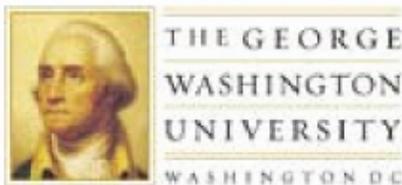


The Burger Court Opinion Writing Database

City of Mesquite v. Aladdin's Castle, Inc.
455 U.S. 283 (1982)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



*Chief
Justice
1970*

SUPREME COURT OF THE UNITED STATES

CITY OF MESQUITE
v. ALADDIN'S CASTLE, INC.

ON APPEAL FROM THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT

No. 80-1577. Decided

PER CURIAM.

The judgment is vacated and the case is remanded to the United States Court of Appeals for the Fifth Circuit to consider whether its judgment is based upon federal constitutional or Texas state constitutional grounds, or both.
cf.
See California v. Krivda, 409 U.S. 33 (1972).

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

CHAMBERS OF
THE CHIEF JUSTICE

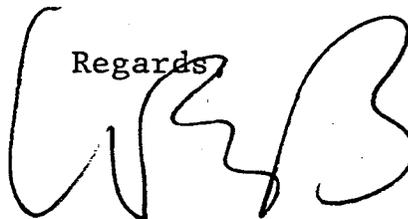
November 27, 1981

Re: No. 80-1577 - City of Mesquite v. Aladdin's Castle, Inc.

Dear John:

I suggest you undertake a draft of a dispositive
Per Curiam in this case.

Regards,

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

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

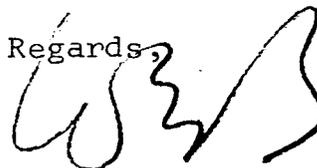
January 28, 1982

Re: No. 80-1577 - City of Mesquite v. Aladdin's Castle, Inc.

Dear John:

I join.

Regards,

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

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 18, 1982.

No. 80-1577 -- City of Mesquite v. Aladdin's Castle, Inc.

Dear John,

I like very much your latest draft opinion in this case, and am inclined to join it. May I make several suggestions, though? First, I think that the supporting facts currently included in footnote 13 are extremely effective in establishing that the "connections with criminal elements" language invalidated by the Court of Appeals is not the standard for approval or disapproval of a license application. It seems to me that those supporting facts would make your presentation on this point even more persuasive if they were in the text rather than in a footnote. Second, some readers might construe the last sentence of the current footnote 18 as holding that in the future every Court of Appeals must always "explain the basis for its conclusion, if there be one, that the state ground is adequate and independent of the federal ground." I suggest the insertion of the word, "here," after the word, "Appeals," which would defeat that construction.

Third, I would like to offer the following as a replacement for the crossover paragraph on pages 10-11:

"Second, it is important to take note of the Court of Appeals' interpretation of the Texas 'requirement of legislative rationality.' That interpretation seems to adopt a standard requiring that a legislative classification rest 'upon some ground of difference having a fair and substantial relationship to the object of the legislation....'"
630 F. 2d, at 1039.[footnote 17] This for-

mulation is derived from this Court's opinion in Royster Guano Co v. Virginia, 253 U.S. 412, 415. But it is unclear whether this Court would apply the Royster Guano standard to the present case. See United States Railroad Retirement Bd. v. Fritz, -- U.S. --, and Craig v. Boren, 429 U.S. 190. Therefore, it is surely not evident that the Texas standard and the federal standard are congruent."

I hope that you will find it possible to accommodate these suggestions.

Sincerely,

WJB
W.J.B., Jr.

Justice Stevens.

Copies to the Conference.

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 22, 1982

RE: No. 80-1577 City of Mesquite v. Aladdin's Castle

Dear John:

I agree.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 24, 1981

80-1577 - CITY OF MESQUITE v. ALADDIN'S
CASTLE, INC.

