

The Burger Court Opinion Writing Database

Community Television of Southern California v. Gottfried

459 U.S. 498 (1983)

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 21, 1982

RE: 81-298) - Community TV of South Calif. v. Gottfried
81-799) - FCC v. Gottfried

Dear John:

I join.

Regards,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 17, 1982

RE: No. 81-298 Community Television v. Gottfried
No. 81-799 FCC v. Gottfried

Dear Thurgood:

John has written a rather narrow opinion in the above coming out to reverse and remand. You and I were the only ones to vote to affirm. Are you still disposed to dissent? I am personally not so sure we should.

Sincerely,

Bul

Justice Marshall

ND

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 24, 1983

RE: Nos. 81-298 & 71-799 Community Television of Southern
California & FCC v. Sue Gottfried, et al.

Dear Thurgood:

Please join me.

Sincerely,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 20, 1982

Re: 81-298 - Community Television of
California v. Gottfried

Dear John,

Please join me.

Sincerely yours,



Justice Stevens

Copies to the Conference

cpm

pp. 2, 5

Justice Brennan
 Justice White
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Marshall**

Circulated: JAN 21 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-298 AND 81-799

81-298
 COMMUNITY TELEVISION OF SOUTHERN
 CALIFORNIA, PETITIONER
v.
 SUE GOTTFRIED ET AL.

81-799
 FEDERAL COMMUNICATIONS COMMISSION,
 PETITIONER
v.
 SUE GOTTFRIED ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[January —, 1983]

JUSTICE MARSHALL, dissenting.

In determining that the "public interest" would be served by renewal of the broadcast license of public station KCET-TV, the FCC refused to consider whether the station had violated the Rehabilitation Act of 1973 during its previous license term. The Court today holds that this refusal to consider the Rehabilitation Act did not constitute an abuse of discretion. In concluding that the FCC was free to disregard the Rehabilitation Act, the Court emphasizes that "the Commission's duties derive from the Communications Act, not from other federal statutes," *ante*, at 12 n. 16, and that there is no evidence that Congress intended to vest the Commission with power to enforce the Rehabilitation Act, *ante*, at 10-11. Because the Court's decision is not supported by

STYLISTIC CHANGES THROUGHOUT.

P. 1, 3

Justice White
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Marshall**

Circulated: _____

Recirculated: JAN 31 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-298 AND 81-799

COMMUNITY TELEVISION OF SOUTHERN
 CALIFORNIA, PETITIONER

81-298

v.

SUE GOTTFRIED ET AL.

FEDERAL COMMUNICATIONS COMMISSION,
 PETITIONER

81-799

v.

SUE GOTTFRIED ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[January —, 1983]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins,
 dissenting.

In determining that the "public interest" would be served by renewal of the broadcast license of public station KCET-TV, the FCC refused to consider whether the station had violated the Rehabilitation Act of 1973 during its previous license term. The Court today holds that this refusal to consider the Rehabilitation Act did not constitute an abuse of discretion. In concluding that the FCC was free to disregard the Rehabilitation Act, the Court emphasizes that "the Commission's duties derive from the Communications Act, not from other federal statutes," *ante*, at 12 n. 16, and that there is no evidence that Congress intended to vest the Commission with power to enforce the Rehabilitation Act, *ante*, at 10-11. Because the Court's decision is not supported by

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 22, 1982

Re: No. 81-298 - Community Television v. Gottfried

Dear John:

I join your opinion, but I have the following comments for your consideration:

1. What happened to No. 81-799, FCC v. Gottfried? On page 9, you mention that certiorari was granted, but that case does not appear in the title.

2. I must leave to your good judgment the several suggestions that have been made by others. I exacerbate the situation, however, by offering two suggestions of my own:

A. What would you think of replacing n. 13's reference to Red Lion with a cite to the FCC's 1968 pronouncement regarding non-discrimination?

B. I think I would prefer to have n. 16 read something like this:

This is not to say that the Commission may permit a licensee to ignore the needs of particular groups within the viewing public. In NAACP v. FPC, 425 U.S. 662 (1976), for example, this Court noted that the Commission's equal employment opportunity regulations, could be regarded as "necessary to enable the FCC to satisfy its obligation ... to ensure that its licensees' programming fairly reflects the tastes and viewpoints of minority groups. Id., at 670, n. 7.

These are just for your consideration.

Sincerely,



Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20548

RECEIVED
SUPREME COURT U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

'82 DEC 22 A10:12

December 20, 1982

81-298 Community Television v. Gottfried

Dear John:

I write to say that I agree with the suggestions made by Bill Rehnquist and Sandra. The language that concerns them is unnecessary, as it involves "rights" that need not be identified in this case.

Also, I had expected you to rely on our recent decision in FCC v. WNCN Listeners Guild, 450 U.S. 582, in which we emphasized the Commission's discretion to give meaning to the public interest standard.

