The Burger Court Opinion Writing Database

Young v. American Mini Theatres, Inc.

427 U.S. 50 (1976)

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

June 16, 1976

Re: 75-312 - Young v. American Mini Theatres

Dear John:

I join your May 25 circulation.

Regards,

WEB

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 14, 1976

RE: No. 75-312 Young v. American Mini Theatres

Dear Potter:

Please join me in the dissenting opinion you have prepared in the above.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 22, 1976

RE: No. 75-312 Young v. American Mini Theatres

Dear Harry:

Please join me in your fine dissent in the above.

Sincerely,

WJB

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 26, 1976

MEMORANDUM TO THE CONFERENCE

Re: Young v. American Mini Theatres, Inc.
No. 75-312

I shall in due course circulate a dissenting opinion in this case.

P.S.

P. S.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-312

Coleman A. Young, Mayor the City of Detroit, et al., Petitioners, *v.* American Mini Theatres, Inc., et al.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[June —, 1976]

MR. JUSTICE STEWART, dissenting.

The Court today holds that the First and Fourteenth Amendments do not prevent the city of Detroit from using a system of prior restraints and criminal sanctions to enforce content-based restrictions on the geographic location of motion picture theaters that exhibit non-obscene but sexually oriented films. I dissent from this drastic departure from established principles of First Amendment law.

This case does not involve a simple zoning ordinance,[1] or a content-neutral time, place, and manner restriction,[2]

[1] Cf. *Village of Belle Terre* v. *Boraas*, 416 U. S. 1, which upheld a zoning ordinance that restricted no substantive right guaranteed by the Constitution.

[2] Here, as in *Police Department of Chicago* v. *Mosley*, 408 U. S. 92, and *Erznoznik* v. *City of Jacksonville*, 422 U. S. 205, the State seeks to impose a selective restraint on speech with a particular content. It is not all movie theaters which must comply with Ordinances No. 742-G and No. 743-G, but only those "used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to 'Specified Sexual Activities' or 'Specified Anatomical Areas . . . .'" The ordinances thus "'sli[p] from the neutrality of time, place, and circumstance into a concern about content.' This is never permitted." *Police De-*

1, 2, 3, 4, 5

To: The C...
Mr. Justice ...
Mr. Justice ...
Mr. Justice ...
Mr. Justice ...
Mr. Justice ...
Mr. Justice ...
Mr. Justice ...
Mr. Justice Stewart

Circulated: ...

Recirculated: JUN 1 3 ...

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75–312

Coleman A. Young, Mayor the City of Detroit, et al., Petitioners, *v.* American Mini Theatres, Inc., et al.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[June —, 1976]

MR. JUSTICE STEWART, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join, dissenting.

The Court today holds that the First and Fourteenth Amendments do not prevent the city of Detroit from using a system of prior restraints and criminal sanctions to enforce content-based restrictions on the geographic location of motion picture theaters that exhibit non-obscene but sexually oriented films. I dissent from this drastic departure from established principles of First Amendment law.

This case does not involve a simple zoning ordinance,[1] or a content-neutral time, place, and manner restriction,[2]

[1] Contrast *Village of Belle Terre* v. *Boraas*, 416 U. S. 1, which upheld a zoning ordinance that restricted no substantive right guaranteed by the Constitution.

[2] Here, as in *Police Department of Chicago* v. *Mosley*, 408 U. S. 92, and *Erznoznik* v. *City of Jacksonville*, 422 U. S. 205, the State seeks to impose a selective restraint on speech with a particular content. It is not all movie theaters which must comply with Ordinances No. 742–G and No. 743–G, but only those "used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to 'Specified Sexual Activities' or 'Specified Anatomical Areas . . . .'" The ordinances thus "'sli[p] from the neutrality of time, place, and circumstance into a concern about content.' This is never permitted." *Police De-*

Please join

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 21, 1976

Re: No. 75-312, Young v. American Mini Theatres

Dear Harry,

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

Sincerely yours,

P.S.
1.

Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 24, 1976

Re: No. 75-312 - Young v. American Mini Theatres

Dear John:

Please join me.

Sincerely,

Mr. Justice Stevens

Copies to Conference

/

June [illegible] 1976

No. 75-312 -- Coleman A. Young v. American Mini[illegible]ess, Inc.

Dear Potter:

Please join me.

Sincerely,

T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 22, 1976

Re: No. 75-312 -- Young v. American Mini Theatres

Dear Harry:

Please join me.

Sincerely,

T.M.

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 7, 1976

Re: No. 75-312 - Young v. American Theatres, Inc.

Dear John:

I shall await the dissent in this case and also whatever Lewis may choose to write.

Sincerely,

Harry

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 21, 1976

Re: No. 75-312 - Young v. American Mini Theatres

Dear Potter:

Please join me in your dissenting opinion.

Sincerely,

Harry

Mr. Justice Stewart

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: 6/21/76

Recirculated: _____

No. 75-312 - Young v. American Mini Theatres

MR. JUSTICE BLACKMUN, dissenting.

I join Mr. Justice Stewart's dissent, and write separately to identify an independent ground on which, for me, the challenged ordinance is unconstitutional. That ground is vagueness.

I

We should put ourselves for a moment in the shoes of the motion picture exhibitor. Let us suppose that, having previously offered only a more innocuous fare, he decides to vary it by exhibiting on certain days films from a series which occasionally deals explicitly with sex. The exhibitor must determine whether this places his theatre into the "adult" class prescribed by the challenged ordinance.

