

The Burger Court Opinion Writing Database

Clark v. Community for Creative Non-Violence

468 U.S. 288 (1984)

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



5

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

CHAMBERS OF
THE CHIEF JUSTICE

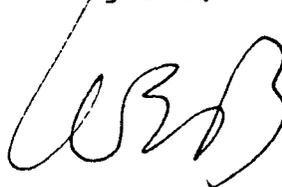
APR 29 05 11 18
May 23, 1984

Re: 82-1998 - William P. Clark v. Community for
Creative Non-Violence

Dear Byron:

I join.

Regards,



Justice White

Copies to the Conference

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
THE CHIEF JUSTICE

May 30, 1984

'84 MAY 30 P4:08

Re: 82-1998 - William P. Clark v. Community for
Creative Non-Violence

MEMORANDUM TO THE CONFERENCE:

I will add the following in this case:

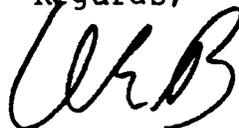
"I concur fully in the Court's opinion.

I find it difficult to conceive of what "camping" means, if it does not include pitching a tent and building a fire. Whether sleeping or cooking follows is up to the campers. With all its frailties, the English language, as used in this country for several centuries, and as used in the regulations, could hardly be plainer in informing the public that the action of these respondents - camping in Lafayette Park - was prohibited. If the Park Service is to be criticized, the criticism should be that it was too lax in not enforcing its regulations literally.

Lafayette Park and others like it are for all the people, not just those who have some "statement" to make; tents, fires, and sleepers, real or feigned, interfere with the rights of others to use that park. Of course, the Constitution guarantees that people may make their "statements," but Washington has countless places for "statements," some of them very near Lafayette Park.

It tells us something about why many people must wait for their "day in court" when the time of courts is preempted by multiple frivolous proceedings that delay the causes of litigants who have legitimate, non-frivolous claims. This wholly frivolous case has engaged the time of one District Judge, an en banc court of eleven Court of Appeals Judges, and nine Justices of this Court; it cannot fairly be described as other than frivolous. As Judge Elizabeth Kovachevich has said, "A litigant is entitled to his day in court, but not to somebody else's day." Especially is this so when the litigant seeks only to make a statement."

Regards,



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

CHAMBERS OF
THE CHIEF JUSTICE

June 11, 1984

Re: 82-1998 - William P. Clark v. Community for
Creative Non-Violence

MEMORANDUM TO THE CONFERENCE:

I will add the following revised version in this case:

"I concur fully in the Court's opinion.

I find it difficult to conceive of what "camping" means, if it does not include pitching a tent and building a fire. Whether sleeping or cooking follows is irrelevant. With all its frailties, the English language, as used in this country for several centuries, and as used in the Park Service regulations, could hardly be plainer in informing the public that camping in Lafayette Park was prohibited.

The actions here claimed as speech entitled to the protections of the First Amendment simply are not speech; rather, they constitute conduct. Justice Black, who was never tolerant of limits on speech, emphatically pointed out in his separate opinion in Cox v. Louisiana, 379 U.S. 536, 578 (1965), that:

"The First and Fourteenth Amendments, I think, take away from government, state and federal, all power to restrict freedom of speech, press, and assembly where people have a right to be for such purposes. *** Picketing, though it may be utilized to communicate ideas, is not speech, and therefore is not of itself protected by the First Amendment."
(Emphasis added) (Citations omitted.)

Camping in the park was a form of "picketing"; it is conduct, not speech. It is conduct that interfered with the rights of others to use Lafayette Park for the purposes for which it was created. Lafayette Park and others like it are for all the people and their rights are not to

be trespassed even by those who have some "statement" to make. Tents, fires, and sleepers, real or feigned, interfere with the rights of others to use that park. Of course, the Constitution guarantees that people may make their "statements," but Washington has countless places for the kind of "statements" these respondents sought to make.

It trivializes the First Amendment to seek to use it as a shield in the manner asserted here. And it tells us something about why many people must wait for their "day in court" when the time of courts is preempted by frivolous proceedings that delay the causes of litigants who have legitimate, non-frivolous claims. This case has engaged the time of one District Judge, an en banc court of eleven Court of Appeals Judges, and nine Justices of this Court."

Regards,

A handwritten signature in dark ink, appearing to be the initials 'WAB' or similar, written in a cursive style.

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN 28 AM 10:07

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

From: The Chief Justice

Circulated: JUN 28 1984

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1998

WILLIAM P. CLARK, SECRETARY OF THE INTERIOR, ET AL., PETITIONERS *v.* COMMUNITY FOR CREATIVE NON-VIOLENCE ET AL.

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

[June —, 1984]

CHIEF JUSTICE BURGER, concurring.

I concur fully in the Court's opinion.

I find it difficult to conceive of what "camping" means, if it does not include pitching a tent and building a fire. Whether sleeping or cooking follows is irrelevant. With all its frailties, the English language, as used in this country for several centuries, and as used in the Park Service regulations, could hardly be plainer in informing the public that camping in Lafayette Park was prohibited.

