

The Burger Court Opinion Writing Database

Memphis Light, Gas and Water Division v. Craft

436 U.S. 1 (1978)

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

April 8, 1978

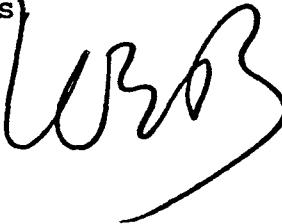
Dear Lewis:

Re: 76-39 Memphis Light, Gas and Water Div. v. Craft

As of this date show me in dissent. Craft got all the process "due" him. I am "overfed" with mountain lawsuits over molehill disputes. I will likely join John's writing if he remains in dissent and if his draft "tracks" his conference comments.

Regards,

WEB



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

April 28, 1978

Re: No. 76-39 - Memphis Light v. Craft

Dear John:

Please join me in your dissent.

Regards,

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

February 8, 1978

RE: No. 76-39 Memphis Light, Gas and Water Division,
et al. v. Willie S. Craft, et al.

Dear Lewis:

I agree with your memorandum and will join it when
converted into an opinion, hopefully for the Court.

Sincerely,



Mr. Justice Powell

cc: The Conference

✓ ✓
Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

February 16, 1978

No. 76-39, Memphis Light, Gas & Water Div.
v. Craft

Dear Lewis,

At our Conference I expressed a preference for remanding this case to the District Court for an explicit determination of whether or not the State had deprived the respondents of property. Since I was alone in that view, I shall not press it. Accordingly, I would be willing to join your memorandum as an opinion of the Court.

Sincerely yours,

? S.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 27, 1978

Re: 76-39 - Memphis Light, Gas and
Water Division v. Craft

Dear Lewis,

I voted to reverse here because I thought the administrative procedures implicitly available were in fact adequate to satisfy the demands of due process. I now think that my differences with you are narrower than I had thought, and I shall acquiesce unless there is a dissent or concurrence that heats my blood.

Sincerely yours,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 9, 1978

No. 76-39, Memphis Light, Gas & Water Division v. Craft

Dear Lewis:

I am in agreement with your memorandum and would be happy to join an opinion expressing those views, subject to one qualification.

As you note in fn. 12, respondents have not cross-petitioned so there is no occasion to address the question of "whether--or under what circumstances--" additional procedures may be appropriate. That being true, I see no reason for us to express an opinion on the impracticality or desirability of having a more formal dispute resolution process.

Sincerely,

JM.

T.M.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 13, 1978

Re: No. 76-39 - Memphis Light, Gas and Water
Division v. Craft

Dear Lewis:

I would be glad to join an opinion along the lines of the memorandum you have circulated.

Sincerely,



Mr. Justice Powell

cc: The Conference

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: FEB 1978

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 76-39

Memphis Light, Gas and Water | On Writ of Certiorari to the
 Division, et al., Petitioners, | United States Court of
 v. | Appeals for the Sixth
 Willie S. Craft et al. | Circuit.

[February —, 1978]

MR. JUSTICE POWELL, memorandum to the Conference.

This is an action brought under 42 U. S. C. § 1983 by homeowners in Memphis, Tenn., seeking declaratory and injunctive relief and damages against a municipal utility and several of its officers and employees for termination of utility service allegedly without due process of law. The District Court determined that respondents' claim of entitlement to continued utility service did not implicate a "property" interest protected by the Fourteenth Amendment, and that, in any event, the utility's termination procedures comported with due process. The Court of Appeals reversed in part. We granted certiorari to consider this constitutional question of importance in the operation of municipal utilities throughout the Nation.

I

Memphis Light, Gas and Water Division (MLG&W)¹ is a

¹ Although Memphis Light, Gas and Water Division is listed as one of the petitioners, the District Court dismissed the action as to the utility itself because "a municipality or governmental unit standing in that capacity is not a 'person' within the meaning" of § 1983. Record 324. The Court of Appeals did not disturb that determination, and respondents have not sought review of the point in this Court. The individual petitioners, who are sued in both their official and personal capacities, are the utility's president and general manager, vice president, members of

February 14, 1978

No. 76-39 Memphis Light, Gas & Water v. Craft

Dear Thurgood:

Thank you for your note indicating agreement with my memorandum, subject to your inquiry as to note 12. You question the reason for including the sentence reading as follows:

"We do note that the sheer force of numbers would make impractical the degree of procedural formality that has been approved in different contexts. See n. 13, infra."

