The Burger Court Opinion Writing Database

Kenosha v. Bruno

412 U.S. 507 (1973)

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

April 26, 1973

Re: No. 72-658 - City of Kenosha v. Bruno

MEMORANDUM TO THE CONFERENCE:

The vote in this case is 4 to Reverse, 3 to Affirm and 2 receptive or for a remand.

In these circumstances I have asked Bill Rehnquist to work up a memo treating both the basis for reversal and for remand.

Regards,

WSB

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

CHAMBERS OF
THE CHIEF JUSTICE

June 8, 1973

Re: No. 72-658 - City of Kenosha, Wisconsin, et al v. Peter G. Bruno, et al

Dear Bill:

Please join me.

Regards,

WEB

Mr. Justice Rehnquist

Copies to the Conference

You may do
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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-658 From: Douglas, J.

Circulated: 5-19-73

Recirculated:

City of Kenosha, Wisconsin, et al., Appellants. v. Peter G. Bruno et al. | On Appeal from the United States District Court for the Eastern District of Wisconsin.

[May —, 1973]

MR. JUSTICE DOUGLAS, concurring.

I have expressed my doubts in *Moor* v. *County of Alameda*, — U. S. —, that our decision in *Monroe* v. *Pape*, 365 U. S. 167, bars equitable relief against a municipality. In that case the legislative history* on which that construction of "person" as used in 42 U. S. C. § 1983 was based related to the fear of mulcting municipalities with damage awards for unauthorized acts of its police officers. *Monroe* v. *Pape* may be read as containing *dicta* that a remedy by way of declaratory relief or by injunction is barred by § 1983 as well as suits for damages. Yet I do not think we should decide that question without full briefing and considered argument.

I do, however, concur in a remand for reconsideration by the District Court in light of *Regents* v. *Roth*, 408 U. S. 564, *Perry* v. *Sindermann*, 408 U. S. 593, and *California* v. *LaRue*, — U. S. — .

*See the Appendix to this opinion.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 17, 1973

Re: No. 72-658 City of Kenosha v. Bruno

Dear Bill:

Your memorandum of May 4 persuades me that jurisdiction does not exist under 28 U.S.C. § 1343 and 42 U.S.C. § 1983. I am in doubt, however, as to the need for a remand to determine whether $10,000 is in controversy for purposes of jurisdiction under 28 U.S.C. § 1331. The record is not free from ambiguity, but two points seem reasonably clear. First, in his original opinion for a one-judge district court, Judge Reynolds noted that "it is stipulated that plaintiffs each have an investment in excess of $20,000 in their tavern operations, that the business of each plaintiff survives primarily by the sale of liquor, and that the loss of a liquor license will cause a grave loss of revenue and patronage to each plaintiff's business, depriving the plaintiffs of the ability to participate in the tavern business." App., at 105-106. That statement pertains to the Kenosha cases. Second, as to the Racine cases--the cases on which the opinion of the three-judge district court is based--the following statement appears in the court's opinion (and is quoted in your memorandum): "It is not unimportant to note that were not civil rights jurisdiction proper, each of the plaintiffs herein would be able to assert the necessary $10,000 controversy requirement of Title 28 U.S.C. § 1331." App., at 123. It seems to be true, as you point out, that no stipulation as to the amount in controversy was entered in the Racine cases. But should we not read the statement of the three-judge court as a finding of fact that the jurisidictional amount is in controversy? While the district court plainly assumed that jurisdiction existed under § 1983, it seems to have held, in the alternative, that jurisdiction existed under § 1331. In short, I am inclined to the view that there is no need to remand on the issue of jurisdiction, given the

unchallenged finding of fact on the question of jurisdictional amount, and that the case is properly presented for decision on the merits. Perhaps you can shed some light on this admittedly confusing record.

Sincerely,

Bill

Mr. Justice Rehnquist

Copies to the Conference

B

Joined 6/5

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

1st DRAFT

From: Brennan, J.

