

The Burger Court Opinion Writing Database

Keeton v. Hustler Magazine, Inc.

465 U.S. 770 (1984)

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

November 3, 1983

Re: 82-485 - Keeton v. Hustler Magazine, Inc., et al.

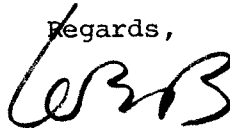
MEMORANDUM TO THE CONFERENCE:

The Clerk has submitted the attached memorandum in the above case.

He was directed to schedule this case in tandem with case No. 82-1401 - Calder v. Jones because of the parallel issues. The third case to be argued, 82-1127 - Helicopteros, etc. v. Hall, also involves an in personam jurisdiction issue.

I see no motions or even a request from any authorized representative of Mr. Flynt to argue his own case. However, this matter can be discussed at our Conference tomorrow as an agenda item.

Regards,



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

82-485

CHAMBERS OF
THE CHIEF JUSTICE

November 8, 1983

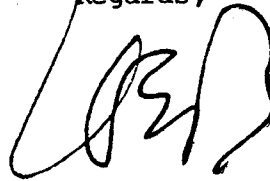
PERSONAL and CONFIDENTIAL

MEMORANDUM TO THE CONFERENCE:

Enclosed is a report from Marshal Wong on today's disturbance in the Court Chambers during Oral Argument.

The concluding sentence is apparently based on what the Assistant U.S. Attorney told our people. We make no recommendations to the U.S. Attorney. The matter is now in his hands. On Friday we can discuss the matter of an order to show cause on his conduct in the presence of the Court.

Regards,

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

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

CHAMBERS OF
THE CHIEF JUSTICE

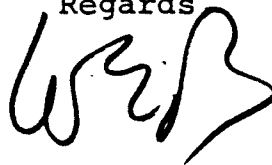
December 10, 1983

Re: 82-485 Keeton, Kathy v. Hustler Magazine, Et al.

Dear Bill:

I join.

Regards



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 8, 1983

No. 82-485

Keeton v. Hustler Magazine, Inc., et al.

No. 82-1401

Calder & South v. Jones

Dear Bill,

While I fully agree with your result in both of these cases, I may want to write something of my own. My problem is that I am the only dissenter in No. 82-1127, Helicopteros Nacionales de Columbia, S.A. v. Hall, and I'm not quite sure what to write in these cases until I have seen what Harry will circulate later in Helicopteros.

Merry Christmas.

Sincerely,

Justice Rehnquist

11
No. 82-485

Keeton v. Hustler Magazine, Inc.

3/16
NO 77

On Writ of Certiorari to the United States Court of Appeals
for the First Circuit

JUSTICE BRENNAN, concurring in the judgment.

I agree with the Court that "[r]espondent's regular circulation of magazines in the forum State is sufficient to support an assertion of jurisdiction in a libel action based on the contents of the magazine." Ante, at 3. These contacts between the respondent and the forum State are sufficiently important and sufficiently related to the underlying cause of action to foreclose any concern that the constitutional limits of the Due Process Clause are being violated. This is so, moreover, irrespective of the state's interest in enforcing its substantive libel laws or its unique statute of limitations. Indeed, as we recently explained in Insurance Corp. v. Compagnie des Bauxites, 456 U.S. 694 (1982), these interests of the State should be relevant only to the extent that they bear upon the liberty interests of the respondent that are protected by the Fourteenth Amendment. "The restriction on state sovereign power described in World-Wide Volkswagen Corp. [v. Woodson], 444 U.S. 286, 291-292 (1980)] must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause. That Clause is the only source of the personal jurisdiction

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

From: Justice Brennan

Circulated: 3/16/84

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-485

KATHY KEETON, PETITIONER *v.* HUSTLER
MAGAZINE, INC. ET AL.

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

[March —, 1984]

JUSTICE BRENNAN, concurring in the judgment.

I agree with the Court that "[r]espondent's regular circulation of magazines in the forum State is sufficient to support an assertion of jurisdiction in a libel action based on the contents of the magazine." *Ante*, at 3. These contacts between the respondent and the forum State are sufficiently important and sufficiently related to the underlying cause of action to foreclose any concern that the constitutional limits of the Due Process Clause are being violated. This is so, moreover, irrespective of the state's interest in enforcing its substantive libel laws or its unique statute of limitations. Indeed, as we recently explained in *Insurance Corp. v. Compagnie des Bauxites*, 456 U. S. 694 (1982), these interests of the State should be relevant only to the extent that they bear upon the liberty interests of the respondent that are protected by the Fourteenth Amendment. "The restriction on state sovereign power described in *World-Wide Volkswagen Corp. v. Woodson*, 444 U. S. 286, 291-292 (1980) must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause. That Clause is the only source of the personal jurisdiction requirement and the Clause itself makes no mention of federalism concerns." *Id.*, at 702-703 n. 10.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

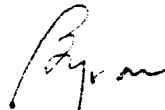
December 19, 1983

Re: 82-485 - Keeton v. Hustler Magazine

Dear Bill,

Please join me.

Sincerely,



Justice Rehnquist

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 19, 1984

Re: NO. 82-485-Keeton v. Hustler

Dear Bill:

Please join me.

Sincerely,

T.M.

T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 14, 1983

Re: No. 82-485 - Keeton v. Hustler Magazine, Inc.

Dear Bill:

Please join me.

I have some concern about some of the material on page 9 of the opinion and have referred to it in my joinder letter of this date concerning No. 82-1401, Calder v. Jones.

Sincerely,



Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 16, 1984

Dear Chief:

I suppose, because of cross-citations, that Keeton and Calder should come down together.

Sincerely,

A handwritten signature in dark ink, appearing to be 'H.A.B.' with a horizontal line underneath.

The Chief Justice

cc: The Conference

December 8, 1983

82-485 Keeton v. Hustler Magazine

Dear Bill:

Note 10, in your otherwise fine opinion, gives me difficulty.

As the note implies, there could be considerable unfairness if the forum state applied its own statute of limitations nationwide regardless of limitation periods in other states and the significance of contacts.

I suggest omission of your final sentence that expresses doubt as to whether the unfairness could rise to the level of due process. It is unnecessary to go this far in this case, and in some situations this could be a question of large importance. My preference would be to replace the last sentence by a statement to the effect that we express no opinion on this question.

Sincerely,

Justice Rehnquist

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

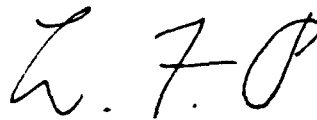
December 12, 1983

82-485 Keeton v. Hustler

Dear Bill:

Please join me.

Sincerely,

A handwritten signature in dark ink, appearing to be "L. F. P." in a cursive, stylized script.

Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 16, 1984

Dear Chief:

I note that Hustler is listed only as "tentative" to come down on Tuesday.

If it should not be ready, I'll be prepared to announce Blum on Tuesday, if this is agreeable.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

RECEIVED
SUPREME COURT U.S.
JUL 11 1983

'83 DEC -7 A11:18

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

From: Justice Rehnquist

Circulated: DEC 7

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-485

KATHY KEETON, PETITIONER *v.* HUSTLER MAGAZINE, INC. ET AL.

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

[December —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner Kathy Keeton sued respondent Hustler Magazine, Inc., and other defendants in the United States District Court for the District of New Hampshire, alleging jurisdiction over her libel complaint by reason of diversity of citizenship. The district court dismissed her suit because it believed that the Due Process Clause of the Fourteenth Amendment to the United States Constitution forbade the application of New Hampshire's long-arm statute in order to acquire personal jurisdiction over respondent. The Court of Appeals for the First Circuit affirmed, 682 F. 2d 33 (CA 1 1982), summarizing its concerns with the statement that "the New Hampshire tail is too small to wag so large an out-of-state dog." *Id.*, at 36. We granted certiorari, 51 U.S.L.W. 3552 (Jan. 24, 1983), and we now reverse.

Petitioner Keeton is a resident of New York. Her only connection with New Hampshire is the circulation there of copies of a magazine that she assists in producing. The magazine bears petitioner's name in several places crediting her with editorial and other work. Respondent Hustler Magazine, Inc., is an Ohio corporation, with its principal place of business in California. Respondent's contacts with New Hampshire consist of the sale of some 10 to 15,000 copies of *Hustler* magazine in that state each month. See *J.A.*, at 81a-86a. Petitioner claims to have been libeled in five sepa-

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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. 82-485

KATHY KEETON, PETITIONER v. HUSTLER MAGAZINE, INC. ET AL.

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

[December —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 19, 1984

Re: No. 82-485 Keeton v. Hustler Magazine, Inc.
No. 82-1401 Calder v. Jones

Dear Chief:

Thurgood has now told me that he joins the Opinion of the Court in both these cases. I have instructed the printer to proceed with them and, presumably, they can be ready to come down tomorrow or Wednesday, if that is still convenient.

Sincerely,

WHR /
MK

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 12, 1983

Re: 82-485 - Keeton v. Hustler Magazine

Dear Bill:

Please join me.

Respectfully,



Justice Rehnquist

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 8, 1983

No. 82-485 Keeton v. Hustler Magazine

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Rehnquist

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