

The Burger Court Opinion Writing Database

Gladstone Realtors v. Village of Bellwood
441 U.S. 91 (1979)

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 29, 1979

Dear Lewis:

Re: 77-1493 Gladstone Realtors v. Village of Bell

I join.

Regards,

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 12, 1979

RE: No. 77-1493 Gladstone Realtors v. Village of Bellwood

Dear Lewis:

I read section IV B (1) of your proposed opinion to hold either

(1) that Title VIII fails to create a legal right not to be steered on the basis of one's race, the violation of which right would constitute legal injury, or, in the alternative

(2) that it is beyond the power of Congress, because of Article III, to create such a right.

I wonder whether it is necessary, or indeed proper, to reach either of these questions. Respondents have abandoned, in this Court, any claim that they have standing in their capacity as testers, and have elected to stand or fall on their allegations of injury in their capacity as residents and neighbors. As a consequence, is there really any "controversy" in this Court with respect to the issue of tester standing? It seems to me there is not.

If I'm right, ought not the question of tester standing be pre-termed, and section IV B (1) replaced by a footnote stating that the question of tester standing is not before us?

I ought also to say that I'm not yet completely at rest on the matter you and Byron have been discussing.

Otherwise I find your opinion very good indeed.

Sincerely,

Bill

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 14, 1979

RE: No. 77-1493 Gladstone Realtors v. Village of
Bellwood, et al.

Dear Lewis:

You are very kind to show me the revisions. They are fine with me, and I hope Byron and John will feel the same. If, however, either should insist in John's words in his February 12 memorandum to you that "leave to amend" be given Perry and Sharp, I suppose I'll have to support them.

Sincerely,



Mr. Justice Powell

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

February 22, 1979

RE: No. 77-1493 Gladstone Realtors v. Village of
Bellwood, et al.

Dear Lewis:

I agree with your circulation of February 16.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 12, 1979

Re: No. 77-1493, Gladstone Realtors v.
Bellwood

Dear Lewis,

I shall await the dissenting opinion
in this case.

Sincerely yours,

PS:

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 27, 1979

Re: 77-1493 - Gladstone Realtors v. Bellwood

Dear Bill:

Please add my name to your excellent dissenting opinion.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 6, 1979

Re: No. 77-1493 - Gladstone Realtors v.
Village of Bellwood

Dear Lewis,

I am quite satisfied with your opinion in this case with the exception of note 24 on page 20. It seems to me that the complaint is sufficient to get these two respondents to trial also. Perry lives in Bellwood and Sharp is a near neighbor. The considerations giving Article III standing to the village also give sufficient substance to the allegations of specific injury to these plaintiffs to withstand summary judgment.

Sincerely yours,



Mr. Justice Powell

Copies to the Conference

cmc

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 16, 1979

Re: No. 77-1493 - Gladstone Realtors v.
Village of Bellwood

Dear Lewis,

Your suggested redraft of footnote 24 would have been satisfactory to me, but you now indicate you are changing it again to accommodate Bill Brennan. I'll take a look at it when it comes around.

Sincerely yours,



Mr. Justice Powell

cmc

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 17, 1979

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Re: 77-1493 - Gladstone Realtors v.
Village of Bellwood

Dear Lewis,

Your circulation of February 16 is
all right with me.

Sincerely yours,



Mr. Justice Powell
Copies to the Conference
cmc

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 15, 1979

Re: 77-1493 - Gladstone Realtors v. Village of
Bellwood

Dear Lewis:

Please join me.

Sincerely,

J.M.

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 5, 1979

Re: No. 77-1493 - Gladstone Realtors v. Village of
Bellwood

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 8, 1979

Re: No. 77-1493 - Gladstone Realtors v. Village
of Bellwood

Dear Lewis:

I have already joined you and therefore was quite content with your footnote 24. I agree with it and, in any event, I would defer to the judgment of the author of Warth and Arlington Heights. I therefore would go along with the footnote as originally written or as proposed in your letter of February 7 to Byron.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 15, 1979

Re: No. 77-1493 - Gladstone Realtors v. Village of Bellwood

Dear Lewis:

I return the material you delivered to me last evening.
The changes you propose are certainly all right with me, and
I shall stick with you in this.