Circulated: 5/24/

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 72-658

City of Kenosha, Wisconsin, et al., Appellants, v. Peter G. Bruno et al. | On Appeal from the United States District Court for the Eastern District of Wisconsin.

[May —, 1973]

MR. JUSTICE BRENNAN, concurring.

Although I join the opinion of the Court, I would add that I find unimpeachably correct the District Court's conclusion that petitioners failed to comply with the requirements of the Due Process Clause in denying renewal of respondents' liquor licenses. Nevertheless, since the defendants named in the complaints were the municipalities of Kenosha and Racine, jurisdiction cannot be based on 28 U. S. C. § 1343. *Moor* v. *County of Alameda*, — U. S. — (1973); *Monroe* v. *Pape*, 365 U. S. 167 (1961). Respondents did assert 28 U. S. C. § 1331 as an alternative ground of jurisdiction, but I agree with the Court's conclusion that existence of the requisite amount in controversy is not, on this record, clearly established. If respondents can prove their allegation that at least $10,000 is in controversy, then § 1331 jurisdiction is available, *Bell* v. *Hood*, 327 U. S. 678 (1946), cf. *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U. S. 388 (1971), and they are clearly entitled to relief.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 31, 1973

RE: No. 72-658 City of Kenosha v. Bruno

Dear Bill:

I shall file my short concurring opinion which joins the second draft of your Per Curiam as circulated May 30, 1973.

Sincerely,

Bill

Mr. Justice Rehnquist

cc: The 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 Rehnq

2nd DRAFT

From: Brennan, J.

Circulated: _____

Recirculated: 6/7/

SUPREME COURT OF THE UNITED STATES

No. 72-658

City of Kenosha, Wisconsin, et al., Appellants, v. Peter G. Bruno et al. | On Appeal from the United States District Court for the Eastern District of Wisconsin.

[June —, 1973]

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

Although I join the opinion of the Court, I would add that I find unimpeachably correct the District Court's conclusion that petitioners failed to comply with the requirements of the Due Process Clause in denying renewal of respondents' liquor licenses. Nevertheless, since the defendants named in the complaints were the municipalities of Kenosha and Racine, jurisdiction cannot be based on 28 U. S. C. § 1343. *Moor* v. *County of Alameda*, — U. S. — (1973); *Monroe* v. *Pape*, 365 U. S. 167 (1961). Respondents did assert 28 U. S. C. § 1331 as an alternative ground of jurisdiction, but I agree with the Court's conclusion that existence of the requisite amount in controversy is not, on this record, clearly established. If respondents can prove their allegation that at least $10,000 is in controversy, then § 1331 jurisdiction is available, *Bell* v. *Hood*, 327 U. S. 678 (1946); cf. *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U. S. 388 (1971), and they are clearly entitled to relief.

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 14, 1973

72-658 - Kenosha v. Bruno

Dear Bill,

I agree with the memorandum you have circulated in this case.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 21, 1973

Re: No. 72-658, City of Kenosha v. Bruno

Dear Bill,

The revisions in the language of your memorandum that you suggest in your letter to Bill Brennan of this date are acceptable to me.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 1, 1973

72-658 - City of Kenosha v. Bruno

Dear Bill,

I agree with your opinion for the Court as recirculated May 30. I see no reason whatever why this 8-page opinion in an argued case should not be a signed opinion.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 26, 1973

MEMORANDUM TO THE CONFERENCE

Re: No. 72-658 - City of Kenosha v. Bruno

I shall be away for the Conference now scheduled for May 4. Bill Rehnquist will have my votes on the cert list. If he can bring himself to do it, he will also cast my vote to remand the above case for further consideration in light of California v. LaRue. I thought I should briefly state the grounds for my vote.

