

The Burger Court Opinion Writing Database

Lloyd Corp. v. Tanner
407 U.S. 551 (1972)

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



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

CHAMBERS OF
THE CHIEF JUSTICE

April 24, 1972

Re: No. 71-492 - Lloyd Corporation Ltd. v. Tanner

Dear Bill:

I have your note in the above advising that you assigned the case to Thurgood on the basis of a 5-4 to affirm.

The vote was not 5-4 as I had reserved and not voted at all.

Independent of what Harry does I will assign this case in due course if I vote to affirm. With a Federal Judicial Center meeting Saturday and part of Sunday I have not as yet worked on the assignments of our final cases. If I am not in the majority, you will, of course, then be free to assign.

Regards,

WB

Mr. Justice Douglas

Copy to Mr. Justice Marshall

By
CHAMBERS OF
THE CHIEF JUSTICE

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

May 8, 1972

This is reassigned to [unclear]

MEMORANDUM TO THE CONFERENCE:

No. 71-492 -- Lloyd v. Tanner

Although I continue to find the case a very difficult one, I have concluded to vote to reverse the judgment under review. The opinion has been assigned to Lewis Powell, along with the re-assignment of Central Hardware case to him from Justice Blackmun, all as indicated by the assignment sheet of today.

Regards,



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

CHAMBERS OF
THE CHIEF JUSTICE

June 13, 1972

Re: No. 71-492 - Lloyd Corporation v. Tanner

Dear Lewis:

Please join me.

Regards,

WB

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

April 21, 1972

Dear Chief:

The vote being five to four in
No. 71-492 - Lloyd Corporation v. Tanner, I
have assigned the opinion to Thurgood.

W. O. D.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 1, 1972

Dear Chief Justice:

Your note to me dated April 24 about the assignment of No. 71-492 - Lloyd Corporation v. Tanner, came when I was out of town and when I returned you were away. Hence this late answer.

You apparently misunderstand. Lloyd is already assigned to Thurgood and he's at work on an opinion. Whether he will command a majority, no one knows.

Under the Constitution & Acts of Congress, there are no provisions for assignment of opinions. Historically, the Chief Justice has made the assignment if he is in the majority. Historically, the senior in the majority assigns the opinion if the Chief Justice is in the minority.

You led the Conference battle against affirmance and that is your privilege. But it is also the privilege of the majority, absent the Chief Justice, to make the assignment. Hence, Lloyd was assigned and is assigned.

The tragedy of compromising on this simple procedure is illustrated by last Term's Swann. You who were a minority of two kept the opinion for yourself and faithfully wrote the minority position which the majority could not accept. Potter wrote the majority view and a majority agreed to it. It was not circulated because we thought you should see it. After much effort your minority opinion was transformed, the majority view prevailed, and the result was unanimous.

But Swann illustrated the wasted time and effort and the frayed relations which result when the traditional assignment procedure is not followed.

If the Conference wants to authorize you to assign all opinions, that will be a new procedure. Though opposed to it, I will acquiesce. But unless we make a frank reversal in our policy, any group in the majority should and must make the assignment.

This is a two-edge sword. Byron might well head up five members of the Court, you, Bill Brennan, Potter Stewart and I being the minority; and we might feel very strongly about it. But in that event it is for Byron to make the assignment. It is not for us in the minority to try to outwit Byron by saying "I reserve my vote" and then recast it to control the assignment. That only leads to a frayed and bitter Court full of needless strains and quarrels.

Lloyd stays assigned to Thurgood.

William O. Douglas

The Chief Justice

CC: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June ninth
1972

RE: NO. 71-492 - LLOYD CORP. v. TANNER

Dear Thurgood:

Please join me in your dissent.

William O. Douglas

Mr. Justice Marshall

CC: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 12, 1972

RE: No. 71-492 - Lloyd Corporation v.
Tanner, et al.

Dear Thurgood:

Please join me in the above.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 12, 1972

71-492 - Lloyd Corp. v. Tanner

Dear Thurgood,

I should appreciate your adding my name to your dissenting opinion in this case.

Sincerely yours,

PS

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 5, 1972

Re: No. 71-492 - Lloyd Corporation
Ltd v. Tanner

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 5, 1972

Re: No. 71-492 - Lloyd Corp. v. Tanner

Dear Lewis:

In due time I will circulate a
dissent.

Sincerely,



T.M.

Mr. Justice Powell

cc: Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-492

Lloyd Corporation, Ltd.,
Petitioner,
v.
Donald M. Tanner et al. } On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit.

[June —, 1972]

MR. JUSTICE MARSHALL, dissenting.