Sincerely,



Mr. Justice Powell

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
8 FEB 1979

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1493

Gladstone Realtors et al.,
Petitioners,
v.
Village of Bellwood et al. } On Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit.

[February —, 1979]

MR. JUSTICE POWELL delivered the opinion of the Court.

Title VIII of the Civil Rights Act of 1968, 82 Stat. 81, 42 U. S. C. § 3601 *et seq.*, commonly known as the Fair Housing Act of 1968 (Act), broadly prohibits discrimination in housing throughout the Nation. This case presents both statutory and constitutional questions concerning standing to sue under Title VIII.

I

Petitioners in this case are two real estate brokerage firms, Gladstone, Realtors (Gladstone) and Robert A. Hintze, Realtors (Hintze), and nine of their employees. Respondents are the Village of Bellwood, a municipal corporation and suburb of Chicago, one Negro and four white residents of Bellwood, and one Negro resident of neighboring Maywood. During the Fall of 1975, the individual respondents and other persons consulted petitioners, stating that they were interested in purchasing homes in the general suburban area of which Bellwood is a part. Respondents were not in fact seeking to purchase homes, but were acting as "testers" in an attempt to determine whether petitioners were engaging in racial "steering," *i. e.*, directing prospective home buyers interested in equivalent properties to different areas according to their race.

In October 1975, respondents commenced an action under

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 7, 1979

77-1493 Gladstone Realtors v. Village of Bellwood

Dear Byron:

Thank you for your letter expressing satisfaction with my draft opinion with the exception of note 24 on page 20.

In that note, I agreed with the District Court that summary judgment was appropriate as to respondents Perry and Sharp. It seemed to me that neither of them had alleged the type of personal injury required by our cases as a prerequisite to standing. Perry does live in Bellwood, but not within the "target" area as defined in this case. Sharp resides in a neighboring municipality.

A troublesome question in this type of case is the boundary beyond which the alleged violation arguably creates actual injury to residents. In Trafficante we had a large housing unit. Here, the area allegedly affected by the racial steering was not the entire Village of Bellwood but a smaller defined "target area". As I read the complaints, they allege harm only to this particular neighborhood. The allegations in the complaint on behalf of the Village seem sufficiently specific to make clear its standing, and the injury suffered by it could extend to the entire village. Thus, I suppose that Perry - as a resident of the Village - could have alleged that she would be affected adversely by the reduction of the tax base, the resulting adverse impact upon municipal services, and the segregation of local schools. In these inartfully drawn complaints, Perry made no such allegations - although she certainly could have made them independently of the allegations made by other respondents.

Respondent Sharp, living in a neighboring municipality, is in an even more remote position. Nor did she make any allegations beyond those made by the other respondents who lived in and focused their complaint on the target area.

For these reasons, I would prefer to reverse CA7's decision with respect to Perry and Sharp. I suggest, however, a change in footnote 24 to read substantially as follows:

"Neither respondent Perry nor respondent Sharp resides within the target neighborhood of Bellwood. We do not read the complaints as alleging any harm to individuals residing outside of this area. Although such injury arguably could occur, it simply has not been alleged in these conclusory complaints. We therefore have no occasion to consider what allegations would have been sufficient to provide standing for these two respondents, and we conclude that summary judgment was appropriate as to them."

If a majority of the Brothers view the allegations of the complaint as sufficient to confer standing on Perry, I believe I could go along with considerable reluctance. But I would find it quite difficult to reconcile standing for Sharp with what we have said in our prior standing decisions.

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference

charges pp: 8, 18-19, 20.

Revised Draft
referenced in
WB's letter of 2/14?

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: 8 FEB 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1493

Gladstone Realtors et al.,
Petitioners, | On Writ of Certiorari to the
v. | United States Court of Appeals
Village of Bellwood et al. | for the Seventh Circuit.

[February —, 1979]

MR. JUSTICE POWELL delivered the opinion of the Court.

Title VIII of the Civil Rights Act of 1968, 82 Stat. 81, 42 U. S. C. § 3601 *et seq.*, commonly known as the Fair Housing Act of 1968 (Act), broadly prohibits discrimination in housing throughout the Nation. This case presents both statutory and constitutional questions concerning standing to sue under Title VIII.

