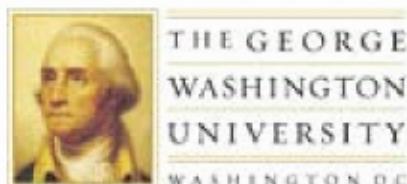


The Burger Court Opinion Writing Database

Chandler v. Roudebush

425 U.S. 840 (1976)

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

March 8, 1976

Re: 74-1599 - Chandler v. Roudesbush

MEMORANDUM TO THE CONFERENCE:

Lewis had indicated he was having a "search" done on § 717 as to the availability of a de novo trial and I deferred my vote. His memorandum pretty much persuades me, however irrational, that the statute seems to permit a de novo trial. It is but another example of legislative irresponsibility, cloaking the point in ambiguity to avoid "biting the bullet" and leaving that task to us.

✓ I therefore vote to reverse.

Regards,

WSB

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

CHAMBERS OF
THE CHIEF JUSTICE

March 9, 1976

Re: 74-1599 - Chandler v. Roudebush

Dear Bill:

On my hurried trip down to Jackson, Mississippi and back late last night I read some material on this issue, generally in the area covered by the memo that Lewis Powell sent around. Although my earlier memo indicated that I could "live with a reversal" of that case, leading to a mandatory de novo trial, my review of the material on the plane yesterday afternoon casts a great deal of doubt on it.

In these circumstances I withdraw the assignment of the case to Potter and leave the reassignment to you. I will work out some other adjustment in Potter's overall assignments.

Regards,

WEB
MB

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

May 24, 1976

Re: No. 74-1599 - Chandler v. Roudebush

Dear Potter:

With considerable reluctance I join your May 6 proposed opinion. It comports with the express language of Congress, and that is our job no matter what result follows.

Regards,

WSUS

Mr. Justice Stewart

Copies to the Conference

✓
JW

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 9, 1976

RE: No. 74-1599 Chandler v. Roudebush

Dear Chief:

Thanks for your note of March 9. I've talked with Potter and he is willing to retain the assignment. I therefore see no reason to reassign it.

Sincerely,

Bill

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 7, 1976

RE: No. 74-1599 Chandler v. Roudebush

Dear Potter:

I agree.

Sincerely,



Mr. Justice Stewart

cc: The Conference

✓
PS
Revised
JULY 1976
To: The Chief Justice
Mr. Justice Powell
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: 6/6/76

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1599

Jewell D. Chandler,
Petitioner,
v.
Richard L. Roudebush,
etc., et al. } On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit.

[May —, 1976]

MR. JUSTICE STEWART delivered the opinion of the Court.

In 1972 Congress extended the protection of Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended 42 U. S. C. § 2000e *et seq.* (1970 ed. Supp. IV), to employees of the Federal Government. A principal goal of the amending legislation, the Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 86 Stat. 103, was to eradicate "‘entrenched discrimination in the Federal service,’" *Morton v. Mancari*, 417 U. S. 535, 547, by strengthening internal safeguards and by according "[a]ggrieved [federal] employees or applicants . . . the full rights available in the courts as are granted to individuals in the private sector under title VII."¹ The issue presented by this case is whether the 1972 Act gives federal employees the same right to a trial *de novo* of employment discrimination claims as "private sector" employees enjoy under Title VII.

I

The petitioner, Mrs. Jewell Chandler, is a Negro. In

¹ S. Rep. No. 92-415, 92d Cong., 1st Sess., 16 (1971) (hereinafter cited as Senate Report).

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 1, 1976

MEMORANDUM TO THE CONFERENCE

Cases previously held for No. 74-1599, Chandler v. Roudebush:

Three cases have been held for No. 74-1599, Chandler v. Roudebush: No. 74-1600, Salone v. United States, (CA 10); No. 75-247, United States v. Sperling, (CA 3); and No. 75-784, Simon v. Caro, (CA 7).

