

The Burger Court Opinion Writing Database

Memphis v. Greene

451 U.S. 100 (1981)

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 1, 1981

Re: 79-1176 - City of Memphis, et al. v. Greene, et al.

Dear John:

I have always assumed that proof of intent is essential but I am not persuaded we need to remand as Byron would.

As informed on this date, I join you.

Regards,

Handwritten signature of Justice Stevens, appearing as "W. B." in cursive.

Justice Stevens

Copies to the Conference

REPRODUCED FROM THE COLLECTED MANUSCRIPT DIVISION OF THE LIBRARY OF CONGRESS

M

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 15, 1980

RE: No. 79-1176 City of Memphis v. Greene

Dear Thurgood and Harry:

We three were to affirm in the above. Would you
Thurgood be willing to take on the dissent?

Sincerely,

Bren

Mr. Justice Marshall

Mr. Justice Blackmun

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION

LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 20, 1981

RE: No. 79-1176 City of Memphis v. Greene

Dear John:

I shall await the dissent.

Sincerely,

Bill

Mr. Justice Stevens

cc: The Conference

REPRODUCED FROM THE COLLECTED MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT OF THE UNITED STATES

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 23, 1981

RE: No. 79-1176 City of Memphis v. Greene, et al.

Dear Thurgood:

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

Sincerely,

Bill

Justice Marshall

cc: The Conference

REPRODUCED FROM THE COLLECTED MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 26, 1981

RE: No. 79-1176 City of Memphis v. Greene

Dear Thurgood:

Harry and I read your dissent as written on the premise that the Court of Appeals found the crucial findings of the District Court to be clearly erroneous. In that case would it be advisable to say so expressly?

Sincerely,



Justice Marshall

cc: Justice Blackmun

REPRODUCED FROM THE COLLECTED

MANUSCRIPT DIVISION

LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 23, 1981

Re: No. 79-1176 - MEMPHIS v. GREENE

Dear John,

I agree with Parts I, II and III of your opinion. Pursuant to § 2 of the Thirteenth Amendment, Congress has enacted various statutes, as summarized in your footnote 33 on page 23. The statute relevant here is § 1982, in which Congress sought to eliminate some of the badges and incidents of slavery with respect to the right to purchase, sell, and hold real and personal property. Since your opinion correctly concludes that there was no invasion of those rights in this case, it does not need to address the question whether such an invasion need be purposeful.

What causes me concern is Part IV of your proposed opinion, dealing with the self-operative effect of § 1 of the Thirteenth Amendment. That provision does no more and no less than to outlaw slavery. I believe that slavery is unconstitutional under that provision, whatever the race of the person enslaved, and regardless of how lacking in discriminatory purpose the slavery might be. I further believe that that provision has no relevance whatever to this case, where the contention is not even made that slavery was imposed.

For this reason, I wholly disagree with the assumption in the last sentence of the first paragraph on page 23 of your opinion that the Thirteenth Amendment requires "careful scrutiny of the justification for any official action that has a disparate impact on black citizens." For the same reason I disagree with certain other statements in Part IV, and with all of Part IV insofar as it is

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION OF THE LIBRARY OF CONGRESS

directed to the issue formulated in the last sentence of the first paragraph on page 23 to which I have referred.

Sincerely yours,

Justice Stevens

Copies to the Conference

PS
1.5

REPRODUCED FROM THE COLLECTION

THE MANUSCRIPT DIVISION

LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 26, 1981

Re: No. 79-1176, Memphis v. Greene

Dear John,

I am glad to join your opinion for
the Court.

Sincerely yours,

PS

Justice Stevens

Copies to the Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION

SSSNCNOUJ BU AVYDPI I AN I

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 2, 1981

Re: No. 79-1176, Memphis v. Greene

Dear John,

I wholly understand the concerns expressed by Lewis, and am sure that I shall have no objection to any changes in language you may make in order to accommodate them.

Sincerely yours,

PS
/

Justice Stevens

Copy to Justice Powell

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 21, 1981

Re: 79-1176 - City of Memphis v. Greene

Dear John,

I voted to reverse this judgment because the Court of Appeals thought that a §1982 violation could be made out without overturning the District Court's finding that a racially discriminatory purpose had not been proved. As I see it, that finding precludes relief under §1982. As I understand it, the Court of Appeals did not grant relief independently under the Thirteenth Amendment; but if it did, I would reverse it for the same reason.

