

The Burger Court Opinion Writing Database

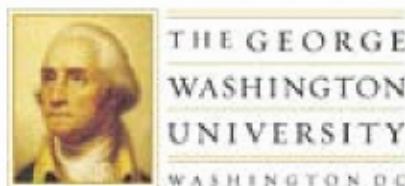
Ward v. Monroeville

409 U.S. 57 (1972)

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. 20543CHAMBERS OF
THE CHIEF JUSTICE

November 2, 1972

Re: No. 71-496 - Ward v. Village of Monroeville

Dear Bill:

The exchange of memos flushes out (as John Harlan used to put it) aspects of this case that I confess I had not fully considered. Potter's memo, for example, gives rise to the question whether a judicial officer, disqualified because of inherent conflict of interest, may take a guilty plea. In a major case such as a felony this would give me some problems; it may be appropriate as a practical matter for traffic violations, etc.

I wonder if this aspect should be treated.

Regards,



Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

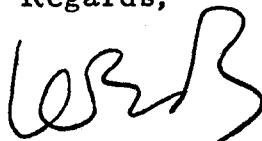
November 7, 1972

Re: No. 71-496 - Ward v. Village of Monroeville, Ohio

Dear Bill:

This will confirm my joining your opinion in
the above.

Regards,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

October 27, 1972

Dear Bill:

In No. 71-496 - Ward v. Monroeville,
please join me.

W. O. D.

Mr. Justice Brennan

cc: Conference

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

2nd DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: 10/26/72

No. 71-496

Recirculated: _____

Clarence Ward, Petitioner,
v.
Village of Monroeville, Ohio. } On Writ of Certiorari to the
Supreme Court of Ohio.

[November —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Pursuant to Ohio Revised Code § 1905.01 *et seq.*, which authorizes mayors to sit as judges in cases of ordinance violations and certain traffic offenses, the Mayor of Monroeville, Ohio, convicted petitioner of two traffic offenses and fined him \$50 on each. The Ohio Court of Appeals of Huron County, 21 Ohio App. 2d 17, 254 N. E. 2d 375 (1969), and the Ohio Supreme Court, 27 Ohio St. 2d 179, 271 N. E. 2d 757 (1971), sustained the conviction, rejecting petitioner's objection that trial before a mayor who also had responsibilities for revenue production and law enforcement denied him a trial before a disinterested and impartial judicial officer as guaranteed by the Due Process Clause of the Fourteenth Amendment. We granted certiorari. 404 U. S. 1058 (1972).

The Mayor of Monroeville has wide executive powers and is the chief conservator of the peace. He is president of the village council, presides at all meetings, votes in case of a tie, accounts annually to the council respecting village finances, fills vacancies in village offices and has general overall supervision of village affairs. A major part of village income is derived from the fines, forfeitures, costs and fees imposed by him in his mayor's court.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. October 27, 1972

RE: No. 71-496, Ward v. Village of
Monroeville

Dear Lewis:

Thank you so much for your suggestion that I change "necessarily" to "may" in the next to the bottom line on page 3. I am making the change because you are indeed right.

Sincerely,

Bill

Mr. Justice Powell

cc: The Conference

Page 3.

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: 10/27/72

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-496

Clarence Ward, Petitioner,
v. Village of Monroeville,
Ohio. } On Writ of Certiorari to the
Supreme Court of Ohio.

[November —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Pursuant to Ohio Revised Code § 1905.01 *et seq.*, which authorizes mayors to sit as judges in cases of ordinance violations and certain traffic offenses, the Mayor of Monroeville, Ohio, convicted petitioner of two traffic offenses and fined him \$50 on each. The Ohio Court of Appeals of Huron County, 21 Ohio App. 2d 17, 254 N. E. 2d 375 (1969), and the Ohio Supreme Court, 27 Ohio St. 2d 179, 271 N. E. 2d 757 (1971), sustained the conviction, rejecting petitioner's objection that trial before a mayor who also had responsibilities for revenue production and law enforcement denied him a trial before a disinterested and impartial judicial officer as guaranteed by the Due Process Clause of the Fourteenth Amendment. We granted certiorari. 404 U. S. 1058 (1972).

The Mayor of Monroeville has wide executive powers and is the chief conservator of the peace. He is president of the village council, presides at all meetings, votes in case of a tie, accounts annually to the council respecting village finances, fills vacancies in village offices and has general overall supervision of village affairs. A major part of village income is derived from the fines, forfeitures, costs and fees imposed by him in his mayor's court.

*Please give me
2*

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: 10/27/72

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-496

Clarence Ward, Petitioner,
v.
Village of Monroeville, Ohio. } On Writ of Certiorari to the
Supreme Court of Ohio.