The actions here claimed as speech entitled to the protections of the First Amendment simply are not speech; rather, they constitute conduct. As Justice Black, who was never tolerant of limits on speech, emphatically pointed out in his separate opinion in *Cox v. Louisiana*, 379 U. S. 536, 578 (1965):

"The First and Fourteenth Amendments, I think, take away from government, state and federal, all power to restrict freedom of speech, press, and assembly *where people have a right to be for such purposes*. . . . Picketing, though it may be utilized to communicate ideas, is not speech, and therefore is not of itself protected by the First Amendment." (Emphasis in original; citations omitted).

M

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 2, 1984

No. 82-1998

Clark v. Community for
Creative Non-Violence

Dear Thurgood,

You and I are in dissent in the
above. Do you care to try the dissent?

Sincerely,

Bill

Justice Marshall

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN 25 P3:47

June 25, 1984

No. 82-1998

Clark v. Community for Creative
Non-Violence, et al.

Dear Thurgood,

Please join me.

Sincerely,



Justice Marshall

Copies to the Conference

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

From: **Justice White**

Circulated: MAY 15 1984

Recirculated: _____

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~~BRW
In due course, I hope to
circulate a dissent
JW~~

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1998

WILLIAM P. CLARK, SECRETARY OF THE INTERIOR, ET AL., PETITIONERS v. COMMUNITY FOR CREATIVE NON-VIOLENCE ET AL.

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

[May —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is whether a National Park Service regulation prohibiting camping in certain parks violates the First Amendment when applied to prohibit demonstrators from sleeping in Lafayette Park and the Mall in connection with a demonstration intended to call attention to the plight of the homeless. We hold that it does not and reverse the contrary judgment of the Court of Appeals.

I

The Interior Department, through the National Park Service, is charged with responsibility for the management and maintenance of the National Parks and is authorized to promulgate rules and regulations for the use of the parks in accordance with the purposes for which they were established. 16 U. S. C. §§ 1, 1a-1, 3.¹ The network of National Parks includes the National Memorial-core parks, Lafayette Park and the Mall, which are set in the heart of Washington,

¹The Secretary is admonished to promote and regulate the use of the parks by such means as conform to the fundamental purpose of the parks, which is "to conserve the scenery and the natural and historic objects and the wild life therein . . . in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U. S. C. § 1.

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 MAY 22 09:44

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

From: Justice White

Circulated: _____

Recirculated: _____

Stylistic changes
and pp. 7 & 10

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1998

WILLIAM P. CLARK, SECRETARY OF THE INTERIOR, ET AL., PETITIONERS *v.* COMMUNITY FOR CREATIVE NON-VIOLENCE ET AL.

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

[May —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

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¹The Secretary is admonished to promote and regulate the use of the parks by such means as conform to the fundamental purpose of the parks, which is "to conserve the scenery and the natural and historic objects and the wild life therein . . . in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U. S. C. § 1.

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

From: **Justice White**

Circulated: _____

Recirculated: _____ MAY 24 1984

EDUCATIONAL CHANGES THROUGHOUT.
PAGES: 6

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1998

WILLIAM P. CLARK, SECRETARY OF THE INTERIOR, ET AL., PETITIONERS *v.* COMMUNITY FOR CREATIVE NON-VIOLENCE ET AL.

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

[May —, 1984]

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I

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¹The Secretary is admonished to promote and regulate the use of the parks by such means as conform to the fundamental purpose of the parks, which is "to conserve the scenery and the natural and historic objects and the wild life therein . . . in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U. S. C. § 1.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 25, 1984

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN 25 P3:2

Re: 82-1998 - Clark v. CCNV

Dear Thurgood,

I shall write nothing more in this case,
and it is ready to come down as far as I am
concerned.

Sincerely yours,



Justice Marshall

Copies to the Conference

HAB

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 26, 1984

MEMORANDUM TO THE CONFERENCE

Case held for No. 82-1998

Clark v. Community for Creative Non-Violence

Columbus, et al. v. Leonard, No. 83-861

This case involves the discharge of six black police officers for removing American flags from their uniforms in protest of racially discriminatory practices of the police department. The CA held that resps' conduct was protected symbolic speech, relying on such cases as Tinker v. Des Moines Independent School District, 393 U.S. 503 (1969), and Spence v. Washington, 418 U.S. 405 (1974). In determining whether the conduct was protected, the CA employed the ~~the~~ standard set out in Pickering v. Board of Education, 391 U.S. 563 (1968), and balanced "the interests of the [employee] as a citizen, in commenting upon matters of public concern and the interests of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." It noted that the question of racial discrimination in the police force is a public issue of interest to the entire political community, distinguishing Connick v. Myers, 103 S.Ct. 1684 (1983). The state's interest was found not to outweigh the individual officers' interest, because the CA found no relation between wearing the patch and the efficient performance of police duties. It acknowledged that the flag was intended to accomplish an integration of the police into the community and represent a devotion to American ideals, but then stated that "[a]lthough this goal is admirable, it is specifically because of what the flag stands for that the interest in having the patch worn must bow to the greater interest of the dismissed officers' free speech." Moreover, the state's interest appeared even smaller in light of the fact that a number of officers frequently failed to wear flags and were not disciplined.