First, with respect to jurisdiction, my view is that neither injunction nor damage actions against a municipality are authorized by 42 U.S.C. § 1983, as interpreted by Monroe v. Pape, 365 U.S. 167 (1961). Nor does Thurgood's Moor v. County of Alameda case reach the question. But the State Attorney General was permitted to intervene as a defendant in this case to defend the very statute (Wis. Stat. § 176.05(1) and (5)) which a three-judge court was convened to consider and which had been construed by the State Supreme Court to authorize the challenged procedure. He remained in the case as a party, defending the constitutionality of this statewide statute. I do not need a remand to consider whether the Attorney General is a sufficient defendant to sustain this § 1983 lawsuit. Aside from this point, however, the complaints also alleged jurisdiction under 28 U.S.C. § 1331 and the adequate amount of controversy was alleged. Whether under Bivens v. Six Unknown Named Agents of the FBI, 403 U.S. 388 (1971), and § 1331 the District Court had jurisdiction over this case against a municipality appears to be a question left open by Bill Brennan's

opinion in the District of Columbia v. Carter case. See 41 U.S.L.W., at 4131. The District Court certainly seems to have felt § 1331 could have been the jurisdictional ground. See App. to J.S., at 123.*

Considering these cases to be properly here, as I think we should, I would nevertheless remand them for reconsideration in the light of LaRue, which, as I understand it, was the essence of the Chief Justice's suggestion at Conference. Two different cities are involved, Racine and Kenosha, and several lawsuits were filed against each city. It was alleged and admitted or stipulated in all cases against both cities that the bars in question featured nude dancing. It also was alleged in the basic complaint against each city that the liquor licenses involved were revoked because of the presentation of nude dancing. E.g., App. 10 and 11; Trans. 191. Racine first admitted, App. 14, then denied, App. 41, this allegation in successive answers to successive complaints. Kenosha denied the allegations from the outset, App. 58. In the formal reasons given by Racine for non-renewal, the city did not specify the presentation of nude dancing among the reasons for non-renewal of the licenses. App. 34-35. Nevertheless, the stipulation of facts between Racine and plaintiff Misurelli admits nude dancing was a factor taken into consideration in recommending non-renewal; the stipulation being "that the defendant city relied on such dance entertainment as one of the factors producing the effects enumerated . . . [in the Resolution of Non-Renewal] in denying the license application of Misurelli." App. 33, para. 32. Also, it is difficult to read the flurry of documents surrounding the request for admissions in one of the Kenosha cases (Sleepy's, Inc. v. City of Kenosha) other than as indicating that nude dance programming was an essential element in the recommendation and decision not to renew. Trans. 201, et seq. In the reasons given for Kenosha's denying respondent Bleashka a license renew "the type of entertainment allowed" is cited for caus various problems, and it is noted that the Kenosha Chief of Police recommended denial because nude danci

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*
There are three reference sources: the Appendix to the Jurisdictional Statement, "App. to J.S."; the Joint Appendix, "App."; and the Transcript, "Trans."

was "conducive to the lack of respect for law and authority." Trans. 211. See Trans. 211-213.

I assume that the pre-conditions to non-renewal under state law -- that is the necessity to have reasons or good cause -- were sufficient to activate the federal constitutional guarantee of due process and the right to a proper hearing. Even so, there is no dispute about the fact that nude dancing was featured in the clubs involved in these cases, and it is reasonably arguable that the liquor licenses were revoked on the basis of a fact about which there is no dispute whatsoever. If non-renewal actually rested on this basis, LaRue, decided since the Distric Court acted, holds that the Federal Constitution did not prevent non-renewal. I would remand the case to the District Court to reconsider in the light of LaRue

B.R.W.

B

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 14, 1973

Re: No. 72-658, City of Kenosha v. Bruno

Dear Bill:

Your suggested disposition is o.k. with me.

Sincerely,

Byron

Mr. Justice Rehnquist

Copies to Conference

B

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 31, 1973

Re: No. 72-658 - City of Kenosha v. Bruno

Dear Bill:

Please join me in your suggested per curiam in this case.

Sincerely,

Byron

Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 5, 1973

Re: No. 72-658 - Kenosha v. Bruno

Dear Bill:

Please join me in your concurrence.

Sincerely,

T.M.