Although I expect to join you, I want to read the opinion again more carefully. I am trying to get away to Richmond by midday tomorrow.

Sincerely,



Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 31, 1982

81-298 Community Television v. Gottfried
81-799 FCC v. Gottfried

Dear John:

Please join me.

Sincerely,



Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 17, 1982

Re: No. 81-298 Community Television v. Gottfried

Dear John:

I agree entirely with both the analysis contained in your opinion, and with its result. I am bothered only by one sentence: the last sentence in the paragraph beginning on page 9 and ending on page 10. It reads:

"The Court of Appeals was quite correct in emphasizing that no licensee, whether commercial or public, may ignore the needs of the hearing impaired in discharging its responsibilities to the community which it serves."

I think this is a somewhat sweeping statement that is not necessary to the decision of this case, and is not supported four-square by the quotation from Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969) to which it is referenced. Since the Court of Appeals held that commercial licensees are not subject to the proscriptions of §504 of the Rehabilitation Act of 1973 involved here, the obligation of at least those licensees must have some source other than the section of the Act which your opinion construes. Your opinion points out that the FCC has considered the needs of the hearing impaired before the Rehabilitation Act was ever adopted; might not that be enough? I am afraid that the sentence, as now written, is one of those generalized

- 2 -

assertions which seems fine at the time, but could come back to haunt us later.

Sincerely,

A handwritten signature in dark ink, appearing to be 'W. W.', written in a cursive style.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

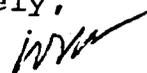
January 3, 1983

Re: Nos. 81-298 & 81-799 Community Television of
Southern California v. Gottfried

Dear John:

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

Circulated: _____

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-298

COMMUNITY TELEVISION OF SOUTHERN CALIFORNIA, PETITIONER v. SUE GOTTFRIED ET AL.

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

[December —, 1982]

D. M. [unclear]

JUSTICE STEVENS delivered the opinion of the Court.

The question presented is whether § 504 of the Rehabilitation Act of 1973¹ requires the Federal Communications Commission to review a public television station's license renewal application under a different standard than it applies to a commercial licensee's renewal application. Contrary to the holding of the Court of Appeals for the District of Columbia Circuit, 655 F. 2d 297, we conclude that it does not.

¹Section 504 of the Rehabilitation Act of 1973, 29 U. S. C. § 794 (1976 ed. and Supp. III), provides:

“§ 794. Nondiscrimination under federal grants and programs; promulgation of rules and regulations

“No otherwise qualified handicapped individual in the United States, as defined in section 706(7) of this title, shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.”

1, 10-14

Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

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Recirculated: DEC 30 '82

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-298 AND 81-799

COMMUNITY TELEVISION OF SOUTHERN
CALIFORNIA, PETITIONER

81-298

v.

SUE GOTTFRIED ET AL.

FEDERAL COMMUNICATIONS COMMISSION,
PETITIONER

81-799

v.

SUE GOTTFRIED ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[January —, 198³]

JUSTICE STEVENS delivered the opinion of the Court.

The question presented is whether § 504 of the Rehabilitation Act of 1973¹ requires the Federal Communications Com-

¹Section 504 of the Rehabilitation Act of 1973, 29 U. S. C. § 794 (1976 ed. and Supp. III), provides:

“§ 794. Nondiscrimination under federal grants and programs; promulgation of rules and regulations

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Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice O'Connor

From: **Justice Stevens**

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7. 10 - 11

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-298 AND 81-799

COMMUNITY TELEVISION OF SOUTHERN
 CALIFORNIA, PETITIONER

81-298

v.

SUE GOTTFRIED ET AL.

FEDERAL COMMUNICATIONS COMMISSION,
 PETITIONER

81-799

v.

SUE GOTTFRIED ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[January —, 1983]

JUSTICE STEVENS delivered the opinion of the Court.

The question presented is whether § 504 of the Rehabilitation Act of 1973¹ requires the Federal Communications Com-

¹Section 504 of the Rehabilitation Act of 1973, 29 U. S. C. § 794 (1976 ed. and Supp. III), provides:

“§ 794. Nondiscrimination under federal grants and programs; promulgation of rules and regulations

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 20, 1982

No. 81-298 Community Television of Southern
California v. Gottfried

Dear John,

You have written an excellent opinion. I am troubled about only one minor point: FN 13. Would you be willing to drop it? It suggests the hearing impaired have a First Amendment right to obtain special programming. Since that was not argued, I am reluctant to suggest it.

Sincerely,



Justice Stevens

Copies to the Conference

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

'82 DEC 35 P1:35

January 4, 1983

No. 81-298 Community Television of Southern
California v. Gottfried
No. 81-799 Federal Communications Commission
v. Gottfried

Dear John,

Please join me.

Sincerely,



Justice Stevens

Copies to the Conference