

HOUSING AND THE LAW: LESSON 5: HANDOUT 2

SHELLEY V. KRAEMER ET UX. MCGHEE ET UX. V. SIPES ET AL.

MAJORITY OPINION¹

SUPREME COURT OF THE UNITED STATES

355 Mo. 814, 198 S.W.2d 679, and 316 Mich. 614, 25 N.W.2d 638, reversed

Decided on May 3, 1948

MR. CHIEF JUSTICE VINSON delivered the opinion of the Court.

These cases present for our consideration questions relating to the validity of court enforcement of private agreements, generally described as **restrictive covenants**, which have as their purpose the exclusion of persons of designated race or color from the ownership or occupancy of real property. Basic constitutional issues of obvious importance have been raised.

The first of these cases comes to this Court on certiorari to the Supreme Court of Missouri. On February 16, 1911, thirty out of a total of thirty-nine owners of property fronting both sides of Labadie Avenue between Taylor Avenue and Cora Avenue in the city of St. Louis, signed an agreement, which was subsequently recorded, providing in part:

. . . the said property is hereby restricted to the use and occupancy for the term of Fifty (50) years from this date, so that it shall be a condition all the time and whether recited and referred to as [sic] not in subsequent conveyances and shall attach to the land as a condition precedent to the sale of the same, that hereafter no part of said property or any portion thereof shall be, for said term of Fifty-years, occupied by any person not of the Caucasian race, it being intended hereby to restrict the use of said property for said period of time against the occupancy as owners or tenants of any portion of said property for resident or other purpose by people of the Negro or Mongolian Race.”

The Court is examining whether or not private agreements (in this case, racially restrictive covenants) are constitutional.

A white neighborhood in Missouri created a restrictive covenant that prevented African Americans and Asian Americans from moving into the neighborhood up until 50 years from the original date of February 16, 1911.

¹ Adapted from <https://www.loc.gov/item/usrep334001/>.

In 1945, the Shelleys, a Black couple, bought a home in the neighborhood without knowing about the restrictive covenant.

...On August 11, 1945, pursuant to a contract of sale, petitioners Shelley, who are Negroes, for valuable consideration received from one Fitzgerald a warranty deed to the parcel in question. The trial court found that petitioners had no actual knowledge of the restrictive agreement at the time of the purchase...

Other property owners in the neighborhood sued to prevent the Shelleys from living in the neighborhood. The local court ruled that the covenant was ineffective because it was never finalized—nine members of the community had not signed the agreement.

On October 9, 1945, **respondents**, as owners of other property subject to the terms of the restrictive covenant, brought suit in the Circuit Court of the city of St. Louis praying that **petitioners** Shelley be restrained from taking possession of the property and that judgment be entered divesting title out of petitioners Shelley and revesting title in the immediate grantor or in such other person as the court should direct. The **trial court** denied the requested relief on the ground that the restrictive agreement, upon which respondents based their action, had never become final and complete because it was the intention of the parties to that agreement that it was not to become effective until signed by all property owners in the district, and signatures of all the owners had never been obtained.

The Supreme Court of Missouri, sitting en banc, reversed and directed the trial court to grant the relief for which respondents had prayed. That court held the agreement effective and concluded that enforcement of its provisions violated no rights guaranteed to petitioners by the Federal Constitution. At the time the court rendered its decision, petitioners were occupying the property in question.

The state Supreme Court of Missouri reversed this decision, saying the agreement was effective and did not violate the Fourteenth Amendment rights of the Shelleys. The Shelleys were actually already living on the property at this time.

A similar case occurred in Detroit, Michigan. The original owners of a property created a contract that excluded any races other than white from living on the property.

The second of the cases under consideration comes to this Court from the Supreme Court of Michigan. The circumstances presented do not differ materially from the Missouri case. In June, 1934, one Ferguson and his wife, who then owned the property located in the city of Detroit which is involved in this case, executed a contract providing in part:

This property shall not be used or occupied by any person or persons except those of the Caucasian race...

The McGhees, a Black couple, had moved into the property. Other property owners in the neighborhood sued to prevent the McGhees from living there. The circuit court ruled that the McGhees had 90 days to vacate, or leave, the property. They appealed this decision to the state Supreme Court, who affirmed, or upheld, the lower court's decision and stated that the Fourteenth Amendment had not been violated.

By deed dated November 30, 1944, petitioners, who were found by the trial court to be Negroes, acquired title to the property, and thereupon entered into its occupancy. On January 30, 1945, respondents, as owners of property subject to the terms of the restrictive agreement, brought suit against petitioners in the Circuit Court of Wayne County. After a hearing, the court entered a decree directing petitioners to move from the property within ninety days. Petitioners were further enjoined and restrained from using or occupying the premises in the future. On appeal, the Supreme Court of Michigan **affirmed**, deciding adversely to petitioners' contentions that they had been denied rights protected by the **Fourteenth Amendment**.

