

The Burger Court Opinion Writing Database

Norwell v. Cincinnati

414 U.S. 14 (1973)

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



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

CHAMBERS OF
THE CHIEF JUSTICE

October 11, 1973

Re: No. 72-1366 - Norwell v. City of Cincinnati

Dear Harry:

I believe you propose a narrow basis for reversal
of this case that-never-should-have-been. So please
join me.

Regards,

WBB

Mr. Justice Blackmun

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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

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 10-2-73

Recirculated: _____

EDWARD NORWELL v. CITY OF CINCINNATI,
OHIO

WHR
f

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME
COURT OF OHIO

No. 72-1366. Decided October —, 1973

MR. JUSTICE DOUGLAS, dissenting.

I would grant certiorari and reverse the conviction below.

Petitioner, a 69-year-old citizen of Cincinnati, was convicted of violating the Cincinnati disorderly conduct ordinance, which reads:

“No person shall willfully conduct himself or herself in a noisy, boisterous, rude, insulting or other disorderly manner, with the intent to abuse or annoy a person or the citizens of the city or any portion thereof”

As petitioner was leaving his son's package liquor store at 10:30 on Christmas night, 1971, a patrolman, notified that a “suspicious man” was in the neighborhood of the store, approached petitioner and asked him if he lived in the area. Petitioner looked at the officer, then turned and walked away. (Tr. 4.) Twice, the officer grabbed petitioner, attempting physically to prevent him from walking away. Each time, petitioner threw the officer's arm off and stated, loudly, that he did not have to tell the officer anything. (Tr. 4-5.) The second time, petitioner was arrested for disorderly conduct. There is no evidence that the physical act of pushing off the officer's arms precipitated the arrest; rather the arrest and conviction were premised on the “loud” and “bois-

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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 ✓

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

Circulate: _____

EDWARD NORWELL v. CITY OF CINCINNATI,
OHIO

Recirculated: 10-6-73

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME
COURT OF OHIO

No. 72-1366. Decided October —, 1973

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

I would grant certiorari and reverse the conviction below.

Petitioner, a 69-year-old citizen of Cincinnati, was convicted of violating the Cincinnati disorderly conduct ordinance, which reads:

"No person shall willfully conduct himself or herself in a noisy, boisterous, rude, insulting or other disorderly manner, with the intent to abuse or annoy a person or the citizens of the city or any portion thereof"

As petitioner was leaving his son's package liquor store at 10:30 on Christmas night, 1971, a patrolman, notified that a "suspicious man" was in the neighborhood of the store, approached petitioner and asked him if he lived in the area. Petitioner looked at the officer, then turned and walked away. Twice, the officer grabbed petitioner, attempting physically to prevent him from walking away. Each time, petitioner threw the officer's arm off and stated, loudly, that he did not have to tell the officer anything. The second time, petitioner was arrested for disorderly conduct. There is no evidence that the physical act of pushing off the officer's arms precipitated the arrest; rather the arrest and conviction were premised on the "loud" and "bois-

Wm

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

October 11, 1973

*R
K
T*

Dear Harry:

No. 72-1366, NORWELL v. CINCINNATI

I have no pride in authorship. Your
alternative ground is o.k. with me - if,
as I suspect, you can get a Court.

W
WILLIAM O. DOUGLAS

Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

October 19, 1973

Dear Harry:

Please join me in your per curiam
in 72-1366, Norwell v. Cincinnati.

WOD
William O. Douglas

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. October 3, 1973

RE: No. 72-1366 Norwell v. City of
Cincinnati, Ohio

Dear Bill:

Please join me in your dissenting
opinion in the above.

Sincerely,

Bill

Mr. Justice Douglas

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. October 23, 1973

RE: No. 72-1366 Norwell v. Cincinnati

Dear Harry:

I agree with the Per Curiam you have
prepared in the above.

Sincerely,

W. J. Brennan, Jr.

Mr. Justice Blackmun

cc: The Conference



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

CHAMBERS OF
JUSTICE POTTER STEWART

October 4, 1973

Re: No. 72-1366, Norwell v. City of
Cincinnati, Ohio

Dear Bill,

Please add my name to your
dissenting opinion in this case.

Sincerely yours,

P.S.
/

Mr. Justice Douglas

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

CHAMBERS OF
JUSTICE POTTER STEWART

October 23, 1973

72-1366, Norwell v. Cincinnati

Dear Harry,

I agree with the Per Curiam you
have circulated in this case.

Sincerely yours,

P.S.
/

Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

October 11, 1973

Re: No. 72-1366 - Norwell v. City of Cincinnati

Dear Harry:

I had arrived at the same conclusion and
join your concurrence in this case.

Sincerely,



Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE BYRON R WHITE

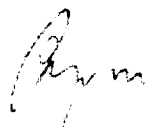
October 30, 1973

Re: No. 72-1366 - Norwell v. City of Cincinnati

Dear Harry:

This is to confirm my earlier oral agreement with your per curiam and my written joinder of your earlier concurrence.

Sincerely,



Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

October 5, 1973

Re: No. 72-1366 -- Edward Norwell v. City of
Cincinnati, Ohio

Dear Bill:

Please join me in your dissent in this
case.

Sincerely,

T.M.

Mr. Justice Douglas

cc: The Conference

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zation of the Hoover Institution Archives.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

October 25, 1973

Re: No. 72-1366 -- Edward Norwell v. City of
Cincinnati, Ohio

Dear Harry:

Please join me.

Sincerely,

T.M.

T.M.

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 9, 1973

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MEMORANDUM TO THE CONFERENCE

Re: No. 72-1366 - Norwell v. City of Cincinnati

After reviewing the record in this case, I have decided to vote to reverse. I do so, however, on a ground more narrow than that stated by Bill Douglas and joined by Bill Brennan, Potter and Thurgood. Assuming that Bill Douglas' circulation will be revised to be the principal rather than a dissenting opinion, I am thus concurring in the result. My circulation will be around shortly.

H.A.B.



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To: The Chief Justice
Mr. Justice Blackmun
Mr. Justice Brennan
Mr. Justice Burger
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Marshall
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Blackmun, J.

EDWARD NORWELL v. CITY OF CINCINNATI,
OHIO

Circulated: 10/10/73

Recirculated:

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME
COURT OF OHIO

No. 72-1366. Decided October —, 1973

MR. JUSTICE BLACKMUN, concurring in the result.

I concur in the grant of the petition for certiorari and in the reversal of the judgment of conviction of petitioner Norwell for violating the Cincinnati disorderly conduct ordinance. I do so, however, not on the ground that the statute is unconstitutionally overbroad and vague, as my Brother DOUGLAS and those who join him hold, but on the narrow ground that the ordinance, as applied to this petitioner on the facts of his case, operates to punish his constitutionally protected speech.

One perhaps might argue that Mr. Norwell could have been charged under some statute or ordinance, assuming one existed, making it illegal to interfere with a police officer in the performance of his duties.* That, however, is not this case. Officer Johnson, who effected the arrest, testified that he "didn't charge the man with resisting because I didn't think it was a warranted cause," and that he arrested the petitioner for "being loud and boisterous," and "He was annoying me." The municipal judge found the petitioner "guilty of disorderly conduct with the intent to annoy" and fined him \$10 and costs "for being so noisy."

Other facts disclosed by the record are revealing: The petitioner, an immigrant and, evidently, 69 years of age,

*The record is by no means clear that Officer Johnson was justified in attempting to stop and detain petitioner. See *Terry v. Ohio*, 392 U. S. 1, 34 (1968) (WHITE, J., concurring); *Adams v. Williams*, 407 U. S. 143, 147 (1972).

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

EDWARD NORWELL v. CITY OF CINCINNATI,
OHIO

Circulated: 10/19/73
Recirculated:

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME
COURT OF OHIO

No. 72-1366. Decided October —, 1973

PER CURIAM.

Petitioner Edward Norwell, on a plea of not guilty, was convicted of a violation of Cincinnati's disorderly conduct ordinance. The charge was that petitioner "did unlawfully and wilfully conduct himself in a disorderly manner, with intent to annoy some person." The judgment of conviction was affirmed by the Ohio Court of Appeals. Further appeal to the Supreme Court of Ohio was dismissed *sua sponte* "for the reason that no substantial constitutional question exists herein."

We are persuaded that the ordinance, as applied to this petitioner on the facts of his case, operated to punish his constitutionally protected speech. We therefore grant certiorari and reverse.

The ordinance, § 901-D4 of the City's Municipal Code, reads:

"No person shall wilfully conduct himself or herself in a noisy, boisterous, rude, insulting or other disorderly manner, with the intent to abuse or annoy a person"

Petitioner, 69 years of age and an immigrant 20 years ago, is employed by his son who manages and is part owner of a "pony keg," a small package liquor store. The petitioner works at the pony keg every evening and helps his son "because it is very dangerous." There have been break-ins at the store on several occasions and a former owner was killed there.

