

# The Burger Court Opinion Writing Database

## *Postal Service v. Council of Greenburgh Civic Associations*

453 U.S. 114 (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

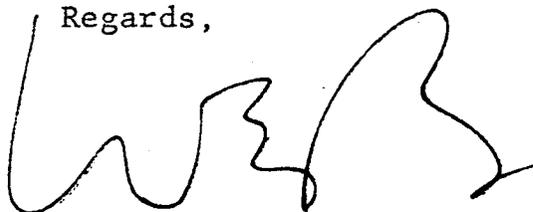
June 8, 1981

RE: 80-608 - U.S. Postal Service v. Council of  
Greenburg Civic Associations

Dear Bill:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'WRB', written over the typed word 'Regards,'.

Justice Rehnquist

Copies to the Conference

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

United States Postal Service v. Council of Greenburgh Civic  
Associations, No. 80-608

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

From: Mr. Justice Brennan

Circulated: JUN 15 1981

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

JUSTICE BRENNAN, concurring in the judgment.

I concur in the judgment, but not in the Court's opinion. I believe the Court errs in not determining whether §1725 is a reasonable time, place, and manner restriction on appellees' exercise of their First Amendment rights, as urged by the Government, and in resting its judgment instead on the conclusion that a letter box is not a public forum. In my view, this conclusion rests on an improper application of the Court's precedents and ignores the historic role of the mails as a national medium of communication.

I

Section 1725 provides:

"Whoever knowingly and willfully deposits anyailable matter such as statements of accounts, circulars, sale bills, or other like matter, on which no postage has been paid, in any letter box established, approved, or accepted by the Postal Service for the receipt or delivery of mail matter on any mail route with intent to avoid payment of lawful postage thereon, shall for each such offense be fined not more than \$300.00." 18 U.S.C. §1725.

Unquestionably, §1725 burdens in some measure the First Amendment rights of appellees who seek to "communicate ideas, positions on local issues, and civic information to their constituents,"

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 26, 1981

Re: No. 80-608, U.S. Postal Service  
v. Greenburgh Civic Assns.

Dear Bill,

I am glad to join your opinion  
for the Court.

Sincerely yours,

P.S.  
/

Justice Rehnquist

Copies to the Conference

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: 16 JUN 1961

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

No. 80-608 -- U.S. Postal Service  
v. Council of Greenburgh Civic Associations

MR. JUSTICE WHITE, concurring in the judgment.

There is no doubt that the postal system is a massive, government-operated communications facility open to all forms of written expression protected by the First Amendment. No one questions, however, that the Government, the operator of the system, may impose a fee on those who would use the system, even though the user fee measurably reduces the ability of various persons or organizations to communicate with others. Respondents do not argue that they may use the mail for home delivery free of charge. A self-evident justification for postage is that the Government may insist that those who use the mails contribute to the expense of maintaining and operating the facility.

No different answer is required in this case because respondents do not insist on free home delivery and desire to use only a part of the system, the mail box. The Government's

TO: THE OTHER JUSTICES  
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: \_\_\_\_\_

Recirculated: 18 JUN 1981

PRINTED  
1st DRAFT  
A

SUPREME COURT OF THE UNITED STATES

No. 80-608

United States Postal Service, Appellant, v. Council of Greenburgh Civic Associations et al.	} On Appeal from the United States District Court for the Southern District of New York.
---	---

[June —, 1981]

MR. JUSTICE WHITE, concurring in the judgment.

There is no doubt that the postal system is a massive, government-operated communications facility open to all forms of written expression protected by the First Amendment. No one questions, however, that the Government, the operator of the system, may impose a fee on those who would use the system, even though the user fee measurably reduces the ability of various persons or organizations to communicate with others. Respondents do not argue that they may use the mail for home delivery free of charge. A self-evident justification for postage is that the Government may insist that those who use the mails contribute to the expense of maintaining and operating the facility.

No different answer is required in this case because respondents do not insist on free home delivery and desire to use only a part of the system, the mail box. The Government's interest in defraying its operating expenses remains, and it is clear that stuffing the mailbox with unstamped materials is a burden on the system.