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

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 6/22/76

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-312

Coleman A. Young, Mayor the City of Detroit, et al., Petitioners, *v.* American Mini Theatres, Inc., et al.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[June 24, 1976]

Mr. Justice Brennan,

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE STEWART joins, dissenting.

and Mr. Justice Marshall

I join MR. JUSTICE STEWART's dissent, and write separately to identify an independent ground on which, for me, the challenged ordinance is unconstitutional. That ground is vagueness.

I

We should put ourselves for a moment in the shoes of the motion picture exhibitor. Let us suppose that, having previously offered only a more innocuous fare, he decides to vary it by exhibiting on certain days films from a series which occasionally deals explicitly with sex. The exhibitor must determine whether this places his theatre into the "adult" class prescribed by the challenged ordinance. If the theatre is within that class, it must be licensed, and it may be entirely prohibited, depending on its location.

"Adult" status *vel non* depends on whether the theatre is "used for presenting" films that are "distinguished or characterized by an emphasis on" certain specified activities including sexual intercourse, or specified ana-

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 27, 1976

No. 75-312 Young v. American Mini Theatres

Dear John:

Although I certainly concur in the result, and probably will join your opinion, I need some additional time to consider this case.

It may be that I will write a brief concurring opinion.

Sincerely,

L. Lewis

Mr. Justice Stevens

CC: The Conference

lfp/ss 6/15/76

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: JUN 16 1976

Recirculated: _____

No. 75-312 YOUNG v. AMERICAN MINI THEATERS

MR. JUSTICE POWELL, concurring.

Although I agree with much of the Court's opinion,[1] my approach to the resolution of this case is sufficiently different to prompt me to write separately. I view the case as presenting an example of innovative land-use regulation, implicating First Amendment concerns only incidentally and to a limited extent.

I.

One-half century ago this Court broadly sustained the power of local municipalities to utilize the then relatively novel concept of land-use regulation in order to meet effectively the increasing encroachments of urbanization

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: JUN 2 1976

Recirculated: _____

1st DRAFT (printed)

SUPREME COURT OF THE UNITED STATES

No. 75-312

Coleman A. Young, Mayor the City of Detroit, et al., Petitioners, *v.* American Mini Theatres, Inc., et al.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[June —, 1976]

MR. JUSTICE POWELL, concurring.

Although I agree with much of the Court's opinion,[1] my approach to the resolution of this case is sufficiently different to prompt me to write separately. I view the case as presenting an example of innovative land-use regulation, implicating First Amendment concerns only incidentally and to a limited extent.

I

One-half century ago this Court broadly sustained the power of local municipalities to utilize the then relatively novel concept of land-use regulation in order to meet effectively the increasing encroachments of urbanization upon the quality of life of their citizens. *Euclid* v. *Ambler Realty Company,* 272 U. S. 365 (1926). The Court there noted the very practical consideration underlying the necessity for such power: "With the great increase and concentration of population, problems have developed, and constantly are developing, which require,

[1] If and to the extent that the opinion of the Court may be read as approving distinctions between types of protected speech without reference to the circumstances in which they occur, I would not agree.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 25, 1976

Re: No. 75-312 - Young v. American Mini Theatres

Dear John:

Please join me.

Sincerely,

Mr. Justice Stevens

Copies to the Conference

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

From: Mr. Justice Stevens

Circulated: 5/20/76

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-312

Coleman A. Young, Mayor the City of Detroit, et al., Petitioners, *v.* American Mini Theatres, Inc., et al.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[June —, 1976]

MR. JUSTICE STEVENS delivered the opinion of the Court.

Zoning ordinances adopted by the city of Detroit differentiate between motion picture theaters which exhibit sexually explicit "adult" movies and those which do not. The principle question presented by this case is whether that statutory classification is unconstitutional because it is based on the content of communication protected by the First Amendment.[1]

Effective November 2, 1972, Detroit adopted the ordinances challenged in this litigation. Instead of concentrating "adult" theaters in limited zones, these ordinances require that such theaters be dispersed. Specifically, an adult theater may not be located within 1,000 feet of any two other "regulated uses" or within 500 feet of a residential area.[2] The term "regulated use" includes 10

[1] "Congress shall make no law . . . abridging the freedom of speech, or of the press; . . ." This Amendment is made applicable to the States by the Due Process Clause of the Fourteenth Amendment. *Edwards* v. *South Carolina*, 372 U. S. 229.

[2] The District Court held that the original form of the 500-foot restriction was invalid because it was measured from "any building

Pg. 20 ✓

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

From: Mr. Justice Stevens

Circulated: _____

Recirculated: 5/25/76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-312

Coleman A. Young, Mayor the City of Detroit, et al., Petitioners, *v.* American Mini Theatres, Inc., et al.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[June —, 1976]

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[2] The District Court held that the original form of the 500-foot restriction was invalid because it was measured from "any building

Pg. 15, 16, 17, 20, 21

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

From: Mr. Justice Stevens

Circulated: _____

Recirculated: JUN 17 1976

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75–312

Coleman A. Young, Mayor the City of Detroit, et al., Petitioners, *v.* American Mini Theatres, Inc., et al.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[June —, 1976]

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[1] "Congress shall make no law . . . abridging the freedom of speech, or of the press; . . ." This Amendment is made applicable to the States by the Due Process Clause of the Fourteenth Amendment. *Edwards* v. *South Carolina*, 372 U. S. 229.

[2] The District Court held that the original form of the 500-foot restriction was invalid because it was measured from "any building