

# The Burger Court Opinion Writing Database

*New York Gaslight Club, Inc. v. Carey*  
447 U.S. 54 (1980)

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

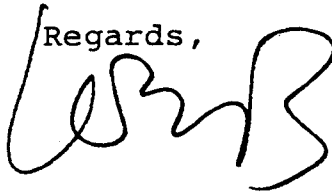
CHAMBERS OF  
THE CHIEF JUSTICE

March 4, 1980

Dear Harry:

No. 79-192, New York Gaslight Club, Inc. v. Carey is hereby assigned to you in place of No. 79-67; 79-148, Walter v. U.S.; Sanders v. U.S.

Regards,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 4, 1980

Re: 79-192 - New York Gaslight Club, Inc. et al.  
v. Cidni Carey

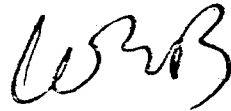
Dear Harry:

I will join all save Note 6 with the following:

Mr. Chief Justice BURGER, concurring\_ /

/ Since resolution of the issue dealt with  
in Note 6 is not necessary, I join the Court's  
opinion except for that part.

Regards,



Mr. Justice Blackmun

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 5, 1980

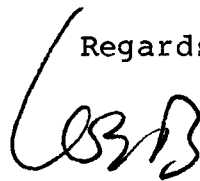
Re: No. 79-192 - New York Gaslight Club, Inc. v. Carey

Dear Harry:

I have informed Mr. Cornio of one small change so that my statement reads as follows:

"THE CHIEF JUSTICE joins the Court's opinion except Footnote 6 thereof; in his view, resolution of the issue dealt with in that footnote is not necessary."

Regards,



Mr. Justice Blackmun

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 20, 1980

RE: No. 79-192 New York Gaslight Club, Inc. v.  
Cidni Carey

Dear Harry:

I agree.

Sincerely,

*Bill*

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 20, 1980

Re: No. 79-192, New York Gaslight Club  
v. Carey

Dear Harry,

I am glad to join your opinion for  
the Court.

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

May 20, 1980

Re: 79-192 - New York Gaslight Club, Inc.  
v. Carey

---

Dear Harry,

Would you please put the following at  
the foot of your circulating opinion in  
this case:

MR. JUSTICE WHITE would  
affirm the judgment essentially  
for the reasons given by Judge  
Mulligan in dissenting from the  
judgment of the Court of Appeals.

Sincerely yours,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 20, 1980

Re: 79-192 - New York Gaslight  
Club, Inc. v. Carey

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Dear Harry,

You are quite right. I would reverse  
the judgment. Spring jitters, I guess.

Sincerely yours,



Mr. Justice Blackmun

Copies to the Conference



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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 20, 1980

Re: 79-192 - New York Gaslight  
Club v. Carey

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Dear Harry,

As far as I am concerned, your  
notation with respect to Bill and me is  
quite satisfactory.

Sincerely yours,



Mr. Justice Blackmun

Copies to the Conference

cmc

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 21, 1980

Re: No. 79-192 - New York Gaslight Club, Inc. v.  
Cidni Carey

Dear Harry:

Please join me.

Sincerely,

*J.M.*

T.M.

Mr. Justice Blackmun

cc: The Conference

Mr. Justice Blackmun  
Mr. Justice Brennan  
Mr. Justice Burger  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: MAY 19 1980

Recirculated: \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 79-192

New York Gaslight Club, Inc.,  
et al., Petitioners,  
v.  
Cidni Carey.

On Writ of Certiorari to the  
United States Court of Ap-  
peals for the Second Circuit,

[May —, 1980]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the question whether, under Title VII of the Civil Rights Act of 1964, a federal court may allow the prevailing party attorney's fees for legal services performed in prosecuting an employment discrimination claim in *state* administrative and judicial proceedings that Title VII requires federal claimants to invoke.

### I

Respondent Cidni Carey, in August 1974, applied for work as a cocktail waitress with petitioner New York Gaslight Club, Inc. After an interview, she was advised that no position was available.

The following January, respondent filed a charge with the Equal Employment Opportunity Commission (EEOC) alleging that petitioners, the Club and its manager, had denied her a position because of her race. App. to Brief for Respondent a1-a3. As required by § 706 (c) of Title VII of the Civil Rights Act of 1964, 78 Stat. 260, as redesignated, 86 Stat. 104, 42 U. S. C. § 2000e-5 (c), respondent's complaint was forwarded to the New York State Division of Human Rights (Division).

In May 1975, after an investigation during which respond-

May 20, 1980

Re: No. 79-192 - New York Gaslight Club, Inc. v. Carey

Dear Byron and Bill:

Will it be agreeable to each of you to have your postures noted as follows:

"MR. JUSTICE WHITE and MR. JUSTICE REHNQUIST would reverse the judgment essentially for the reasons given by Judge Mulligan in dissenting from the judgment of the Court of Appeals."

The alternative would be to recite that Bill "joins" Byron. I shall be guided by your instructions.

Sincerely,

HAB

Mr. Justice White  
Mr. Justice Rehnquist

STYLISTIC CHANGES  
4 p. 16

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice [unclear]  
Mr. Justice [unclear]

From: Mr. Justice Blackmun

Circulated: \_\_\_\_\_

Recirculated: MAY 29 1980

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 79-192

New York Gaslight Club, Inc., et al., Petitioners, v. Cidni Carey.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Second Circuit,
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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 5, 1980

Re: No. 79-192 - New York Gaslight Club, Inc. v. Carey

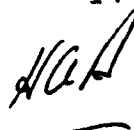
Dear Chief:

Pursuant to your request, I have formulated the following to be placed at the end of the opinion:

"THE CHIEF JUSTICE joins the Court's opinion except Footnote 6 thereof. He feels that resolution of the issue dealt with in that footnote is not necessary."

I am sending this down to Mr. Cornio. If the phraseology does not meet with your approval, would you advise him of your preference.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 5, 1980

MEMORANDUM TO THE CONFERENCE

Re: No. 79-192 - New York Gaslight Club, Inc. v. Carey

There is one case held for Gaslight. It is No. 79-1435, Mahoning Women's Center v. Hunter.

In this case, petitioner, an abortion clinic, brought suit challenging the constitutionality of a city ordinance which imposed strict health and safety requirements on the performance of abortions. Petitioner was successful and the District Court declared the ordinance unconstitutional. That court denied petitioner's request for an attorney's fee award under 42 U.S.C. § 1988, because respondents had acted in good faith and petitioner was a corporation capable of bearing the costs of the litigation.

The CA6 affirmed the decision on the merits. In a footnote, the court held that the District Court did not abuse its discretion in denying an award of attorney's fees. The court held that in exercising its discretion under § 1988, the District Court may consider the nature of the question presented, the good faith of the parties, the means of the plaintiff, and the quality and extent of the legal services rendered.

The CA6's decision seems clearly wrong, in light of our precedents. In Newman v. Piggie Park Enterprises, 390 U.S. 400 (1968), the Court rejected the argument that a prevailing plaintiff under Title II of the Civil Rights Act of 1964 should be awarded fees only when the defendant acted in bad faith. The Court held that a prevailing plaintiff under Title II "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." Id., at 402. The Court noted that a statutory authorization of a fee award would not have been necessary if Congress intended awards only against defendants who acted in bad faith, since the common-law rule allowed a fee award in that situation. Id., at 402, n.4.

The other factor relied upon by the District Court here was that respondent could afford to bear the costs of litigation.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 21, 1980

79-192 New York Gaslight Club v. Carey

Dear Harry:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "L. F. Powell, Jr.", written in dark ink.

Mr. Justice Blackmun

lfp/ss

cc: The Conference



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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 20, 1980

Re: No. 79-192 New York Gaslight Club, Inc. v. Carey

Dear Harry:

Will you add my name to Byron's "squib" at the end of your opinion in this case?

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 21, 1980

Re: No. 79-192 New York Gaslight Club, Inc. v. Carey

Dear Harry:

Your suggestion contained in your letter of May 20th  
is entirely agreeable to me.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 19, 1980

Re: 79-192 - New York Gaslight Club  
v. Carey

Dear Harry:

You have written a most persuasive opinion.  
Since I voted the other way at conference, I will  
wait to see what is written on the other side, but  
I may well end up joining you.

Respectfully,



Mr. Justice Blackmun

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

79-192 - New York Gaslight Club, Inc. v. Carey

From: Mr. Justice Stevens

Circulated: MAY 20 '80

Recirculated: \_\_\_\_\_

MR. JUSTICE STEVENS, concurring.

While I agree with most of what is said in the Court's opinion, I think it is useful to emphasize that this federal litigation was commenced in order to obtain relief for respondent on the merits of her basic dispute with petitioner, and not simply to recover attorney's fees. Whether Congress intended to authorize a separate federal action solely to recover costs, including attorney's fees, incurred in obtaining administrative relief in either a deferral or a non-deferral State is not only doubtful but is a question that is plainly not presented by this record.

On July 13, 1977, when the EEOC issued respondent a letter notifying her that she had a right to file an action in the federal court, and on September 30, 1977, when she commenced her federal court action, the state judicial review of the state administrative proceedings had not yet been completed. It was not until sometime in February 1978, after the federal judicial proceeding had been pending for several months, that all questions other than the fee issue were finally removed from the federal case. It is clear, therefore, that under the plain language of § 706(k) of the Civil Rights Act of 1964 as

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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 Rehnquist

From: Mr. Justice Stevens

Circulated: MAY 23 '80

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1st PRINTED DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 79-192

New York Gaslight Club, Inc.,  
et al., Petitioners,  
v.  
Cidni Carey.

On Writ of Certiorari to the  
United States Court of Ap-  
peals for the Second Circuit.

[May —, 1980]

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\*That section provides in part:

"In any action or proceeding under this title the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs. . . ."

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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 Rehnquist

From: Mr. Justice Stevens

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MAY 23 '80

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 79-192

New York Gaslight Club, Inc.,  
et al., Petitioners,  
v.  
Cidni Carey.

On Writ of Certiorari to the  
United States Court of Ap-  
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[May —, 1980]

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