of the Court for the reasons set out in MR. JUSTICE BLACK's concurring opinion in *New York Times Co. v. Sullivan*, 376 U. S. 254, 293 (1964), in his concurring and dissenting opinion in *Curtis Pub. Co. v. Butts*, 388 U. S. 130, 170 (1967), and in MR. JUSTICE DOUGLAS' concurring opinion in *Garrison v. Louisiana*, 379 U. S. 64, 80 (1964).

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

B

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brandeis  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Black  
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

No. 413.—OCTOBER TERM, 1969

From: El...

Circulated 4-17-70

Greenbelt Cooperative Publish-  
ing Association, Inc., et al.,  
Petitioners,  
v.  
Charles S. Bresler.

On Writ of Certiorari  
to the Court of Ap-  
peals of Maryland.

Recirculated: \_\_\_\_\_

[April 1970]

and Mr. Justice Douglas

MR. JUSTICE BLACK concurs in the judgment of the Court for the reasons set out in his concurring opinion in *New York Times Co. v. Sullivan*, 376 U. S. 254, 293 (1964), in his concurring and dissenting opinion in *Curtis Pub. Co. v. Butts*, 388 U. S. 130, 170 (1967), and in MR. JUSTICE DOUGLAS' concurring opinion in *Garrison v. Louisiana*, 379 U. S. 64, 80 (1964).

Dear Hugo  
would you please  
join me?  
WN

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall

1

SUPREME COURT OF THE UNITED STATES: Harlan, J.

No. 413.—OCTOBER TERM, 1969

Circulated: APR 16 1970

Recirculated: \_\_\_\_\_

Greenbelt Cooperative Publish-  
ing Association, Inc., et al.,  
Petitioners,  
v.  
Charles S. Bresler.

On Writ of Certiorari  
to the Court of Ap-  
peals of Maryland.

[April —, 1970]

MR. JUSTICE HARLAN, concurring.

I join the Court's opinion, except for that portion (*ante*, pp. 5-6), which suggests that libel suits arising out of discussions of political issues, but not involving as parties any "public official" or "public figure," are subject to some special kind of constitutional limitations, as yet undefined. No such question need be decided in this case, and I would reserve any pronouncements or intimations upon it for a case in which such a question must be addressed.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

April 23, 1970

Re: No. 413 - Greenbelt v. Bresler

Dear Potter:

The restructuring reflected in your circulation of today satisfies me, and I am accordingly withdrawing my separate concurring opinion.

Sincerely,

J. M. H.

Mr. Justice Stewart

CC: The Conference

## SUPREME COURT OF THE UNITED STATES

No. 413.—OCTOBER TERM, 1969

Greenbelt Cooperative Publish- ing Association, Inc., et al., Petitioners, v. Charles S. Bresler.	}	On Writ of Certiorari to the Court of Ap- peals of Maryland.
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[April —, 1970]

MR. JUSTICE BRENNAN.

I disagree with the implication in the Court's opinion that my Brother HARLAN's suggested constitutional restriction in *Curtis Pub. Co. v. Butts*, 388 U. S. 130, 155, upon libel suits brought by "public figures" constitutes an acceptable standard. A Court of Chief Justice Warren, MR. JUSTICE BLACK, MR. JUSTICE DOUGLAS, MR. JUSTICE WHITE, and I expressly rejected that standard in *Butts* and held that the constitutional restriction upon libel suits brought by "public officials" also applied to such suits brought by "public figures." *Curtis Pub. Co. v. Butts, supra*, 164 (opinion of Warren, C. J.); *id.*, at 170 (opinion of MR. JUSTICE BLACK with whom MR. JUSTICE DOUGLAS joined); *id.*, at 172-174 (opinion of MR. JUSTICE BRENNAN with whom MR. JUSTICE WHITE joined). Therefore, while I join in the judgment of reversal and remand, and join the Court's opinion in all other respects, I dissent from such implication.



