The Burger Court Opinion Writing Database

Byrne v. Karalexis
401 U.S. 216 (1971)

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

RM J6

05

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

CHAMBERS OF
THE CHIEF JUSTICE

November 25, 1970

Re: No. 83 - Byrne v. Karalexis
Assignment List - November 24, 1970

MEMORANDUM TO THE CONFERENCE:

Through inadvertence the above case was listed as assigned to Justice Harlan. It should have been included in the "Dombrowski" group assigned to Justice Black. I regret the error.

WEB

TM

Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

From: Black, J.

Circulated: NOV 27 1970

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 83.—October Term, 1970

Garrett H. Byrne et al., Appellants, *v.* Serafim Karalexis et al. } On Appeal From the United States District Court for the District of Massachusetts.

[November —, 1970]

Per Curiam.

This is an appeal from the order of a three-judge court granting a preliminary injunction against any civil or criminal proceedings in state courts against the appellees. The appellant, Byrne, is the district attorney of Suffolk County, Massachusetts. The appellees own and operate a motion picture theatre in Boston. As a result of exhibiting the film entitled "I am Curious (Yellow)" at their theatre, appelless were charged by District Attorney Byrne with violating Massachusetts General Laws Chapter 272, § 28A, which prohibits the possession of obscene films for the purpose of exhibition.[1]

After the filing of the original state indictments against them appellees brought the present action in federal

[1] Mass. Gen. Laws c. 272, § 28A, provides:

"Importing, printing, distributing or possessing obscene things.

"Whoever imports, prints, publishes, sells or distributes a pamphlet, ballad, printed paper, phonographic record, or other thing which is obscene, indecent or impure, or an obscene, indecent or impure print, picture, figure, image or description, or buys, procures, receives or has in his possession any such pamphlet, ballad, printed paper, phonographic record, obscene, indecent or impure print, picture, figure, image or other thing, for the purpose of sale, exhibition, loan or circulation, shall be punished . . . ."

SUPREME COURT OF THE UNITED STATES

No. 83.—October Term, 1970

Garrett H. Byrne et al., Appellants, v. Serafim Karalexis et al. } On Appeal From the United States District Court for the District of Massachusetts.

[December —, 1970]

Mr. Justice Brennan.

The injunction appealed from issued December 6, 1969, after appellees' convictions in state court on November 12, 1969, of exhibiting an obscene film in violation of state law. In the absence of any showing of bad faith or harassment, appellees were therefore obliged to pursue their constitutional defenses on appeal from the convictions to the state appellate court, and the Federal District Court erred in enjoining appellant from interfering with future showings of the film. To be sure, *Freedman* v. *Maryland*, 380 U. S. 51, 60 (1965), forbade such interference until after appellees were afforded a "prompt judicial determination" of the question of the film's alleged obscenity. See also *Lee Art Theater* v. *Virginia*, 392 U. S. 636 (1968). But there was no interference from July through November; appellant honored a stipulation made July 15 in federal court not to seize the film or interfere with its exhibition pending the outcome of the trial. Appellant withdrew from the stipulation and threatened to move against further exhibition of the film only after the convictions were obtained. Clearly, he was not required to continue to stay his hand pending the outcome of appeals from the convictions; *Freedman* was satisfied by a "prompt judicial decision *by the trial court*," *Teitel Film Corp.* v. *Cusack*, 390 U. S. 139, 142 (1968). (Emphasis supplied.) Rather than remand I would therefore reverse the judgment of the District Court for the reasons stated in my opinion in *Perez* v. *Ledesma*, *post*.

SUPREME COURT OF THE UNITED STATES

No. 83.—October Term, 1970

Garrett H. Byrne et al., Appellants, v. Serafim Karalexis et al. } On Appeal From the United States District Court for the District of Massachusetts.

[December —, 1970]

Mr. Justice Brennan.

The injunction appealed from issued December 6, 1969, after appellees' convictions in state court on November 12, 1969, of exhibiting an obscene film in violation of state law. In the absence of any showing of bad faith or harassment, appellees were therefore obliged to pursue their constitutional defenses on appeal from the convictions to the state appellate court, and the Federal District Court erred in enjoining appellant from interfering with future showings of the film. To be sure, *Freedman* v. *Maryland,* 380 U. S. 51, 60 (1965), forbade such interference until after appellees were afforded a "prompt judicial determination" of the question of the film's alleged obscenity. See also *Lee Art Theater* v. *Virginia,* 392 U. S. 636 (1968). But there was no interference from July through November; appellant honored a stipulation made July 15 in federal court not to seize the film or interfere with its exhibition pending the outcome of the trial. Appellant withdrew from the stipulation and threatened to move against further exhibition of the film only after the convictions were obtained. Clearly, he was not required to continue to stay his hand pending the outcome of appeals from the convictions; *Freedman* was satisfied by a "prompt judicial decision *by the trial court,*" *Teitel Film Corp.* v. *Cusack,* 390 U. S. 139, 142 (1968). (Emphasis supplied.) Rather than remand I would therefore reverse the judgment of the District Court for the reasons stated in *Perez* v. *Ledesma, post.*

Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83.—October Term, 1970 From: Brennan, J.

