The Burger Court Opinion Writing Database

Havens Realty Corp. v. Coleman

455 U.S. 363 (1982)

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

December 15, 1981

Re: No. 80-988 - Havens Realty Corp. v. Coleman

Dear Bill:

Will you take on this case?

I hope you can figure out the "consensus" -- if any. I count six to affirm with some of those for an alternative "DIG."

Regards,

WEB

Justice Brennan

Copies to the Conference

P.S. I can affirm, but I am still a "candidate" to DIG.

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

CHAMBERS OF
THE CHIEF JUSTICE

February 14, 1982

Re: 80-988 - Havens Realty Corp. v. Coleman

Dear Bill:

I join.

Regards,

WEB

Justice Brennan

Copies to the Conference

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

From: Justice Brennan

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-988

HAVENS REALTY CORPORATION, ET AL., PETITIONERS, *v.* SYLVIA COLEMAN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[January ——, 1982]

JUSTICE BRENNAN delivered the opinion of the Court.

This case presents questions concerning the scope of standing to sue under the Fair Housing Act of 1968 and the proper construction of § 812(a) of the Act, which requires that a civil suit be brought within 180 days after the alleged occurrence of a discriminatory practice.

I

The case began as a class action against Havens Realty Corp. (Havens) and one of its employees, Rose Jones. Defendants were alleged to have engaged in "racial steering"[1] violative of § 804 of the Fair Housing Act of 1968, 42 U. S. C. § 3604 (Act or Fair Housing Act).[2] The complaint, seeking

[1] As defined in the complaint, "racial steering" is a "practice by which real estate brokers and agents preserve and encourage patterns of racial segregation in available housing by steering members of racial and ethnic groups to buildings occupied primarily by members of such racial and ethnic groups and away from buildings and neighborhoods inhabited primarily by members of other races or groups." App. 11-12, ¶1.

[2] Section 804 provides:

"As made applicable by section 803 and except as exempted by sections 803(b) and 807, it shall be unlawful—

"(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 25, 1982

Re: Havens Realty Corp. v. Coleman (No. 80-988)

Dear Lewis:

Thank you for your note of January 23 concerning this case. I do appreciate your concern that the Court's opinion may be read as suggesting that the entire Richmond metropolitan area may constitute one "neighborhood" for purposes of standing to sue under the Fair Housing Act. I believe we share the view that the real issue presented under the rubric of neighborhood standing is whether the particular plaintiff has actually been affected in some palpable way by the defendants' steering practices. I tried--apparently unsuccessfully--to make clear at pages 12-13 of the draft opinion, that the complaint may be read as alleging that the respondents reside in neighborhoods within the Richmond metropolitan area that are close enough to the area where steering was practiced, to be affected.

As you undoubtedly remember, a similar situation was presented in Village of Bellwood. The complaint merely alleged that the plaintiffs were residents of the Chicago metropolitan area. Only upon discovery was it revealed that the four individual plaintiffs lived within the affected area. Yet the Court opinion in no way suggested that the District Court had erred in giving the plaintiffs the opportunity to make that showing.

In sum, I do not think that our views are much apart. Indeed, I share your lack of enthusiasm for such "scattershot" pleadings. Perhaps you might have some wording changes that might satisfy both of us.

Sandra wrote me that she was interested in your view and I'm therefore sending her a copy of this note.

Sincerely,

Bill

Copy to Justice O'Connor

Brennan

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 27, 1982

Re: Havens Realty Corp. v. Coleman (No. 80-988)

Dear Lewis:

I greatly appreciate your proposed changes. I would suggest a few revisions to the paragraphs you submitted that will not change the thrust of those paragraphs. The revised paragraphs are attached. And if the revised paragraphs are incorporated, I would delete the first sentence of the full paragraph on page 11 and the last sentence of the first full paragraph on page 12.

If you find the revised changes acceptable, I will incorporate them in the draft.

Sincerely,

Bill

Copy to Justice O'Connor

Brennan FL

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REVISED PARAGRAPHS

"It is indeed implausible to argue that petitioners' alleged acts of discrimination could have palpable effects throughout the entire Richmond metropolitan area. At the time relevant to this action the City of Richmond contained a population of nearly 220,000 persons, dispersed over 37 square miles. Henrico County occupies more than 232 square miles, in which roughly 170,000 people make their homes.[1] Our cases have upheld standing based on the effects of discrimination only within a "relatively compact neighborhood," Bellwood, 441 U.S., at 114. We have not suggested that discrimination within a single housing complex might give rise to "distinct and palpable injury," Warth v. Seldin, supra, at 501, throughout a metropolitan area.