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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 12, 1970

RE: No. 413 - Greenbelt Coop. v. Bresler

Dear Potter:

I am glad to join your revised opinion  
in the above and am withdrawing my separate  
statement.

Sincerely,

  
W. J. B. Jr.

Mr. Justice Stewart

cc: The Conference

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
✓ Mr. Justice Brennan  
Mr. Justice White  
~~Mr. Justice Fortas~~  
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

No. 413.—OCTOBER TERM, 1969

From: Stewart, J.

Circulated: **APR 14 1970**

Greenbelt Cooperative Publish-  
ing Association, Inc., et al.,  
Petitioners,  
v.  
Charles S. Bresler.

On Writ of Certiorari  
to the Court of Ap-  
peals of Maryland.

Recirculated: \_\_\_\_\_

[April —, 1970]

MR. JUSTICE STEWART delivered the opinion of the Court.

The petitioners are the publishers of a small weekly newspaper, the Greenbelt News Review, in the City of Greenbelt, Maryland. The respondent Bresler is a prominent local real estate developer and builder in Greenbelt, and was, during the period in question, a member of the Maryland House of Delegates from a neighboring district. In the autumn of 1965 Bresler was engaged in negotiations with the Greenbelt City Council to obtain certain zoning variances that would allow the construction of high density housing on land owned by him. At the same time the city was attempting to acquire another tract of land owned by Bresler for the construction of a new high school. Extensive litigation concerning compensation for the school site seemed imminent, unless there should be an agreement on its price between Bresler and the city authorities, and the concurrent negotiations obviously provided both parties considerable bargaining leverage.

These joint negotiations evoked substantial local controversy, and several tumultuous city council meetings

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Chargesson  
PP, 2, 5, 6  
as indicated

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan ✓  
Mr. Justice White  
Mr. Justice Fortas  
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

No. 413.—OCTOBER TERM, 1969

Circulated: \_\_\_\_\_

Recirculated: APR 17

Greenbelt Cooperative Publish-  
ing Association, Inc., et al.,  
Petitioners,  
v.  
Charles S. Bresler.

On Writ of Certiorari  
to the Court of Ap-  
peals of Maryland.

[April —, 1970]

MR. JUSTICE STEWART delivered the opinion of the Court.

The petitioners are the publishers of a small weekly newspaper, the Greenbelt News Review, in the City of Greenbelt, Maryland. The respondent Bresler is a prominent local real estate developer and builder in Greenbelt, and was, during the period in question, a member of the Maryland House of Delegates from a neighboring district. In the autumn of 1965 Bresler was engaged in negotiations with the Greenbelt City Council to obtain certain zoning variances that would allow the construction of high density housing on land owned by him. At the same time the city was attempting to acquire another tract of land owned by Bresler for the construction of a new high school. Extensive litigation concerning compensation for the school site seemed imminent, unless there should be an agreement on its price between Bresler and the city authorities, and the concurrent negotiations obviously provided both parties considerable bargaining leverage.

These joint negotiations evoked substantial local controversy, and several tumultuous city council meetings

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 23, 1970

No. 413 - Greenbelt Coop. Pub. v. Bresler

MEMORANDUM TO THE CONFERENCE

I have restructured this opinion somewhat, in an effort to meet the difficulties expressed respectively by John Harlan and Bill Brennan.

OS,  
P. S.

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To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan ✓  
Mr. Justice White  
Mr. Justice Fortas  
Mr. Justice Marshall

—  
Chang's PP 2, 5, 6  
as indicated

5

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

No. 413.—OCTOBER TERM, 1969

Regulated: \_\_\_\_\_  
Recirculated: APR 23 1970

Greenbelt Cooperative Publish-  
ing Association, Inc., et al.,  
Petitioners,  
v.  
Charles S. Bresler.

On Writ of Certiorari  
to the Court of Ap-  
peals of Maryland.

[April —, 1970]

MR. JUSTICE STEWART delivered the opinion of the Court.