Some 33,000 "high bill" complaints were processed by MLG&W in the relevant year. Assuming five business days per week (and deducting five legal holidays) leaves 255 days that would have been available for the affording of some "due process". If my math is correct, this would involve about 130 hearings per day.

The foregoing facts are of record, and their relevance was argued by respondent. You are quite right that it is not strictly necessary for us to make any comment at all. Yet, leaving the question open as to "additional procedure" (as we do in footnote 12), we clearly invite additional litigation. I think, in these circumstances, it is clearly appropriate for the Court simply to take note of the fact that this case presents quite different considerations bearing on "what process is due" than the typical deprivation of property case. Moreover, we are concerned here with a public utility that would simply pass on to customers the cost of hearings if it became consequential.

I am entirely willing, however, to soften the sentence a bit along the following lines:

"We do note that the magnitude of the numbers of complaints of overcharge would be a relevant factor in determining the appropriateness of more formal procedures than those we approve in this case. The resolution of a disputed bill normally presents a limited factual issue susceptible of informal resolution."

If the foregoing meets your concern, and absent objection from Brothers who have approved of my memorandum, I will be happy to make these changes.

Sincerely,

Mr. Justice Marshall

lfp/ss

cc: The Conference

Stylistic Changes Throughout

P.10

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:

Recirculated: 16 FEB 1978

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-39

Memphis Light, Gas and Water | On Writ of Certiorari to the
Division, et al., Petitioners, | United States Court of
v. | Appeals for the Sixth
Willie S. Craft et al. | Circuit.

[February —, 1978]

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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 Rhenquist
 Mr. Justice Stevens

Stylistic Changes Throughout.

From: Mr. Justice Powell

Circulated: _____

3rd DRAFT

Recirculated: 24 FEB 1978

SUPREME COURT OF THE UNITED STATES

No. 76-39

Memphis Light, Gas and Water | On Writ of Certiorari to the
 Division, et al., Petitioners, | United States Court of
 v. | Appeals for the Sixth
 Willie S. Craft et al. | Circuit.

[February —, 1978]

MR. JUSTICE POWELL, delivered the opinion of the Court.

This is an action brought under 42 U. S. C. § 1983 by homeowners in Memphis, Tenn., seeking declaratory and injunctive relief and damages against a municipal utility and several of its officers and employees for termination of utility service allegedly without due process of law. The District Court determined that respondents' claim of entitlement to continued utility service did not implicate a "property" interest protected by the Fourteenth Amendment, and that, in any event, the utility's termination procedures comported with due process. The Court of Appeals reversed in part. We granted certiorari to consider this constitutional question of importance in the operation of municipal utilities throughout the Nation.

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P, 18

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: _____

Recirculated: 8 MAR 1978

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-39

Memphis Light, Gas and Water | On Writ of Certiorari to the
Division, et al., Petitioners, | United States Court of
v. | Appeals for the Sixth
Willie S. Craft et al. | Circuit.

[February —, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

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pp. 11-13, 15, 17

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: _____

5th DRAFT

Recirculated: 23 MAR 1978

SUPREME COURT OF THE UNITED STATES

No. 76-39

Memphis Light, Gas and Water | On Writ of Certiorari to the
Division, et al., Petitioners, | United States Court of
v. | Appeals for the Sixth
Willie S. Craft et al. | Circuit.

[February —, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

This is an action brought under 42 U. S. C. § 1983 by homeowners in Memphis, Tenn., seeking declaratory and injunctive relief and damages against a municipal utility and several of its officers and employees for termination of utility service allegedly without due process of law. The District Court determined that respondents' claim of entitlement to continued utility service did not implicate a "property" interest protected by the Fourteenth Amendment, and that, in any event, the utility's termination procedures comported with due process. The Court of Appeals reversed in part. We granted certiorari to consider this constitutional question of importance in the operation of municipal utilities throughout the Nation.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 11, 1978

No. 76-39 Memphis Light v. Craft

Dear John:

I will have a few gentle words to say about your dissent, but may not be able to get these around for a couple of days.

If I do this by Thursday, perhaps we can bring this case down next week.