Petitioners have placed primary reliance on their contentions, first raised in the state courts, that judicial enforcement of the restrictive agreements in these cases has violated rights guaranteed to petitioners by the Fourteenth Amendment of the Federal Constitution and Acts of Congress passed pursuant to that Amendment...

Now the case is in the Supreme Court of the United States, which must decide whether the equal protection clause of the Fourteenth Amendment has been violated through the state courts' enforcing the restrictive covenants. This is the first case of its kind.

Whether the **equal protection clause** of the Fourteenth Amendment inhibits judicial enforcement by state courts of restrictive covenants based on race or color is a question which this Court has not heretofore been called upon to consider...

It is well, at the outset, to scrutinize the terms of the restrictive agreements involved in these cases. In the Missouri case, the covenant declares that no part of the affected property shall be

“occupied by any person not of the Caucasian race, it being intended hereby to restrict the use of said property . . . against the occupancy as owners or tenants of any portion of said property for resident or other purpose by people of the Negro or Mongolian Race.”

Not only does the restriction seek to proscribe use and occupancy of the affected properties by members of the excluded class, but, as construed by the Missouri courts, the agreement requires that title of any person who uses his property in violation of the restriction shall be divested. The restriction of the covenant in the Michigan case seeks to bar occupancy by persons of the excluded class. It provides that "This property shall not be used or occupied by any person or persons except those of the Caucasian race."

Here, the Court acknowledges that the restrictive covenant excludes members of a certain class (in this case, anyone who is not white).

The Court also acknowledges that the right to own and enjoy property is a civil right protected by the fourteenth amendment.

A revised statute from the Civil Rights Act of 1866 stated that all citizens, regardless of race, have the right to property.

It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own and dispose of property. Equality in the enjoyment of property rights was regarded by the framers of that Amendment as an essential pre-condition to the realization of other basic civil rights and liberties which the Amendment was intended to guarantee. Thus, Section 1978 of the Revised Statutes, derived from 1 of the Civil Rights Act of 1866, which was enacted by Congress while the Fourteenth Amendment was also under consideration, provides:

“All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.”

The Court says that clearly these restrictions on property would not meet the requirements of the Fourteenth Amendment if they were created by a state or local statute or law.

But in these cases, these agreements were created by private individuals and not state or local laws. However, the state courts have enforced these restrictions. And this is the issue to be considered—whether this enforcement violates the Fourteenth Amendment.

It is likewise clear that restrictions on the right of occupancy of the sort sought to be created by the private agreements in these cases could not be squared with the requirements of the Fourteenth Amendment if imposed by state statute or local ordinance...

But the present cases, unlike those just discussed, do not involve action by state legislatures or city councils. Here, the particular patterns of discrimination and the areas in which the restrictions are to operate are determined, in the first instance, by the terms of agreements among private individuals. Participation of the State consists in the enforcement of the restrictions so defined. The crucial issue with which we are here confronted is whether this distinction removes these cases from the operation of the prohibitory provisions of the Fourteenth Amendment.

Since the decision of this Court in the *Civil Rights Cases*, the principle has become firmly embedded in our constitutional law that the action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful.

We conclude, therefore, that the restrictive agreements, standing alone, cannot be regarded as violative of any rights guaranteed to petitioners by the Fourteenth Amendment. So long as the purposes of those agreements are effectuated by

The Fourteenth Amendment only protects against state conduct or behavior that discriminates.

In this case, the Court finds that discriminatory action done privately by individuals does not violate the Fourteenth Amendment.

Racially restrictive covenants alone that are created and followed on a voluntary basis do not violate the rights of the Shelleys and McGhees.

voluntary adherence to their terms, it would appear clear that there has been no action by the State, and the provisions of the Amendment have not been violated.

However, the Court pivots here to say that these private agreements were enforced by the state courts to restrict people based on race. The respondents claim that this is not state action and the Shelleys and McGhees' rights were not violated. The Court moves to consider these issues.

But here there was more. These are cases in which the purposes of the agreements were secured only by **judicial enforcement** by state courts of the restrictive terms of the agreements. The respondents urge that judicial enforcement of private agreements does not amount to state action, or, in any event, the participation of the State is so attenuated in character as not to amount to state action within the meaning of the Fourteenth Amendment. Finally, it is suggested, even if the States in these cases may be deemed to have acted in the constitutional sense, their action did not deprive petitioners of rights guaranteed by the Fourteenth Amendment. We move to a consideration of these matters.

