

Washington Supreme Court reverses its 1960 ruling that allowed Seattle cemetery to discriminate against a Black family

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Shown here are plots for young children at Evergreen Washelli Memorial Park in North Seattle. In 1957, a Black Seattle couple wanted to bury their 3-year-old son in a section of the cemetery called “Babyland.” They were told it was for whites only; they sued, but the state Supreme Court ruled against them. Today, the state Supreme Court overruled that 1960 decision. Photographed on October 15, 2020. (Mike Siegel / The Seattle Times)

By [David Gutman](#)

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As the Washington state Supreme Court struck down Tim Eyman’s voter-approved initiative to cut car-tab taxes on Thursday, it also did something else, seemingly completely unrelated: It overruled another Supreme Court decision, one from 1960, that had allowed cemeteries to discriminate on the basis of race.

It was, in part, a symbolic gesture.

Cemeteries in Washington are not allowed to discriminate on the basis of race. Decades of subsequent federal and state civil rights laws, as well as evolving court interpretations, have made racial discrimination in public accommodations illegal.

But, in striking down its [1960 opinion](#), the Supreme Court said on Thursday it was trying to reckon with the court system's long history of racial discrimination. It was taking one small, symbolic step to try to undo centuries of systemic racism in America.

The Supreme Court foreshadowed its own action back in June, when racial justice protests in response to the killing of a Black man, George Floyd, by Minneapolis police, dominated the nation's attention. All nine justices on the court wrote [an open letter to members of the legal community](#) calling on them to "recognize the role we have played in devaluing black lives."

"This very court once held that a cemetery could lawfully deny grieving black parents the right to bury their infant," the justices wrote. "We cannot undo this wrong — but we can recognize our ability to do better in the future."

In this case, the future was Thursday.

The Supreme Court tacked on [a footnote to page 13 of its order in the Eyman case](#) to, officially, try to right its 60-year-old wrong.

"It's institutionally really important that the courts look backward in time and acknowledge when things are really wrong, when they accomplish an injustice rather than justice," said Theo Myhre, a professor at the University of Washington School of Law. "That's what they're doing in this footnote."

Myhre referenced the [U.S. Supreme Court's 2018 decision](#), when, even as it upheld the Trump administration's travel ban on citizens from several Muslim countries, it also took the opportunity to officially overturn the 1944 Korematsu decision, which allowed Japanese incarceration camps.

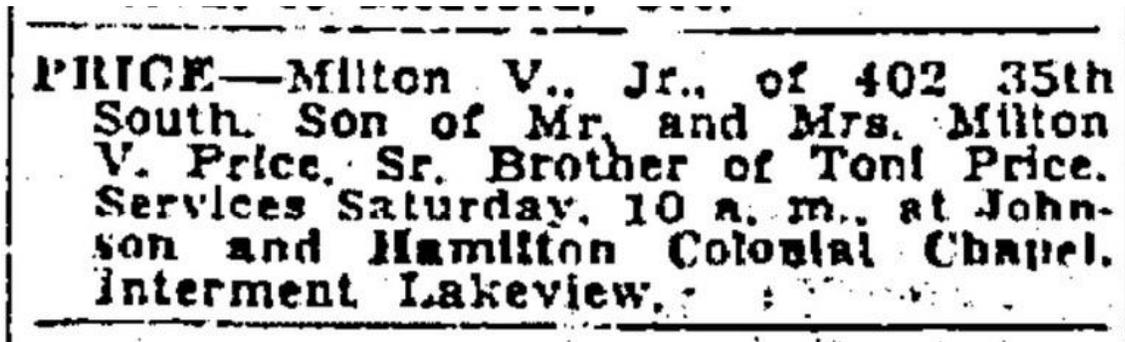
In Thursday's order, [the state Supreme Court tossed out Eyman's Initiative 976](#), which lowered car tab taxes to \$30, because its ballot title was misleading and the initiative contained multiple subjects.

In a footnote to its ruling, the Supreme Court addressed a 1960 decision that also tossed out a state law for containing multiple subjects. That 1960 decision struck down a state law that made it illegal for cemeteries to "refuse burial to any person because such person may not be of the Caucasian race."

On Thursday, in the footnote, the Court said the 1960 decision got it wrong in two ways. First, it improperly divided the subjects of the law in question. But second, and more importantly, the 1960 order contained a concurring decision that attacked integration and civil rights.

“The Price concurrence is an example of the unfortunate role we have played,” the Court wrote Thursday.

In 1957, 3-year-old Milton V. Price Jr. drowned in a swimming pool accident. His parents, Milton, a Seattle police officer, and Bernice Price, tried to bury him at Evergreen Washelli Cemetery, in North Seattle.



PRICE—Milton V., Jr., of 402 35th South. Son of Mr. and Mrs. Milton V. Price, Sr. Brother of Tom Price. Services Saturday, 10 a. m., at Johnson and Hamilton Colonial Chapel. Interment Lakeview.

The 1957 death announcement, in The Seattle Daily Times, of Milton V. Price Jr., who died when he was 3. Evergreen Washelli Cemetery in Seattle refused to bury him where other children were laid to rest because he was Black.

The Prices wanted to bury their son in a section of the cemetery specifically for young children, known as “Babyland.” The cemetery refused. The Prices were told that section was for Caucasians only, and the cemetery offered a plot in another area, known as “Resthaven.”

The Prices sued, citing state law that forbid cemeteries from refusing burial on the basis of race.

“Isn’t my baby as good as any other baby?” Bernice Price asked, according to coverage of the trial.

A jury in King County Superior Court ruled against them. The Prices filed a motion asking for a new trial. Judge William J. Wilkins said no. They appealed to the state Supreme Court.

In 1960, the Supreme Court ruled against them, 6-3, on a technicality. The law forbidding cemeteries from discriminating based on race, the court ruled, was unconstitutional.

The court wrote that the state law addressed both how private cemeteries should be governed and civil rights, and thus unconstitutionally covered more than one subject.

“This was a strained and incorrect way to divide the subjects in the bill, all of which were germane to the subject of cemetery regulation,” the current court wrote Thursday.

But the 1960 decision also contained ideas a lot more pernicious than how to look at the subjects of a bill.

In a concurring opinion at the time, Justice Joseph A. Mallery offered a full-throated defense of segregation.



A Seattle Daily Times headline from 1960. The story recounts how state Supreme Court Justice Joseph A. Mallery defended segregation in a case in which a Black family sued a cemetery. The current state Supreme Court on *Thursday* officially repudiated that court's decision and Mallery's opinion.

Mallery wrote that the Prices' lawsuit was part of a "Negro crusade to judicially deprive white people of their right to choose their associates in their private affairs."

"The white parents who have relied upon the white restriction in question have acquired a right to the association of their own race exclusively," he wrote.

Evergreen Washelli Cemetery and Funeral Home said Thursday that they did not own the cemetery at the time of the court case and they applaud the new decision.

In officially repudiating Mallery's concurrence, Myhre said, the court was both ensuring that it could never be used as judicial precedent and trying to address the past wrong.

It's an approach that the court appears ready to continue, if the justices' June letter is any guide.

"Systemic racial injustice against black Americans is not an omnipresent specter that will inevitably persist," they wrote in June. "It is the collective product of each of our individual actions — every action, every day. It is only by carefully reflecting on our actions, taking individual responsibility for them, and constantly striving for better that we can address the shameful legacy we inherit."

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