

The Burger Court Opinion Writing Database

City of Revere v. Massachusetts General Hospital

463 U.S. 239 (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

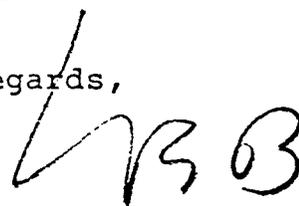
June 14, 1983

Re: No. 82-63, City of Revere v. Massachusetts General
Hospital

Dear Harry:

I join.

Regards,

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

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 9, 1983

No. 82-63

City of Revere v. Massachusetts
General Hospital

Dear Harry,

I agree.

Sincerely,

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 20, 1983

Re: 82-63 - City of Revere v.
Massachusetts General Hospital

Dear Bill,

Please add my name to your separate
opinion in this case.

Sincerely yours,



Justice Rehnquist

cc: The Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 9, 1983

Re: No. 82-63-City of Revere v. Massachusetts
General Hospital

Dear Harry:

Please join me.

Sincerely,



T.M.

Justice Blackmun

cc: The Conference

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

From: **Justice Blackmun**

Circulated: JUN 8 1983

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AA
✓

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-63

**CITY OF REVERE, PETITIONER v. MASSACHUSETTS
GENERAL HOSPITAL**

**ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS**

[June —, 1983]

JUSTICE BLACKMUN delivered the opinion of the Court.

The issue in this case is whether a municipality's constitutional duty to obtain necessary medical care for a person injured by the municipality's police in the performance of their duties includes a corresponding duty to compensate the provider of that medical care.

I

On September 20, 1978, members of the police force of petitioner city of Revere, Mass., responded to a report of a breaking and entering in progress. At the scene they sought to detain a man named Patrick M. Kivlin, who attempted to flee. When repeated commands to stop and a warning shot failed to halt Kivlin's flight, an officer fired at Kivlin and wounded him. The officers summoned a private ambulance. It took Kivlin, accompanied by one officer, to the emergency room of respondent Massachusetts General Hospital (MGH) in Boston.¹ Kivlin was hospitalized at MGH from September 20 until September 29. Upon his release, Revere police served him with an arrest warrant that had been issued on September 26. Kivlin was arraigned and released on his own recognizance.

¹The city of Revere apparently has no municipal hospital or even a jail of its own. See App. 14.

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STYLISTIC CHANGES

P. 6

footnotes renumbered

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

From: **Justice Blackmun**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-63

CITY OF REVERE, PETITIONER *v.* MASSACHUSETTS
GENERAL HOSPITAL

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS

[June —, 1983]

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The issue in this case is whether a municipality's constitutional duty to obtain necessary medical care for a person injured by the municipality's police in the performance of their duties includes a corresponding duty to compensate the provider of that medical care.

I

On September 20, 1978, members of the police force of petitioner city of Revere, Mass., responded to a report of a breaking and entering in progress. At the scene they sought to detain a man named Patrick M. Kivlin, who attempted to flee. When repeated commands to stop and a warning shot failed to halt Kivlin's flight, an officer fired at Kivlin and wounded him. The officers summoned a private ambulance. It took Kivlin, accompanied by one officer, to the emergency room of respondent Massachusetts General Hospital (MGH) in Boston.¹ Kivlin was hospitalized at MGH from September 20 until September 29. Upon his release, Revere police served him with an arrest warrant that had been issued on September 26. Kivlin was arraigned and released on his own recognizance.

¹ The city of Revere apparently has no municipal hospital or even a jail of its own. See App. 14.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 15, 1983

Re: No. 82-63 - City of Revere v. Mass. General Hospital

Dear Bill:

This is a somewhat belated reply to your letter of June 10 suggesting a change in the first sentence under B on page 5 of the opinion. I have thought about this, but I have concluded that I would prefer to leave the sentence as it is. The point the sentence makes, it seems to me, does follow directly from Bell v. Wolfish and Estelle v. Gamble; in any event, I have no doubt that it correctly states the law.

You are usually so agreeable when I have a suggestion for a change, that I hesitate to give you this response.

Sincerely,



Justice Rehnquist

cc: The Conference

✓

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 8, 1983

82-63 City of Revere v. Massachusetts General

Dear Harry:

I like both the substance and brevity of your opinion for the Court, and am happy to join you.

