The Burger Court Opinion Writing Database

Paris Adult Theatre I v. Slaton

413 U.S. 49 (1973)

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71–1051

Paris Adult Theatre I et al., Petitioners, *v.* Lewis R. Slaton, District Attorney, Atlanta Judicial Circuit, et al. } On Writ of Certiorari to the Supreme Court of Georgia.

[January —, 1973]

Memorandum from MR. CHIEF JUSTICE BURGER.

Petitioners are two Atlanta, Georgia, movie theatres and their owners and managers, operating in the style of "adult" theatres. On December 28, 1970, respondents, the local state district attorney and the solicitor general for the local state criminal court, filed complaints against petitioners in civil proceedings alleging that they were exhibiting to the public, for paid admissions, two obscene films, contrary to Georgia statute.[1] The two films in question, "Magic Mirror" and

[1] Georgia Code § 26–2101 reads in relevant part:

"Distributing obscene materials.—(a) A person commits the offense of distributing obscene materials when he sells, lends, rents, leases, gives, advertises, publishes, exhibits or otherwise disseminates to any person any obscene material of any description, knowing the obscene nature thereof, or who offers to do so, or who possesses such material with the intent so to do . . . .

"(b) Material is obscene if considered as a whole, applying community standards, its predominant appeal is to prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion, and utterly without redeeming social value and if, in addition, it

changes throughout
pgs 5-7

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

From: The Chief Justice

Circulated:

Recirculated: JAN 19 1973

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1051

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 4-6, 9-17

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

B—April 7, 1973

From: Mr. Chief Justice

3rd DRAFT

Circulated:

Recirculated APR 9 1973

SUPREME COURT OF THE UNITED STATES

No. 71-1051

Paris Adult Theatre I et al., Petitioners, *v.* Lewis R. Slaton, District Attorney, Atlanta Judicial Circuit, et al.

On Writ of Certiorari to the Supreme Court of Georgia.

[April —, 1973]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

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[1] As this is a civil proceeding, and the Georgia Code § 26-2101 defines a criminal offense, the reference to the statute was entirely for the purposes of defining the acts to be enjoined. If materials are found to be obscene," as defined by this statute, Georgia case law permits a civil injunction preventing exhibition. *1024 Peachtree Corp.* v. *Slaton*, 228 Ga. 102, *Walter* v. *Slaton*, 227 Ga. 676. *Evans Theatre Corp.* v. *Slaton*, 227 Ga. 377. See p. 4, *infra*. The statute reads in relevant part:

"Distributing obscene materials.—(a) A person commits the offense of distributing obscene materials when he sells, lends, rents, leases, gives, advertises, publishes, exhibits or otherwise disseminates to any person any obscene material of any description, knowing the

B/M 10, 17

Agreed with BRW 3/20

B—April 11, 1973

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

From: The Chief Justice

Circulated: ________

Recirculated: APR 11 1973

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71–1051

Paris Adult Theatre I et al, Petitioners, *v.* Lewis R. Slaton, District Attorney, Atlanta Judicial Circuit, et al. | On Writ of Certiorari to the Supreme Court of Georgia.

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 5-6, 8-10, 15-17

B—May 7, 1973

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1051

Paris Adult Theatre I et al., Petitioners, *v.* Lewis R. Slaton, District Attorney, Atlanta Judicial Circuit, et al. | On Writ of Certiorari to the Supreme Court of Georgia.

[May —, 1973]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

Petitioners are two Atlanta, Georgia, movie theatres and their owners and managers, operating in the style of "adult" theatres. On December 28, 1970, respondents, the local state district attorney and the solicitor general for the local state criminal court, filed complaints against petitioners in civil proceedings alleging that they were exhibiting to the public, for paid admissions, two allegedly obscene films, contrary to Georgia Code § 26-2101.[1] The two films in question, "Magic

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

From: The Chief Justice

Circulated:

Recirculated: MAY 8 1973

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 9, 19

To: Mr. J... Mr. J... Mr. ... Mr. ... Mr. ... Mr. ... Mr. ... Mr. ...

B—May 16, 1973

6th DRAFT

From: ...

SUPREME COURT OF THE UNITED STATES

No. 71-1051

Recirculated: MAY 17 ...

Paris Adult Theatre I et al., Petitioners, v. Lewis R. Slaton, District Attorney, Atlanta Judicial Circuit, et al. } On Writ of Certiorari to the Supreme Court of Georgia.