Perhaps I am wrong, but I thought the Conference vote looked in this direction and I would prefer to dispose of the case on this basis.

Sincerely yours,



Mr. Justice Stevens

Copies to the Conference

REPRODUCED FROM THE COLLECTED

MANUSCRIPT DIVISION

LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 5, 1981

Re: 79-1176 - Memphis v. Greene

Dear John,

I shall write separately in this case and hope not to hold you up too long.

Sincerely yours,



Mr. Justice Stevens

Copies to the Conference

REPRODUCED FROM THE COLLECTED

MANUSCRIPT DIVISION

U.S. DEPARTMENT OF COMMERCE

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

From: Mr. Justice White

Circulated: 3-31-81

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1176

City of Memphis et al., Petitioners, } On Writ of Certiorari
v. } to the United States
N. T. Greene et al. } Court of Appeals for
the Sixth Circuit.

[April —, 1981]

JUSTICE WHITE, concurring.

In this civil rights action, respondents sought relief under the Thirteenth and Fourteenth Amendments as well as under 42 U. S. C. §§ 1982-1983. The District Court held that while the closure of West Drive in Memphis, Tenn., would have a disproportionate impact upon certain black residents of Memphis, the evidence did not support a finding of a purpose or intent to discriminate. Neither was the disparate impact "so stark that a purpose or intent of racial discrimination" could be inferred. As a consequence, and following instructions from the initial remand, the District Court concluded that respondents had failed to prove a violation of either § 1982 or § 1983.¹ The District Court did not specifically address the alleged constitutional violations, but implicitly those allegations fell on the same basis. The Court of Appeals for the Sixth Circuit reversed the District Court's

¹The initial opinion of the Court of Appeals instructed the District Court as follows:

"To establish a section 1982 or 1983 claim on remand, Greene must prove his allegations that city officials conferred the closed street on West Drive residents because of their color; he must prove racial motivation, intent or purpose, in the absence of such egregious differential treatment as to in itself violate equal protection or, alternatively, to command an inference of racial motivation." 535 F. 2d 976, 979.

In the opinion rendered by the Court of Appeals following the initial remand, the above language was described as dicta.

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION OF THE FEDERAL BUREAU OF INVESTIGATION

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

- p. 7 & stylistic

From: Mr. Justice White

2nd DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES

Circulated: 3 APR 1981

No. 79-1176

City of Memphis et al., Petitioners, } On Writ of Certiorari
v. } to the United States
N. T. Greene et al. } Court of Appeals for
the Sixth Circuit.

[April —, 1981]

JUSTICE WHITE, concurring.

In this civil rights action, respondents sought relief under the Thirteenth and Fourteenth Amendments as well as under 42 U. S. C. §§ 1982-1983. The District Court held that while the closure of West Drive in Memphis, Tenn., would have a disproportionate impact upon certain black residents of Memphis, the evidence did not support a finding of a purpose or intent to discriminate. Neither was the disparate impact "so stark that a purpose or intent of racial discrimination" could be inferred. As a consequence, and following instructions from the initial remand, the District Court concluded that respondents had failed to prove a violation of either § 1982 or § 1983.¹ The District Court did not specifically address the alleged constitutional violations, but implicitly those allegations fell on the same basis. The Court of Appeals for the Sixth Circuit reversed the District Court's

¹The initial opinion of the Court of Appeals instructed the District Court as follows:

"To establish a section 1982 or 1983 claim on remand, Greene must prove his allegations that city officials conferred the closed street on West Drive residents because of their color; he must prove racial motivation, intent or purpose, in the absence of such egregious differential treatment as to in itself violate equal protection or, alternatively, to command an inference of racial motivation." 535 F. 2d 976, 979.

In the opinion rendered by the Court of Appeals following the initial remand, the above language was described as dicta.

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION

U. S. LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 19, 1981

Re: No. 79-1176 - City of Memphis v. Greene

Dear John:

In due course I will circulate a dissent
in this one.

Sincerely,

JM.

T.M.