This justification would suffice even in those situations where insisting on the fee will totally prevent the putative user from communicating with his intended correspondents, *i. e.*, there would be no adequate alternative means available to reach the intended recipients. For this reason, if for no

8 JUN 1981

No. 80-608

United States Postal Service v. Council of Greenburgh Civic Ass'n  
and Saw Mill Valley Civic Ass'n

On Appeal from the United States District Court for the Southern  
District of New York

JUSTICE MARSHALL, dissenting.

When the Framers of the Constitution granted Congress the authority "[t]o establish Post Offices and Post Roads," Art. I, § 8, cl. 7, they placed the powers of the federal government behind a national communication service. Protecting the economic viability and efficiency of that service remains a legitimate and important congressional objective. This case involves a statute defended on that ground, but I believe it is unnecessary for achieving that purpose and inconsistent with the underlying commitment to communication.

The challenged statute, 18 U.S.C. § 1725, forbids anyone from knowingly placing unstamped "mailable matter" in any box approved by the United States Postal Service (Postal Service) for receiving or depositing material carried by the Postal Service. Violators may be punished with fines of up to \$300 for each offense. In this case, appellee civic associations claimed, and the District Court agreed, that this criminal statute unreasonably restricts their First Amendment right of free

pp. 2, 11

10 JUN 1981

1st PRINTED DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-608

United States Postal Service, Appellant, <i>v.</i> Council of Greenburgh Civic Associations et al.	}	On Appeal from the United States District Court for the Southern District of New York.
--	---	---

[June —, 1981]

JUSTICE MARSHALL, dissenting.

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The challenged statute, 18 U. S. C. § 1725, forbids anyone from knowingly placing unstamped “mailable matter” in any box approved by the United States Postal Service (Postal Service) for receiving or depositing material carried by the Postal Service. Violators may be punished with fines of up to \$300 for each offense. In this case, appellee civic associations claimed, and the District Court agreed, that this criminal statute unreasonably restricts their First Amendment right of free expression.

The Court today upholds the statute on the theory that its focus—the letter box situated on residential property—is not a public forum where the First Amendment guarantees access. The Court further asserts that when, as here, the government acts as an entrepreneur, it may strike the balance

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 10, 1981

Re: No. 80-608 - U.S. Postal Service v. Council  
of Greenburgh Civic Association

MEMORANDUM TO THE CONFERENCE

In light of Bill's response to my dissent, I will change my first sentence of the second paragraph on p. 2 to read:

"First, I disagree with the Court's assumption that if no public forum is involved, the only First Amendment challenge to be considered is whether the regulation is content-based, see ante, at 15-16."

Sincerely,



T.M.

pp. 1-4, 7, 9-10

18 JUN 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-608

United States Postal Service, Appellant, v, Council of Greenburgh Civic Associations et al.	}	On Appeal from the United States District Court for the Southern District of New York.
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[June —, 1981]

JUSTICE MARSHALL, dissenting.

When the Framers of the Constitution granted Congress the authority "[t]o establish Post Offices and Post Roads," Art. I, § 8, cl. 7, they placed the powers of the Federal Government behind a national communication service. Protecting the economic viability and efficiency of that service remains a legitimate and important congressional objective. This case involves a statute defended on that ground, but I believe it is unnecessary for achieving that purpose and inconsistent with the underlying commitment to communication.

The challenged statute, 18 U. S. C. § 1725, forbids anyone from knowingly placing unstamped "mailable matter" in any box approved by the United States Postal Service (Postal Service) for receiving or depositing material carried by the Postal Service. Violators may be punished with fines of up to \$300 for each offense. In this case, appellee civic associations claimed, and the District Court agreed, that this criminal statute unreasonably restricts their First Amendment right of free expression.

The Court today upholds the statute on the theory that its focus—the letter box situated on residential property—is not a public forum where the First Amendment guarantees access. I take exception to the result, the analysis, and the premise that private persons lose their prerogatives over the letter boxes they own and supply for mail service.

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

From: Mr. Justice Blackmun

Circulated: JUN 17 1981

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

No. 80-608 United States Postal Service v. Council of Greenburg

JUSTICE BLACKMUN, concurring in the judgment.