Dear Chief,

I would prefer the following disposition: to vacate the judgment as moot insofar as it rests on vagueness; to reverse the judgment with respect to the age issue.

In any event, the Krivda disposition would not reach the vagueness issue and it should inquire whether there is an independent and adequate state law ground for the age decision.

Sincerely yours,



The Chief Justice

cc: To Conference

dag

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 14, 1981

RE: 80-1577 - City of Mesquite
v. Aladdin's Castle

Dear Lewis:

Please join me.

Sincerely yours,



Justice Powell

Copies to the Conference

bkh

To: The Chief Justice
 Justice Brennan
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice White

Circulated: 2/10/82

Recirculated: _____

No. 80-1577 - City of Mesquite v. Aladdin's Castle, Inc.

Justice WHITE, concurring in part and dissenting in part.

I concur in the Court's holding that Mesquite's ordinance directing the Chief of Police to consider whether a license applicant has any "connection with criminal elements" is not void for vagueness.¹

¹I agree that this issue has not been mooted by the City's revision of the ordinance. This conclusion is not inconsistent with our recent disposition of Princeton University v. Schmid, U.S. _____ (1982) (per curiam). In that case, Princeton University's regulations governing solicitation and similar activity on University property were held invalid by the New Jersey Supreme Court. While the case was pending before the New Jersey court, Princeton substantially amended the contested regulations. On appeal to this Court, we held that the validity of the old regulations had become a moot issue. Unlike the City of Mesquite, Princeton gave no indication that it desired to return to the original regulatory scheme and would do so absent a judicial barrier. In this case, as noted in the Court's opinion, Footnote continued on next page.

To: The Chief Justice
Justice Brennan
~~Justice Marshall~~
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice White

Circulated: _____

Recirculated: 2/11/82

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1577

CITY OF MESQUITE, APPELLANT v.
ALADDIN'S CASTLE, INC.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[February —, 1982]

JUSTICE WHITE, concurring in part and dissenting in part.

I concur in the Court's holding that Mesquite's ordinance directing the Chief of Police to consider whether a license applicant has any "connection with criminal elements" is not void for vagueness.¹

Like JUSTICE POWELL, however, I dissent from the Court's remand of the challenge to the age requirements in §5 of the Mesquite ordinance. The sentiment to avoid unnecessary constitutional decisions is wise, but there is no rea-

¹ I agree that this issue has not been mooted by the City's revision of the ordinance. This conclusion is not inconsistent with our recent disposition of *Princeton University v. Schmid*, — U. S. — (1982) (per curiam). In that case, Princeton University's regulations governing solicitation and similar activity on University property were held invalid by the New Jersey Supreme Court. While the case was pending before the New Jersey court, Princeton substantially amended the contested regulations. On appeal to this Court, we held that the validity of the old regulations had become a moot issue. Unlike the City of Mesquite, Princeton gave no indication that it desired to return to the original regulatory scheme and would do so absent a judicial barrier. In this case, as noted in the Court's opinion, Mesquite "has announced just such an intention." *Ante* at 6, n. 11. Because the test of whether the cessation of allegedly illegal action moots a case requires that we evaluate the likelihood that the challenged action will recur, *City of Los Angeles v. Davis*, 440 U. S. 625 (1979), it is on this basis that our disposition of the two cases is consistent.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 23, 1981

Re: No. 80-1577 - City of Mesquite v. Aladdin's
Castle, Inc.

Dear Chief:

I agree with your Per Curiam.

Sincerely,

JM.
T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 29, 1982

Re: No. 80-1577 - City of Mesquite v. Aladdin's
Castle, Inc.

Dear John:

Please join me.

Sincerely,

T.M.
T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 25, 1982

Re: No. 80-1577 - City of Mesquite v. Aladdin's Castle, Inc.

Dear John:

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 23, 1981

80-1577 City of Mesquite v. Alladin Castle

Dear Chief:

As I stated at Conference, I cannot join a DIG in this case and will dissent if there is a Court to dispose of it that way.