The petitioners are the publishers of a small weekly newspaper, the Greenbelt News Review, in the City of Greenbelt, Maryland. The respondent Bresler is a prominent local real estate developer and builder in Greenbelt, and was, during the period in question, a member of the Maryland House of Delegates from a neighboring district. In the autumn of 1965 Bresler was engaged in negotiations with the Greenbelt City Council to obtain certain zoning variances that would allow the construction of high density housing on land owned by him. At the same time the city was attempting to acquire another tract of land owned by Bresler for the construction of a new high school. Extensive litigation concerning compensation for the school site seemed imminent, unless there should be an agreement on its price between Bresler and the city authorities, and the concurrent negotiations obviously provided both parties considerable bargaining leverage.

These joint negotiations evoked substantial local controversy, and several tumultuous city council meetings were held at which many members of the community freely expressed their views. The meetings were re-

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To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
✓ Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Fortas  
Mr. Justice Marshall

1

SUPREME COURT OF THE UNITED STATES

From: White, J.

No. 413.—OCTOBER TERM, 1969

Circulated: 5-6-70

Recirculated: \_\_\_\_\_

Greenbelt Cooperative Publish-  
ing Association, Inc., et al.,  
Petitioners.

v.

Charles S. Bresler.

On Writ of Certiorari  
to the Court of Ap-  
peals of Maryland.

[May —, 1970]

MR. JUSTICE WHITE, concurring.

I concur in the judgment of reversal and join the opinion of the Court insofar as it rests reversal on the erroneous definition of malice contained in the instructions given to the jury. I do not, however, join the remainder of the Court's opinion.

Respondent Bresler charged that he had been libeled by at least four statements published in petitioner's newspapers: (1) a statement that Bresler's conduct amounted to "a slight case of blackmail," accompanied by the use of the word "blackmail" as a column subheading; (2) a charge that Bresler had engaged in an "unethical trade"; (3) an allegation that Bresler had been guilty of "skulduggery," a word coined by the newspaper to characterize statements made by others about Bresler; and (4) a statement that Bresler had had legal proceedings "started against him for failure to make construction corrections in accordance with county standards." Petitioner contended that the use of the word blackmail had not been intended in the criminal sense and was not libelous and that in any event the newspaper had not made its publications with malice, that is, with knowledge that any of the statements were false or with reckless disregard of the falsity of any of them.

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To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
✓ Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Forgas  
Mr. Justice Marshall

Stylistic changes  
1, 5, 6

2

SUPREME COURT OF THE UNITED STATES

From: White, J.

Circulated: \_\_\_\_\_

No. 413.—OCTOBER TERM, 1969

Recirculated: 5-15-

Greenbelt Cooperative Publish-  
ing Association, Inc., et al.,  
Petitioners,  
v.  
Charles S. Bresler.

} On Writ of Certiorari  
to the Court of Ap-  
peals of Maryland.

[May 18, 1970]

MR. JUSTICE WHITE, concurring.

I concur in the judgment of reversal and join the opinion of the Court insofar as it rests reversal on the erroneous definition of malice contained in the instructions given to the jury. I do not, however, join the remainder of the Court's opinion.

Respondent Bresler charged that he had been libeled by at least four statements published in petitioner's newspapers: (1) a statement that Bresler's conduct amounted to "a slight case of blackmail," accompanied by the use of the word "blackmail" as a column subhead-  
ing; (2) a charge that Bresler had engaged in an "un-ethical trade"; (3) an allegation that Bresler had been guilty of "skulduggery," a word used by the newspaper to characterize statements made by others about Bresler; and (4) a statement that Bresler had had legal proceedings "started against him for failure to make construction corrections in accordance with county standards." Petitioner contended that the use of the word blackmail had not been intended in the criminal sense and was not libelous and that in any event the newspaper had not made its publications with malice, that is, with knowledge that any of the statements were false or with reckless disregard of the falsity of any of them.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 15, 1970

Re: No. 413 - Greenbelt Coop. Publishing  
Ass'n. v. Bresler

Dear Potter:

Please join me.

Sincerely,



T.M.

Mr. Justice Stewart

cc: The Conference