The Burger Court Opinion Writing Database

Renton v. Playtime Theatres, Inc.

475 U.S. 41 (1986)

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

FILED
JAN 29 1986
OFFICE OF THE CLERK
SUPREME COURT, U.S.

January 29, 1986

Re: No. 84-1360 - City of Renton v. Playtime Theatres

Dear Bill:

I join.

Regards,

WEB

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 15, 1985

No. 84-1360

City of Renton
v. Playtime Theatres

Dear Thurgood,

You and I are in dissent in the above. I will be glad to undertake the dissent.

Sincerely,

Bill

Justice Marshall

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 5, 1985

No. 84-1360

City of Renton, et al.
v. Playtime Theatres, Inc., et al.

Dear Bill,

I shall be circulating a dissent in the above in due course.

Sincerely,

Bill

Justice Rehnquist

Copies to the Conference

pp 5, 8

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

From: **Justice Brennan**

Circulated: FEB 19 1986

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1360

CITY OF RENTON, ET AL., APPELLANTS *v.*
PLAYTIME THEATRES, INC., ET AL.

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

[February ——, 1986]

JUSTICE BRENNAN, dissenting.

Renton's zoning ordinance selectively imposes limitations on the location of a movie theater based exclusively on the content of the films shown there. The constitutionality of the Ordinance is therefore not correctly analyzed under standards applied to content-neutral time, place, and manner restrictions. But even assuming that the Ordinance may fairly be characterized as content-neutral, it is plainly unconstitutional under the standards established by the decisions of this Court. Although the Courts analysis is limited to cases involving "businesses that purvey sexually explicit materials," *ante*, at 7, and n. 2, and thus does not affect our holdings in cases involving State regulation of other kinds of speech, I dissent.

I

"[A] constitutionally permissible time, place or manner restriction may not be based upon either the content or subject matter of speech." *Consolidated Edison Co.* v. *Public Service Commission*, 447 U. S. 530, 536 (1980). The Court asserts that the Ordinance is "aimed not at the *content* of the films shown at 'adult motion picture theatres,' but rather at the *secondary effects* of such theatres on the surrounding community," *ante*, at 5 (emphasis in original), and thus is

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1

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

From: Justice Brennan

Circulated: _____

Recirculated: FEB 24 1986

SUPREME COURT OF THE UNITED STATES

No. 84-1360

CITY OF RENTON, ET AL., APPELLANTS *v.*
PLAYTIME THEATRES, INC., ET AL.

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

[February 25, 1986]

JUSTICE BRENNAN joined by JUSTICE MARSHALL, dissenting.

Renton's zoning ordinance selectively imposes limitations on the location of a movie theater based exclusively on the content of the films shown there. The constitutionality of the ordinance is therefore not correctly analyzed under standards applied to content-neutral time, place, and manner restrictions. But even assuming that the ordinance may fairly be characterized as content-neutral, it is plainly unconstitutional under the standards established by the decisions of this Court. Although the Courts analysis is limited to cases involving "businesses that purvey sexually explicit materials," *ante*, at 7, and n. 2, and thus does not affect our holdings in cases involving state regulation of other kinds of speech, I dissent.

I

"[A] constitutionally permissible time, place or manner restriction may not be based upon either the content or subject matter of speech." *Consolidated Edison Co.* v. *Public Service Comm'n of N. Y.*, 447 U. S. 530, 536 (1980). The Court asserts that the ordinance is "aimed not at the *content* of the films shown at 'adult motion picture theatres,' but rather at the *secondary effects* of such theatres on the surrounding community," *ante*, at 5 (emphasis in original), and thus is

(b)

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 9, 1985

84-1360 - City of Renton v.
Playtime Theatres, Inc.

Dear Bill,

Please join me.

Sincerely yours,

Byron

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 5, 1985

Re: No. 84-1360-City of Renton v. Playtime Theatres

Dear Bill:

I await the dissent.

Sincerely,

TM

T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 19, 1986

Re: No. 84-1360-City of Renton v. Playtime Theatres

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

February 12, 1986

Re: No. 84-1360, City of Renton v. Playtime Theatres

Dear Bill:

As you will have surmised by this time, I am waiting to see what the dissent in this case has to say.