It does occur to me that perhaps it would be well - as precaution - to add a note to the effect that nothing in our opinion would prevent the hospital or the government from seeking to recover the cost of the hospital services from the patient. Some of today's criminal suspects can well afford to pay (e.g., dealers in illicit drugs).

Sincerely,

Lewis

Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 10, 1983

Re: No. 82-63 City of Revere v. Massachusetts
General Hospital

Dear Harry:

I agree with everything but one sentence in your opinion, and that is the first sentence under B on page 5 which says:

"The Due Process Clause, however, does require the responsible government or governmental agency to provide medical care to persons, such as Kivlin, who have been injured while being apprehended by the police."

I don't believe that Bell v. Wolfish, 441 U.S. 520, which you cite in the next sentence, supports this proposition. and I don't believe any of our other cases support it, either. Could you "assume for the sake of argument" that this is the case, without saying so?

Sincerely,



Justice Blackmun

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**

JUN 20 1983

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-63

**CITY OF REVERE, PETITIONER *v.* MASSACHUSETTS
GENERAL HOSPITAL**

**ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS**

[June —, 1983]

JUSTICE REHNQUIST, concurring in part and concurring in the judgment.

I see no reason to decide in this case what requirements the Due Process Clause may impose upon a governmental agency by way of providing medical care to persons who have been injured while being apprehended by the police. As the Court points out, “[w]hatever the standard may be, Revere fulfilled its constitutional obligation by seeing that Kivlin was taken promptly to a hospital that provided the treatment necessary for the injury.” *Ante*, at 5-6. The Court’s other statements regarding the application of the Due Process Clause in this situation, *ante*, at 5-6, are therefore unnecessary as well as largely unsupported.

I concur in parts I, II, IIIA, and IV of the Court’s opinion.

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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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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-63

**CITY OF REVERE, PETITIONER v. MASSACHUSETTS
GENERAL HOSPITAL**

**ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS**

[June —, 1983]

JUSTICE REHNQUIST, with whom JUSTICE WHITE joins,
concurring in part and concurring in the judgment.

I see no reason to decide in this case what requirements the Due Process Clause may impose upon a governmental agency by way of providing medical care to persons who have been injured while being apprehended by the police. As the Court points out, "[w]hatever the standard may be, Revere fulfilled its constitutional obligation by seeing that Kivlin was taken promptly to a hospital that provided the treatment necessary for the injury." *Ante*, at 5-6. The Court's other statements regarding the application of the Due Process Clause in this situation, *ante*, at 5-6, are therefore unnecessary as well as largely unsupported.

I concur in parts I, II, IIIA, and IV of the Court's opinion.

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

From: **Justice Stevens**

Circulated: JUN 10 '83

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-63

**CITY OF REVERE, PETITIONER v. MASSACHUSETTS
GENERAL HOSPITAL**

**ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS**

[June —, 1983]

JUSTICE STEVENS, concurring in the judgment.

This case raises a question of state fiscal policy. If the Mayor of the City of Revere had paid this bill because he had been advised by his attorney, or by the Attorney General of the State, that it was an obligation of the municipality, we would have had no interest in the matter, even if the legal advice had misinterpreted federal law. If the Massachusetts Legislature had passed a statute requiring bills of this character to be paid by the city, the performance of a city's state statutory obligation would give rise to no federal question. That would be true even if the legislative history of the statute made it perfectly clear that every lawmaker who voted for the bill did so because he believed that the Federal Constitution required the State to allocate the cost in this manner.

Because the Supreme Judicial Court of Massachusetts—rather than another branch of state government—invoked the Federal Constitution in imposing an expense on the City of Revere, this Court has the authority to review the decision. But is it a sensible exercise of discretion to wield that authority? I think not. There is “nothing in the Federal Constitution that prohibits a State from giving lawmaking power to its courts.” *Minnesota v. Clover Leaf Creamery Co.*, 449 U. S. 456, 479 (STEVENS, J., dissenting) (1981). No

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

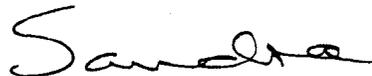
June 9, 1983

No. 82-63 City of Revere v. Massachusetts
General Hospital

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference