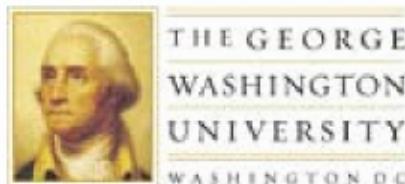


The Burger Court Opinion Writing Database

Alabama Power Co. v. Davis

431 U.S. 581 (1977)

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

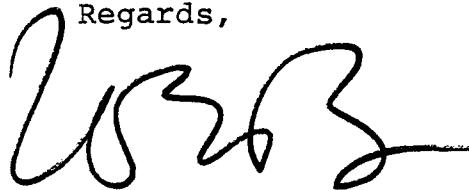
June 1, 1977

RE: 76-451 - Alabama Power Co. v. Davis

Dear Thurgood:

I join.

Regards,



Mr. Justice Marshall

Copies to the Conference

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

(3)

CHAMBERS OF
JUSTICE WM.J. BRENNAN, JR.

May 25, 1977

RE: No. 76-451 Alabama Power Co. v. Davis

Dear Thurgood:

I agree.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

①

✓

May 25, 1977

Re: 76-451, Alabama Power Co. v. Davis

Dear Thurgood,

I am glad to join your opinion for the
Court in this case.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

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

(5)

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 25, 1977

Re: No. 76-451 - Alabama Power Co. v. Davis

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to Conference

MAY 24 1977

No. 76-451, Alabama Power Co. v. Davis

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Respondent Davis became a permanent employee of petitioner Alabama Power Co. on August 16, 1936, and continued to work until March 18, 1943, when he left to enter the military. After serving in the military for thirty months, he resumed his position with Alabama Power, where he worked until he retired on June 1, 1971. Davis received credit under the company pension plan for his service from August 16, 1937,^{1/} until the date of his retirement, with the exception of the time he spent in the military and some time spent on strike.

Davis claimed that section 9 of the Military Selective Service Act, 50 U.S. C. App. 459(b) (1970)^{2/} requires Alabama Power to give him credit toward his pension for his period of military service. With the assistance of the United States Attorney,^{3/} he sued to vindicate that asserted right. The district court, 383 F. Supp. 880 (N.D. Ala. 1973), and the Court of Appeals for the Fifth Circuit, 542 F.2d 650 (1976), agreed with Davis. Because of the importance of the issue and a conflict among the circuits,^{4/} we granted certiorari, U.S.^{5/}.

We affirm.

1, 5, 9, 10, 12, 13

MAY 27 1977

printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-451

Alabama Power Company,
Petitioner,
v.
Raymond E. Davis. } On Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit.

[June —, 1977]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Respondent Davis became a permanent employee of petitioner Alabama Power Co. on August 16, 1936, and continued to work until March 18, 1943, when he left to enter the military. After serving in the military for 30 months, he resumed his position with Alabama Power, where he worked until he retired on June 1, 1971. Davis received credit under the company pension plan for ~~her~~ service from August 16, 1937,¹ until the date of his retirement, with the exception of the time he spent in the military and some time spent on strike. Davis claimed that § 9 of the Military Selective Service Act, 50 U. S. C. App. § 459 (b) (1970)² requires Alabama Power to give him credit toward his pension for his period of military service. With the assistance of the United States Attorney,³ he sued to vindicate that asserted right. The District Court, 383 F. Supp. 880 (ND Ala. 1973), and the Court of Appeals for the Fifth Circuit, 542 F. 2d 650 (1976), agreed with Davis. Because of the importance of the issue

415

¹ Employees do not become eligible to participate in the plan until they have worked for one year. See p. —, *infra*.

² Section 459 (b) has been recodified, without substantial change, as 38 U. S. C. § 2021 (Supp. V 1975).

³ See 50 U. S. C. App. § 459 (d), now codified at 38 U. S. C. § 2022 (Supp. V 1975).

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 7, 1977

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 76-451, Alabama Power Co. v. Davis

The only case held for Alabama Power Co. is No. 76-1221, Industrial Employers & Distributors Association v. Smith. Like Alabama Power, Smith involves a World War II veteran's claim to credit under a defined benefit pension plan for time spent in the military during the War. The district court concluded that pensions are an incident of seniority and awarded summary judgment to Smith. CA 9 affirmed, although on a different rationale. The rationale adopted by CA 9 is somewhat inconsistent with Alabama Power, but since the judgment below is correct, I will vote to deny. ✓

T. M.

T. M.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

1
✓

May 30, 1977

Re: No. 76-451 - Alabama Power Co. v. Davis

Dear Thurgood:

Please join me.

Sincerely,

h.a.b.

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 25, 1977

(4)

No. 76-451 Alabama Power Co. v. Davis

Dear Thurgood:

Please join me.

Sincerely,

Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

✓
Supreme Court of the United States
Washington, D. C. 20543
6

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 25, 1977

Re: No. 76-451 - Alabama Power Co. v. Davis

Dear Thurgood:

I was the other way at Conference, but you have written a good opinion and I am happy to join it.

Sincerely,

W.W.

Mr. Justice Marshall

Copies to the Conference

(2)

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 25, 1977

RE: 76-451 Alabama Power Co. v. Davis

Dear Thurgood:

Please join me.

Respectfully,



Mr. Justice Marshall

Copies to the Conference