I join the judgment of the Court. While I agree with much of what JUSTICE REHNQUIST has said for the plurality, I do not agree with the observations, ante, at 18, concerning the Government's comparative invulnerability when it engages in entrepreneurial rather than sovereign activity. I have been unable to find any justification either in policy or in the Court's precedents for employing a less stringent analysis to judge a federal law passed by a Congress acting "as an employer or as a entrepreneur, rather than as a lawgiver." Ibid. Although I conclude that a private mailbox, being the personal property of the owner, is not a "public forum" in the sense of the Court's prior cases, I also conclude that 18 U.S.C. §1725 is

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 19, 1981

Re: No. 80-608 - United States Postal Service  
v. Council of Greenburgh

Dear Bill:

Please join me in your recirculation of June 18. I am withdrawing my separate concurrence circulated on June 17.

Sincerely,

*H.A.B.*

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 28, 1981

80-608 United States Postal Service v. Council of Greenburgh

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

lfp/ss

cc: The Conference

P. 9

0\$608H. 22-MAY-81 SPW/DRB

NO

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: MAY 25 1981

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

1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 80-608

UNITED STATES POSTAL SERVICE, APPELLANT *v.*  
COUNCIL OF GREENBURGH CIVIC ASSOCIATIONS,  
ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

[May —, 1981]

JUSTICE REHNQUIST delivered the opinion of the Court.

We noted probable jurisdiction to decide whether the United States District Court for the Southern District of New York correctly determined that 18 U. S. C. § 1725, which prohibits the deposit of unstamped "mailable matter" in a letter box approved by the United States Postal Service (Postal Service), unconstitutionally abridges the First Amendment rights of certain civic associations in Westchester County, New York. — U. S. — (1980). Jurisdiction of this Court rests on 28 U. S. C. § 1252.

## I

Appellee Council of Greenburgh Civic Associations (Council) is an umbrella organization for a number of civic groups in Westchester County, New York. Appellee Saw Mill Valley Civic Association is one of the Council's member groups. In June 1976, the Postmaster in White Plains, New York, notified the Chairman of the Saw Mill Valley Civic Association that the association's practice of delivering messages to local residents by placing unstamped notices and pamphlets in the letter boxes of private homes was in violation of 18 U. S. C. § 1725, which provides:

"Whoever knowingly and willfully deposits any mail-

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 9, 1981

MEMORANDUM TO THE CONFERENCE

Re: No. 80-608 U.S. Postal Service v. Council of  
Greenburgh Civic Association

In view of the lateness of the Term, I am circulating this proposed footnote in response to Thurgood's dissent prior to its actual printing.

Sincerely,



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

Re: No. 80-608 U.S. Postal Service v. Council of  
Greenburgh Civic Association

Footnote 5 to go at the end of Section III

JUSTICE MARSHALL in his dissent, post, p. 2, states that he disagrees "with the Court's assumption that it may avoid consideration of the First Amendment challenge on the theory that no public forum is involved...." Our opinion assumes no such thing, as a reading of it will demonstrate. The First Amendment prohibits Congress from "abridging freedom of speech, or of the press", and its ramifications are by no means confined to the "public forum" first noted in Hague v. CIO, 307 U.S. 496 (1939). What we do hold is the principle reiterated by cases such as Adderley v. Florida, 385 U.S. 39 (1966), and Greer v. Spock, 424 U.S. 828 (1976), is that property owned or controlled by the government which is not a public forum may be subject to a prohibition of speech, leafleting, picketing, or other forms of communication without running afoul of the First Amendment so long as the prohibition is content-neutral. Here there is no question that the regulation is content-neutral, unless one were

to describe the payment of postage on mailable matter as a "content-based" regulation.

Even Justice MARSHALL's dissent recognizes that the government may defend the regulation here on a ground other than simply a "time, place, and manner" basis. For example, he says in dissent, post, p. 2, that "The question, then, is whether this statute burdens any First Amendment rights enjoyed by appellees. If so, it must be determined whether this burden is justified by a significant governmental interest substantially advanced by the statute." For the reasons stated in our opinion, we think the government's interest in limiting access to letter boxes is every bit as significant as those upheld in Adderley and Greer.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 10, 1981

MEMORANDUM TO THE CONFERENCE

Re: No. 80-608 U.S. Postal Service v. Council  
of Greenburgh Civic Association

In response to Thurgood's recent change, I am circulating this revision to footnote 5 prior to its printing.