Justice Stevens

cc: The Conference

REPRODUCED FROM THE COLLECTED

IN THE MANUSCRIPT DIVISION

SSS RCNOC BU AVYDIA I NY

20 MAR 1981

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1176

City of Memphis et al., Petitioners, } On Writ of Certiorari
v. } to the United States
N. T. Greene et al. } Court of Appeals for
the Sixth Circuit.

[March —, 1981]

JUSTICE MARSHALL, dissenting.

This case is easier than the majority makes it appear. Petitioner city of Memphis, acting at the behest of white property owners, has closed the main thoroughfare between an all-white enclave and a predominantly-Negro area of the city. The stated explanation for the closing is of a sort all too familiar: "protecting the safety and tranquility of a residential neighborhood" by preventing "undesirable traffic" from entering it. Too often in our Nation's history, statements such as these have been little more than code phrases for racial discrimination. These words may still signify racial discrimination, but apparently not, after today's decision, forbidden discrimination. The majority, purporting to rely on the evidence developed at trial, concludes that the city's stated interests are sufficient to justify erection of the barrier. Because I do not believe that ~~either~~ the Constitution or federal law permits a city to carve out racial enclaves without substantial justification, I dissent.

either

I

In order to determine "whether the State 'in any of its manifestations' has become significantly involved in private discriminations," it is necessary to "sif[t] facts and weig[h] circumstances" so that "'nonobvious involvement of the State in private conduct [can] be attributed its true significance.'" *Reitman v. Mulkey*, 387 U. S. 369, 378 (1967),

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION OF THE LIBRARY OF CONGRESS

— PP 1, 12, 14, 17
+ typographical changes
+ renumbered footnotes

27 MAR 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1176

City of Memphis et al., Petitioners, } On Writ of Certiorari
v. } to the United States
N. T. Greene et al. } Court of Appeals for
the Sixth Circuit.

[March —, 1981]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins,
dissenting.

This case is easier than the majority makes it appear. Petitioner city of Memphis, acting at the behest of white property owners, has closed the main thoroughfare between an all-white enclave and a predominantly-Negro area of the city. The stated explanation for the closing is of a sort all too familiar: "protecting the safety and tranquility of a residential neighborhood" by preventing "undesirable traffic" from entering it. Too often in our Nation's history, statements such as these have been little more than code phrases for racial discrimination. These words may still signify racial discrimination, but apparently not, after today's decision, forbidden discrimination. The majority, purporting to rely on the evidence developed at trial, concludes that the city's stated interests are sufficient to justify erection of the barrier. Because I do not believe that either the Constitution or federal law permits a city to carve out racial enclaves without substantial justification, I dissent.

I

In order to determine "whether the State 'in any of its manifestations' has become significantly involved in private discriminations," it is necessary to "'sif[t] facts and weig[h] circumstances'" so that "'nonobvious involvement of the State in private conduct [can] be attributed its true signifi-

REPRODUCED FROM THE COLLECTED SUPREME COURT MANUSCRIPTS
SERIALIZED BY THE SUPREME COURT ARCHIVE

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 1, 1981

Re: No. 79-1176 - City of Memphis v. Greene

Dear Bill:

Although I appreciate your suggestion that I discuss, however briefly, the clearly erroneous standard as it relates to the District Court's findings in this case, I believe that the Court of Appeals' opinion is sufficiently murky that it would be difficult to establish that it implicitly set aside the trial court's factual findings. In addition, I suspect that a discussion of the clearly erroneous standard would lead to a "battle of footnotes" that need not be fought. The only "factual" finding by the District Court that I actually dispute is its conclusion that there would be no economic harm to Negro property owners. I think that pages 10-12 of my dissent dispose of that finding without the need to announce that it is clearly erroneous.

The other "findings" relied on by the majority--that petitioners did not deviate significantly from their usual practices in approving the application and that there was no intentional discrimination--are really mixed findings of fact and law, and as such, they do not enjoy the protection of the clearly erroneous standard. For these reasons, I would prefer not to discuss the application of the clearly erroneous standard to this case.

Sincerely,

J.M.

T.M.