The action of state courts in their official capacities can be considered state action.

That the action of state courts and judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment is a proposition which has long been established by decisions of this Court...

The Court recognizes that state courts who enforce common law rules (in this case, a property law in the form of a restrictive covenant) can violate Fourteenth Amendment rights.

But the examples of state judicial action which have been held by this Court to violate the Amendment's commands are not restricted to situations in which the judicial proceedings were found in some manner to be procedurally unfair. It has been recognized that the action of state courts in enforcing a substantive common law rule formulated by those courts, may result in the denial of rights guaranteed by the Fourteenth Amendment, even though the judicial proceedings in such cases may have been in complete accord with the most rigorous conceptions of procedural due process...

The short of the matter is that, from the time of the adoption of the Fourteenth Amendment until the present, it has been the consistent ruling of this Court that the action of the States to which the Amendment has reference includes action of state courts and state judicial officials. Although, in construing the terms of the Fourteenth Amendment, differences have from time to time been expressed as to whether particular types of state action may be said to offend the Amendment's prohibitory provisions, it has never been suggested that state court action is immunized from the operation of those provisions simply because the act is that of the judicial branch of the state government...

We have no doubt that there has been state action in these cases in the full and complete sense of the phrase. The undisputed facts disclose that petitioners were willing purchasers of properties upon which they desired to establish homes. The owners of the properties were willing sellers, and contracts of sale were accordingly consummated. It is clear that, but for the active intervention of the state courts, supported by the full panoply of state power, petitioners would have been free to occupy the properties in question without restraint.

The Court is confident that the state courts' actions could be considered **state action**, which meant these actions had violated the Fourteenth Amendment because a governmental body was enforcing a discriminatory private agreement. The houses/properties had already been sold and the Shelleys and McGhees would have been able to live where they wanted had the state courts not intervened.

The state courts could have chosen not to enforce these covenants. Private individuals could discriminate based on race if they wanted. There would not be a legal issue if this was the case.

However, by enforcing the covenant, the state courts used governmental power to deny the Shelleys and McGhees from being able to own property based on their race. The Shelleys and McGhees had been able to afford the house and the house was willingly sold.

Enforcing this covenant rather than not enforcing it meant that these families would be denied the property rights that other members of the community enjoyed. Furthermore, they would not be able to enjoy their property rights on an equal level as their white neighbors.

These are not cases, as has been suggested, in which the States have merely abstained from action, leaving private individuals free to impose such discriminations as they see fit.

Rather, these are cases in which the States have made available to such individuals the full coercive power of government to deny to petitioners, on the grounds of race or color, the enjoyment of property rights in premises which petitioners are willing and financially able to acquire and which the grantors are willing to sell. The difference between judicial enforcement and nonenforcement of the restrictive covenants is the difference to petitioners between being denied rights of property available to other members of the community and being accorded full enjoyment of those rights on an equal footing.

The enforcement of the restrictive agreements by the state courts in these cases was directed pursuant to the common law policy of the States as formulated by those courts in earlier decisions. In the Missouri case, enforcement of the covenant was directed in the first instance by the highest court of the State after the trial court had determined the agreement to be invalid for want of the requisite number of signatures. In the Michigan case, the order of enforcement by the trial court was affirmed by the highest state court. The judicial action in each case bears the clear and unmistakable imprimatur of the State...

We hold that, in granting judicial enforcement of the restrictive agreements in these cases, the States have denied petitioners the equal protection of the laws, and that, therefore, the action of the state courts cannot stand. We have noted that freedom from discrimination by the States in the enjoyment of property rights was among the basic objectives sought to be effectuated by the framers of the Fourteenth Amendment. That such discrimination has occurred in these cases is clear. Because of the race or color of these petitioners, they have been denied rights of ownership or occupancy enjoyed as a matter of course by other citizens of different race or color. The Fourteenth Amendment declares

“that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color.”

The Court claims that the state courts in using judicial enforcement of the restrictive covenants denied the Shelleys and McGhees equal protection under the law. *These actions are unconstitutional.*

Furthermore, the Court notes that the right to own property was a basic objective when the framers wrote the Fourteenth Amendment. In these cases, there was discrimination based on race that denied the petitioners this right.

The Supreme Court of the United States reverses the state supreme court decisions.

For the reasons stated, the judgment of the Supreme Court of Missouri and the judgment of the Supreme Court of Michigan must be reversed.

Reversed.

MR. JUSTICE REED, MR. JUSTICE JACKSON, and MR. JUSTICE RUTLEDGE took no part in the consideration or decision of these cases.²

² Opinion adapted from
<https://www.law.cornell.edu/supremecourt/text/334/1>