Sincerely,

*WH*

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Re: No. 80-608 U.S. Postal Service v. Council of  
Greenburgh Civic Association

Revised Footnote 5 to go at the end of Section III

JUSTICE MARSHALL in his dissent, post, p. 2, states that he disagrees "with the Court's assumption that if no public forum is involved, the only First Amendment challenge to be considered is whether the regulation is content-based...." Our opinion assumes no such thing, as a reading of it will demonstrate. The First Amendment prohibits Congress from "abridging freedom of speech, or of the press", and its ramifications are not confined to the "public forum" first noted in Hague v. CIO, 307 U.S. 496 (1939). What we hold is the principle reiterated by cases such as Adderley v. Florida, 385 U.S. 39 (1966), and Greer v. Spock, 424 U.S. 828 (1976), that property owned or controlled by the government which is not a public forum may be subject to a prohibition of speech, leafleting, picketing, or other forms of communication without running afoul of the First Amendment. Admittedly, the government must act reasonably in imposing such

restrictions, Jones v. North Carolina Prisoners' Labor Union, 433 U.S. 119, 130-131 (1977), and the prohibition must be content-neutral. But, for the reasons stated in our opinion, we think it cannot be questioned that § 1725 is both a reasonable and content-neutral regulation.

Even Justice MARSHALL's dissent recognizes that the government may defend the regulation here on a ground other than simply a "time, place, and manner" basis. For example, he says in dissent, post, p. 2, that "The question, then, is whether this statute burdens any First Amendment rights enjoyed by appellees. If so, it must be determined whether this burden is justified by a significant governmental interest substantially advanced by the statute." We think § 1725 satisfies even the test articulated by JUSTICE MARSHALL.

STYLISTIC CHANGES THROUGHOUT  
pp. 15-16

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: \_\_\_\_\_

Recirculated: JUN 11 1981

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-608

United States Postal Service, )  
Appellant, ) On Appeal from the United  
v. ) States District Court for the  
Council of Greenburgh Civic ) Southern District of New  
Associations et al. ) York.

[June — , 1981]

JUSTICE REHNQUIST delivered the opinion of the Court.

We noted probable jurisdiction to decide whether the United States District Court for the Southern District of New York correctly determined that 18 U. S. C. § 1725, which prohibits the deposit of unstamped "mailable matter" in a letter box approved by the United States Postal Service (Postal Service), unconstitutionally abridges the First Amendment rights of certain civic associations in Westchester County, N. Y. — U. S. — (1980). Jurisdiction of this Court rests on 28 U. S. C. § 1252.

I

Appellee Council of Greenburgh Civic Associations (Council) is an umbrella organization for a number of civic groups in Westchester County, N. Y. Appellee Saw Mill Valley Civic Association is one of the Council's member groups. In June 1976, the Postmaster in White Plains, N. Y., notified the Chairman of the Saw Mill Valley Civic Association that the association's practice of delivering messages to local residents by placing unstamped notices and pamphlets in the letter boxes of private homes was in violation of 18 U. S. C. § 1725, which provides:

"Whoever knowingly and willfully deposits any mail-

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 15, 1981

Re: No. 80-608 United States Postal Service v.  
Council of Greenburgh Civic  
Associations, et al.

Dear Bill,

Attached are copies of two footnotes which I intend to insert in my recirculated draft court opinion of June 11th responding to your concurring opinion.

Sincerely,



Justice Brennan

cc: The Conference

Proposed footnote 5 -- to be inserted at the end of first paragraph, p. 13.

Justice BRENNAN, concurring in the result, quotes the oft repeated aphorism of Justice Holmes, dissenting, in Milwaukee Publishing Co. v. Burleson, 255 U.S. 407, 437 (1921), that "The United States may give up the Post Office when it sees fit, but while it carries it on the use of the mails is almost as much a part of free speech as the right to use our tongues, and it would take very strong language to convince me that Congress ever intended to give such a practically despotic power to any one man." 255 U.S. 407, 437. Justice BRENNAN also quoted this aphorism in his opinion for the Court in Blount v. Rizzi, 400 U.S. 410, 416 (1971), a case dealing with the Postmaster General's authority to prevent distributions of obscene matter, which has little if any relation to the present case because no one contends that appellees' circulars are obscene. Justice BRENNAN, however, does not refer to the dissenting opinion of Justice Brandeis in Burleson (with respect to which Justice Holmes says "I agree in substance with his view", Id., at 436).