No. 74-1600, Salone v. United States

The 10th Circuit held in this case that federal employees are not routinely entitled to a trial de novo under § 717(c). This holding is inconsistent with our decision in Chandler v. Roudebush, supra. Accordingly, the petition for certiorari should be granted, and the case vacated and remanded for re-consideration in light of Chandler.

No. 75-247, United States v. Sperling

The 3rd Circuit held in this case that federal employees are routinely entitled to a trial de novo under § 717(c). This holding is consistent with our decision in Chandler v. Roudebush, supra. Accordingly, the petition for certiorari should be denied.

No. 75-784, Simon v. Caro

The 7th Circuit held in this case that federal employees are routinely entitled to a trial de novo under § 717(c). This holding is consistent with our decision in Chandler v. Roudebush, supra. Accordingly, the petition for certiorari should be denied.

P.S.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 27, 1976

Re: No. 74-1599 - Chandler v. Roudebush

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 7, 1976

Re. No. 74-1599 -- Jewell D. Chandler v. Richard L.
Roudebush

Dear Potter:

Please join me.

Sincerely,

T. M.
T. M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 17, 1976

Re: No. 74-1599 - Chandler v. Roudebush

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 8, 1976

No. 74-1599 Chandler v. Roudebush

MEMORANDUM TO THE CONFERENCE:

At the Conference on Friday, I voted to affirm the CA9 holding that de novo review of a federal employee's claim under § 717 is not required. This had been my view at conclusion of the argument and prior to our Conference.

Discussion at the Conference prompted me to take a second look at this case, which I did on Saturday with some care - assisted by my clerk, Chris Whitman. I was interested primarily in pursuing two inquiries: (i) the legislative history, and (ii) the language used in other statutes.

As a result of this inquiry, I am now persuaded that the legislative history is not a "stand off", as I had previously thought. Although not free from some ambiguity, the history supports de novo review.

In view of what was said at the Conference (by Bill Rehnquist and others), I was especially interested in determining what other statutes provide with respect to review of administrative action. Every example we could find, in the time available, involved an explicit statutory provision as to the finality of the agency finding "if supported by substantial evidence". The provision in this respect in numerous other statutes is to be contrasted with the absence of comparable language in § 717(c) and its flat statement that an aggrieved employee "may file a civil action".

In view of the foregoing, I am now persuaded that however unwise it may seem (and my view as to this has not changed), Congress intended de novo review by a district court.

- 2 -

Particularly since Byron gave me his "proxy" in this case, I feel compelled to release him and also to share my "second thoughts" with all of you. I enclose a copy of Chris Whitman's memorandum, prepared by her under considerable time constraint but which I found quite helpful.

L.F.P. Jr

L.F.P., Jr.

ss

cw/ss 3/6/76

MEMORANDUM

TO: Mr. Justice Powell DATE: March 6, 1976
FROM: Chris Whitman

No. 74-1599 Chandler v. Roudebush

I. The Legislative History

The Hawkins bill, reported out of the House Committee on Education and Labor, was the first step towards the 1972 Act. It conferred authority to issue cease-and-desist orders on the EEOC. These orders were judicially enforceable in the court of appeals subject to a limited review to see if they were supported by "substantial evidence on the record considered as a whole." The right of private sector employees to file a "civil action" in the district court was retained for those instances when the EEOC dismissed the complaint or failed to act within 180 days. This "civil" action was to be identical to that available to employees under the Act prior to 1972. In Alexander v. Gardner-Denver, 415 U.S. 36 (1974), and McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), the Court determined that/civil action was to take the form of a trial de novo before the district court.

The Hawkins bill also provided for Title VII coverage of Federal employees. The EEOC was given enforcement responsibility over their claims, but the Federal employees were allowed to

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 6, 1976

No. 74-1599 Chandler v. Roudebush

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 27, 1976

Re: No. 74-1599 - Chandler v. Roudebush

Dear Potter:

Please join me.

Sincerely,

W.W.

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 7, 1976

Re: 74-1599 - Chandler v. Roudebush

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to the Conference