Justice Brennan

cc: Justice Blackmun

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION OF THE SUPREME COURT OF THE UNITED STATES

PP 1, 7, 8

2 APR 1981

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1176

City of Memphis et al., Petitioners, } On Writ of Certiorari
v. } to the United States
N. T. Greene et al. } Court of Appeals for
the Sixth Circuit.

[March —, 1981]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN and JUSTICE BLACKMUN join, dissenting.

This case is easier than the majority makes it appear. Petitioner city of Memphis, acting at the behest of white property owners, has closed the main thoroughfare between an all-white enclave and a predominantly-Negro area of the city. The stated explanation for the closing is of a sort all too familiar: "protecting the safety and tranquility of a residential neighborhood" by preventing "undesirable traffic" from entering it. Too often in our Nation's history, statements such as these have been little more than code phrases for racial discrimination. These words may still signify racial discrimination, but apparently not, after today's decision, forbidden discrimination. The majority, purporting to rely on the evidence developed at trial, concludes that the city's stated interests are sufficient to justify erection of the barrier. Because I do not believe that either the Constitution or federal law permits a city to carve out racial enclaves without substantial justification, I dissent.

I

In order to determine "whether the State 'in any of its manifestations' has become significantly involved in private discriminations," it is necessary to "'sif[t] facts and weig[h] circumstances'" so that "'nonobvious involvement of the State in private conduct [can] be attributed its true signifi-

REPRODUCED FROM THE COLLECTED SUPREME COURT MANUSCRIPT DIVISION

1, 14-15, 17, 18-19, 20

+ page references

8 APR 1981

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1176

City of Memphis et al., Petitioners, } On Writ of Certiorari
v. } to the United States
N. T. Greene et al. } Court of Appeals for
the Sixth Circuit.

[March —, 1981]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN and JUSTICE BLACKMUN join, dissenting.

This case is easier than the majority makes it appear. Petitioner city of Memphis, acting at the behest of white property owners, has closed the main thoroughfare between an all-white enclave and a predominantly-Negro area of the city. The stated explanation for the closing is of a sort all too familiar: "protecting the safety and tranquility of a residential neighborhood" by preventing "undesirable traffic" from entering it. Too often in our Nation's history, statements such as these have been little more than code phrases for racial discrimination. These words may still signify racial discrimination, but apparently not, after today's decision, forbidden discrimination. The majority, purporting to rely on the evidence developed at trial, concludes that the city's stated interests are sufficient to justify erection of the barrier. Because I do not believe that either the Constitution or federal law permits a city to carve out racial enclaves I dissent.

Omission

I

In order to determine "whether the State 'in any of its manifestations' has become significantly involved in private discriminations," it is necessary to "'sif[t] facts and weig[h] circumstances'" so that "'nonobvious involvement of the State in private conduct [can] be attributed its true signifi-

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 19, 1981

Re: No. 79-1176 - City of Memphis v. Greene

Dear John:

I shall await the dissent.

Sincerely,

HAB
—

Mr. Justice Stevens

cc: The Conference

REPRODUCED FROM THE COLLECTED MANUSCRIPT DIVISION OF THE SUPREME COURT OF THE UNITED STATES

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 23, 1981

Re: No. 79-1176 - City of Memphis v. Greene

Dear Thurgood:

I am most sympathetic with your dissenting opinion in this case, but I have one minor problem.

My difficulty centers in the first sentence, and the citation that follows it, of the second full paragraph on page 17. I did not join your dissent in Bolden, and wrote separately there concurring in the judgment. If that sentence and citation on page 17 could be eliminated, you have my vote.

Sincerely,

Harry

MM

OK

take it out!

Mr. Justice Marshall

cc: Mr. Justice Brennan

REPRODUCED FROM THE COLLECTED SUPREME COURT MANUSCRIPT DIVISION OF THE LIBRARY OF CONGRESS

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

March 27, 1981

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

Re: No. 79-1176 - City of Memphis v. Greene

Dear Thurgood:

Please join me in your recirculation of March 27.