[November —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Pursuant to Ohio Revised Code § 1905.01 *et seq.*, which authorizes mayors to sit as judges in cases of ordinance violations and certain traffic offenses, the Mayor of Monroeville, Ohio, convicted petitioner of two traffic offenses and fined him \$50 on each. The Ohio Court of Appeals for Huron County, 21 Ohio App. 2d 17, 254 N. E. 2d 375 (1969), and the Ohio Supreme Court, 27 Ohio St. 2d 179, 271 N. E. 2d 757 (1971), three justices dissenting, sustained the conviction, rejecting petitioner's objection that trial before a mayor who also had responsibilities for revenue production and law enforcement denied him a trial before a disinterested and impartial judicial officer as guaranteed by the Due Process Clause of the Fourteenth Amendment. We granted certiorari. 404 U. S. 1058 (1972).

The Mayor of Monroeville has wide executive powers and is the chief conservator of the peace. He is president of the village council, presides at all meetings, votes in case of a tie, accounts annually to the council respecting village finances, fills vacancies in village offices and has general overall supervision of village affairs. A major part of village income is derived from the fines, forfeitures, costs and fees imposed by him in his mayor's court.

Page 5.

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.

5th DRAFT

Circulated: _____

Recirculated: 11-7-72

SUPREME COURT OF THE UNITED STATES

No. 71-496

Clarence Ward, Petitioner,
v. On Writ of Certiorari to the
Village of Monroeville, Supreme Court of Ohio.
Ohio.

[November —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Pursuant to Ohio Revised Code § 1905.01 *et seq.*, which authorizes mayors to sit as judges in cases of ordinance violations and certain traffic offenses, the Mayor of Monroeville, Ohio, convicted petitioner of two traffic offenses and fined him \$50 on each. The Ohio Court of Appeals for Huron County, 21 Ohio App. 2d 17, 254 N. E. 2d 375 (1969), and the Ohio Supreme Court, 27 Ohio St. 2d 179, 271 N. E. 2d 757 (1971), three justices dissenting, sustained the conviction, rejecting petitioner's objection that trial before a mayor who also had responsibilities for revenue production and law enforcement denied him a trial before a disinterested and impartial judicial officer as guaranteed by the Due Process Clause of the Fourteenth Amendment. We granted certiorari. 404 U. S. 1058 (1972).

The Mayor of Monroeville has wide executive powers and is the chief conservator of the peace. He is president of the village council, presides at all meetings, votes in case of a tie, accounts annually to the council respecting village finances, fills vacancies in village offices and has general overall supervision of village affairs. A major part of village income is derived from the fines, forfeitures, costs and fees imposed by him in his mayor's court.

Supreme Court of the United States
Washington, D. C. 20543CHAMBERS OF
JUSTICE POTTER STEWART

October 27, 1972

Re: No. 71-496, Ward v. Monroeville

Dear Bill,

I am in basic agreement with your opinion for the Court in this case. I do, however, have some suggestions, perhaps because as a former Ohioan I am quite sensitive to the considerable impact this decision will have upon hundreds of villages throughout the State:

(1) I think it is important to make clear that we are talking here only about adjudication and punishment in a litigated case where there is a not guilty plea. I would certainly not disqualify the mayor or any other village official from acting in a quasi-clerical capacity where there is a free and voluntary guilty or nolo plea, forfeiture of collateral, or the like.

(2) I think it might be well to mention at the top of page 3 that there were dissenters from the judgment of the Supreme Court of Ohio.

(3) I think it is not accurate to say in the second sentence of the first full paragraph on page 4 that the Mayor of Xenia, in the Dugan case, "had no executive but only judicial functions." As indeed you indicate in the balance of that paragraph, the Mayor, as a member of the commission, had both legislative and executive powers.

Sincerely yours,

Mr. Justice Brennan

Copies to the Conference

P.S.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

October 27, 1972

Re: No. 71-496 - Ward v. Village of
Monroeville

Dear Bill:

I am considering a
concurrence joining the judgment in
this case.

Sincerely,



Mr. Justice Brennan

Copies to Conference

*to the
Supreme Court*

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

1st DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Entered: 10-31-72
No. 71-496

Recirculated: _____

Clarence Ward, Petitioner,
v.
Village of Monroeville, Ohio. } On Writ of Certiorari to the
Supreme Court of Ohio.

[November —, 1972]

MR. JUSTICE WHITE, dissenting.

The Ohio mayor who judged this case had no direct financial stake in its outcome. *Tumey v. Ohio*, 273 U. S. 510 (1927), is therefore not controlling, and I would not extend it. I cannot assume, as the Court does, that every mayor in every case will disregard his oath and administer justice contrary to constitutional commands. Nor can I assume that this will occur sufficiently often to warrant the *per se* treatment meted out by the Court.

It may be, as my Brother REHNQUIST suggests, that this particular conviction is vulnerable on its own facts by reason of bias on the part of the trier of fact. But I am not at all sure that this question, as such, was presented to and passed on by the Ohio Supreme Court. The petition for certiorari does not present it as a separate ground for reversal but solely attacks the system of municipal justice which is followed by Ohio and 16 other States.

I would affirm the judgment.

Substantially rewritten

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

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 71-496

Recirculated: 11-9-72

Clarence Ward, Petitioner,
v. Village of Monroeville, Ohio. } On Writ of Certiorari to the
Supreme Court of Ohio.

[November —, 1972]

MR. JUSTICE WHITE, dissenting.

The Ohio mayor who judged this case had no direct financial stake in its outcome. *Tumey v. Ohio*, 273 U. S. 510 (1927), is therefore not controlling, and I would not extend it.

To justify striking down the Ohio system on its face, the Court must assume either that every mayor-judge in every case will disregard his oath and administer justice contrary to constitutional commands or that this will happen often enough to warrant the prophylactic, *per se* rule urged by petitioner. I can make neither assumption with respect to Ohio mayors nor with respect to similar officials in 16 other States. Hence, I would leave the due process matter to be decided on a case-to-case basis, a question which, as I understand the posture of this case, is not now before us. I would affirm the judgment.

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

From: White, J.

Circulated:

No. 71-496

Recirculated: 11-10-72

Clarence Ward, Petitioner,) v. } On Writ of Certiorari to the
Village of Monroeville, } Supreme Court of Ohio.
Ohio.

[November 14, 1972]

MR. JUSTICE WHITE, with whom MR. JUSTICE REHNQUIST joins, dissenting.

The Ohio mayor who judged this case had no direct financial stake in its outcome. *Tumey v. Ohio*, 273 U. S. 510 (1927), is therefore not controlling, and I would not extend it.

To justify striking down the Ohio system on its face, the Court must assume either that every mayor-judge in every case will disregard his oath and administer justice contrary to constitutional commands or that this will happen often enough to warrant the prophylactic, *per se* rule urged by petitioner. I can make neither assumption with respect to Ohio mayors nor with respect to similar officials in 16 other States. Hence, I would leave the due process matter to be decided on a case-to-case basis, a question which, as I understand the posture of this case, is not now before us. I would affirm the judgment.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

October 30, 1972

Re: No. 71-496 - Ward v. Monroeville, Ohio

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Brennan

cc: Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 27, 1972

Re: No. 71-496 - Ward v. Village of Monroeville

Dear Bill:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 26, 1972

Re: No. 71-496 Ward v. Village of Monroeville

Dear Bill:

Please join me in your opinion (second draft).

Although not of great importance, it occurs to me that the word "necessarily" - as used in the next to the bottom line on page 3 - may overstate the situation, especially in this case where the Mayor in fact does not function as a normal chief executive municipal officer. I think I would substitute "may" for "necessarily", although I am content to leave this to you.

Sincerely,

Lewis

Mr. Justice Brennan

cc: The Conference

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

1st DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

dated: 10/30/72

No. 71-496

Recirculated:

Clarence Ward, Petitioner,
v. On Writ of Certiorari to the
Village of Monroeville, Supreme Court of Ohio.
Ohio.

[November —, 1972]

MR. JUSTICE REHNQUIST, concurring in the result.

I concur in the result reached by this Court, but on the narrower ground that the record reveals that the judge in this particular case displayed sufficient partiality as to deny to this petitioner due process of law.* I disagree with the conclusion that the statutory framework chosen by Ohio to prosecute traffic offenses in small towns is on its face necessarily violative of due process standards. To reach its result the Court has had to expand the holding of *Tumey v. Ohio*, 273 U. S. 510 (1927).

Tumey v. Ohio dealt with the constitutionality of state laws permitting a mayor to act as judge of a "Liquor

*In the mayor's court the following colloquy took place between the mayor and the defense counsel when the latter attempted to question the credibility of the police chief who was appointed by and was under the control of the mayor:

"THE MAYOR: Are you going to sit here and are you going to challenge the credibility of the police officer that gives testimony under oath?

"COUNSEL: Yes.

"THE MAYOR: You are going to challenge the credibility of this police officer?

"COUNSEL: Yes.

"THE MAYOR: Under oath?

"COUNSEL: Yes.

"THE MAYOR: This man? Very well, you may proceed."
(Tr. 37-38.)

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 1, 1972

Re: No. 71-496 - Ward v. Village of Monroeville

Dear Chief:

I wish to withdraw the concurring opinion circulated by me on October 30th in this case; I intend to join the dissenting opinion which Byron drafted.

Sincerely,

W.W.

The Chief Justice

Copies to Conference

WD

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 1, 1972

Re: No. 71-496 - Ward v. Village of Monroeville

Dear Byron:

Please join me in your dissent. Since I am withdrawing my proposed concurrence, your reference to it is no longer necessary.

Sincerely,


Mr. Justice White

Copies to Conference