Circulated: _____

Garrett H. Byrne et al., Appellants, v. Serafim Karalexis et al. } On Appeal From the United States District Court for the District of Massachusetts.

Recirculated: 1-29-71

[February —, 1971]

Mr. Justice Brennan, with whom Mr. Justice White and Mr. Justice Marshall join.

The injunction appealed from issued December 6, 1969, after appellees' convictions in state court on November 12, 1969, of exhibiting an obscene film in violation of state law. In the absence of any showing of bad faith or harassment, appellees were therefore obliged to pursue their constitutional defenses on appeal from the convictions to the state appellate court, and the Federal District Court erred in enjoining appellant from interfering with future showings of the film. To be sure, *Freedman* v. *Maryland,* 380 U. S. 51, 60 (1965), forbade such interference until after appellees were afforded a "prompt judicial determination" of the question of the film's alleged obscenity. See also *Lee Art Theater* v. *Virginia,* 392 U. S. 636 (1968). But there was no interference from July through November; appellant honored a stipulation made July 15 in federal court not to seize the film or interfere with its exhibition pending the outcome of the trial. Appellant withdrew from the stipulation and threatened to move against further exhibition of the film only after the convictions were obtained. Clearly, he was not required to continue to stay his hand pending the outcome of appeals from the convictions; *Freedman* was satisfied by a "prompt judicial decision *by the trial court,*" *Teitel Film Corp.* v. *Cusack,* 390 U. S. 139, 142 (1968). (Emphasis supplied.) Rather than remand I would therefore reverse the judgment of the District Court for the reasons stated in my opinion in *Perez* v. *Ledesma, post.*

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83.—October Term, 1970

Garrett H. Byrne et al., Appellants, v. Serafim Karalexis et al. } On Appeal From the United States District Court for the District of Massachusetts.

[February —, 1971]

Mr. Justice Brennan, with whom Mr. Justice White and Mr. Justice Marshall join.

The injunction appealed from issued December 6, 1969, after appellees' convictions in state court on November 12, 1969, of exhibiting an obscene film in violation of state law. In the absence of any showing of bad faith or harassment, appellees were therefore obliged to pursue their constitutional defenses on appeal from the convictions to the state appellate court, and the Federal District Court erred in enjoining appellant from interfering with future showings of the film. *Freedman* v. *Maryland,* 380 U. S. 51, 60 (1965), limited to preservation of the status quo for the shortest, fixed period compatible with sound judicial resolution, any restraint imposed in advance of prompt, final, judicial determination of the question of the film's alleged obscenity. See also *Lee Art Theater* v. *Virginia,* 392 U. S. 636 (1968). But there was no interference from July through November; appellant honored a stipulation made July 15 in federal court not to seize the film or interfere with its exhibition pending the outcome of the trial. Appellant withdraw from the stipulation and threatened to move against further exhibition of the film only after the convictions were obtained. Clearly, he was not required to continue to stay his hand pending the outcome of appeals from the convictions;

Not Circulated

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83.—October Term, 1970

Garrett H. Byrne et al., Appellants, *v.* Serafim Karalexis et al. } On Appeal From the United States District Court for the District of Massachusetts.

[February —, 1971]

Mr. Justice Brennan, with whom Mr. Justice White and Mr. Justice Marshall join.

The injunction appealed from issued December 6, 1969, after appellees' convictions in state court on November 12, 1969, of exhibiting an obscene film in violation of state law. In the absence of any showing of bad faith or harassment, appellees were therefore obliged to pursue their constitutional defenses on appeal from the convictions to the state appellate court, and the Federal District Court erred in enjoining appellant from interfering with future showings of the film. *Freedman* v. *Maryland,* 380 U. S. 51, 60 (1965), limited to preservation of the status quo for the shortest, fixed period compatible with sound judicial resolution, any restraint imposed in advance of prompt, final, judicial determination of the question of the film's alleged obscenity. See also *Lee Art Theater* v. *Virginia,* 392 U. S. 636 (1968). But there was no interference from July through November; appellant honored a stipulation made July 15 in federal court not to seize the film or interfere with its exhibition pending the outcome of the trial. Appellant withdraw from the stipulation and threatened to move against further exhibition of the film only after the convictions were obtained. Clearly, he was not required to continue to stay his hand pending the outcome of appeals from the convictions;

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 11, 1970

Re: No. 83 - Byrne v. Karalexis

Dear Bill:

Please join me in your opinion in this case.

Sincerely,

B.R.W.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 28, 1970

Re: No. 83 - Byrne v. Karalexis

Dear Bill:

Please join me in this one.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

December 28, 1970

Re: No. 83 - Byrne v. Karalexis

Dear Hugo:

Please join me in your opinion for this case.

Sincerely,

H. A. B.

Mr. Justice Black

cc: The Conference