Sincerely,



Mr. Justice Marshall

cc: The Conference

REPRODUCED FROM THE COLLECTED MANUSCRIPT DIVISION OF THE SUPREME COURT OF THE UNITED STATES

February 27, 1981

79-1176 City of Memphis v. Greene

Dear John:

According to my notes, you have written an opinion in this case entirely in accord with what you said at Conference. My notes indicate, however, that at least four of us addressed the §1982 question and would hold that it, like §1983, requires purposeful discrimination. I would prefer to decide the case on that ground. The lower courts need guidance, and we have avoided the issue - questionably in my view - in County of Los Angeles v. Davis (involving §1981), and perhaps other cases.

As you suggest, perhaps the case should not have been assigned to you. In any event, you did "as you were told" and - as Potter has done - I would like to be able to join you. Your revisions in Part IV bring me considerably closer. I am still troubled by the possibility that some will read your opinion as suggesting that §§1981 and 1982 do not require the "purposeful" element of §1983. I believe some relatively minor language changes would enable me to join you and perhaps write a concurring opinion also.

1. At the bottom of page 17 and top of page 18, you state that "the coverage of both §1982 and the Thirteenth Amendment is significantly broader than the coverage of the Fourteenth Amendment." Since the Court's decision in Thiboutot last Term, I doubt that any of the post war civil rights statutes is as broad in its sweep as §1983. If you could make clear that the difference - whether characterized as "broader" or in some other way - is that §1983 applies only to "official action", this would help me.

2. Also on page 18, the sentence beginning "Thus, although . . .", carries the same implication. Perhaps this sentence could be eliminated without affecting your basic reasoning.

3. At several points (pp. 21, 26 ad 27) your opinion refers to the "impact" of the street closing. I assume that what you mean is that in the absence of proof of a discriminatory effect - i.e. a substantial "impact" on blacks different from that on whites - there is no occasion even to consider the question whether purposeful or discriminatory intent is required under §1982. Unless this is made clear, it seems to me that your opinion could be read as implying that if a discriminatory "impact" had been shown, the question of intent would be irrelevant.

4. Finally, the first sentence in the first full paragraph on page 24 troubles me for a similar reason. Perhaps you could qualify this by saying in substance that although we need not reach the question of "racially discriminatory motive," the fact is that none has been shown.

In sum, although I would prefer to decide the case on the intent issue, I could join your opinion if it is made clearer - without contrary suggestions - that on the facts we simply do not reach the issue. I may then write a brief concurring opinion in which I would join you, but say - in substance - that rather than review the facts in this case I would have disposed of it simply on the basis of the absence of discriminatory intent.

As Potter has joined you, I am sending him a copy of this letter.

Sincerely

Mr. Justice Stevens

lfp/ss

cc: Mr. Justice Stewart

March 4, 1981

79-1176 City of Memphis v. Greene

Dear John:

Your letter of March 2 (that I have only this afternoon had an opportunity to look at carefully) meets entirely satisfactorily three of the four specific concerns that I mentioned.

This leaves the portion of your opinion that discusses the Thirteenth Amendment. The alternative suggestion (including the footnote) that you make at the top of page 2 of your letter, also would be entirely satisfactory and is my preference. I am quite willing to leave the Thirteenth Amendment question for another day, but at this time in our history it is hard to imagine a "badge of slavery", or the imposition of involuntary servitude, other than one intentionally imposed.

Yet, this is your opinion, and I am glad to defer to your preference not to make the changes you outlined on page 2 of your letter. One small change that would help clarify Part IV for me would be to change the first two lines of the first full paragraph on page 4 to read as follows:

"We begin our examination of respondents' Thirteenth Amendment argument by reiterating the conclusion . . ."

When you recirculate, I will join you. I may write briefly, but have not decided definitely that it is worthwhile.

My thanks for your courteous consideration of my suggestions.

Sincerely,

Mr. Justice Stevens

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 7, 1981

79-1176 City of Memphis v. Greene

Dear John:

I voted to grant this case because I thought it a good opportunity to decide a question that heretofore has evaded us: whether purposeful discrimination is required under §1982 as it is under §1983. I also thought - although my notes are not entirely clear - that there were five of us at Conference who were inclined to decide that such intent is required.

You have written the case differently, and persuasively, relying on its facts and the findings - or absence of findings - below. My notes are clear that this was the position you took at Conference and you wrote accordingly.

As your review of the facts fully supports your position, leaving for another day the §1982 question as well as the related meaning of the Thirteenth Amendment, I am glad to join your opinion.