I

Petitioners in this case are two real estate brokerage firms, Gladstone, Realtors (Gladstone) and Robert A. Hintze, Realtors (Hintze), and nine of their employees. Respondents are the Village of Bellwood, a municipal corporation and suburb of Chicago, one Negro and four white residents of Bellwood, and one Negro resident of neighboring Maywood. During the Fall of 1975, the individual respondents and other persons consulted petitioners, stating that they were interested in purchasing homes in the general suburban area of which Bellwood is a part. Respondents were not in fact seeking to purchase homes, but were acting as "testers" in an attempt to determine whether petitioners were engaging in racial "steering," *i. e.*, directing prospective home buyers interested in equivalent properties to different areas according to their race.

In October 1975, respondents commenced an action under

Changes pp: 8, 18-19, 20

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

8 FEB 1979

Circulated: _____

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1493

Gladstone Realtors et al.,
Petitioners,
v.
Village of Bellwood et al. } On Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit.

[February —, 1979]

MR. JUSTICE POWELL delivered the opinion of the Court.

Title VIII of the Civil Rights Act of 1968, 82 Stat. 81, 42 U. S. C. § 3601 *et seq.*, commonly known as the Fair Housing Act of 1968 (Act), broadly prohibits discrimination in housing throughout the Nation. This case presents both statutory and constitutional questions concerning standing to sue under Title VIII.

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In October 1975, respondents commenced an action under

*Master
as of 2/14
submitted
to HAB,
WGB
having
approved
(see his
letter
of 2/14).*

1
JF
Please for no
MS 18/20/23

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: _____

2nd DRAFT

Recirculated: 18 FEB 1979

SUPREME COURT OF THE UNITED STATES

No. 77-1493

Gladstone Realtors et al.,
Petitioners,
v.
Village of Bellwood et al.

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

[February —, 1979]

MR. JUSTICE POWELL delivered the opinion of the Court.

Title VIII of the Civil Rights Act of 1968, 82 Stat. 81, 42 U. S. C. § 3601 *et seq.*, commonly known as the Fair Housing Act of 1968 (Act), broadly prohibits discrimination in housing throughout the Nation. This case presents both statutory and constitutional questions concerning standing to sue under Title VIII.

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In October 1975, respondents commenced an action under

Changes 6, 10, 11, 12, 165
Footnotes Renumbered
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:

8 APR 1979

3rd DRAFT

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 77-1493

Gladstone Realtors et al.,
Petitioners,
v.
Village of Bellwood et al. } On Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit.

[February —, 1979]

MR. JUSTICE POWELL delivered the opinion of the Court.

Title VIII of the Civil Rights Act of 1968, 82 Stat. 81, 42 U. S. C. § 3601 *et seq.*, commonly known as the Fair Housing Act of 1968 (Act), broadly prohibits discrimination in housing throughout the Nation. This case presents both statutory and constitutional questions concerning standing to sue under Title VIII.

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Petitioners in this case are two real estate brokerage firms, Gladstone, Realtors (Gladstone) and Robert A. Hintze, Realtors (Hintze), and nine of their employees. Respondents are the Village of Bellwood, a municipal corporation and suburb of Chicago, one Negro and four white residents of Bellwood, and one Negro resident of neighboring Maywood. During the Fall of 1975, the individual respondents and other persons consulted petitioners, stating that they were interested in purchasing homes in the general suburban area of which Bellwood is a part. Respondents were not in fact seeking to purchase homes, but were acting as "testers" in an attempt to determine whether petitioners were engaging in racial "steering," *i. e.*, directing prospective home buyers interested in equivalent properties to different areas according to their race.

In October 1975, respondents commenced an action under

6,10,11,12,15,16,23

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:

9 APR 1979

Recirculated:

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1493

Gladstone Realtors et al.,
 Petitioners,
 v.
 Village of Bellwood et al. } On Writ of Certiorari to the
 United States Court of Appeals
 for the Seventh Circuit.

[February —, 1979]

MR. JUSTICE POWELL delivered the opinion of the Court.
 Title VIII of the Civil Rights Act of 1968, 82 Stat. 81, 42 U. S. C. § 3601 *et seq.*, commonly known as the Fair Housing Act of 1968 (Act), broadly prohibits discrimination in housing throughout the Nation. This case presents both statutory and constitutional questions concerning standing to sue under Title VIII.