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There, Justice Brandeis goes into a more detailed analysis of the relationship of the mails to the prohibitions of the First Amendment, and states:

"The Government might, of course, decline altogether to distribute newspapers; or it might decline to carry any at less than the cost of service; and it would not thereby abridge the freedom of the press, since to all papers other means of transportation would be left open." Id., at 430.

It seems to us that that is just what the Postal Service here has done: it has by no means declined to distribute the leaflets which appellees seek to have deposited in mailboxes, but has simply insisted that the appellees pay the same postage rate that any other circular in its class would have to pay. Thus, neither the dissents of Justice Brandeis nor of Justice Holmes in Milwaukee Publishing Co. v. Burleson, supra, support JUSTICE BRENNAN's position.

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Proposed footnote 6 -- to be inserted at the end of the first paragraph, p. 15.

JUSTICE BRENNAN argues that a letterbox is a public forum

because:

"...the mere deposit of mailable matter without postage is not 'basically incompatible' with the 'normal activity' for which a letterbox is used, i.e., deposit of mailable matter with proper postage or mail delivery by the postal service. On the contrary, the mails and the letterboxes are specifically used for the communication of information and ideas and thus surely constitute a public forum appropriate for the exercise of First Amendment rights subject to reasonable time, place, and manner restrictions such as those embodied in § 1725...." Post, at 5-6.

JUSTICE BRENNAN's analysis assumes that simply because an instrumentality "is used for the communication of ideas or information," it thereby becomes a public forum. Our cases provide no support for such a sweeping proposition. Certainly, a bulletin board in a cafeteria at Fort Dix is "specifically used for the communication of information and ideas," but such a bulletin board is no more a "public forum" than are the street corners and parking lots found not to be so at the same military base. Greer v. Spock, 424 U.S. 828 (1976). Likewise, the advertising space made available in public transportation in the

City of Shaker Heights is "specifically used for the communication of information and ideas," but that fact alone was not sufficient to transform that space into a "public forum" for First Amendment purposes. Lehman v. City of Shaker Heights, 418 U.S. 298 (1974). In fact, Justice Blackmun recognized in Lehman that:

"Were we to hold to the contrary, display cases in public hospitals, libraries, office buildings, military compounds, and other public facilities immediately would become Hyde Parks open to every would-be pamphleteer and politician. This the Constitution does not require." Id., at 304.

For the reasons we have stated at length in our opinion, we think the appellees' First Amendment activities are wholly incompatible with the maintenance of a nationwide system for the safe and efficient delivery of mail. The history of the postal system and the role the letter box serves within that system supports this conclusion, and even JUSTICE BRENNAN acknowledges that a "significant governmental interest" is advanced by the restriction imposed by § 1725. Post, at 2.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 17, 1981

Re: No. 80-608 U.S. Postal Service v. Greenburgh

Dear Harry:

This will confirm our telephone conversation to the effect that I will delete the paragraph beginning on the bottom of page 17 of the second printed draft and carrying over to Roman Numeral Five on page 18. It is my understanding that this will obviate your objections to the draft opinion as it had previously existed, and you will now join; the changes are at the printer.

Sincerely,



Justice Blackmun

Pp 6, 13-16 + 19

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: \_\_\_\_\_  
Recirculated: JUN 18 1981

3d DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-608

United States Postal Service, }  
Appellant, } On Appeal from the United  
v. } States District Court for the  
Council of Greenburgh Civic } Southern District of New  
Associations et al. } York.

[June — , 1981]

JUSTICE REHNQUIST delivered the opinion of the Court.