In my view, CA5 simply "threw in" citations to Texas cases. There is not even a hint that they differed from federal law as evidenced by the numerous decisions of this Court and other federal courts that are cited and relied upon in the opinion. At most, CA5 apparently thinks that Texas law is congruent with our decisions.

I also think it would be unfortunate to set a precedent that would enable both state and federal courts to limit or delay our review by simply citing a few state court cases.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall ✓
 Justice Blackmun
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice Powell

Circulated: DEC 8 1981

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 80-1577

CITY OF MESQUITE, APPELLANT *v.*
 ALADDIN'S CASTLE, INC.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
 FOR THE FIFTH CIRCUIT

[December —, 1981]

JUSTICE POWELL, dissenting.

The jurisdictional basis for the Court's review of this case is 28 U. S. C. § 1254(2), which provides for mandatory Supreme Court review of federal appellate decisions overturning state statutes on federal constitutional grounds. Rather than exercising this jurisdiction, the Court remands the case to the Court of Appeals to clarify whether its decision is based on Texas law. In the past, the Court has not automatically required clarification when the record reveals that the lower court's decisional basis is federal law. In this case, the opinion of the Court of Appeals contains no analysis of state law independent of its clear application of federal law. In my view there is no justification for a remand.

But I do not dissent only because the Court, after full briefing and oral argument, remands an appeal unnecessarily. When a federal court has used federal law to overrule a state statute, a remand for clarification of a state-law point is inconsistent with the principle of comity embodied in § 1254(2)'s grant of mandatory jurisdiction.

The city of Mesquite, Texas, adopted an ordinance stating that owners of coin-operated pin ball machines should not allow their operation by youths of 17 years or less. In the decision below, the Court of Appeals held that this ordinance violated Equal Protection and Due Process as well as First

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: _____

Recirculated: DEC 15 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1577

CITY OF MESQUITE, APPELLANT *v.*
ALADDIN'S CASTLE, INC.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[December —, 1981]

JUSTICE POWELL, with whom JUSTICE WHITE joins,
dissenting.

The jurisdictional basis for the Court's review of this case is 28 U. S. C. § 1254(2), which provides for mandatory Supreme Court review of federal appellate decisions overturning state statutes on federal constitutional grounds. Rather than exercising this jurisdiction, the Court remands the case to the Court of Appeals to clarify whether its decision is based on Texas law. In the past, the Court has not automatically required clarification when the record reveals that the lower court's decisional basis is federal law. In this case, the opinion of the Court of Appeals contains no analysis of state law independent of its clear application of federal law. In my view there is no justification for a remand.

The city of Mesquite, Texas, adopted an ordinance stating that owners of coin-operated pin ball machines should not allow their operation by youths of 17 years or less. In the decision below, the Court of Appeals held that this ordinance violated Equal Protection and Due Process as well as First Amendment Rights of Free Speech and Association. The court's opinion referred to the Texas Constitution's Due Process and Equal Protection Clauses,¹ and quoted the rele-

¹ 630 F. 2d 1029, 1038-1039 (CA5 1980):

4

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: _____

Recirculated: DEC 28 1981

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1577

CITY OF MESQUITE, APPELLANT *v.*
ALADDIN'S CASTLE, INC.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[December —, 1981]

JUSTICE POWELL, with whom JUSTICE WHITE joins,
dissenting.

The jurisdictional basis for the Court's review of this case is 28 U. S. C. § 1254(2), which provides for mandatory Supreme Court review of federal appellate decisions overturning state statutes on federal constitutional grounds. Rather than exercising this jurisdiction, the Court remands the case to the Court of Appeals to clarify whether its decision is based on Texas law. In the past, the Court has not automatically required clarification when the record reveals that the lower court's decisional basis is federal law. In this case, the opinion of the Court of Appeals contains no analysis of state law independent of its clear application of federal law. In my view there is no justification for a remand.

