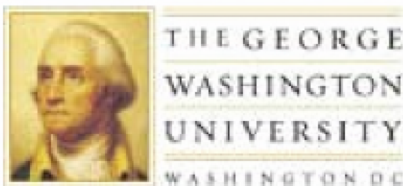
The Burger Court Opinion Writing Database

Agins v. City of Tiburon

447 U.S. 255 (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

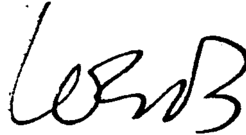
June 4, 1980

RE: 79-602 - Agins v. Tiburon

Dear Lewis:

I join.

Regards,



Mr. Justice Powell

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 28, 1980

RE: No. 79-602 Donald W. Agins et ux. v. City of Tiburon

Dear Lewis:

I agree.

Sincerely,

Bill

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 29, 1980

Re: 79-602 - Agins v. Tiburon

Dear Lewis:

Footnote 6 of your proposed opinion takes care of the basic problem I had with this case. Therefore, subject to being persuaded by whatever anybody else may write separately, I join your opinion for the Court.

Sincerely yours,

Mr. Justice Powell

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 28, 1980

Re: 79-602 - Agins v. City of Tiburon

Dear Lewis,

Please join me.

Sincerely yours,

Mr. Justice Powell

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cmc

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 28, 1980

Re: No. 79-602 - Agins v. City of Tiburon

Dear Lewis:

Please join me.

Sincerely,

T.M.

T.M.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

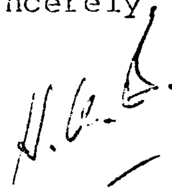
May 29, 198

Re: No. 79-602 - Agins v. Tiburon

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

cc: The Conference

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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: MAY 27 1980

Recirculated: ____________

5-27-80

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-602

Donald W. Agins et ux., Appellants, v. City of Tiburon. | On Appeal from the Supreme Court of California.

[June —, 1980]

MR. JUSTICE POWELL delivered the opinion of the Court.

The question in this case is whether a municipal zoning ordinance took appellants' property without just compensation in violation of the Fifth and Fourteenth Amendments.

I

After the appellants acquired five acres of unimproved land in the city of Tiburon, Cal., for residential development, the city was required by state law to prepare a general plan governing both land-use and the development of open-space land. Cal. Govt. Code § 65302 (a) & (e) (West Supp. 1979); see *id.*, § 65563. In response, the city adopted two ordinances that modified existing zoning requirements. Tiburon, Cal., Ordinances Nos. 123 N. S. and 124 N. S. (June 28, 1973). The zoning ordinances placed the appellants' property in "RPD-1," a Residential Planned Development and Open Space Zone. RPD-1 property may be devoted to one-family dwellings, accessory buildings, and open-space uses. Density restrictions permit the appellants to build between one and five single-family residences on their five-acre tract. The appellants never have sought approval for development of their land under the zoning ordinances.[1]

[1] Shortly after it enacted the ordinances, the city began eminent domain proceedings against the appellants' land. The following year, however, the

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 29, 1980

79-602 Agins v. Tiburon

Dear Bill:

Thank you for your letter advising that my opinion satisfies you on the demurrer issue.

I would prefer not to quote any particular language from Euclid. This Court has decided a host of zoning cases, and I thought it best not to quote selectively from them. I have, however, referred to Euclid as the "seminal" decision and also have twice referred to page 395 of that case - where the language you like appears.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 11, 1980

MEMORANDUM TO THE CONFERENCE

No. 79-602, Agins v. City of Tiburon

The only case held for Agins v. Tiburon. It is No. 79-678, San Diego Gas & Elec. Co. v. San Diego.

In 1966 appellant acquired about 412 acres of undeveloped property in San Diego. In 1967 the City zoned part of the land for industrial activities (M-1A) and part for an agricultural and holding zone (A-1-1). In 1973, the City began planning activities to acquire some of the land for open-space use. It issued a general plan that included most of appellant's property in its open-space element. Also in 1973, the City re-zoned some of the property from M-1-A to A-1-10, recommended that a substantial portion (77 acres) remain M-1-A, and that a further segment be zoned for agricultural use (A-1-1) but be considered for future industrial growth. Subsequently a bond issue, the proceeds of which were to be used to purchase some of appellant's land, failed and the City dropped its efforts to acquire any of appellant's land by eminent domain. Apparently, however, the appellant's land remain listed in the City's general plan as open-space property.

Appellant filed suit in state court for inverse condemnation. The superior court found there was a taking. The court stated that as a result of the City's activites, appellants had been deprived of all practical, beneficial or economic use of the property. The court found that the property has been devoted to public use as open-space, and, thus, no delvelopment could proceed. The court found that it would have been impractical and fuitile for appellant to submit development plans.

Futile to submit a development plan

The state court of appeal affirmed the holding that the City's actions had constituted a taking. The court of

appeal found that the land could be used for no economically viable use other than industrial. The court noted that inclusion in the open-space element of the general plan did not automotically mean that industrial uses would be prohibited, but the court concluded that the cear inference from the evidence presented was that the "City would deny any application for industrial development on this parcel because of the open space designation on the general plan." The court upheld the finding that exhaustion of administrative remedies would be fuitile.

After the State Supreme Court decided Agins v. Tiburon, this case was re-heard in the court of appeal. The court then reversed the superior court, holding that damages was not a proper remedy for a taking. The court said that the appellant was free to file a declaratory judgment or mandamus action. In a curious sentence, the court seemed to suggest that the trial court's decision might not resolve the question whether there was abritrary action that could be reached by these remedies, even though the court did not disapprove the holding that a taking had occured.

This case thus presents the remedies issue that was not reached in Agins. That issue is presented as the state courts have found that the City's actions deprived appellant of all economic value in his property.

There is some dispute among the parties whether this case is properly denominated an appeal. Appellees contend that no state statute was held valid against a federal constitutional attack because the open-sapce plan does not have the force of law. Also, the judgment appealed from did not hold the zoning plan or the open-space plan valid against constitutional attack. I would favor postponing jurisdiction until oral argument. If it then appears that the appeal is improper, I would favor treating the papers as a petn for cert and granting cert.

L.F.P.

L.F.P., Jr.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 29, 1980

Re: No. 79-602 Agins v. Tiburon

Dear Lewis:

My recollection of the vote at Conference is that Potter and I were the only ones who disagreed with the result which your opinion reaches, and that our feeling was based on the fact that the sustaining of a demurrer to a complaint which alleged that a zoning ordinance had completely destroyed the value of the plaintiffs' property must mean that the Superior Court, affirmed by the Supreme Court of California, thought that this was permissible under the Eminent Domain Clause of the United States Constitution as applied to the states. Your treatment of the California practice in your presently circulating draft has convinced me, however, that California courts in passing on demurrers may take judicial notice of local ordinances, even though the ordinance as construed is contrary to the allegations in the complaint. I am therefore now quite prepared to go with you on that point.

I am somewhat uneasy about the latitude which your treatment of federal constitutional review of local zoning ordinances on pages 5 and 6 of your present draft appears to give federal courts. I realize that it is not easy to simply plug in a quotation to an opinion which you have already edited and structured in the manner that seems best to you, but my concerns along this line could be completely allayed if you could see fit to put in somewhere in the opinion the following quotation from what you describe as the "seminal" case of Euclid v. Ambler Co., 272 U.S. 365, 395:

> "If these reasons, thus summarized, do not demonstrate the wisdom or sound policy in all respects of those restrictions which we have indicated as pertinent to the inquiry, at least, the reasons are sufficiently cogent to preclude

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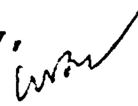
> us from saying, as it must be said [illegible] the ordinance can be declared unconstitutional, that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare."

This may be just a difference of nuance, but it seems to me that it allows the states somewhat more latitude than your implicit requirement on page 5 that a zoning ordinance to be constitutional "substantially advance legitimate governmental goals".

If you would prefer to leave the opinion as is, I will simply write a short separate concurrence, quoting the language from Euclid, joining at least in the judgment and probably in the opinion.

Sincerely,



Mr. Justice Powell

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 30, 1980

Re: No. 79-602 Agins v. Tiburon

Dear Lewis:

The "nuance" which troubles me is probably not worth a separate concurring opinion in this case. I am sufficiently in agreement with both the reasoning and result that you may count me as a "join".

Sincerely,

Mr. Justice Powell

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 27, 1980

Re: 79-602 - Agins v. City of Tiburon

Dear Lewis:

Please join me.

Respectfully,

Mr. Justice Powell

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