

The Burger Court Opinion Writing Database

Gunn v. University Committee to End War in Viet Nam

399 U.S. 383 (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

May 20, 1970

Re: No. 7 - Gunn v. University Committee to End the
War in Viet Nam

Dear Potter:

Please join me.

Regards,



W. E. B.

cc: Mr. Justice Stewart

cc: The Conference

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

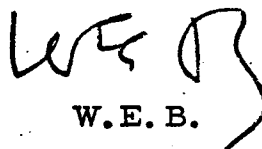
CHAMBERS OF
THE CHIEF JUSTICE

June 4, 1970

Re: No. 7 - Gunn v. University Committee to End
the War in Vietnam

Dear Potter:

This will confirm my joining your May 26
circulation with modifications of the first draft.


W.E.B.

Mr. Justice Stewart

cc: The Conference

MAY 14, 1870

JOHN F. DUNSTON, Commission
to the State of New York, N. Y.

JOHN F. DUNSTON, Commission

JOHN F. DUNSTON, Commission

JOHN F. DUNSTON, Commission

JOHN F. DUNSTON, Commission

JOHN F. DUNSTON, Commission

pp. 2-4

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

5

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

No. 269.—OCTOBER TERM, 1968.

Circulated: _____

Lester Gunn et al., Appellants, } On Appeal From the
v. } United States District
University Committee To End } Court for the Western
the War in Viet Nam et al. } District of Texas.

Re-circulated: **APR 24 1969**

[April —, 1969.]

MR. JUSTICE STEWART, with whom MR. JUSTICE BLACK joins, dissenting.

Article 474 of the Texas Penal Code provides:

"Whoever shall go into or near any public place, or into or near any private house, and shall use loud and vociferous, or obscene, vulgar or indecent language or swear or curse, or yell or shriek or expose his or her person to another person of the age of Sixteen (16) years or over, or rudely display any pistol or deadly weapon, in a manner calculated to disturb the person or persons present at such place or house, shall be punished by a fine not exceeding Two Hundred Dollars (\$200)."

In the present case a three-judge Federal District Court rendered an opinion that this law is, on its face, "impermissibly and unconstitutionally broad." 289 F. Supp. 469, 475. Today the District Court's "judgment" is affirmed, on the ground that the Texas law is not only "overbroad," but "much too subjective." I respectfully dissent, because I am convinced the Court today has gone quite remarkably astray.

I.

In the first place, we have no business dealing with this case at all. The parties say we have jurisdiction of the appeal under 28 U. S. C. § 1253. But that section

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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

1

SUPREME COURT OF THE UNITED STATES

Com: Stewart, J.
1:3 1970

No. 7.—OCTOBER TERM, 1969

Circulated: _____

Recirculated: _____

Lester Gunn et al.,
Appellants,
v.
University Committee
to End the War in
Viet Nam et al.

On Appeal From the United
States District Court for the
Western District of Texas.

[May —, 1970]

MR. JUSTICE STEWART delivered the opinion of the Court.

On December 12, 1967, President Lyndon Johnson made a speech in Bell County, Texas, to a crowd of some 25,000 people, including many servicemen from nearby Fort Hood. The individual appellees¹ arrived at the edge of the crowd with placards signifying their strong opposition to our country's military presence in Vietnam. Almost immediately after their arrival, they were set upon by members of the crowd, subjected to some physical abuse, promptly removed from the scene by military police, turned over to Bell County officers, and taken to jail. Soon afterwards, they were brought before a justice of the peace on a complaint signed by a deputy sheriff, charging them with "Dist the Peace." They pleaded not guilty, were returned briefly to jail, and were soon released on \$500 bond.

¹ The appellee University Committee to End the War in Viet Nam is an unincorporated association centered in Austin, Texas. The individual appellees are two members of the association and one nonmember who is sympathetic with its purposes.

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

2

From: Supreme Court

SUPREME COURT OF THE UNITED STATES

Filed: MAY 6 1970

No. 7.—OCTOBER TERM, 1969

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See pp 4, 7

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

3

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

No. 7.—OCTOBER TERM, 1969

Recirculated: JUN 17 1970

Lester Gunn et al., Appellants, v. University Committee to End the War in Viet Nam et al.	}	On Appeal From the United States District Court for the Western District of Texas.
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[June —, 1970]

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p. 7

4

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

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

No. 7.—OCTOBER TERM, 1969

Circulated: _____

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University Committee
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Viet Nam et al.