[May —, 1973]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

Petitioners are two Atlanta, Georgia, movie theatres and their owners and managers, operating in the style of "adult" theatres. On December 28, 1970, respondents, the local state district attorney and the solicitor general for the local state criminal court, filed complaints against petitioners in civil proceedings alleging that they were exhibiting to the public, for paid admissions, two allegedly obscene films, contrary to Georgia Code § 26-2101.[1] The two films in question, "Magic

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 6, 10-11, 18

#13

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

B—June 19, 1973

7th DRAFT

Circulated: _____

Recirculated: JUN 1 9 1973

SUPREME COURT OF THE UNITED STATES

No. 71-1051

Paris Adult Theatre I et al., Petitioners, v. Lewis R. Slaton, District Attorney, Atlanta Judicial Circuit, et al. | On Writ of Certiorari to the Supreme Court of Georgia.

[June 21, 1973]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

Petitioners are two Atlanta, Georgia, movie theatres and their owners and managers, operating in the style of "adult" theatres. On December 28, 1970, respondents, the local state district attorney and the solicitor for the local state trial court, filed civil complaints in that court alleging that petitioners were exhibiting to the public for paid admissions two allegedly obscene films, contrary to Georgia Code § 26-2101.[1] The two films in question, "Magic Mirror" and "It All Comes

[1] This is a civil proceeding. Although Georgia Code § 26-2101 defines a criminal offense, the exhibition of materials found to be "obscene" as defined by that statute may be enjoined in a civil proceeding under Georgia case law. *1024 Peachtree Corp.* v. *Slaton*, 228 Ga. 102 (1971). *Walter* v. *Slaton*, 227 Ga. 676 (1971). *Evans Theatre Corp.* v. *Slaton*, 227 Ga. 377 (1971). See p. 4, *infra*. Georgia Code § 26-2101 reads in relevant part:

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B

You joined Douglas

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1051

Circulated: 6-8-73

Recirculated:

Paris Adult Theatre I et al., Petitioners, *v.* Lewis R. Slaton, District Attorney, Atlanta Judicial Circuit, et al. } On Writ of Certiorari to the Supreme Court of Georgia.

[May —, 1973]

MR. JUSTICE DOUGLAS, dissenting.

My Brother BRENNAN is to be commended for seeking a new path through the thicket which the Court entered when it undertook to sustain the constitutionality of obscenity laws and to place limits on their application. I have expressed on numerous occasions my disagreement with the basic decision that held that "obscenity" was not protected by the First Amendment. I disagreed also with the definitions that evolved. Art and literature reflect tastes; and tastes, like musical appreciation, are hardly reducible to precise definitions. That is one reason I have always felt that "obscenity" was not an exception to the First Amendment. For matters of taste, like matters of belief, turn on the idiosyncracies of individuals. They are too personal to define and too emotional and vague to apply, as witness the prison term for Ralph Ginzburg, *Ginzburg* v. *United States,* 383 U. S. 463, not for what he printed but for the sexy manner in which he advertised his creations.

The other reason I could not bring myself to conclude that "obscenity" was not covered by the First Amendment was that prior to the adoption of our Constitution

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June 18, 1973

MEMO TO THE CONFERENCE:

In 71-1051, Paris Adult Theatre v. Slaton I am adding as a footnote on page 3 of my dissent the attached.

William O. Douglas

The Conference

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to mean "matter, taken
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prurient interest, i.
, or excretion; and is

matter which taken as a whole goes substantially beyond customary limits of candor in description or representation of such matters; and is matter which taken as a whole is utterly without redeeming social importance for minors."

12

Join in agreement with your memorandum

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

3rd DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 12/8/72

Recirculated: _____

No. 71–1051

Paris Adult Theatre I et al., Petitioners, *v.* Lewis R. Slaton, District Attorney, Atlanta Judicial Circuit, et al. | On Writ of Certiorari to the Supreme Court of Georgia.

[December —, 1972]

Memorandum of MR. JUSTICE BRENNAN.

This case requires us once again to confront the vexing problem of reconciling state efforts to suppress sexually oriented expression with the protections of the First Amendment, as applied to the States through the Fourteenth Amendment. No other aspect of the First Amendment has, in recent years, demanded so substantial a commitment of our time, generated such disharmony of views, and remained so resistant to the formulation of stable and managable standards. We are convinced that the approach initiated 15 years ago in *Roth* v. *United States,* 354 U. S. 476 (1957), and culminating in *Redrup* v. *New York,* 386 U. S. 767 (1967), and its progeny, cannot bring stability to this area of the law without jeopardizing fundamental First Amendment values, and we have concluded that the time has come to make a significant departure from that approach.