I may possibly write a brief concurring statement, although I am by no means sure that I will.

Sincerely,

Lewis

Mr. Justice Stevens

lfp/ss

cc: The Conference

REPRODUCED FROM THE COLLECTED

MANUSCRIPT DIVISION

OFFICE OF THE CLERK

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 9, 1981

Re: No. 79-1176 City of Memphis v. Greene

Dear John:

Although I would have preferred to see the issue of "intent" or "purpose" decided in the manner suggested by Byron in his letter to you, I recognize that this is a matter within the latitude of the opinion writer to leave open, as you do. I therefore join your opinion for the Court.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

REPRODUCED FROM THE COLLECTED

MANUSCRIPT DIVISION

U.S. LIBRARY OF CONGRESS

Handwritten notes:
✓ PS
to the Supreme Court
Circuit Court of Appeals
1981

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: FEB 18 '81

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 79-1176

City of Memphis et al., Petitioners, } On Writ of Certiorari
v. } to the United States
N. T. Greene et al. } Court of Appeals for
the Sixth Circuit.

[February —, 1981]

JUSTICE STEVENS delivered the opinion of the Court.

The question presented is whether a decision by the city of Memphis to close the north end of West Dr., a street that traverses a white residential community, violated § 1 of the Civil Rights Act of 1966, 14 Stat. 27, codified at 42 U. S. C. § 1982, or the Thirteenth Amendment to the United States Constitution.¹ The city's action was challenged by respondents, who resided in a predominantly black area to the north. The Court of Appeals ultimately held the street closing invalid because it adversely affected respondents' ability to hold and enjoy their property. 610 F. 2d 395. We conclude that the record does not support that holding.

¹ Section 1982 provides in relevant part:

"All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." 42 U. S. C. § 1982.

The Thirteenth Amendment provides:

"Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Section 2. Congress shall have power to enforce this article by appropriate legislation."

REPRODUCED FROM THE COLLECTED MANUSCRIPT DIVISION OF THE SUPREME COURT OF THE UNITED STATES

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 23, 1981

Re: 79-1176 - City of Memphis v. Greene

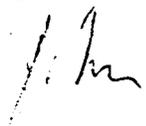
Dear Byron:

Thank you for your letter. Your criticism is a fair one and makes me wonder if I would have been wiser to ask the Chief to be relieved of the assignment instead of trying to write a narrow opinion that might be able to garner five votes.

My recollection of the Conference is that although there were three and possibly four members of the Court who shared the opinion expressed in your letter, Potter and I based our votes on the reasoning set forth in my draft. Since the Chief assigned the case to me, I assume that it would be acceptable to write it on a narrow ground that a majority might accept without basing the decision on the intent rationale.

I could not join a holding that a racially discriminatory purpose is necessary to a Thirteenth Amendment violation. Theoretically, I suppose a long-term contract containing a reserve clause and various other highly restrictive provisions could be regarded as a form of involuntary servitude violative of the Thirteenth Amendment even if both the employer and the employee were members of the same race. Indeed, the concept of a racially discriminatory purpose does not seem to me to be particularly relevant to the Thirteenth Amendment inquiry.

Respectfully,



Mr. Justice White

Copies to the Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION OF THE LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 24, 1981

Re: 79-1176 - City of Memphis v. Greene

Dear Potter:

Your criticism of my draft opinion is well taken. I will take out the sentence on page 23 to which you particularly object and do some re-writing that I hope will satisfy your concerns.

Respectfully,



Justice Stewart

Copies to the Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION OF THE LIBRARY OF CONGRESS

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: FEB 26 '81

P. 22, 27

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1176

City of Memphis et al., Petitioners, } On Writ of Certiorari
v. } to the United States
N. T. Greene et al. } Court of Appeals for
the Sixth Circuit.

[February —, 1981]

JUSTICE STEVENS delivered the opinion of the Court.

The question presented is whether a decision by the city of Memphis to close the north end of West Drive, a street that traverses a white residential community, violated § 1 of the Civil Rights Act of 1966, 14 Stat. 27, codified at 42 U. S. C. § 1982, or the Thirteenth Amendment to the United States Constitution.¹ The city's action was challenged by respondents, who resided in a predominantly black area to the north. The Court of Appeals ultimately held the street closing invalid because it adversely affected respondents' ability to hold and enjoy their property. 610 F. 2d 395. We reverse because the record does not support that holding.