Nonetheless, in the absence of further factual development, we cannot say as a matter of law that no injury could be proved. Respondents have not identified the particular neighborhoods in which they live, nor established the proximity of their homes to the site of petitioners' alleged steering practices. Further pleading and proof might establish that they lived in areas where petitioners' practices had an appreciable effect. Under the liberal federal pleading standards, we therefore agree with the Court of Appeals that dismissal on the pleadings is inappropriate at this stage of the litigation. At the same time, we note that the extreme generality of the complaint makes it impossible to say that respondents have made factual averments sufficient if

Burnett attach to WB 1/27/82

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 3, 1982

Re: Havens Realty Corp. v. Coleman (No. 80-988)

Dear Lewis,

I am pleased that we were able to resolve your concerns about Part III of the opinion, a revised copy of which is appended. With respect to Part IV of the opinion, involving the statute of limitations, I would not want to revise the draft if Thurgood, Harry, or John (who joined the opinion) objected. If they do not, I would propose to Sandra and you that I substitute the language on the attached rider for the full paragraph beginning on page 15 and ending on page 16 of the enclosed draft. And if I were to incorporate it, I would think that you and Sandra would also want footnote 25 to be omitted. Am I right?

Sincerely,

Copies to:
Justice Marshall
Justice Blackmun
Justice Stevens
Justice O'Connor

PARAGRAPH TO SUBSTITUTE FOR FULL PARAGRAPH BEGINNING ON PAGE 15 AND ENDING ON PAGE 16 OF REVISED DRAFT:

We agree with the Court of Appeals that for purposes of §812(a), a "continuing violation" of the Fair Housing Act should be treated differently from one discrete act of discrimination. Statutes of limitations such as that contained in §812(a) are intended to keep stale claims out of the courts. See Chase Securities Corp. v. Donaldson, 325 U.S. 304, 314 (1945). Where the challenged violation is a continuing one, the staleness concern disappears. Petitioners' wooden application of §812(a), which ignores the continuing nature of the alleged violation, only undermines the broad remedial intent of Congress embodied in the Act, see Jones v. Alfred H. Mayer Co., 392 U.S. 409, 417 (1968). Cf. Zipes v. Trans World Airlines, Inc., ___ U.S. ___, ___ (1981). Like the Court of Appeals, we therefore conclude that where a plaintiff, pursuant to the Fair Housing Act, challenges not just one incident of conduct violative of the Act, but an unlawful practice[1] that continues into the limitations period, the complaint is timely when it is filed within 180 days of the last asserted occurrence of that practice.

Note 1: Petitioners read §813 of the Act, 42 U.S.C. §3613, as permitting only the Attorney General to bring a civil suit under the Act challenging a "pattern or practice" of unlawful conduct. We disagree. That section serves only to describe the suits that

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–988

HAVENS REALTY CORPORATION, ET AL., PETITIONERS, *v.* SYLVIA COLEMAN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[January ——, 1982]

JUSTICE BRENNAN delivered the opinion of the Court.

This case presents questions concerning the scope of standing to sue under the Fair Housing Act of 1968 and the proper construction of § 812(a) of the Act, which requires that a civil suit be brought within 180 days after the alleged occurrence of a discriminatory practice.

I

The case began as a class action against Havens Realty Corp. (Havens) and one of its employees, Rose Jones. Defendants were alleged to have engaged in "racial steering"[1] violative of § 804 of the Fair Housing Act of 1968, 42 U. S. C. § 3604 (Act or Fair Housing Act).[2] The complaint, seeking

[1] As defined in the complaint, "racial steering" is a "practice by which real estate brokers and agents preserve and encourage patterns of racial segregation in available housing by steering members of racial and ethnic groups to buildings occupied primarily by members of such racial and ethnic groups and away from buildings and neighborhoods inhabited primarily by members of other races or groups." App. 11–12, ¶1.

[2] Section 804 provides:

"As made applicable by section 803 and except as exempted by sections 803(b) and 807, it shall be unlawful—

"(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 3, 1982

Re: Havens Realty Corp. v. Coleman (No. 80-988)

Dear Thurgood, Harry, and John:

Lewis and I have resolved his concerns about Part III of the draft opinion, a revised copy of which is appended. The language beginning with the first full paragraph on page 12 and running to the end of Part III on page 13 is new and replaces a paragraph in the original draft. With respect to Part IV of the opinion, relating to the statute of limitations question, Lewis and Sandra make another suggestion: that I omit reliance on the Title VII cases. As indicated in my memo to Lewis, a copy of which is also enclosed, I am willing to substitute the language contained in the rider to the memo for some of the language in Part IV of the opinion, but would not want to do so if any of you objected. What do you think?