One thing does occur to me. In Thornburgh, which now has been circulated, I have proposed a resolution of the Slaker problem. I did so because my notes indicate that a majority were willing to take this step and put the matter to rest. This is in Part II of Thornburgh on pp. 5 and 6.

Your opinion in Renton undoubtedly will come down before Thornburgh is ready (assuming (Heaven forbid) that it even gains a Court). There is no problem if Renton precedes Thornburgh. On the other hand, if, for any reason, Thornburgh precedes Renton, then I suppose you would like to change your first footnote in Renton.

This is much ado about not very much, but I give you this note so that we may keep the chronology in mind.

Sincerely,

HAB

Justice Rehnquist

February 20, 1986

Re: No. 84-1360, City of Renton v. Playtime Theatres

Dear Bill:

The last paragraph of your footnote 4 gives me trouble because of my dissent on vagueness in American Mini Theatres. I am quite content just to concur in the result, and I do not ask you to change your footnote to accommodate my concern.

Sincerely,

HAB

Justice Rehnquist

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 20, 1986

Re: No. 84-1360, City of Renton v. Playtime Theatres

Dear Bill:

At the end of your opinion, will you please state:

"JUSTICE BLACKMUN concurs in the result."

Sincerely,

HAB.

Justice Rehnquist

cc: The Conference

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

December 13, 1985

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR

84-1360 Renton v. Playtime Theatres, Inc.

Dear Bill:

Please join me in your opinion for the Court.

Sincerely,

L. F. P.

Justice Rehnquist

Copies to the Conference

LFP/vde

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

From: **Justice Rehnquist**

Circulated: DEC 5 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1360

CITY OF RENTON, ET AL., APPELLANTS *v.*
PLAYTIME THEATRES, INC., ET AL.

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

[December ——, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

This case involves a constitutional challenge to a zoning ordinance, enacted by appellant, the city of Renton, Washington, that prohibits adult motion picture theatres from locating within 1000 feet of any residential zone, single- or multiple-family dwelling, church, park, or school. Appellees, Playtime Theatres, Inc., and Sea-First Properties, Inc., filed an action in the United States District Court for the Western District of Washington seeking a declaratory judgment that the Renton ordinance violated the First and Fourteenth Amendments and a permanent injunction against its enforcement. The District Court ruled in favor of Renton and denied the permanent injunction, but the Court of Appeals for the Ninth Circuit reversed and remanded for reconsideration. 748 F. 2d 527 (1984). We noted probable jurisdiction, 105 S. Ct. 2015 (1985), and now reverse the judgment of the Ninth Circuit.[1]

[1] This appeal was taken under 28 U. S. C. § 1254(2), which provides this Court with appellate jurisdiction at the behest of a party relying on a state statute or local ordinance held unconstitutional by a court of appeals. As we have previously noted, there is some question whether jurisdiction under § 1254(2) is available to review a non-final judgment. See *South Carolina Electric & Gas Co.* v. *Flemming*, 351 U. S. 901 (1956); *Slaker* v. *O'Connor*, 278 U. S. 188 (1929). But see *Chicago* v. *Atchison, Topeka & Santa Fe R. Co.*, 357 U. S. 77, 82–83 (1958).

Pp. 5 & 11, and

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 9 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1360

CITY OF RENTON, ET AL., APPELLANTS *v.*
PLAYTIME THEATRES, INC., ET AL.

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

[December ——, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

This case involves a constitutional challenge to a zoning ordinance, enacted by appellant, the city of Renton, Washington, that prohibits adult motion picture theatres from locating within 1000 feet of any residential zone, single- or multiple-family dwelling, church, park, or school. Appellees, Playtime Theatres, Inc., and Sea-First Properties, Inc., filed an action in the United States District Court for the Western District of Washington seeking a declaratory judgment that the Renton ordinance violated the First and Fourteenth Amendments and a permanent injunction against its enforcement. The District Court ruled in favor of Renton and denied the permanent injunction, but the Court of Appeals for the Ninth Circuit reversed and remanded for reconsideration. 748 F. 2d 527 (1984). We noted probable jurisdiction, 471 U. S. —— (1985), and now reverse the judgment of the Ninth Circuit.[1]

[1] This appeal was taken under 28 U. S. C. § 1254(2), which provides this Court with appellate jurisdiction at the behest of a party relying on a state statute or local ordinance held unconstitutional by a court of appeals. As we have previously noted, there is some question whether jurisdiction under § 1254(2) is available to review a non-final judgment. See *South Carolina Electric & Gas Co.* v. *Flemming*, 351 U. S. 901 (1956); *Slaker* v. *O'Connor*, 278 U. S. 188 (1929). But see *Chicago* v. *Atchison, T. & S. F. R. Co.*, 357 U. S. 77, 82-83 (1958).

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

From: **Justice Rehnquist**

Circulated: FEB 21 1986

Recirculated: _____

P. 13

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1360

CITY OF RENTON, ET AL., APPELLANTS *v.*
PLAYTIME THEATRES, INC., ET AL.

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

[February ——, 1986]

JUSTICE REHNQUIST delivered the opinion of the Court.

This case involves a constitutional challenge to a zoning ordinance, enacted by appellant, the city of Renton, Washington, that prohibits adult motion picture theatres from locating within 1000 feet of any residential zone, single- or multiple-family dwelling, church, park, or school. Appellees, Playtime Theatres, Inc., and Sea-First Properties, Inc., filed an action in the United States District Court for the Western District of Washington seeking a declaratory judgment that the Renton ordinance violated the First and Fourteenth Amendments and a permanent injunction against its enforcement. The District Court ruled in favor of Renton and denied the permanent injunction, but the Court of Appeals for the Ninth Circuit reversed and remanded for reconsideration. 748 F. 2d 527 (1984). We noted probable jurisdiction, 471 U. S. —— (1985), and now reverse the judgment of the Ninth Circuit.[1]

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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: FEB 24 1986

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84–1360

CITY OF RENTON, ET AL., APPELLANTS *v.*
PLAYTIME THEATRES, INC., ET AL.

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

[February ——, 1986]

JUSTICE REHNQUIST delivered the opinion of the Court.

This case involves a constitutional challenge to a zoning ordinance, enacted by appellant, the city of Renton, Washington, that prohibits adult motion picture theaters from locating within 1,000 feet of any residential zone, single- or multiple-family dwelling, church, park, or school. Appellees, Playtime Theatres, Inc., and Sea-First Properties, Inc., filed an action in the United States District Court for the Western District of Washington seeking a declaratory judgment that the Renton ordinance violated the First and Fourteenth Amendments and a permanent injunction against its enforcement. The District Court ruled in favor of Renton and denied the permanent injunction, but the Court of Appeals for the Ninth Circuit reversed and remanded for reconsideration. 748 F. 2d 527 (1984). We noted probable jurisdiction, 471 U. S. —— (1985), and now reverse the judgment of the Ninth Circuit.[1]

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 5, 1986

MEMORANDUM TO THE CONFERENCE

RE: Cases held for No. 84-1360, City of Renton v. Playtime Theatres, Inc.

No. 85-353 Michigan Diversified Business Products, Inc. v. City of Warren

Under §14.02 of the City of Warren's zoning ordinance, certain specified adult businesses may not be operated without "special use approval" from both the Planning Commission and the Board of Zoning Appeals. "Special use approval" requires the filing of both an application for "special use approval" and a site plan application. The site plan application may not be approved if the proposed adult business site is (1) on other than a major thoroughfare, (2) within 500 feet of a residential zone, or (3) within 1,000 feet of another adult business, a church, or a private or public school. These spatial restrictions may be waived only upon the written consent of 51% of those owning, residing, or doing business within 500 feet of the proposed adult business site. If, and only if, the spatial restrictions are satisfied, then "special use approval" is based on whether the proposed adult business would be "injurious" to the surrounding area and contrary to "the spirit and purpose of the ordinances." Section 21.07 of the ordinance provides that an application for "special use approval" must be granted or denied within a "reasonable time."

Appellants operate a massage parlor/adult bookstore and other adult entertainment facilities in Warren. Appellants stipulated at trial that they had filed neither an application for "special use approval" nor a site plan application prior to operating these adult businesses. Warren sued to enjoin appellants from operating the adult businesses, and appellants filed a counterclaim and a separate mandamus action arguing that Warren's zoning ordinance is unconstitutional. The trial court granted a

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 9, 1985

Re: 84-1360 - City of Renton v. Playtime Theatres, Inc.

Dear Bill:

Please join me.

Respectfully,

JPS

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 6, 1985

No. 84-1360 City of Renton v. Playtime Theatres

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Rehnquist

Copies to the Conference