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Petitioners in this case are two real estate brokerage firms, Gladstone, Realtors (Gladstone) and Robert A. Hintze, Realtors (Hintze), and nine of their employees. Respondents are the Village of Bellwood, a municipal corporation and suburb of Chicago, one Negro and four white residents of Bellwood, and one Negro resident of neighboring Maywood. During the Fall of 1975, the individual respondents and other persons consulted petitioners, stating that they were interested in purchasing homes in the general suburban area of which Bellwood is a part. Respondents were not in fact seeking to purchase homes, but were acting as "testers" in an attempt to determine whether petitioners were engaging in racial "steering," *i. e.*, directing prospective home buyers interested in equivalent properties to different areas according to their race.

In October 1975, respondents commenced an action under

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 5, 1979

Re: No. 77-1493 - Gladstone Realtors v. Village of
Bellwood

Dear Lewis:

In due course I will undertake the writing and circulation
of a dissent in this case.

Sincerely,



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 Stevens

From: Mr. Justice Rehnquist

Circulated: 27 MAR 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1493

Gladstone Realtors et al.,
Petitioners,
v.
Village of Bellwood et al. } On Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit.

[March —, 1979]

MR. JUSTICE REHNQUIST, dissenting.

Title VIII of the Civil Rights Act of 1968, 42 U. S. C. § 3601 *et seq.*, which outlaws discrimination in virtually all aspects of the sale or rental of housing, provides two distinct and widely different routes into federal court. Under § 810, 42 U. S. C. § 3610,¹ a "person aggrieved," that is, "[a]ny

¹ Section 810 provides:

(a) "Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irreversibly injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. Complaints shall be in writing and shall contain such information and be in such form as the Secretary requires. Upon receipt of such a complaint the Secretary shall furnish a copy of the same to the person or persons who allegedly committed or are about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c) of this section, the Secretary shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Secretary decides to resolve the complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned. Any employee of the Secretary who shall make public any information in violation of this provision shall

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

From: Mr. Justice Rehnquist

2nd DRAFT

Circulated: _____

29 MAR 1979

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 77-1493

Gladstone Realtors et al.,
 Petitioners,
 v.
 Village of Bellwood et al.

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

[March —, 1979]

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

Title VIII of the Civil Rights Act of 1968, 42 U. S. C. § 3601 *et seq.*, which outlaws discrimination in virtually all aspects of the sale or rental of housing, provides two distinct and widely different routes into federal court. Under § 810, 42 U. S. C. § 3610,¹ a "person aggrieved," that is, "[a]ny

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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 Stevens

n. 7 deleted

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Mr. Justice Rehnquist

No. 77-1493

Circulated: _____

Recirculated: 6 APR 19

Gladstone Realtors et al.,
Petitioners,
v.
Village of Bellwood et al.

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

[March —, 1979]

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

Title VIII of the Civil Rights Act of 1968, 42 U. S. C. § 3601 *et seq.*, which outlaws discrimination in virtually all aspects of the sale or rental of housing, provides two distinct and widely different routes into federal court. Under § 810, 42 U. S. C. § 3610,¹ a "person aggrieved," that is, "[a]ny

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 12, 1979

Re: 77-1493 - Gladstone Realtors v.
Village of Bellwood

Dear Lewis:

Even the revision of n. 24 that you propose in your letter of February 7 troubles me because of the way this case developed. As I recall the case, there was no argument either in the lower courts or in this Court aimed at differentiating among the individual plaintiffs. Summary judgment was granted before discovery was completed and before anyone suggested that the allegations by Perry and Sharp might be insufficient even though the other plaintiffs had standing. Had the problem pinpointed in the trial court, and had that court adopted your analysis, I would suppose that leave to amend would have been given to Perry and Sharp before their claims were dismissed with prejudice. If you can frame a disposition that will give them such an opportunity, I could join the entire opinion. However, I cannot go along with the view that dismissal with prejudice as to Perry and Sharp was proper.

My preference would be simply to omit n. 24 and assume that the problem will be adequately handled by your comments concerning the need for actual proof to support the rather vague allegations in the complaint.

Respectfully,

Mr. Justice Powell

Copies to the Conference



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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 21, 1979

Re: 77-1493 - Gladstone Realtors v. Village
of Bellwood

Dear Lewis:

Please join me.

Respectfully,



Mr. Justice Powell

Copies to the Conference