Sincerely,



Mr. Justice Stevens

lfp/ss

cc: The Conference

pp 10, 12-13, 14-15, 18-19
Footnotes Renumbered

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

From: Mr. Justice Powell

Circulated: _____

Recirculated: 13 APR 1978

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-39

Memphis Light, Gas and Water | On Writ of Certiorari to the
Division, et al., Petitioners, | United States Court of
v. | Appeals for the Sixth
Willie S. Craft et al. | Circuit.

[February —, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

This is an action brought under 42 U. S. C. § 1983 by homeowners in Memphis, Tenn., seeking declaratory and injunctive relief and damages against a municipal utility and several of its officers and employees for termination of utility service allegedly without due process of law. The District Court determined that respondents' claim of entitlement to continued utility service did not implicate a "property" interest protected by the Fourteenth Amendment, and that, in any event, the utility's termination procedures comported with due process. The Court of Appeals reversed in part. We granted certiorari to consider this constitutional question of importance in the operation of municipal utilities throughout the Nation.

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✓ —
pp. 10, 12-13, 14, 15, 16, 18

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

7th DRAFT

From: Mr. Justice Powell

SUPREME COURT OF THE UNITED STATES

Circulated:

No. 76-39

24 APR 1978

Recirculated:

Memphis Light, Gas and Water) On Writ of Certiorari to the
Division, et al., Petitioners,) United States Court of
v.) Appeals for the Sixth
Willie S. Craft et al.) Circuit.

[February —, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

This is an action brought under 42 U. S. C. § 1983 by homeowners in Memphis, Tenn., seeking declaratory and injunctive relief and damages against a municipal utility and several of its officers and employees for termination of utility service allegedly without due process of law. The District Court determined that respondents' claim of entitlement to continued utility service did not implicate a "property" interest protected by the Fourteenth Amendment, and that, in any event, the utility's termination procedures comported with due process. The Court of Appeals reversed in part. We granted certiorari to consider this constitutional question of importance in the operation of municipal utilities throughout the Nation.

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pp. 12, 13

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: _____

Recirculated ~~APR 27 1978~~

8th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-39

Memphis Light, Gas and Water } On Writ of Certiorari to the
Division, et al., Petitioners, } United States Court of
v. } Appeals for the Sixth
Willie S. Craft et al. } Circuit.

[February —, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

This is an action brought under 42 U. S. C. § 1983 by homeowners in Memphis, Tenn., seeking declaratory and injunctive relief and damages against a municipal utility and several of its officers and employees for termination of utility service allegedly without due process of law. The District Court determined that respondents' claim of entitlement to continued utility service did not implicate a "property" interest protected by the Fourteenth Amendment, and that, in any event, the utility's termination procedures comported with due process. The Court of Appeals reversed in part. We granted certiorari to consider this constitutional question of importance in the operation of municipal utilities throughout the Nation.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 21, 1978

Re: No. 76-39 - Memphis Light, Gas and Water Division
v. Craft

Dear Lewis:

I am sorry to have taken so long in responding to your circulating memorandum in this case. I voted the other way at Conference, but your treatment of the "property interest" question as being dependent on Tennessee law, rather than the treatment of the same question accorded by the Court of Appeals, is entirely satisfactory to me. As to the hearing and notice issues, I am not entirely at rest but presently agree with the comments contained in John's response to your memorandum.

Sincerely,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 13, 1978

Re: No. 76-39 Memphis Light, Gas & Water Div. v. Craft

Dear John:

Please join me in your dissent.

Sincerely,

WW

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 8, 1978

Re: 76-39 - Memphis Light v. Craft

Dear Lewis:

Although I agree with Parts I, II, and III of your opinion, I cannot join Parts IV and V because I believe a notice is constitutionally sufficient if it advises the adversary of the threatened harm and is sufficiently prompt to allow time to prepare an appropriate response. I do not believe the Constitution requires a litigant to give the kind of legal advice to his adversary that will enable him to proceed effectively without consulting a lawyer. In this case, I would suppose the proper advice to give the Crafts would be a suggestion that they inform the utility that the amount of the bill was in dispute and therefore any termination of service would result in a substantial damage claim. See the quotation from Trigg, at pp. 7-8.

In any event, I am still persuaded that the Court of Appeals should be reversed on the due process issue. Because my conference notes indicate that the outcome is still in doubt, I will not try to write anything until others have responded.

