

The Burger Court Opinion Writing Database

Village of Belle Terre v. Boraas
416 U.S. 1 (1974)

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

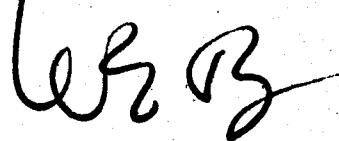
March 18, 1974

Re: 73-191 - Village of Belle Terre - v. Boraas

Dear Bill:

Please join me.

Regards,



Mr. Justice Douglas

Copies to the Conference

To the Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-191

Village of Belle Terre
et al., Appellants.
v.
Bruce Boraas et al. } On Appeal from the United States
Court of Appeals for the Second Circuit.

[March —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Belle Terre is a village on Long Island's north shore of about 220 homes inhabited by 700 people. Its total land area is less than one square mile. It has restricted land use to one-family dwellings excluding lodging houses, boarding houses, fraternity houses, or multiple dwelling houses. The word "Family" as used in the ordinance means, "One or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants. A number of persons but not exceeding two (2) living and cooking together as a single housekeeping unit though not related by blood, adoption, or marriage shall be deemed to constitute a family."

Appellees (Dickmans) are owners of a house in the village and leased it in December, 1971 for a term of 18 months to Michael Truman. Later Bruce Boraas became a colessee. Then Anne Parish moved into the house along with three others. These six are students at nearby State University at Stony Brook and none is related to the other by blood, adoption, or marriage. When the village served the Dickmans with an "Order to

88-67

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:

No. 73-191

Recirculate: 3-X2

Village of Belle Terre
 et al., Appellants,
 v.
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On Appeal from the United States
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p.8

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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Douglas: J.

No. 73-191

Circulate:

Recirculated:

Village of Belle Terre
et al., Appellants,
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Bruce Boraas et al.

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[March —, 1974]

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To : The Chief Justice
Mr. Justice Brennan
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NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

From: Douglas; J.

SUPREME COURT OF THE UNITED STATES

circulate:

No. 73-191

Recirculated:

Village of Belle Terre et al., Appellants, v. Bruce Boraas et al. } On Appeal from the United States Court of Appeals for the Second Circuit.

[April 1, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

MEMORANDUM TO THE CONFERENCE

Re: Browndale Internat'l Ltd. v. Dane Co. Bd. of Adjustment,
73-886, heretofore held for Village of Belle Terre v.
Boraas, 73-191

Petitioner in this case is a for-profit corporation operating homes for emotionally disturbed children. The corporation has purchased residences in Dane County Wisconsin and hopes to place several emotionally disturbed children in each such residence along with two adults who will serve as "surrogate parents." The houses are located in an area where use as a single family dwelling is permitted without specific site approval. The Dane County Board of Adjustment determined that the intended use of the residences as care centers for emotionally disturbed children did not fall within the classification of single family dwellings and that specific site approval was required for such intended use. This determination was ultimately upheld by the Wisconsin Supreme Court.

The challenged ordinance defines "family" as: "Any number of individuals related by blood or marriage, or not to exceed five (5) persons not so related, living together on the premises as a single housekeeping unit, including any domestic servants." Petitioner challenges the constitutionality of excluding its commercial treatment homes merely because "such homes do not constitute traditional-biological- marriage family groups." Petitioner claims the classification discriminates against emotionally disturbed children and is a denial of equal protection. The primary ground asserted for granting certiorari was the Court of Appeals decision in Belle Terre.

Classifying petitioner's commercial therapeutic homes as different from single family dwellings appears well within the local zoning authorities' discretion which we recognized in Belle Terre. I would deny certiorari.

William O. Douglas

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. March 13, 1974

RE: No. 73-191 Village of Belle Terre v.
Boraas

Dear Bill:

I have not yet decided whether I'll
write a dissent but will make up my mind
within the next week.

Sincerely,

Bill

Mr. Justice Douglas

cc: The Conference

*Circulated
3-27-74*

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-191

Village of Belle Terre
et al., Appellants,
v.
Bruce Boraas et al. } On Appeal from the United States
Court of Appeals for the Sec-
ond Circuit.

