The Burger Court Opinion Writing Database

Southeastern Promotions, Ltd. v. Conrad

420 U.S. 546 (1975)

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

March 14, 1975

Re: No. 73-1004 - Southeastern Publications v. Conrad

Dear Byron

I join your proposed dissenting opinion in the above case.

Regards,

WEB

Mr. Justice White

Copies to the Conference

2nd DRAFT

Circulated: 2/21/75

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 73-1004

Southeastern Promotions, Ltd., Petitioner, *v.* Steve Conrad et al. } On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[February —, 1975]

MR. JUSTICE DOUGLAS, dissenting.

While I agree with the Court's conclusion that the actions of the respondents constituted an impermissible prior restraint upon the performance of petitioner's rock musical, I am compelled to write separately in order to emphasize my view that the injuries inflicted upon petitioner's First Amendment rights cannot be treated adequately or averted in the future by the simple application of a few procedural band-aids. The critical flaw in this case lies not in the absence of procedural safeguards, but rather in the very nature of the content screening in which respondents have engaged.

The Court today treads much the same path which it walked in *Freedman* v. *Maryland,* 380 U. S. 51 (1965), and the sentiment which I expressed on that occasion remains equally relevant: "I do not believe any form of censorship—no matter how speedy or prolonged it may be—is permissible." *Id.,* at 61–62 (concurring opinion). See also *Star* v. *Preller,* — U. S. — (1974) (dissenting opinion); *Times Film Corp.* v. *Chicago,* 365 U. S. 43, 78 (1961) (dissenting opinion).

A municipal theatre is no less a forum for the expression of ideas than is a public park, or a sidewalk; the forms of expression adopted in such a forum may be more expensive and more structured than those typically seen

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 21, 1975

RE: No. 73-1004 Southeastern Promotions, Ltd. v. Conrad

Dear Harry:

I am happy to join in your very fine opinion circulated January 21, 1975.

Sincerely,

Bill

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 23, 1975

No. 73-1004, Southeastern Promotions, Ltd.
v. Steve Conrad et al.

Dear Harry,

Pursuant to our telephone conversation, I am glad to join your opinion for the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 23, 1975

Re: No. 73-1004 - Southeastern Promotions v. Conrad

Dear Harry:

I shall wait for the dissent in this case.

Sincerely,

Mr. Justice Blackmun

Copies to Conference

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: 2-18-75

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1004

Southeastern Promotions, Ltd., Petitioner, *v.* Steve Conrad et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[February —, 1975]

MR. JUSTICE WHITE, dissenting.

Although in Part II of its opinion the Court lectures on the evils of standardless licensing systems, understandably this is not the ultimate basis for decision. However broad discretion the Chattanooga authorities may otherwise have, plainly they are subject to the laws against obscenity and public nudity, and the standard lease requires that productions such as "Hair" not violate the law. In this respect, the licensing system is not without standards. As might be expected, therefore, the issue in the case, as defined by the District Court and the Court of Appeals, was not whether local authorities had undue discretion but whether they correctly refused to license "Hair" on the ground that the production would fail to satisfy "Par. 1 of the standard lease form requiring the licensee to comply with all state and local laws in its use of the leased premises," these laws being the laws against obscenity, public nudity and display of sexually oriented materials to minors. In so framing the question, the courts below reflected the prayer of the complaint, App. 13-14, which sought a declaration that the musical was protected expression under the First Amendment, did not violate any city ordinance and was not obscene. An injunction requiring local authorities to make the municipal facilities available for the production of "Hair" was also sought.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 23, 1975

Re: No. 73-1004 -- Southeastern Promotions, Ltd. v. Steve Conrad et al.

Dear Harry:

Please join me.

Sincerely,

T. M.

Mr. Justice Blackmun

cc: The Conference

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

1st Draft

From: Blackmun, J.

Circulated: 1/16/75

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 73-1004

Southeastern Promotions, Ltd., Petitioner, *v.* Steve Conrad et al. } On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[January —, 1975]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

The issue in this case is whether First Amendment rights were abridged when respondents denied petitioner the use of a municipal facility in Chattanooga, Tennessee, for the showing of the controversial rock musical "Hair."

I

Petitioner Southeastern Promotions, Ltd., is a New York corporation engaged in the business of promoting and presenting theatrical productions for profit. On October 29, 1971, it applied for the use of the Tivoli, a privately owned Chattanooga theater under long-term lease to the City, to present "Hair" there for six days beginning November 23. This was to be a road company showing of the musical that had played for three years on Broadway, and had appeared in over 140 cities in the United States.[1]

[1] Twice previously, petitioner informally had asked permission to use the Tivoli, and had been refused. In other cities, it had encountered similar resistance and had successfully sought injunctions ordering local officials to permit use of municipal facilities. See *Southeastern Promotions, Ltd.* v. *City of Mobile*, 457 F. 2d 340 (CA5 1972); *Southeastern Promotions, Ltd.* v. *City of West Palm*

Re: No. 73-1004 - Southeastern Promotions, Ltd. v. Conrad

Supreme Court of the United States

Memorandum

1/20/75, 19

Dear Lewis:

The suggestion you have made for page 17 is certainly acceptable to me. It will appear on the rerun.

