

The Burger Court Opinion Writing Database

Fitzpatrick v. Bitzer

427 U.S. 445 (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

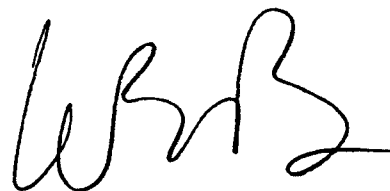
June 21, 1976

Re: (75-251 - Fitzpatrick v. Bitzer
(75-283 - Bitzer v. Matthews)

Dear Bill:

I join.

Regards,

A handwritten signature in cursive script, appearing to be 'WB', likely representing William Brennan.

Mr. Justice Rehnquist

Copies to the Conference

To: The Chief Justice
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

No. 75-251 Fitzpatrick v. Bitzer
 No. 75-283 Bitzer v. Matthews

From: Mr. Justice Brennan

Circulated: 6/23/76

Recirculated: _____

MR. JUSTICE BRENNAN, concurring in the judgment.

This suit was brought by present and retired employees of the State of Connecticut against the State Treasurer, the State Comptroller, and the Chairman of the State Employees' Retirement Commission. In that circumstance, Connecticut may not invoke the Eleventh Amendment, since that Amendment bars only federal court suits against States by citizens of other States. Rather, the question is whether Connecticut may avail itself of the nonconstitutional but ancient doctrine of sovereign immunity as a bar to a claim for damages under Title VII. In my view Connecticut may not assert sovereign immunity for the reason I expressed in dissent in Employees v. Missouri Public Health Dept., 411 U.S. 279, 298 (1973): the States surrendered that immunity, in Hamilton's words, "in the plan of the Convention" that formed the Union, at least insofar as the States granted Congress specifically enumerated powers. See, id., at 319 n. 7; Edelman v. Jordan, 415 U.S. 651, 687 (1974) (BRENNAN, J., dissenting); Parden v. Terminal R. Co., 377 U.S. 184 (1964). Congressional authority to enact the provisions of Title VII at issue in this case is found in the Commerce Clause, Art. I, §8, cl.3, and in §5 of the Fourteenth Amendment, two of the enumerated powers granted Congress in the Constitution. Cf. Oregon v. Mitchell,

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 10, 1976

Nos. 75-251 and 75-283
Fitzpatrick v. Bitzer

Dear Bill,

I am glad to join your opinion for
the Court in these cases.

Sincerely yours,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 11, 1976

Re: Nos. 75-251 and 75-283 - Fitzpatrick v.
Bitzer

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 25, 1976

Re: Nos. 75-251 and 75-283, Fitzpatrick v. Bitzer

Dear Bill:

Please join me.

Sincerely,


T.M.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

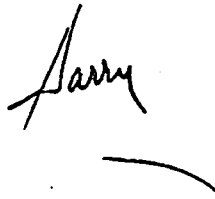
June 21, 1976

Re: No. 75-251 - Fitzpatrick v. Bitzer
No. 75-283 - Bitzer v. Matthews

Dear Bill:

Please join me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Harry", with a long horizontal flourish extending to the right.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 11, 1976

No. 75-251 Fitzpatrick v. Bitzer
No. 75-283 Bitzer v. Matthews

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

lfp/ss

cc: The Conference

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Black
 Mr. Justice Harlan
 Mr. Justice Burger

From: Mr. Justice Rehnquist

Circulated: JUN 1 1976

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75-251 AND 75-283

Garland M. Fitzpatrick
 et al., Petitioners,
 75-251 v.
 Frederick Bitzer, etc.,
 et al.
 Frederick Bitzer, etc.,
 et al., Petitioners,
 75-283 v.
 Donald Matthews et al.)

On Writs of Certiorari to the
 United States Court of Ap-
 peals for the Second Circuit.

[June —, 1976]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

In the 1972 Amendments to Title VII of the Civil Rights Act of 1964, Congress, acting under § 5 of the Fourteenth Amendment, authorized federal courts to award money damages in favor of a private individual against a state government found to have subjected that person to employment discrimination on the basis of "race, color, religion, sex, or national origin."¹ The

¹ Section 703 (a) of the Civil Rights Act of 1964 (hereinafter the 1964 Act), 78 Stat. 255, 42 U. S. C. § 2000e-2 (a), provides:

"It shall be an unlawful employment practice for an employer—

"(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

"(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employ-

P. 2-4, 6-8, 10
WHR

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Souter

From: Mr. Justice

Circulated: _____

Recirculated: JUN 10 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75-251 AND 75-283

Garland M. Fitzpatrick
et al., Petitioners,
75-251 v.

Frederick Bitzer, etc.,
et al.

Frederick Bitzer, etc.,
et al., Petitioners,
75-283 v.

Donald Matthews et al.

On Writs of Certiorari to the
United States Court of Ap-
peals for the Second Circuit.

[June —, 1976]

MR. JUSTICE REHNQUIST delivered the opinion of the
Court.

In the 1972 Amendments to Title VII of the Civil
Rights Act of 1964, Congress, acting under § 5 of the
Fourteenth Amendment, authorized federal courts to
award money damages in favor of a private individual
against a state government found to have subjected that
person to employment discrimination on the basis of
"race, color, religion, sex, or national origin."¹ The

¹Section 703 (a) of the Civil Rights Act of 1964 (hereinafter the
1964 Act), 78 Stat. 255, 42 U. S. C. § 2000e-2 (a), provides:

"It shall be an unlawful employment practice for an employer—

"(1) to fail or refuse to hire or to discharge any individual, or
otherwise to discriminate against any individual with respect to his
compensation, terms, conditions, or privileges of employment, because
of such individual's race, color, religion, sex, or national origin; or

"(2) to limit, segregate, or classify his employees in any way
which would deprive or tend to deprive any individual of employ-

HAB

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 24, 1976

MEMORANDUM TO THE CONFERENCE

Re: Case held for Fitzpatrick v. Bitzer, No. 75-251

There is one case being held: McAuliffe v. Carlson, Comm'r of Finance, No. 75-933, involving an order requiring the State to make restitution of monies found to have been unconstitutionally used to pay for the cost of petitioner's treatment at state mental health facilities.

There were two separate funds involved. In 1971 petitioner was transferred from jail to a mental health facility where he served the remainder of his one-year sentence for breaking and entering. Respondent, having designated himself as "representative payee" under the Social Security Act, received petitioner's Title II disability payments in the interim. Acting under a Connecticut statute making transferees such as petitioner liable for the costs of the state's mental health treatment, respondent by a bookkeeping entry applied some \$1,000 of the accrued benefits to petitioner's bill (\$5.03 x 218 days) upon his discharge. Thereafter, petitioner was involuntarily committed to another state mental hospital. Petitioner deposited \$150 in a patient's account. Pursuant to a Connecticut statute appointing him as conservator with power over this fund, respondent applied it to pay for this second period of treatment.

In a declaratory ruling not at issue here, the District Court found petitioner had been unconstitutionally deprived of the money in the two funds. While recognizing that the

Reproduced from the Collections of the Manuscript Division, Library of Congress

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 2, 1976

Re: 75-251 and 75-283 - Fitzpatrick v. Bitzer

Dear Bill:

Although future study may persuade me otherwise,
I presently plan to write separately concurring in
the result.

Sincerely,



Mr. Justice Rehnquist

Copies to the Conference

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

No. 75-251 - Fitzpatrick v. Bitzer
No. 75-283 - Bitzer v. Matthews

From: Mr. Justice Stevens

Circulated: JUN 24 1976

Recirculated: _____

MR. JUSTICE STEVENS, concurring.

In my opinion the Commerce power is broad enough to support federal legislation regulating the terms and conditions of State employment and, therefore, provides the necessary support for the 1972 Amendments to Title VII, even though Congress expressly relied on § 5 of the Fourteenth Amendment. But I do not believe plaintiffs proved a violation of the Fourteenth Amendment, and because I am not sure that the 1972 Amendments were "needed to secure the guarantees of the Fourteenth Amendment," see Katzbach v. Morgan, 384 U.S. 641, 651, I question whether § 5 of that Amendment is an adequate reply to Connecticut's Eleventh Amendment defense. I believe the defense should be rejected for a different reason.

Even if the Eleventh Amendment does cover a citizen's suit against his own State, ^{1/} it does not bar an action against

^{1/} As Chief Justice Marshall has pointed out, the Eleventh Amendment is not literally applicable to this situation. See Cohens v. Virginia, 19 U.S. (6 Wheaton) 264, 412; see also Employees v. Missouri Public Health Department, 411 U.S. 279, (Brennan, J., concurring), 298-324.