We noted probable jurisdiction to decide whether the United States District Court for the Southern District of New York correctly determined that 18 U. S. C. § 1725, which prohibits the deposit of unstamped "mailable matter" in a letter box approved by the United States Postal Service (Postal Service), unconstitutionally abridges the First Amendment rights of certain civic associations in Westchester County, N. Y. — U. S. — (1980). Jurisdiction of this Court rests on 28 U. S. C. § 1252.

I

Appellee Council of Greenburgh Civic Associations (Council) is an umbrella organization for a number of civic groups in Westchester County, N. Y. Appellee Saw Mill Valley Civic Association is one of the Council's member groups. In June 1976, the Postmaster in White Plains, N. Y., notified the Chairman of the Saw Mill Valley Civic Association that the association's practice of delivering messages to local residents by placing unstamped notices and pamphlets in the letter boxes of private homes was in violation of 18 U. S. C. § 1725, which provides:

"Whoever knowingly and willfully deposits any mail-

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HAA

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 30, 1981

MEMORANDUM TO THE CONFERENCE

Cases held for No. 80-608, United States Postal  
Service v. Council of Greenburg

The only case held is No. 80-815, Council of Greenburgh, et al. v. United States Postal Service. This action is a cross appeal filed by the appellees in United States Postal Service v. Council of Greenburgh. Appellees argue that the District Court's injunction was limited to the 56 civic associations specified therein and by cross-appelling they asked this Court to modify the judgment below so that the District Court's injunction benefits all persons or entities similarly situated throughout the United States. I do not believe this is a proper appeal, but in any event the merits of it are directly controlled by the Court's opinion in Postal Service. I will vote to DISMISS and DENY.

Sincerely,

*whr/cms*

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 27, 1981

Re: 80-608 - U.S. Postal Svs. v. Council of  
Greenburgh

Dear Thurgood:

At Conference, I thought I could support a dissenting opinion but I am now inclined to think I will go along with the majority. However, if you intend to write in dissent, I will wait to see what you have to say.

Respectfully,



Justice Marshall

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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

80-608 - United States Postal Service v. Council of Greenburgh

From: Mr. Justice Stevens

Circulated: JUN 16 '81

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

JUSTICE STEVENS, dissenting.

JUSTICE MARSHALL has persuaded me that this statute is unconstitutional, but I do not subscribe to all of his reasoning. He is surely correct in concluding that content neutral restrictions on the use of private letter boxes do not automatically comply with the First Amendment simply because such boxes are a part of the Postal Service. Like libraries and schools, once these facilities have come into existence, the Government's regulation of them must comply with the Constitution. See ante, at 10 n. 10. I cannot, however, accept the proposition that these private receptacles are the functional equivalent of public fora.

My disagreement with the Court and with JUSTICE MARSHALL can best be illustrated by looking at this case from the point of view of the owner of the mailbox. The mailbox is private property; it is not a public forum to which the owner must grant access. If the owner does not want to receive any written communications other than stamped mail, he should be permitted to post the equivalent of a "no trespassing" sign on his mailbox. A

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: JUN 18 '81

1st PRINTED DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-608

United States Postal Service, Appellant, v. Council of Greenburgh Civic Associations et al.	}	On Appeal from the United States District Court for the Southern District of New York.
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[June —, 1981]

JUSTICE STEVENS, dissenting.

JUSTICE MARSHALL has persuaded me that this statute is unconstitutional, but I do not subscribe to all of his reasoning. He is surely correct in concluding that content neutral restrictions on the use of private letter boxes do not automatically comply with the First Amendment simply because such boxes are a part of the Postal Service. Like libraries and schools, once these facilities have come into existence, the Government's regulation of them must comply with the Constitution. See *ante*, at 10, n. 10. I cannot, however, accept the proposition that these private receptacles are the functional equivalent of public fora.

My disagreement with the Court and with JUSTICE MARSHALL can best be illustrated by looking at this case from the point of view of the owner of the mailbox. The mailbox is private property; it is not a public forum to which the owner must grant access. If the owner does not want to receive any written communications other than stamped mail, he should be permitted to post the equivalent of a "no trespassing" sign on his mailbox. A statute that protects his privacy by prohibiting unsolicited and unwanted deposits on his property would surely be valid. The Court, however, upholds a statute that interferes with the owner's receipt of information that he may want to receive. If the owner