Sincerely,

H. A. B.

This came from J. Blackmun. Are you joining now, or waiting for new draft? JS

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 21, 1975

Re: No. 73-1004 - Southeastern Promotions, Ltd.
v. Conrad

Dear Lewis:

The change you suggested in the material on page 17 of my first draft is a good one. It will be incorporated in a rerun which is at the Printer.

I am also eliminating paragraph III A. of the first draft. I believe you will find this to be an improvement, but if you think otherwise please let me know.

Sincerely,

Harry

Mr. Justice Powell

pp. 12, 13, 16

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1004

Southeastern Promotions, Ltd., Petitioner, *v.* Steve Conrad et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[January —, 1975]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

The issue in this case is whether First Amendment rights were abridged when respondents denied petitioner the use of a municipal facility in Chattanooga, Tennessee, for the showing of the controversial rock musical "Hair."

I

Petitioner Southeastern Promotions, Ltd., is a New York corporation engaged in the business of promoting and presenting theatrical productions for profit. On October 29, 1971, it applied for the use of the Tivoli, a privately owned Chattanooga theater under long-term lease to the City, to present "Hair" there for six days beginning November 23. This was to be a road company showing of the musical that had played for three years on Broadway, and had appeared in over 140 cities in the United States.[1]

[1] Twice previously, petitioner informally had asked permission to use the Tivoli, and had been refused. In other cities, it had encountered similar resistance and had successfully sought injunctions ordering local officials to permit use of municipal facilities. See *Southeastern Promotions, Ltd.* v. *City of Mobile*, 457 F. 2d 340 (CA5 1972); *Southeastern Promotions, Ltd.* v. *City of West Palm*

Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

From: Blackmun, J.

Circulated: _____

Recirculated: 1/24/75

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1004

Southeastern Promotions, Ltd., Petitioner, *v.* Steve Conrad et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[January —, 1975]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

The issue in this case is whether First Amendment rights were abridged when respondents denied petitioner the use of a municipal facility in Chattanooga, Tennessee, for the showing of the controversial rock musical "Hair." It is established, of course, that the Fourteenth Amendment has made applicable to the States the First Amendment's guarantee of free speech. *Douglas* v. *City of Jeanette*, 319 U. S. 157, 162 (1943).

I

Petitioner Southeastern Promotions, Ltd., is a New York corporation engaged in the business of promoting and presenting theatrical productions for profit. On October 29, 1971, it applied for the use of the Tivoli, a privately owned Chattanooga theater under long-term lease to the City, to present "Hair" there for six days beginning November 23. This was to be a road company showing of the musical that had played for three years on Broadway, and had appeared in over 140 cities in the United States.[1]

[1] Twice previously, petitioner informally had asked permission to use the Tivoli, and had been refused. In other cities, it had encoun-

V

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 20, 1975

No. 73-1004 Southeastern Promotions
v. Conrad

Dear Harry:

Please join me.

Sincerely,

L. Lewis

Mr. Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 16, 1975

Re: No. 73-1004 - Southeastern Promotions v. Conrad

Dear Harry:

As I had indicated earlier to you, I will in due course circulate a dissent in this case.

Sincerely,

WHR

Mr. Justice Blackmun

Copies to the Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1004

Southeastern Promotions, Ltd., Petitioner, *v.* Steve Conrad et al. } On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[February —, 1975]

MR. JUSTICE REHNQUIST, dissenting.

The Court treats this case as if it were on all fours with *Freedman* v. *Maryland*, 380 U. S. 51 (1965), which it is not. *Freedman* dealt with the efforts of the State of Maryland to prohibit the petitioner in that case from showing a film "at his Baltimore theater," *Freedman, supra,* at 52. Petitioner here did not seek to show the musical production "Hair" at *its* Chattanooga theater, but rather at a Chattanooga theater owned by the city of Chattanooga.

The Court glosses over this distinction by treating a community owned theater as if it were the same as a city park or city street, which it is not. The Court's decisions have recognized that city streets and parks are traditionally open to the public, and that permits or licenses to use them are not ordinarily required. ". . . [O]ne who is rightfully on a street which the state has left open to the public carries with him there as elsewhere the constitutional right to express his views in an orderly fashion. This right extends to the communication of ideas by handbill and literature as well as the spoken word." *Jamison* v. *Texas*, 318 U. S. 413, 416 (1942). The Court has therefore held that where municipal authorities have sought to exact a license or permit for those who wished to use parks or streets for the purpose of