Sincerely,

Enclosures

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 5, 1982

Re: Havens Realty v. Coleman (80-988)

Dear Lewis,

Thank you for your note of February 4. As regards the P.S., I think I'd prefer my version.

Sincerely,

Bill

Justice Powell

Brennan 81

Stylistic Changes Throughout

Nonstylistic changes at pp. 12-13, 15

Footnotes renumbered 18 and following

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

From: Justice Brennan

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–988

HAVENS REALTY CORPORATION, ET AL., PETITIONERS, *v.* SYLVIA COLEMAN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[January ——, 1982]

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STYLISTIC CHANGES

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–988

HAVENS REALTY CORPORATION, ET AL., PETITIONERS, *v.* SYLVIA COLEMAN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[February ——, 1982]

JUSTICE BRENNAN delivered the opinion of the Court.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 8, 1982

Re: 80-988 - Havens Realty v. Coleman

Dear Bill,

I shall await Lewis's dissent.

Sincerely yours,

Justice Brennan

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 11, 1982

Re: 80-988 - Havens Realty
Corporation v. Coleman

Dear Bill,

Please join me in your current circulation.

Sincerely yours,

Byron

Justice Brennan

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 29, 1982

Re: No. 80-988 - Havens Realty Corp. v. Coleman

Dear Bill:

Please join me.

Sincerely,

T.M.

T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 25, 198

Re: No. 80-988 - Havens Realty Corp. v. Coleman

Dear Bill:

Please join me.

Sincerely,

Harry

Justice Brennan

cc: The Conference

HAB

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 4, 1982

Re: No. 80-988 - Havens Realty Corp. v. Coleman

Dear Bill:

The changes proposed by your letter of February 3 have my approval.

Sincerely,

Justice Brennan

cc: Justice Marshall
Justice Stevens

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 23, 1982

80-988 Havens Realty v. Coleman

Dear Bill:

You have written a fine opinion, and I expect to join most of it.

My primary - and possibly only - concern is with Part III-B in which you hold the allegations of this complaint sufficient to create "neighborhood" standing. No one would ever confuse the Richmond metropolitan area (more than half a million people with numerous residential areas miles apart) with a "neighborhood". In due time, I will write a dissent on this issue.

Sincerely,

Lewis

Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 26, 1982

80-988 Havens Realty Corp.

Dear Bill:

Thank you for your letter of January 25, addressing the point that concerns Sandra and me.

I am taking advantage of your invitation to submit some language. I attach a draft of a paragraph for your consideration. It would be a substitution beginning at the second full paragraph on page 12 of your draft, and would supersede the remainder of your Part IIIB.

My own view is that the District Court should have dismissed so much of the complaint as depended on the metropolitan averment - certainly if an opportunity to amend was afforded. I might say this in a sentence or two in concurring, and I could join in your opinion if language substantially in accord with the enclosed draft is added.

I am grateful to you for this opportunity.

Sincerely,

Lewis

Justice Brennan

lfp/ss

cc: Justice O'Connor

Brennan 81

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lfp/ss 01/26/82 Rider, 80-988 Havens Realty

The following language is suggested as a substitute for that in the draft opinion beginning at the second full paragraph on page 12. It would supersede the remainder of Part IIIB:

"It is implausible to argue that petitioner's alleged acts of discrimination could have palpable effects of this scope. At the time relevant to this action the City of Richmond contained a population of nearly 220,000 persons, dispersed over 37 square miles. Henrico County occupies more than 232 square miles, in which roughly 170,000 people make their homes.[1] Our cases have upheld standing based on the effects of discrimination only within a "relatively compact neighborhood," Bellwood, supra, 441 U.S., at 114. We have not suggested that discrimination within a single housing complex might given rise to "distinct and palpable injury," Warth v. Seldin, supra, at 501, throughout a metropolitan area.

Nonetheless, in the absence of further factual development, we cannot say as a matter of law that no injury could be proved. Respondents have not identified the particular neighborhoods in which they live, nor established the proximity of their homes to the Havens complex. Further pleading and proof conceivably could establish that they

Brennan 1/26/82

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 2, 1982

80-988 Havens Realty Corp. v. Coleman

Dear Bill:

Your revisions of the paragraphs I suggested are satisfactory, and - subject to the comment below - I will be glad to join your opinion.