The city of Mesquite, Texas, adopted an ordinance stating that owners of coin-operated pin ball machines should not allow their operation by youths of 17 years or less. In the decision below, the Court of Appeals held that this ordinance violated Equal Protection and Due Process as well as First Amendment Rights of Free Speech and Association. The court's opinion referred to the Texas Constitution's Due Process and Equal Protection Clauses,¹ and quoted the rele-

¹ 630 F. 2d 1029, 1038-1039 (CA5 1980):

January 26, 1982

80-1577 City of Mesquite

Dear Byron:

I am recirculating today for the purpose of responding to the substantial changes made by John.

I omitted your name because our views differ on the vagueness issue.

I would be most happy if you feel free to renew your join of the portion of my opinion dissenting from the Court's remand on the challenge to §5 of the ordinance.

Sincerely,

Justice White

lfp/ss

Changes 1, 3, 4, 5, 6

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall ✓
 Justice Blackmun
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice Powell

Circulated: _____

Recirculated: JAN 26 1982

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1577

CITY OF MESQUITE, APPELLANT *v.*
 ALADDIN'S CASTLE, INC.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
 FOR THE FIFTH CIRCUIT

[January —, 1982]

JUSTICE POWELL, concurring in part and dissenting in part.

I concur in the Court's holding that Mesquite Ordinance 1353 §6 is not void for vagueness. I dissent, however, from the Court's remand of the challenge to §5.

I

The jurisdictional basis for the Court's review of this case is 28 U. S. C. § 1254(2), which provides for mandatory Supreme Court review of federal appellate decisions overturning state statutes on federal constitutional grounds. Rather than exercising this jurisdiction, the Court remands the case to the Court of Appeals to clarify whether its decision is based on Texas law. In the past, the Court has not automatically required clarification when the record reveals that the lower court's decisional basis is federal law. In this case, the opinion of the Court of Appeals contains no analysis of state law independent of its clear application of federal law. In my view there is no justification for a remand.

The city of Mesquite, Texas, adopted an ordinance stating that owners of coin-operated pin ball machines should not allow their operation by youths of 17 years or less. In the decision below, the Court of Appeals held that this ordinance violated Equal Protection and Due Process as well as First

Change: 1,4-8

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: _____

Recirculated: FEB 1 1982

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1577

**CITY OF MESQUITE, APPELLANT v.
ALADDIN'S CASTLE, INC.**

**ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

[January —, 1982]

JUSTICE POWELL, concurring in part and dissenting in part.

I concur in the Court's holding that Mesquite Ordinance 1353 § 6 is not void for vagueness. I dissent, however, from the Court's remand of the challenge to § 5.

I

The jurisdictional basis for the Court's review of this case is 28 U. S. C. § 1254(2), which provides for mandatory Supreme Court review of federal appellate decisions overturning state statutes on federal constitutional grounds. Rather than exercising this jurisdiction, the Court remands the case to the Court of Appeals to clarify whether its decision is based on Texas law. In the past, the Court has not automatically required clarification when the record reveals that the lower court's decisional basis is federal law. In this case, the opinion of the Court of Appeals contains no analysis of state law independent of its clear application of federal law. In my view there is no justification for a remand.

The city of Mesquite, Texas, adopted an ordinance stating that owners of coin-operated pin ball machines should not allow their operation by youths of 17 years or less. In the decision below, the Court of Appeals held that this ordinance violated Equal Protection and Due Process as well as First

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 24, 1981

Re: No. 80-1577 City of Mesquite v. Aladdin's Castle, Inc.

Dear Chief:

While I perhaps do not feel as strongly as Lewis does that your proposed Per Curiam is a wholly inappropriate disposition in this case, I would prefer to see a couple of paragraphs elaborating on the reasons suggested by Lewis as a basis for the proposed Per Curiam.