Mr. Justice Brennan

cc: Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 15, 1973

Re: No. 72-658 - Kenosha v. Bruno

Dear Bill:

I am in accord with the memorandum you have prepared for this case.

Sincerely,

Harry

Mr. Justice Rehnquist

Copies to the Conference

1/2-10

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 22, 1973

Re: No. 72-658 - City of Kenosha v. Bruno

Dear Bill:

What you suggest in your letter of May 21 to Bill Brennan is acceptable to me.

Sincerely,

H.A.B.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 31, 1973

Re: No. 72-658 - City of Kenosha v. Bruno

Dear Bill:

Please join me in your recirculation of May 30.

Sincerely,

H. A. B.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 17, 1973

No. 72-658 City of Kenosha v. Bruno

Dear Bill:

I will join in the disposition suggestion in your memorandum.

Sincerely,

Lewis

Mr. Justice Rehnquist

cc: The Conference

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 21, 1973

No. 72-658 City of Kenosha v. Bruno

Dear Bill:

The revisions in the language of your memorandum that you suggest in your letter to Bill Brennan of this date are acceptable to me.

Sincerely,

Lewis

Mr. Justice Rehnquist

cc: The Conference

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 31, 1973

No. 72-658 City of Kenosha v. Bruno

Dear Bill:

I approve of your Per Curiam.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/gg

cc: The Conference

Sally -
This [illegible] case was selected for 1/12.

attach this to Cert Memo

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

From: Rehnquist, J.

Circulated: 1/4/73

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

CITY OF KENOSHA, WISCONSIN, ET AL *v.* PETER G. BRUNO ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

No. 72-658. Decided January —, 1973

Memorandum of MR. JUSTICE REHNQUIST.

More than one aspect of the decision of the District Court in this case seems to be fairly debatable, and I cannot therefore agree to its summary affirmance by this Court.

Wisconsin by statute provides that its municipalities may issue liquor licenses for a period of one year, with a right to seek renewal of the license at the end of that term. All such licenses expire on July 1st of each year. The applicable law, Wis. Stats. § 176.05 (8), further provides:

> ". . . (8) ANNUAL LICENSE MEETINGS. All town and village boards and common councils, or the duly authorized committees of such councils, shall meet not later than May 15th of each year and be in session from day to day thereafter, so long as it may be necessary, for the purpose of acting upon such applications for license as may be presented to them on or before April 15th, and all applications for license so filed shall be granted, issued or denied not later than June 15th for the ensuing license year, provided that nothing shall prevent any governing body from granting any licenses which are applied for at any other time. As soon as an application has been approved, a duplicate copy thereof shall be forwarded to the Secretary of Revenue. No application for a license which is in existence at the time of such annual

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 1, 1973

Re: No. 72-658 - City of Kenosha v. Bruno

Dear Chief:

I simply have not yet been able to put together an adequate memorandum in this case, as suggested by your assignment list, and therefore suggest that discussion be postponed to the Conference of May 11th. I will try to circulate a memorandum by the beginning of next week.

Sincerely,

WHR

The Chief Justice

Copies to 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

Circulated: 5/4/73

Recirculated: _____

No. 72-658

City of Kenosha, Wisconsin, et al., Appellants. v. Peter G. Bruno et al. | On Appeal from the United States District Court for the Eastern District of Wisconsin.

[May —, 1973]

Memorandum of MR. JUSTICE REHNQUIST.

Appellees, owners of retail liquor establishments, were holders of tavern liquor licenses [1] issued under Wisconsin law by appellants, the cities of Racine and Kenosha. Acting pursuant to Wis. Stat. Ann. § 176.05 (1), (8), the Cities denied appellees applications for renewal of their one-year licenses after holding public "legislative" hearings. Alleging, *inter alia*, deprivations of their Fourteenth Amendment procedural due process rights in such denials and, by amended complaints, the unconstitutionality of §§ 176.05 (1), (8), appellees brought these federal civil rights actions for declaratory and injunctive relief naming in each case only the appropriate municipality as a defendant. The District Court entered temporary restraining orders commanding the immediate issuance of licenses and convened a three-judge district court pursuant to 28 U. S. C. § 2281 to rule on the constitutionality of the statutory licensing procedure. Thereafter, the Attorney General of Wisconsin was allowed to intervene as a party defendant on his own