¹ Section 1982 provides in relevant part:

"All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." 42 U. S. C. § 1982.

The Thirteenth Amendment provides:

"Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Section 2. Congress shall have power to enforce this article by appropriate legislation."

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION OF THE LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 2, 1981

Re: 79-1176 - City of Memphis v. Greene

Dear Lewis:

Thank you for your letter about the Memphis opinion. It seems to me that I should have no difficulty in accommodating your concerns. Although I am not persuaded that intent is always an essential element of a § 1982 cause of action, I surely did not intend the opinion to be slanted one way or the other on that issue. To take care of your four specific concerns, let me make these suggestions:

1. At the top of page 18, I would substitute the words "different from" for the words "broader than." *OK*

2. On page 18, I would revise the sentence beginning on line 13 to read: "Thus, although respondents challenge official action in this case, the provisions of the law on which the challenge is based cover certain private action as well." *OK*

3. At the top of page 21, I suggest revising the sentence to read: "Therefore, as applied to this case, the threshold inquiry under § 1982 must focus on the relationship between the street closing and the property interests of the respondents." *OK*

On pages 26 and 27, I do not believe the use of the word "impact" or the word "effect" can cause any misunderstanding with respect to the construction of § 1982 because I am discussing the Thirteenth Amendment rather than the statute on those pages. As Potter points out, it is quite clear that intent is not required to establish a violation of the Amendment itself.

4. Again, on page 24 of the opinion, the discussion concerns the Thirteenth Amendment rather than § 1982. I do not really think the sentence is subject to misinterpretation, but if it continues to trouble you in the Thirteenth Amendment context--and if Potter is agreeable--I think we could eliminate the sentence from the text and begin the paragraph by saying: "The record demonstrates that the interests that motivated the City Council were entirely legitimate.*

I would then append a footnote at that point reading this way:

*Although it is not necessary in this case to decide whether either a "badge of slavery" or a violation of § 1982 can be established without proof of "racially discriminatory motive" we reiterate that this record discloses no such motive on the part of the City Council. See pages 6-7, 13-15 and nn. 19-23, supra.

Frankly, I would prefer not to revise page 24 in this manner but I want to see if there isn't some formulation that will eliminate your concern that the opinion may be misunderstood.

Part of my difficulty in introducing cautionary language in the section discussing the Thirteenth Amendment is the fact that I feel strongly that we should not create the incorrect impression that "intent" is an element of a constitutional violation. For as I have already suggested, it seems perfectly clear to me that there could be categories of involuntary servitude that are totally unrelated to any racial discrimination.

Finally, I would just add that my feeling about this issue is like my attitude on most constitutional questions, namely, that I think it better not to reach

would prefer

an issue that need not be decided in order to dispose
of this case.

Respectfully,

A handwritten signature, possibly "J. Powell", written in dark ink.

Justice Powell

cc: Justice Stewart

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION OF THE U.S. ARCHIVES

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

77. 18, 21, 24

From: Mr. Justice Stevens

Circulated: _____

4th DRAFT

Recirculated: MAR 6 '81

SUPREME COURT OF THE UNITED STATES

No. 79-1176

City of Memphis et al., Petitioners, } On Writ of Certiorari
v. } to the United States
N. T. Greene et al. } Court of Appeals for
the Sixth Circuit.

[February —, 1981]

JUSTICE STEVENS delivered the opinion of the Court.

The question presented is whether a decision by the city of Memphis to close the north end of West Drive, a street that traverses a white residential community, violated § 1 of the Civil Rights Act of 1966, 14 Stat. 27, codified at 42 U. S. C. § 1982, or the Thirteenth Amendment to the United States Constitution.¹ The city's action was challenged by respondents, who resided in a predominantly black area to the north. The Court of Appeals ultimately held the street closing invalid because it adversely affected respondents' ability to hold and enjoy their property. 610 F. 2d 395. We reverse because the record does not support that holding.

¹ Section 1982 provides in relevant part:

"All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." 42 U. S. C. § 1982.