Sincerely,

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 24, 1981

Re: No. 80-1577 City of Mesquite v. Aladdin's Castle, Inc.

Dear Chief:

I could join an expansion of your Per Curiam suggested by John in his circulation of today.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 20, 1982

Re: No. 80-1577 City of Mesquite v. Aladdin's Castle

Dear John:

Please join me.

Sincerely,
WHR

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 24, 1981

Re: 80-1577 City of Mesquite v. Aladdin's
Castle, Inc.

Dear Chief:

May I suggest that our disposition be expanded somewhat along the following lines:

PER CURIAM.

One of the holdings sought to be reviewed was stated by the Court of Appeals as follows:

"We hold that the seventeen year old age requirement violates both the United States and Texas constitutional guarantees of due process of law, and that the application of this age requirement to coin-operated amusement centers violates the federal and Texas constitutional guarantees of equal protection of the law." 630 F.2d 1029, 1038-1039 (1980) (footnotes omitted).

In the omitted footnotes, the court quoted the Due Process and Equal Protection Clauses of the Federal Constitution and the corresponding provisions of the Texas Constitution. Id., at 1039, nn.14, 15. The court also cited three decisions of the Texas appellate courts in the course of articulating the rational basis test. Id., at 1039. Apart from these references to Texas law, the court's constitutional analysis is supported by citation to only federal cases.

In the exercise of our appellate jurisdiction, we must know whether the Court of Appeals' decision rests on an independent state law ground. The judgment therefore is vacated and

-2-

the case is remanded to the Court of Appeals with instructions to state whether it considers the relevant Texas law to be congruent with federal law, and if not, to articulate its interpretation of the independent state law.

Respectfully,

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

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

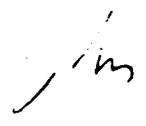
November 30, 1981

Re: 80-1577 - City of Mesquite v. Aladdin's
Castle, Inc.

Dear Chief:

I will be happy to prepare a draft.

Respectfully,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 8, 1981

Re: 80-1577 - City of Mesquite v. Aladdin's
Castle, Inc.

Dear Lewis:

In due course I shall circulate an opinion explaining
the position from which you are dissenting.

Respectfully,



Justice Powell

Copies to the Conference

To: The Chief Justice
 Justice Brennan
 Justice White
 ✓ Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice O'Connor

Justice Stevens

Circulated JAN 15 1982

Recirculated

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1577

CITY OF MESQUITE, APPELLANT *v.*
 ALADDIN'S CASTLE, INC.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
 FOR THE FIFTH CIRCUIT

[January —, 1982]

JUSTICE STEVENS delivered the opinion of the Court.

The United States Court of Appeals for the Fifth Circuit declared unconstitutional two sections of a licensing ordinance governing coin-operated amusement establishments in the City of Mesquite, Texas.¹ Section 6 of Ordinance 1353, which directs the Chief of Police to consider whether a license applicant has any "connection with criminal elements,"² was

¹630 F. 2d 1029 (CA5 1980), probable jurisdiction noted, — U. S.

²Section 6 of Ordinance 1353 of the Code of the City of Mesquite provided in pertinent part:

"Any person desiring to obtain a license for a coin-operated amusement establishment shall apply to the City Secretary by original and five (5) copies, one of which shall be routed to the City Manager, Chief of Police, Chief Building Inspector and City Planner, for review.

"Upon approval by each of the parties and payment of the license fee, the City Secretary shall issue a license for such establishment, which shall be valid for one (1) year and shall be non-transferable.

"The Chief of Police shall make his recommendation based upon his investigation of the applicant's character and conduct as a law abiding person and shall consider past operations, if any, convictions of felonies and crimes involving moral turpitude and connections with criminal elements, taking into consideration the attraction by such establishments of those of tender years.