[1] In the case of appellee Misurelli, it appears from the record that his partner was actually the holder of the expired license. The District Court held, however, that in substance his application was no different from those of the other appellees

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 21, 1973

Re: No. 72-658 - City of Kenosha v. Bruno

Dear Bill:

Your letter of May 17th rightly suggests that my memorandum of May 11th concentrates too exclusively on the Racine cases, as opposed to the Kenosha cases, in my discussion of jurisdiction under section 1331. And I must admit that the findings in the Kenosha cases are, as you say, confusing.

The single judge District Court stated in its opinion continuing the outstanding temporary restraining orders that, with respect to the Kenosha cases, "it is stipulated that plaintiffs each have an investment in excess of $20,000 in their tavern operations . . .". In plaintiff's request for admissions filed July 8, 1971, in Sleepy's Inc. v. City of Kenosha, Case No. 71-C-332 in the District Court, defendant was requested to admit: "43. That plaintiff has an investment in excess of $20,000 in the tavern operation." (R. 207.) In a response to that request filed July 16, 1971, the City of Kenosha stated that it "has insufficient knowledge upon which to form a belief as to the allegations in Request No. 43,"but admits that there is an investment on plaintiff's part." (R. 275.)

In an amendment to the request and response, the parties to that action stipulated that "Item 43 of the Request for Admission of Facts is admitted by the defendant for purposes of this litigation only." (R. 279.) That amendment was

filed on July 23, 1971. But in the verified answer to the verified complaint filed, according to the list of docket entries, after the above amendment but on the same day, defendant said that it had insufficient knowledge with respect to plaintiff's allegation that it had "an investment in its business in excess of $40,000 and faces imminent irreparable damage and injury" and put plaintiff to its proof. (R. 283.)

Even in the light of this purported stiuplation, the single judge only found jurisdiction "present pursuant to Title 42 USC § 1983." (J.S. App. 106.) There was no express finding on "arising under" jurisdiction pursuant to 28 USC § 1331.

To further confuse matters, plaintiff filed an amended complaint on April 21, 1972, alleging for the first time the unconstitutionality of the Wisconsin statutory licensing scheme. In that complaint, it repeated its allegation that it had an investment in its business in excess of $40,000 and faced imminent irreparable damage and injury. (R. 341.) The record in my office does not indicate that any answer was filed to this complaint, and the next significant item in the record chronologically is the opinion of the three-judge District Court from which this appeal was taken.

I do not think I could agree with the suggestion in your letter of May 17th that we treat the statement of the three-judge District Court as to section 1331 jurisdiction as a finding of fact as to the jurisdictional amount. The posture of the case at that time was that both parties had filed cross-motions for summary judgment, and that at least in the Racine cases the existence of the amount in controversy was denied. My understanding of summary judgment procedure is that by definition it cannot involve any findings of fact,

since if there is a genuine issue of material fact, summary judgment is not proper under Rule 56(c), F.R.C.P. Thus I think that my memorandum as presently drafted is correct in its treatment of the Racine cases, but does not pay sufficient attention to the confused state of the record in the Kenosha cases. To correct this, if agreeable with those who have already indicated their agreement with the memorandum, I would propose a revision of the language on page 7 of that memorandum by way of substitution of the following language for the present language beginning "But although appellees . . ." and ending with the end of the paragraph:

> "But although appellees in the Racine denials alleged jurisdiction pursuant to 28 USC § 1331 as well as § 1343, and in each complaint there was an allegation of an investment in a tavern of at least $20,000, the defendant municipal corporations answered by putting the appellees to their proof as to the amount in controversy. Since the cases were submitted and decided on cross-motions for summary judgment and stipulations of fact, and no stipulation as to the amount in controversy was filed, we cannot say on this state of the record whether or not jurisdiction over the complaints was affirmatively established. See, Hague v. CIO, 307 U.S. 496, 507-508 (1939), and the cases therein cited. With respect to the Kenosha denials, there was a stipulation as to jurisdictional amount in the proceedings before the single-judge District Court, and an allegation of the requisite jurisdictional amount in the amended complaint which for the first time challenged the constitutional validity of the Wisconsin statutory licensing scheme. No answer was filed to the amended complaint prior to the entry of judgment by the District Court.

"We have had the benefit of neither briefs, arguments, nor explicit consideration by the District Court of the jurisdictional questions presented by the intervention of the Attorney General as a party, and the availability of § 1331 jurisdiction in view of the state of the record below. We therefore remand the case to the District Court for consideration of these issues."

Sincerely,

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 30, 1973

MEMORANDUM TO THE CONFERENCE

Re: City of Kenosha v. Bruno, No. 72-658

Since it appears that a majority of the Court is willing to join the views expressed in my memorandum of May 6, and its amendments, I am recirculating those views in the form of a per curiam opinion. I would appreciate a renewal of votes at your convenience.

Sincerely,

WHR

/ P7

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

From: Rehnquist, J.

2nd DRAFT

Circulated: _____

Recirculated: 5/30/73

SUPREME COURT OF THE UNITED STATES

No. 72-658

City of Kenosha, Wisconsin, et al., Appellants, v. Peter G. Bruno et al. | On Appeal from the United States District Court for the Eastern District of Wisconsin.

[June -, 1973]

PER CURIAM,

Appellees, owners of retail liquor establishments, were holders of tavern liquor licenses[1] issued under Wisconsin law by appellants, the cities of Racine and Kenosha. Acting pursuant to Wis. Stat. Ann. § 176.05 (1), (8), the Cities denied appellees applications for renewal of their one-year licenses after holding public "legislative" hearings. Alleging, *inter alia*, deprivations of their Fourteenth Amendment procedural due process rights in such denials and, by amended complaints, the unconstitutionality of §§ 176.05 (1), (8), appellees brought these federal civil rights actions for declaratory and injunctive relief naming in each case only the appropriate municipality as a defendant. The District Court entered temporary restraining orders commanding the immediate issuance of licenses and convened a three-judge district court pursuant to 28 U. S. C. § 2281 to rule on the constitutionality of the statutory licensing procedure. Thereafter, the Attorney General of Wisconsin was allowed to intervene as a party defendant on his own

[1] In the case of appellee Misureli, it appears from the record that his partner was actually the holder of the expired license. The District Court held, however, that in substance his application was no different from those of the other appellees.

B
1

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

From: Rehnquist, J.

Circulated:

Recirculated: 6/11/73

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-658

City of Kenosha, Wisconsin, et al., Appellants, v. Peter G. Bruno et al.	On Appeal from the United States District Court for the Eastern District of Wisconsin.

[June —, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Appellees, owners of retail liquor establishments, were holders of tavern liquor licenses[1] issued under Wisconsin law by appellants, the cities of Racine and Kenosha. Acting pursuant to Wis. Stat. Ann. § 176.05 (1), (8), the Cities denied appellees applications for renewal of their one-year licenses after holding public "legislative" hearings. Alleging, *inter alia*, deprivations of their Fourteenth Amendment procedural due process rights in such denials and, by amended complaints, the unconstitutionality of §§ 176.05 (1), (8), appellees brought these federal civil rights actions for declaratory and injunctive relief naming in each case only the appropriate municipality as a defendant. The District Court entered temporary restraining orders commanding the immediate issuance of licenses and convened a three-judge district court pursuant to 28 U. S. C. § 2281 to rule on the constitutionality of the statutory licensing procedure. Thereafter, the Attorney General of Wisconsin was allowed to intervene as a party defendant on his own

[1] In the case of appellee Misurelli, it appears from the record that his partner was actually the holder of the expired license. The District Court held, however, that in substance his application was no different from those of the other appellees.