

# The Burger Court Opinion Writing Database

## *Kirchberg v. Feenstra*

450 U.S. 455 (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

January 23, 1981

Re: 79-1388 - Kirchberg v. Feenstra

Dear Thurgood,

I join.

Regards,

WEB/lee

Justice Marshall

Copies to the Conference

P.S. I had a concurring opinion in the mill, but I think we have too many concurring opinions, and I will "bury mine."

(m)

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

December 30, 1980

RE: No. 79-1388 Kirchberg v. Feenstra, et al.

Dear Thurgood:

I agree.

Sincerely,

*Bill*

Mr. Justice Marshall

cc: The Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Stevens  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Burger

From: Mr. Justice Stewart

Circulated: 31 DEC 1980

Participated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 79-1388

Karl J. Kirchberg, Appellant, | On Appeal from the United  
v. | States Court of Appeals for  
Joan Paillot Feenstra et al. | the Fifth Circuit.

[January —, 1981]

JUSTICE STEWART, concurring in the result.

Since men and women were similarly situated for all relevant purposes with respect to the management and disposition of community property, I agree that Art. 2404 of the Louisiana Civil Code, which allowed husbands but not wives to execute mortgages on jointly owned real estate without spousal consent, violated the Equal Protection Clause of the Fourteenth Amendment. See *Michael M. v. Superior Court*, — U. S. —, — (concurring opinion).

While it is clear that the Court is correct that the judgment of the Court of Appeals applied to the particular mortgage executed by Mr. Feenstra, it is equally clear that that court's explicit announcement that its holding was to apply only prospectively means that no other mortgage executed before the date of the decision of the Court of Appeals is invalid by reason of its decision.

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

2nd DRAFT

From: Mr. Justice Stewart

**SUPREME COURT OF THE UNITED STATES**

No. 79-1388

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

6 JAN 1981

Karl J. Kirchberg, Appellant, | On Appeal from the United  
v. | States Court of Appeals for  
Joan Paillot Feenstra et al. | the Fifth Circuit.

[January —, 1981]

JUSTICE STEWART, with whom JUSTICE REHNQUIST joins,  
concurring in the result.

Since men and women were similarly situated for all relevant purposes with respect to the management and disposition of community property, I agree that Art. 2404 of the Louisiana Civil Code, which allowed husbands but not wives to execute mortgages on jointly owned real estate without spousal consent, violated the Equal Protection Clause of the Fourteenth Amendment. See *Michael M. v. Superior Court*, — U. S. —, — (concurring opinion).

While it is clear that the Court is correct that the judgment of the Court of Appeals applied to the particular mortgage executed by Mr. Feenstra, it is equally clear that that court's explicit announcement that its holding was to apply only prospectively means that no other mortgage executed before the date of the decision of the Court of Appeals is invalid by reason of its decision.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 30, 1980

Re: 79-1388 - Kirchberg v. Feenstra

Dear Thurgood,

I join your opinion except for the last two sentences of the penultimate paragraph. Those sentences do not appear necessary to your disposition, and although your case or controversy statement is supported by the jump cite to Stovall, I would not so readily discard the permissibility of purely prospective holdings and depart from the implications of what the Court did in Lemon v. Kurtzman, 411 U.S. 192 (1974); Chevron Oil v. Huson, 404 U.S. 97 (1971); Allen v. State Board of Elections, 393 U.S. 544 (1960); Simpson v. Union Oil, 377 U.S. 13 (1964); England v. Medical Examiners, 375 U.S. 411 (1964); and Great Northern Ry. v. Sunburst, 287 U.S. 358 (1932).

Would you consider dropping the two sentences?

Sincerely yours,



Mr. Justice Marshall

Copies to the Conference

29 DEC 1980

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1388

Karl J. Kirchberg, Appellant, } On Appeal from the United  
v. } States Court of Appeals for  
Joan Paillot Feenstra et al. } the Fifth Circuit.

[January —, 1981]

JUSTICE MARSHALL delivered the opinion of the Court.

In this appeal we consider the constitutionality of a now superseded Louisiana statute that gave a husband, as “head and master” of property jointly owned with his wife, the unilateral right to dispose of such property without his spouse’s consent. Concluding that the provision violates the Equal Protection Clause of the Fourteenth Amendment, we affirm the judgment of the Court of Appeals for the Fifth Circuit invalidating the statute.

I

In 1974, appellee Joan Feenstra filed a criminal complaint against her husband, Harold Feenstra, charging him with molesting their minor daughter. While incarcerated on that charge, Mr. Feenstra retained appellant Karl Kirchberg, an attorney, to represent him. Mr. Feenstra signed a \$3,000 promissory note in prepayment for legal services to be performed by appellant Kirchberg. As security on this note, Mr. Feenstra executed a mortgage in favor of appellant on the home he jointly owned with his wife. Mrs. Feenstra was not informed of a mortgage, and her consent was not required because a state statute, former Art. 2404 of the Louisiana Civil Code, gave her husband exclusive control over the disposition of community property.<sup>1</sup>

<sup>1</sup> Article 2404, in effect at the time Mr. Feenstra executed the mortgage on behalf of appellant, provided in pertinent part:

“The husband is the head and master of the partnership or community

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 30, 1980

Re: No. 79-1388 - Kirchberg v. Feenstra

Dear Byron:

Your suggestion is agreeable to me.

Sincerely,

*J.M.*  
T.M.

Justice White

Copies to the Conference

p.7

81 DEC 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1388

Karl J. Kirchberg, Appellant, } On Appeal from the United  
v. } States Court of Appeals for  
Joan Paillot Feenstra et al. } the Fifth Circuit.

[January —, 1981]

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I

In 1974, appellee Joan Feenstra filed a criminal complaint against her husband, Harold Feenstra, charging him with molesting their minor daughter. While incarcerated on that charge, Mr. Feenstra retained appellant Karl Kirchberg, an attorney, to represent him. Mr. Feenstra signed a \$3,000 promissory note in prepayment for legal services to be performed by appellant Kirchberg. As security on this note, Mr. Feenstra executed a mortgage in favor of appellant on the home he jointly owned with his wife. Mrs. Feenstra was not informed of the mortgage, and her consent was not required because a state statute, former Art. 2404 of the Louisiana Civil Code, gave her husband exclusive control over the disposition of community property.<sup>1</sup>

<sup>1</sup> Article 2404, in effect at the time Mr. Feenstra executed the mortgage on behalf of appellant, provided in pertinent part:

"The husband is the head and master of the partnership or community



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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 29, 1980

Re: No. 79-1388 - Kirchberg v. Feenstra

Dear Thurgood:

Please join me.

Sincerely,

Mr. Justice Marshall

cc: The Conference



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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 30, 1980

79-1388 Kirchberg v. Feenstra

Dear Thurgood:

Please join me.

Sincerely,

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 5, 1981

Re: No. 79-1388 Kirchberg v. Feenstra

Dear Potter:

Please join me in your opinion concurring in the result.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

January 5, 1981

Re: 79-1388 - Kirchberg v. Feenstra

Dear Thurgood:

Please join me.

Respectfully,



Justice Marshall

Copies to the Conference