In rereading the opinion, I agree with Sandra (her letter of January 25) that reliance on an analogy to Title VII (p.16) is undesirable. Although the cited cases of course are distinguishable, the approving reference to them possibly could give rise to confusion about their relation to our decision last Term in Delaware State College v. Ricks and our more recent per curiam in Chardon v. Rivera (Nov. 2, 1981). Moreover, the analogy may not be apt. Housing discrimination is far more likely to be truly "continuing" than discrimination with respect to a discharge, or a failure to employ or promote. As this reliance is unnecessary to the decision of this case, I hope you will omit it.

I do indeed appreciate the opportunity to harmonize our views.

Sincerely,

Lewis

Justice Brennan

lfp/ss

cc: Justice O'Connor

Brennan 81

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 4, 1982

80-988 Havens Realty v. Coleman

Dear Bill:

The substitute language that you suggest for the full paragraph beginning on page 15 and ending on page 16, substantially meets my concern. It no longer mentions Title VII, and makes clear that there is a distinction between a discrete act of discimination and a continuing violation. With this change, I will be glad to join your opinion.

You are correct, of course, that the reference in footnote 25 to Evans and Title VII also should be omitted.

Thank you also for revising the paragraphs on the "neighborhood".

Sincerely,

Justice Brennan

lfp/ss

cc: Justice Marshall
Justice Blackmun
Justice Stevens
Justice O'Connor

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 11, 1982

80-988 Havens Realty Corp. v. Coleman

Dear Bill:

In view of the changes made in your second draft, I am glad to join your opinion for the Court.

Sincerely,

Lewis

Justice Brennan

Copies to the Conference

LFP/vde

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

From: Justice Powell

Circulated: FEB 15 1982

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-988

HAVENS REALTY CORPORATION, ET AL.,
PETITIONERS *v.* SYLVIA COLEMAN ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[February ——, 1982]

JUSTICE POWELL, concurring.

In claiming standing based on a deprivation of the benefits of an integrated community, the individual respondents alleged generally that they lived in the City of Richmond or in Henrico County. This is an area of roughly 259 square miles, inhabited in 1978 by about 390,000 persons. Accordingly, as the Court holds, it is at best implausible that discrimination within two adjacent apartment complexes could give rise to "distinct and palpable injury," *Warth* v. *Seldin*, 422 U. S. 490, 501 (1975) throughout this vast area. See *ante*, at 12. This, to me, is the constitutional core of the Court's decision. "Distinct and palpable" injury remains the minimal constitutional requirement for standing in a federal court.

Although I join the Opinion of the Court, I write separately to emphasize my concern that the Article III requirement of a genuine case or controversy not be deprived of all substance by meaningless pleading. Our prior cases have upheld standing, in cases of this kind, where the effects of discrimination were alleged to have occurred only within "a relatively compact neighborhood." *Gladstone, Realtors* v. *Village of Bellwood*, 441 U. S., 91, 114 (1979). By implication we today reaffirm that limitation. See *ante*, at 12. I therefore am troubled, not by the Opinion of the Court, but

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 11, 1982

Re: No. 80-988 Havens Realty Corp. v. Coleman

Dear Bill:

Please join me in your opinion for the Court.

Sincerely,

Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 21, 1982

Re: 80-988 - Havens Realty Corp. v. Coleman

Dear Bill:

Please join me.

Respectfully,

John

Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 25, 1982

No. 80-988 Havens Realty Corporation v. Coleman

Dear Bill,

I agree with most of your draft in this complex case. I am prepared to join most of it, but would want to look at any separate writing which may be forthcoming from Lewis on what constitutes a neighborhood.

I would also like to know whether you would consider placing less emphasis on Title VII and the Court of Appeals cases dealing with continuing violations under Title VII. We have not actually considered the Title VII provision here and I would prefer to limit our holding to our interpretation of the Fair Housing Act. Would you be willing to consider removing some of the Title VII discussion on page 16 of the draft?

Sincerely,

Sandra

Justice Brennan

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 8, 1982

No. 80-988 Havens Realty v. Coleman

Dear Bill,

I am well satisfied with the substitute language on pp. 15 and 16. I agree that the reference in Footnote 25 to Evans and Title VII should also be omitted.

I am also satisfied with the revisions concerning the "neighborhood."

With these changes, please join me in your opinion.

Sincerely,

Sandra

Justice Brennan

cc: Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 11, 1982

No. 80-988 Havens Realty Corp. v. Coleman

Dear Bill,

Please join me in the second draft of your opinion in the referenced case.

Sincerely,

Sandra

Justice Brennan

Copies to the Conference