On Appeal From the United
States District Court for the
Western District of Texas.

Recirculated JUN 23 1974

[June —, 1970]

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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

3

SUPREME COURT OF THE UNITED STATES

From: White, J.

Circulated: _____

No. 269.—OCTOBER TERM, 1968.

Recirculated: 5-8-69

Lester Gunn et al., Appellants, } On Appeal From the
v. } United States District
University Committee To End } Court for the Western
the War in Viet Nam et al. } District of Texas.

[May —, 1969.]

MR. JUSTICE WHITE, dissenting.

Given the failure of the District Court to make findings which adequately support its conclusion that declaratory and injunctive relief are appropriate, I would remand this case for further findings and would decline to perform that task in the first instance. But even if the award of declaratory relief can be upheld on the determinations made by the majority from this record, the grant of injunctive relief cannot. *Douglas v. City of Jeannette*, 319 U. S. 157, 162 (1943). Only last Term the Court made it clear that the propriety of injunctive relief does not follow from the conclusion that a declaratory judgment is appropriate, *Zwickler v. Koota*, 389 U. S. 241, 254-255 (1967), and the majority's apparent equation of declaratory and injunctive relief as equally permissible exercises of the District Court's equitable jurisdiction, see pp. 6-7, *ante*, is consistent neither with *Zwickler* nor with the present record. There is no ground for believing that "in order to secure [appellees'] constitutional rights, [an injunction] will be either necessary or appropriate." *Douglas v. City of Jeanette, supra*, 319 U. S., at 165.

Neither do I agree that the Texas statute is unconstitutional on its face. Only a narrow category of speech can be made criminal. Fighting words, for example, are not protected by the First Amendment. But a statute which

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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. 7.—OCTOBER TERM, 1969

Circulated: 5-20-70

Recirculated: _____

Lester Gunn et al., Appellants, v. University Committee to End the War in Viet Nam et al.	}	On Appeal From the United States District Court for the Western District of Texas.
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[May —, 1970]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN joins, concurring.

I join the opinion of the Court but deem it appropriate to express my view that the opinion of the District Court should be viewed as having the operative effect of a declaratory judgment invalidating the Texas statute at issue in this case. The State was thus entitled to have this phase of the case reviewed in the Court of Appeals, but could not come directly here since our § 1253 jurisdiction is limited to appeals from injunctive orders. I agree with the Court that the opinion of the District Court cannot be construed as an order granting an injunction; and even if the opinion and subsequent inaction of the District Court amounted to a denial of an injunction because the injunctive relief demanded was not forthcoming, the State could not appeal from an order in its favor. *Public Service Comm'n v. Brashear Freight Lines, Inc.*, 306 U. S. 204 (1938).

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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

2

SUPREME COURT OF THE UNITED STATES

From: White, J.

Circulated: _____

No. 7.—OCTOBER TERM, 1969

Recirculated: 5-27-70

Lester Gunn et al.,
Appellants,
v.
University Committee
to End the War in
Viet Nam et al.

On Appeal From the United
States District Court for the
Western District of Texas.

[June —, 1970]

MR. JUSTICE WHITE, concurring.

I join the opinion of the Court but deem it appropriate to express my view that the opinion of the District Court should be viewed as having the operative effect of a declaratory judgment invalidating the Texas statute at issue in this case. The State was thus entitled to have this phase of the case reviewed in the Court of Appeals, but could not come directly here since our § 1253 jurisdiction is limited to appeals from injunctive orders. I agree with the Court that the opinion of the District Court cannot be construed as an order granting an injunction and that, if it amounts to an order denying an injunction, it is not appealable to this Court by the State.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 18, 1970

Re: No. 7 - Gunn v. Univ. Committee to
End War in Vietnam

Dear Potter:

Please join me.

Sincerely,


T.M.

Mr. Justice Stewart

cc: The Conference