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

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

84 JUN 28 21:08
STIC CHANGES THROUGHOUT.
SEE PAGES:

Justice White

circulated:

Resirculated:

JUN 28 1984

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 82-1998

WILLIAM P. CLARK, SECRETARY OF THE INTERIOR, ET AL., PETITIONERS *v.* COMMUNITY FOR CREATIVE NON-VIOLENCE ET AL.

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

[June 29, 1984]

JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is whether a National Park Service regulation prohibiting camping in certain parks violates the First Amendment when applied to prohibit demonstrators from sleeping in Lafayette Park and the Mall in connection with a demonstration intended to call attention to the plight of the homeless. We hold that it does not and reverse the contrary judgment of the Court of Appeals.

I

The Interior Department, through the National Park Service, is charged with responsibility for the management and maintenance of the National Parks and is authorized to promulgate rules and regulations for the use of the parks in accordance with the purposes for which they were established. 16 U. S. C. §§ 1, 1a-1, 3.¹ The network of National Parks includes the National Memorial-core parks, Lafayette Park and the Mall, which are set in the heart of Washington, D. C., and which are unique resources that the Federal Gov-

¹The Secretary is admonished to promote and regulate the use of the parks by such means as conform to the fundamental purpose of the parks, which is "to conserve the scenery and the natural and historic objects and the wild life therein . . . in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U. S. C. § 1.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 15, 1984

Re: No. 82-1998-Clark v. Community For Creative
Non-Violence et al

Dear Byron:

In due course, I hope to circulate a dissent.

Sincerely,

J.M.

T.M.

Justice White

cc: The Conference

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

From: **Justice Marshall**

Circulated: JUN 22 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1998

WILLIAM P. CLARK, SECRETARY OF THE INTERIOR, ET AL., PETITIONER *v.* COMMUNITY FOR CREATIVE NON-VIOLENCE ET AL.

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

[June —, 1984]

JUSTICE MARSHALL, dissenting.

The Court's disposition of this case is marked by two related failings. First, the majority is either unwilling or unable to take seriously the First Amendment claims advanced by respondents. Contrary to the impression given by the majority, respondents are not supplicants seeking to wheedle an undeserved favor from the government. They are citizens raising issues of profound public importance who have properly turned to the courts for the vindication of their Constitutional rights. Second, the majority misapplies the test for ascertaining whether a restraint on speech qualifies as a reasonable time, place and manner regulation. In determining what constitutes a sustainable regulation, the majority fails to subject the alleged interests of the Government to the degree of scrutiny required to ensure that expressive activity protected by the First Amendment remains free of unnecessary limitations.

I

The proper starting point for analysis of this case is a recognition that the activity in which respondents seek to engage —sleeping in a highly public place, outside, in the winter for the purpose of protesting homelessness—is symbolic speech protected by the First Amendment. The majority

STYLISTIC CHANGES THROUGHOUT.

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

From: Justice Marshall

Circulated: _____

Recirculated: JUN 28 1984

2ND DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1998

WILLIAM P. CLARK, SECRETARY OF THE INTERIOR, ET AL., PETITIONERS *v.* COMMUNITY FOR CREATIVE NON-VIOLENCE ET AL.

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

[June 29, 1984]

JUSTICE MARSHALL, dissenting.

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I

The proper starting point for analysis of this case is a recognition that the activity in which respondents seek to engage—sleeping in a highly public place, outside, in the winter for the purpose of protesting homelessness—is symbolic speech protected by the First Amendment. The majority assumes, without deciding, that the respondents' conduct is

Supreme Court of the United States
Washington, D.C.
RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

84 JUN 14 A9:40

June 14, 1984

Re: No. 82-1998, Clark v. Community for
Creative Non-Violence

Dear Byron:

Please join me.

Sincerely,



Justice White

cc: The Conference

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

NOV 16 10 45 AM '84

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 16, 1984

82-1998 Clark v. Community for Creative Non-Violence

Dear Byron:

Please join me.

Sincerely,



Justice White

lfp/ss

cc: The Conference

N

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 16, 1984

Re: No. 82-1998 Clark v. Community for Creative Non-Violence

Dear Byron:

Please join me.

Sincerely,



Justice White

cc: The Conference

81:59 01 YAM AS

W

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 18, 1984

702
205
MAY 19 6 54 AM '84

Re: 82-1998 - Watt v. Community for Creative
Non-Violence

Dear Byron:

Please join me.

Respectfully,



Justice White

Copies to the Conference



CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 MAY 22 P2:00

May 22, 1984

No. 82-1998 Clark v. CCNV

Dear Byron,

Please join me.

Sincerely,

Sandra

Justice White

Copies to the Conference