Chicago through

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Blackmun, J.

Circulated: _____

EDWARD NORWELL v. CITY OF CINCINNATI,
OHIO

Recirculated: 10/24/73

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME
COURT OF OHIO

No. 72-1366. Decided October —, 1973

PER CURIAM.

Petitioner Edward Norwell, on a plea of not guilty, was convicted of a violation of Cincinnati's disorderly conduct ordinance. The charge was that petitioner "did unlawfully and wilfully conduct himself in a disorderly manner, with intent to annoy some person." The judgment of conviction was affirmed by the Ohio Court of Appeals. Further appeal to the Supreme Court of Ohio was dismissed by that court *sua sponte* "for the reason that no substantial constitutional question exists herein."

We are persuaded that the ordinance, as applied to this petitioner on the facts of his case, operated to punish his constitutionally protected speech. We therefore grant certiorari and reverse.

The ordinance, § 901-D4 of the City's Municipal Code, reads:

"No person shall wilfully conduct himself or herself in a noisy, boisterous, rude, insulting or other disorderly manner, with the intent to abuse or annoy a person"

Petitioner, 69 years of age and an immigrant 20 years ago, is employed by his son who manages and is part owner of a "pony keg," a small package liquor store. The petitioner works at the pony keg every evening and helps his son "because it is very dangerous." There have been break-ins at the store on several occasions and a former owner was killed there.

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CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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

October 11, 1973

No. 72-1366 Norwell v. Cincinnati

Dear Harry:

Please join me in your concurrence.

Sincerely,

Lewis

Mr. Justice Blackmun

lfp/ss

cc: The Conference

HOOPER INSTITUTION
ON WAR, REVOLUTION AND PEACE
Sanford, California 94303-6010



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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 20, 1973

ml
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72-1366 Norwell v. City of Cincinnati

Dear Harry:

Please join me in your Per Curiam.

Sincerely,

Lewis

Mr. Justice Blackmun

lfp/ss

cc: The Conference

HOOPER INSTITUTION
ON WAR, REVOLUTION AND PEACE
Sanford, California 94963-6010



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Mr. Chief Justice
Mr. Justice Burger
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell

1st DRAFT

Mr. Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

dated: 10/11/73

EDWARD NORWELL v. CITY OF CINCINNATI,
OHIO

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME
COURT OF OHIO

No. 72-1366. Decided October —, 1973

MR. JUSTICE REHNQUIST, dissenting.

Petitioner was convicted in the Municipal Court of Hamilton County, Ohio, of violating the Disorderly Conduct Ordinance set forth in the opinion of my Brother DOUGLAS. The Ohio Court of Appeals, affirming petitioner's conviction and sentence (to pay a fine of \$10) stated:

"... the record demonstrates that the police officer had sufficient grounds to stop the appellant and inquire as to his presence and actions at that time and place. The appellant had a right to refuse to answer the officer's questions but not to become noisy or disorderly in so refusing."

It is both possible and reasonable to find support in the record for the conclusion that petitioner was arrested and convicted for a mere verbal protest of what he considered to be the improper actions of the arresting officer. But the testimony of the arresting officer that when he sought to question petitioner the latter "threw my arm off" permitted a finding by the trial court that petitioner had engaged in conduct which was prohibited by the ordinance. The subjective intent with which the patrolman arrested petitioner has little or no relevance here, since the inquiry is not the validity of the arrest but the validity of the conviction. While no interpretation of the facts suggests that this was a model street encounter, I am not persuaded that the Ohio courts transgressed

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LAW (TITLE 17, U.S. CODE)

October 23, 1973

Re: No. 72-1366 - Norwell v. City of Cincinnati

Dear Harry:

I would have said that I couldn't have been had on this one, but your most recent draft has just about "got" me, to use the White Owl phrase. The one reservation I have is about the sentence in the last paragraph on page 3 in which you describe the "stop" as "a highly questionable detention by a police officer". Could you see your way clear to changing that language to read something like "to what he obviously felt was a highly questionable detention by a police officer"? If you could, I will join.

Sincerely,

WHR

Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

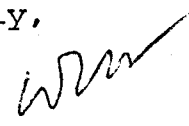
October 24, 1973

Re: No. 72-1366 - Norwell v. Cincinnati

Dear Harry:

Please join me in the per curiam opinion which you
circulated today.

Sincerely,



Mr. Justice Blackmun

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Stanford, California 94305-5000



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