

The Burger Court Opinion Writing Database

Larkin v. Grendel's Den, Inc.

459 U.S. 116 (1982)

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



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

From: **The Chief Justice**

Circulated: 11/12/82

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Y
Please join me
MJ

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-878

JOHN P. LARKIN, ET AL., APPELLANTS *v.*
GRENDDEL'S DEN, INC.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT.

[November —, 1982]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

The question presented by this appeal is whether a Massa-
chusetts statute, which vests in the governing bodies of
churches and schools the power effectively to veto applica-
tions for liquor licenses within a five hundred foot radius of
the church or school, violates the Establishment Clause of
the First Amendment or the Due Process Clause of the Four-
teenth Amendment.

I
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Appellee operates a restaurant located in the Harvard
Square area of Cambridge, Massachusetts. The Holy Cross
Armenian Catholic Parish is located adjacent to the restau-
rant; the back walls of the two buildings are ten feet apart.
In 1977, appellee applied to the Cambridge License Commis-
sion for approval of an alcoholic beverage license for the
restaurant.

Section 16C of Chapter 138 of the Massachusetts General
Laws provides: "Premises . . . located within a radius of five
hundred feet of a church or school shall not be licensed for the
sale of alcoholic beverages if the governing body of such
church or school files written objection thereto."¹

¹Section 16C defines "church" as "a church or synagogue building dedi-
cated to divine worship and in regular use for that purpose, but not a cha-

77
Church & State
I like the
old due
process

777

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Changes at 2, 3, 4, 5, 6, 9, 10, 11

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

From: **The Chief Justice**

Circulated: 11/22/72

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2d
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-878

JOHN P. LARKIN, ET AL., APPELLANTS *v.*
GRENDDEL'S DEN, INC.

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

[November —, 1982]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

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I

A

Appellee operates a restaurant located in the Harvard Square area of Cambridge, Massachusetts. The Holy Cross Armenian Catholic Parish is located adjacent to the restaurant; the back walls of the two buildings are ten feet apart. In 1977, appellee applied to the Cambridge License Commission for approval of an alcoholic beverage license for the restaurant.

Section 16C of Chapter 138 of the Massachusetts General Laws provides: "Premises . . . located within a radius of five hundred feet of a church or school shall not be licensed for the sale of alcoholic beverages if the governing body of such church or school files written objection thereto."¹

¹Section 16C defines "church" as "a church or synagogue building dedicated to divine worship and in regular use for that purpose, but not a cha-

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

CHAMBERS OF
THE CHIEF JUSTICE

November 23, 1982

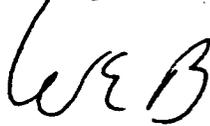
Re: No. 81-878 - Larkin v. Grendel's Den, Inc.

Dear Bill:

Enclosed is a revised draft opinion in this case. I need not rely on the Beverage Control Commission's characterization, since the State's highest court has construed the statute as vesting a veto power in churches and schools.

"Silly cases" do not make bad law -- or good law, but "silly" statutes can make unconstitutional law! As here!

Regards,



Justice Rehnquist

Copies to the Conference

— 2,3,4,5,6,8,9,10,11.
is are identical to those
ked on xeroxed 2d Draft.

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

From: **The Chief Justice**

Circulated: _____

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-878

**JOHN P. LARKIN, ET AL., APPELLANTS v.
GRENDDEL'S DEN, INC.**

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
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To: Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: The Chief Justice

Circulated: _____

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4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-878

JOHN P. LARKIN, ET AL., APPELLANTS v.
GRENDDEL'S DEN, INC.

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

[December —, 1982]

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2, 4, 5, 7, 9-11

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

From: **The Chief Justice**

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5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-878

**JOHN P. LARKIN ET AL., APPELLANTS v.
GRENDDEL'S DEN, INC.**

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

[December —, 1982]

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¹Section 16C defines "church" as "a church or synagogue building dedicated to divine worship and in regular use for that purpose, but not a chapel occupying a minor portion of a building primarily devoted to other

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 18, 1982

RE: No. 81-878 Larkin v. Grendel's Den

Dear Chief:

I agree.

Sincerely,

Bill

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 23, 1982

Re: 81-878 - Larkin v. Grendel's Den, Inc.

Dear Chief,

Please join me.

Sincerely yours,



The Chief Justice

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 19, 1982

Re: No. 81-878 - Larkin v. Grendel's Den, Inc.

Dear Chief:

Please join me.

Sincerely,


T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 23, 1982

Re: No. 81-878 - Larkin v. Grendel's Den, Inc.

Dear Chief:

Please join me.

Sincerely

A handwritten signature in dark ink, appearing to read "H. A. Blackmun", with a horizontal line underneath.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 17, 1982

81-878 Larkin v. Grendel's Den, Inc.

Dear Chief:

Please join me.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

From: **Justice Rehnquist**

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Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-878

JOHN P. LARKIN, ET AL., APPELLANTS *v.*
GRENDDEL'S DEN, INC.

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

[November —, 1982]

JUSTICE REHNQUIST, dissenting.

Dissenting opinions in previous cases have commented that "great" cases, like "hard" cases, make bad law. *Northern Securities Co. v. United States*, 193 U. S. at 400-401 (1904) (Holmes, J., dissenting); *Nixon v. General Service Administrator*, 433 U. S. 425, 505 (1977) (BURGER, C. J., dissenting). Today's opinion suggests that a third class of cases—silly cases—also make bad law. The Court wrenches from the decision of the Massachusetts Alcoholic Beverage Control Commission, a body not heretofore known for its contribution to constitutional law, the phrase "absolute veto," and uses it no less than four times in its opinion. The aim of this effort is to prove that a quite sensible Massachusetts liquor zoning law is apparently some sort of sinister religious attack on secular government reminiscent of St. Bartholemew's Night. Being unpersuaded, I dissent.

In its original form, § 16C imposed a flat ban on the grant of an alcoholic beverage licenses to any establishment located within 500 feet of a church or a school. 1954 Mass. Acts c. 569, § 1. This statute represented a legislative determination that worship and liquor sales are generally not compatible uses of land. The majority concedes, as I believe it must, that "an absolute legislative ban on liquor outlets within reasonable prescribed distances from churches,

I
Stylistic changes
throughout

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

From: **Justice Rehnquist**

Circulated: _____

Recirculated: DEC 1 1982

2nd
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-878

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GRENDDEL'S DEN, INC.

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FOR THE FIRST CIRCUIT

[November —, 1982]

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In its original form, § 16C imposed a flat ban on the grant of an alcoholic beverage licenses to any establishment located within 500 feet of a church or a school. 1954 Mass. Acts c. 569, § 1. This statute represented a legislative determination that worship and liquor sales are generally not compatible uses of land. The majority concedes, as I believe it must, that "an absolute legislative ban on liquor outlets within reasonable prescribed distances from churches, schools, hospitals, and like institutions," *ante*, at 8 (footnote omitted), would be valid. See *California v. LaRue*, 409

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
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From: **Justice Rehnquist**

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-878

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 15, 1982

Re: 81-878 - Larkin v. Grendel's Den, Inc.

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

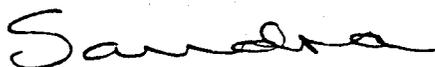
November 22, 1982

No. 81-878 Larkin v. Grendel's Den, Inc.

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

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