"The Chief Building Inspector and City Planner shall determine compliance

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Stevens
Justice O'Connor

7p. 7, 8, 10, 11

[Handwritten notes and scribbles]

Revised: _____

Recirculated: Jan 1 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1577

CITY OF MESQUITE, APPELLANT v.
ALADDIN'S CASTLE, INC.

Join

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[January —, 1982]

JUSTICE STEVENS delivered the opinion of the Court.

The United States Court of Appeals for the Fifth Circuit declared unconstitutional two sections of a licensing ordinance governing coin-operated amusement establishments in the City of Mesquite, Texas.¹ Section 6 of Ordinance 1353, which directs the Chief of Police to consider whether a license applicant has any "connection with criminal elements,"² was

¹630 F. 2d 1029 (CA5 1980), probable jurisdiction noted, — U. S.

²Section 6 of Ordinance 1353 of the Code of the City of Mesquite provided in pertinent part:

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"The Chief Building Inspector and City Planner shall determine compliance

2.11

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

Circulated: _____

Recirculated: _____ JAN 29 '82

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1577

CITY OF MESQUITE, APPELLANT *v.*
ALADDIN'S CASTLE, INC.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[January —, 1982]

JUSTICE STEVENS delivered the opinion of the Court.

The United States Court of Appeals for the Fifth Circuit declared unconstitutional two sections of a licensing ordinance governing coin-operated amusement establishments in the City of Mesquite, Texas.¹ Section 6 of Ordinance 1353, which directs the Chief of Police to consider whether a license applicant has any "connection with criminal elements,"² was

¹ 630 F. 2d 1029 (CA5 1980), probable jurisdiction noted, — U. S.

² Section 6 of Ordinance 1353 of the Code of the City of Mesquite provided in pertinent part:

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"Upon approval by each of the parties and payment of the license fee, the City Secretary shall issue a license for such establishment, which shall be valid for one (1) year and shall be non-transferable.

"The Chief of Police shall make his recommendation based upon his investigation of the applicant's character and conduct as a law abiding person and shall consider past operations, if any, convictions of felonies and crimes involving moral turpitude and connections with criminal elements, taking into consideration the attraction by such establishments of those of tender years.

"The Chief Building Inspector and City Planner shall determine compliance



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*Recirculation of Draft 3
(Page 6 omitted from last Draft)*

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Stevens

Circulated: _____

Recirculated: 5/19/82

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1577

**CITY OF MESQUITE, APPELLANT v.
ALADDIN'S CASTLE, INC.**

**ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

[January —, 1982]

JUSTICE STEVENS delivered the opinion of the Court.

The United States Court of Appeals for the Fifth Circuit declared unconstitutional two sections of a licensing ordinance governing coin-operated amusement establishments in the City of Mesquite, Texas.¹ Section 6 of Ordinance 1353, which directs the Chief of Police to consider whether a license applicant has any "connection with criminal elements,"² was

¹630 F. 2d 1029 (CA5 1980), probable jurisdiction noted, — U. S.

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"Upon approval by each of the parties and payment of the license fee, the City Secretary shall issue a license for such establishment, which shall be valid for one (1) year and shall be non-transferable.

"The Chief of Police shall make his recommendation based upon his investigation of the applicant's character and conduct as a law abiding person and shall consider past operations, if any, convictions of felonies and crimes involving moral turpitude and connections with criminal elements, taking into consideration the attraction by such establishments of those of tender years.

"The Chief Building Inspector and City Planner shall determine compliance

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

November 24, 1981

No. 80-1577 City of Mesquite v. Aladdin's
Castle, Inc.

Dear Chief,

I can agree with John's proposed Per Curiam
if you decide to do so.

I would also agree to vacate the judgment
as moot insofar as it rests on vagueness, as suggested
by Byron.

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 19, 1982

No. 80-1577 City of Mesquite v. Aladdin's
Castle, Inc.

Dear John,

Please join me in your opinion in the
referenced case.

Sincerely,

Sandra

Justice Stevens

Copies to the Conference