Donald Tanner, Betsy Wheeler, and Susan Roberts (respondents) brought this action for a declaratory judgment that they have the right under the First and Fourteenth Amendments to the United States Constitution to distribute handbills in a shopping center owned by petitioner and an injunction to enforce that right. Relying primarily on our very recent decision in *Amalgamated Food Employees Union v. Logan Valley Plaza, Inc.*, 391 U. S. 308 (1968), the United States District Court for the District of Oregon granted the relief requested. 308 F. Supp. 128 (1970). The United States Court of Appeals for the Ninth Circuit affirmed. 446 F. 2d 545 (1971). Today, this Court reverses the judgment of the Court of Appeals and attempts to distinguish this case from *Logan Valley*. In my view, the distinction that the Court sees between the cases does not exist. As I read the opinion of the Court, it is an attack not only on the rationale of *Logan Valley*, but also on this Court's longstanding decision in *Marsh v. Alabama*, 326 U. S. 501 (1946). Accordingly, I dissent.

I

Lloyd Center is a large, modern retail shopping center in Portland, Oregon. Sprawling over 50 acres of land, the Center offers to shoppers more than 60 commercial

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-492

Lloyd Corporation, Ltd.,
Petitioner,
v.
Donald M. Tanner et al. } On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit.

[June —, 1972]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE STEWART join, dissenting.

Donald Tanner, Betsy Wheeler, and Susan Roberts (respondents) brought this action for a declaratory judgment that they have the right under the First and Fourteenth Amendments to the United States Constitution to distribute handbills in a shopping center owned by petitioner and an injunction to enforce that right. Relying primarily on our very recent decision in *Amalgamated Food Employees Union v. Logan Valley Plaza, Inc.*, 391 U. S. 308 (1968), the United States District Court for the District of Oregon granted the relief requested. 308 F. Supp. 128 (1970). The United States Court of Appeals for the Ninth Circuit affirmed. 446 F. 2d 545 (1971). Today, this Court reverses the judgment of the Court of Appeals and attempts to distinguish this case from *Logan Valley*. In my view, the distinction that the Court sees between the cases does not exist. As I read the opinion of the Court, it is an attack not only on the rationale of *Logan Valley*, but also on this Court's longstanding decision in *Marsh v. Alabama*, 326 U. S. 501 (1946). Accordingly, I dissent.

I

Lloyd Center is a large, modern retail shopping center in Portland, Oregon. Sprawling over 50 acres of land,

Supreme Court of the United States
Washington, D. C. 20542CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 24, 1972

Re: No. 71-492 - Lloyd Corporation v. Tanner

Dear Thurgood:

I note Justice Douglas' assignment of the opinion in this case to you. Please bear in mind that my vote at Conference was very tentative. I am not at all at rest and at the moment could go either way. I mention this because of the closeness of the vote.

Sincerely,



Mr. Justice Marshall

cc: The Conference

(3)

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 8, 1972

Re: No. 71-492 - Lloyd Corporation v. Tanner

Dear Chief:

I have spent a good bit of the weekend wrestling with this case. I have now concluded that my vote will be to reverse and not extend Logan Valley to the present situation.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 14, 1972

Re: No. 71-492 - Lloyd Corp. v. Tanner

Dear Lewis:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Powell

cc: The Conference

April 25, 1972

Re: No. 71-492 Lloyd v. Tanner

Dear Byron:

This is to confirm that I will be glad, as you requested, to draft an opinion for those of us who voted to reverse the above case.

I note that Harry's vote is still tentative and my notes indicate that the Chief reserved decision. Thus, unless advised to the contrary, I will assume that you, Bill Rehnquist and I are the only solid votes on our side at this time.

Sincerely,

LFP

Mr. Justice White

cc: The Chief Justice
Mr. Justice Rehnquist

for due time
and circulate
a dissent

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

1st DRAFT

From: Powell, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: 2 1972

No. 71-492

Recirculated: _____

Lloyd Corporation, Ltd.,
Petitioner,
v.
Donald M. Tanner et al. } On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit.

[June —, 1972]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents the question reserved by the Court in *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc.*, 391 U. S. 308 (1968), as to the right of a privately owned shopping center to prohibit the distribution of handbills on its property when the handbilling is unrelated to the shopping center's operations. Relying primarily on *Marsh v. Alabama*, 326 U. S. 501 (1946), and *Logan Valley*, the United States District Court for the District of Oregon sustained an asserted First Amendment right to distribute handbills in petitioner's shopping center, and issued a permanent injunction restraining petitioner from interfering with such right. 308 F. Supp. 128 (Ore. 1970). The Court of Appeals for the Ninth Circuit affirmed, 446 F. 2d 545 (CA9 1971). We granted certiorari to consider petitioner's contention that the decision below violates rights of private property protected by the Fifth and Fourteenth Amendments. 404 U. S. 1037 (1972).

Lloyd Corporation, Ltd. (Lloyd), owns a large, modern retail shopping center in Portland, Oregon. Lloyd Center embraces altogether about 50 acres, including some 20 acres of open and covered parking facilities which

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 6, 1972

Re: No. 71-492 - Lloyd v. Tanner

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

Copies to the Conference