[April —, 1974]

MR. JUSTICE BRENNAN, dissenting.

The constitutional challenge to the village ordinance is premised *solely* on alleged infringement of associational and other constitutional rights of *tenants*. But the named tenant appellees have quit the house, thus raising a serious question whether there now exists a cognizable "case or controversy" that satisfies that indispensable requisite of Art. III of the Constitution. Existence of a "case or controversy" must of course appear at every stage of review, see *e. g.*, *Roe v. Wade*, 410 U. S. 113, 125 (1973), *Steffel v. Thompson*, — U. S. —, — n. 10 (1974). In my view it does not appear at this stage of this case.

Plainly there is no "case or controversy" as to the named tenant appellees since, having moved out, they no longer have an interest, associational, economic or otherwise, to be vindicated by invalidation of the ordinance. Whether there is a cognizable "case or controversy" must therefore turn on whether the lessor appellees may attack the ordinance on the basis of the constitutional rights of their tenants.

The general "weighty" rule of practice is "that a litigant may only assert his own constitutional rights or immunities," *United States v. Raines*, 362 U. S. 17, 22 (1970). A pertinent exception however ordinarily limits

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

SUPREME COURT OF THE UNITED STATES

Henry Brennan, J.

Circulated: _____

No. 73-191

Recirculated: 3-2

Village of Belle Terre
et al., Appellants,
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[April —, 1974]

MR. JUSTICE BRENNAN, dissenting.

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3-28-74*

2nd DRAFT

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No. 73-191

Village of Belle Terre
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[April —, 1974]

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SUPREME COURT OF THE UNITED STATES

No. 73-191

Village of Belle Terre et al., Appellants, v. Bruce Boraas et al. } On Appeal from the United States Court of Appeals for the Second Circuit.

[April —, 1974]

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 11, 1974

Re: No. 73-191, Village of Belle Terre v.
Boraas

Dear Bill,

I am glad to join your opinion for the Court
in this case.

Sincerely yours,

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 11, 1974

Re: No. 73-191 - Village of Belle Terre v.
Boraas

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

Copies to Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 14, 1974

Re: No. 73-191 -- Village of Belle Terre v. Boraas

Dear Bill:

I, too, will need a little more time on this one.

Sincerely,



T. M.

Mr. Justice Douglas

cc: The Conference

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

2nd DRAFT

From: Marshall, J.

Circulated: MAR 28 1974

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 73-191

Village of Belle Terre
et al., Appellants,
v.
Bruce Boraas et al. } On Appeal from the United States
Court of Appeals for the Sec-
ond Circuit.

[April —, 1974]

MR. JUSTICE MARSHALL, dissenting.

This case draws into question the constitutionality of a zoning ordinance of the incorporated village of Belle Terre, New York, which prohibits groups of more than two unrelated persons, as distinguished from groups consisting of any number of persons related by blood, adoption or marriage, from occupying a residence within the confines of the township.¹ Appellees, the two owners of a Belle Terre residence, and three unrelated student tenants challenged the ordinance on the grounds that it establishes a classification between households of related and unrelated individuals, which deprives them of equal protection of the laws. In my view, the disputed classification burdens the students' fundamental rights of association and privacy guaranteed by the First and Fourteenth Amendments. Because the application of strict equal protection scrutiny is therefore required, I am at odds with my brethren's conclusion that the ordinance may be sustained on a showing that it bears a rational relationship to the accomplishment of legitimate governmental objectives.

I am in full agreement with the majority that zoning is a complex and important function of the State. It may indeed be the most essential function performed by

¹ The text of the ordinance is reprinted at 1, *ante*.

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 12, 1974

Dear Bill:

Re: No. 73-191 - Village of Belle Terre v. Boraas

Please join me.

Sincerely,



Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 9, 1974

No. 73-191 Village of Belle Terre v. Boraas

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Douglas

lfp/ss

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 11, 1974

Re: No. 73-191 - Village of Belle Terre v. Boraas

Dear Bill:

Please join me in your opinion for the Court in this case.

Sincerely,

WHD

Mr. Justice Douglas

Copies to the Conference