In this civil action in the Superior Court of Fulton County, the State of Georgia sought to enjoin the showing of two motion pictures, It All Comes Out In The End, and Magic Mirror, at the Paris Adult Theatres

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 21-27, 33-36, 39

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

From: Brennan, J.

4th DRAFT

Circulated: _____

Recirculated: 3/16/73

SUPREME COURT OF THE UNITED STATES

No. 71–1051

Paris Adult Theatre I et al., Petitioners, *v.* Lewis R. Slaton, District Attorney, Atlanta Judicial Circuit, et al. | On Writ of Certiorari to the Supreme Court of Georgia.

[March —, 1973]

Memorandum of MR. JUSTICE BRENNAN.

This case requires us once again to confront the vexing problem of reconciling state efforts to suppress sexually oriented expression with the protections of the First Amendment, as applied to the States through the Fourteenth Amendment. No other aspect of the First Amendment has, in recent years, demanded so substantial a commitment of our time, generated such disharmony of views, and remained so resistant to the formulation of stable and manageable standards. We are convinced that the approach initiated 15 years ago in *Roth* v. *United States,* 354 U. S. 476 (1957), and culminating in *Redrup* v. *New York,* 386 U. S. 767 (1967), and its progeny, cannot bring stability to this area of the law without jeopardizing fundamental First Amendment values, and we have concluded that the time has come to make a significant departure from that approach.

In this civil action in the Superior Court of Fulton County, the State of Georgia sought to enjoin the showing of two motion pictures, It All Comes Out In The End, and Magic Mirror, at the Paris Adult Theatres

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1052

Paris Adult Theatre I et al., Petitioners
v.
Lewis R. Slaton, District Attorney, Atlanta Judicial Circuit, et al.

On Writ of Certiorari to the Supreme Court of Georgia.

June —, 1973

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

This case requires the Court to confront once again the vexing problem of reconciling state efforts to suppress sexually oriented expression with the protections of the First Amendment, as applied to the States through the Fourteenth Amendment. No other aspect of the First Amendment has, in recent years, demanded so substantial a commitment of our time, generated such disharmony of views, and remained so resistant to the formulation of stable and manageable standards. I am convinced that the approach initiated 15 years ago in *Roth* v. *United States*, 354 U. S. 476 (1957), and culminating in the Court's decision today, cannot bring stability to this area of the law without jeopardizing fundamental First Amendment values, and I have concluded that the time has come to make a significant departure from that approach.

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9, 13, 14, 15, 16, 22, 23, 24, 25, 30, 34, 36, 37, 41

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

From: Brennan, J.

Circulated: _____

Recirculated: 6/18/73

7th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1051

Paris Adult Theatre I et al., Petitioners, v. Lewis R. Slaton, District Attorney, Atlanta Judicial Circuit, et al.

On Writ of Certiorari to the Supreme Court of Georgia.

[June —, 1973]

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B

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 11, 1972

71-1051 - Paris Adult Theatre I
v. Slaton

Dear Bill,

I think your memorandum is a fine piece of work, and I agree with it.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 11, 1972

Re: No. 71-1051 - Paris Adult Theatre v. Slaton

Dear Bill:

I am in agreement with your memorandum.

Sincerely,

T.M.

Mr. Justice Brennan

cc: Conference

3

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 9, 1972

Re: No. 71-1051 - Paris Adult Theatre v. Slaton

Dear Bill:

Your circulation of December 8 is exceedingly well done and strongly presents the views you have come to espouse. As I have heretofore indicated to you, the solution you propose is a tempting one for it tends to eliminate or, at least, to simplify what necessarily are areas of confusion and stress. I am not certain, however, that pressure upon the judicial institutions, which you stress throughout the opinion, is to be regarded as a persuasive factor.

As Lewis Powell expressed in his note of December 11 to you, I, too, am inclined to the other view and shall await the anticipated circulations before coming finally to rest and voting.

Sincerely,

Harry

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 11, 1972

Re: No. 71-1051 Paris Adult Theatre v. Slaton

Dear Bill:

As previously indicated, I am inclined to the position generally outlined by the Chief Justice in previous memoranda (and as amplified in some respects by Byron's memorandum), and accordingly will await further circulations before voting.

Sincerely,

Lewis

Mr. Justice Brennan

cc: The Conference