Respectfully,



Mr. Justice Powell

Copies to the Conference

P.S. One additional comment by way of explanation. In general, it is my feeling that if a loss is sufficiently grievous to constitute a deprivation of a constitutional right, it is not unreasonable to expect the injured party to obtain legal advice to protect his interest. I have always had doubts about Farella, and surely would not extend the rule of that case into a civil context. Any lawyer would surely have been able to protect the Crafts from an unwarranted termination of service.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 27, 1978

Re: 76-39 - Memphis Light, Gas and Water
Division v. Craft

Dear Lewis:

Unless someone else does so, I shall try to
heat Byron's blood with a short dissent.

Respectfully,



Mr. Justice Powell

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

APR 10
Circulated: _____

76-39 - Memphis Light, Gas and Water Division, et al.
Recirculated: _____
v. Willie S. Craft, et al.

MR. JUSTICE STEVENS, dissenting.

In my judgment, the Court's holding confuses and trivializes the principle that the State may not deprive any person of life, liberty, or property without due process of law. I have no quarrel with the proposition that a municipality may not terminate utility service without giving the customer a fair opportunity to avoid the termination by either paying his bill or questioning its accuracy. I do not agree, however, that this record discloses any constitutional defect in the termination procedures employed by the Light, Gas and Water Division of the City of Memphis (the Division).

The Court focuses on two aspects of the Division's collection procedures. First, according to the Court, the Division's standard form of termination notice did not adequately inform the customer of the availability of a procedure for protesting a proposed termination of service as unjustified. Ante, at 12. Second, the Division did not afford its customers an adequate opportunity to meet with an employee who had the authority to settle credit disputes. Ante, at 15. Whether we consider the evidence describing the unusual dispute

Supreme Court of the United States
Washington, D. C. 20542

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

No Tech

April 13, 1978

Re: 76-39 - Memphis Light, Gas and Water
Division v. Craft

Dear Lewis:

I have made the attached change in accordance
with Bill Rehnquist's suggestion.

Respectfully,

John

Mr. Justice Powell

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 13, 1978

Re: 76-39 - Memphis, Light, Gas and Water
Division v. Craft

Dear Lewis:

The enclosed changes are in response to your revised draft.

Respectfully,

JL

Mr. Justice Powell

4/14/78

As far as I can, the only change that need be made is the deletion of the last sentence of note 15.

Stan - I think we also must modify the remainder of the note along lines of my attached Rider. Show our changes to Ste Baker on Monday. *John*

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: APR 20 1978

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-39

Memphis Light, Gas and Water | On Writ of Certiorari to the
 Division, et al., Petitioners, | United States Court of
 v. | Appeals for the Sixth
 Willie S. Craft et al. | Circuit.

[April —, 1978]

MR. JUSTICE STEVENS, with whom MR. JUSTICE REHNQUIST |
 joins, dissenting.

In my judgment, the Court's holding confuses and trivializes the principle that the State may not deprive any person of life, liberty, or property without due process of law. I have no quarrel with the Court's conclusion that as a matter of Tennessee law a customer has a legitimate claim of entitlement to continued utility services as long as the undisputed portions of his utility bills are paid. For that reason, a municipality may not terminate utility service without giving the customer a fair opportunity to avoid termination either by paying the bill or questioning its accuracy. I do not agree, however, that this record discloses any constitutional defect in the termination procedures employed by the Light, Gas and Water Division of the City of Memphis (the Division).

The Court focuses on two aspects of the Division's collection procedures. First, according to the Court, the Division's standard form of termination notice did not adequately inform the customer of the availability of a procedure for protesting a proposed termination of service as unjustified. *Ante*, at 13. Second, the Division did not afford its customers an adequate opportunity to meet with an employee who had the authority to settle billing disputes. *Ante*, at 16. Whether we consider the evidence describing the unusual dispute between the Crafts and the Division, or the evidence concerning the general operation of the Division's collection procedures, I find no basis for

Wm. Brennan
 0077

pp. 4-5

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: _____

5th DRAFT

Recirculated: APR 26 1978

SUPREME COURT OF THE UNITED STATES

No. 76-39

Memphis Light, Gas and Water On Writ of Certiorari to the
Division, et al., Petitioners, United States Court of
v. Appeals for the Sixth
Willie S. Craft et al. Circuit.

[April —, 1978]

MR. JUSTICE STEVENS, with whom MR. JUSTICE REHNQUIST joins, dissenting.

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