The Thirteenth Amendment provides:

"Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Section 2. Congress shall have power to enforce this article by appropriate legislation."

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 20, 1981

In Re: 79-1176 City of Memphis v. Greene

Dear Thurgood:

On page 17, I propose to add the following footnote to my draft opinion:

Plaintiffs also called Dr. Feit, a clinical assistant professor in the Department of Psychiatry, University of Tennessee Center of Health Sciences, as an expert witness. The District Court summarized Dr. Feit's testimony as follows:

"Dr. Marvin Feit, an assistant professor at the University of Tennessee School of Social Work, testified that it was his opinion that closing West Drive would result in negative consequences in the form of hostility towards the people who live in Hein Park, increased vandalism, school harassment, and increased arrests by police. He also was of the opinion that the closure would result in more disgruntled drivers." App. 155.

Over defendants' objection that he was testifying to matters outside his area of expertise, see T.R. 106-110, Dr. Feit also testified as follows:

"Q Before the luncheon recess we were at the point of asking Dr. Feit to give his professional opinion as to the negative psychological consequences of the possible closure of West Drive and how those consequences might affect property values, and I will ask you to answer that question.

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION OF THE ARCHIVES OF THE SUPREME COURT OF THE UNITED STATES

A Well, particularly on the north of Jackson it is very likely that the property values will go down, whereas in Hein Park it is most likely that they will rise equal to the rather exclusive area; whereas the area north of Jackson will go down because of the increase in the volume of traffic which has nowhere to go." T.R. 119.

The District Court did not credit this testimony.

Respectfully,

A handwritten signature in cursive script, appearing to be 'J.M.', is written below the word 'Respectfully,'.

Mr. Justice Marshall

Copies to the Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION OF THE LIBRARY OF CONGRESS

pp. 3, 4, 11, 12, 15, 16, 18
and numbered footnotes

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: MAR 25 '81

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1176

City of Memphis et al., Petitioners, } On Writ of Certiorari
v. } to the United States
N. T. Greene et al. } Court of Appeals for
the Sixth Circuit.

[February —, 1981]

JUSTICE STEVENS delivered the opinion of the Court.

The question presented is whether a decision by the city of Memphis to close the north end of West Drive, a street that traverses a white residential community, violated § 1 of the Civil Rights Act of 1966, 14 Stat. 27, codified at 42 U. S. C. § 1982, or the Thirteenth Amendment to the United States Constitution.¹ The city's action was challenged by respondents, who resided in a predominantly black area to the north. The Court of Appeals ultimately held the street closing invalid because it adversely affected respondents' ability to hold and enjoy their property. 610 F. 2d 395. We reverse because the record does not support that holding.

¹ Section 1982 provides in relevant part:

"All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." 42 U. S. C. § 1982.

The Thirteenth Amendment provides:

"Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Section 2. Congress shall have power to enforce this article by appropriate legislation."

REPRODUCED FROM THE COLLECTION

MANUSCRIPT DIVISION

LIBRARY OF CONGRESS

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

7.3

From: Mr. Justice Stevens

Circulated: _____

6th DRAFT

Recirculated: APR 9 '81

SUPREME COURT OF THE UNITED STATES

No. 79-1176

City of Memphis et al., Petitioners, } On Writ of Certiorari
v. } to the United States
N. T. Greene et al. } Court of Appeals for
the Sixth Circuit.

[February —, 1981]

JUSTICE STEVENS delivered the opinion of the Court.

The question presented is whether a decision by the city of Memphis to close the north end of West Drive, a street that traverses a white residential community, violated § 1 of the Civil Rights Act of 1966, 14 Stat. 27, codified at 42 U. S. C. § 1982, or the Thirteenth Amendment to the United States Constitution.¹ The city's action was challenged by respondents, who resided in a predominantly black area to the north. The Court of Appeals ultimately held the street closing invalid because it adversely affected respondents' ability to hold and enjoy their property. 610 F. 2d 395. We reverse because the record does not support that holding.

¹ Section 1982 provides in relevant part:

"All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." 42 U. S. C. § 1982.

The Thirteenth Amendment provides:

"Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Section 2. Congress shall have power to enforce this article by appropriate legislation."

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION OF THE LIBRARY OF CONGRESS