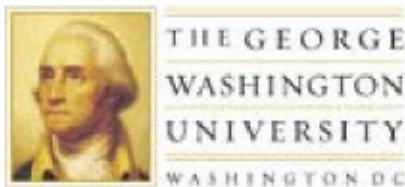


The Burger Court Opinion Writing Database

Lorillard v. Pons

434 U.S. 575 (1978)

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

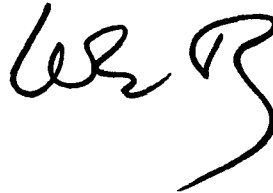
February 16, 1978

Re: 76-1346 - Lorillard v. Pons

Dear Thurgood:

I join.

Regards,

A handwritten signature in dark ink, appearing to be 'WRB', written in a cursive, stylized script.

Mr. Justice Marshall

Copies to the Conference

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

2

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 31, 1978

RE: No. 76-1346 Lorrillard v. Pons

Dear Thurgood:

I agree.

Sincerely,

B. J. White

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 1, 1978

No. 76-1346 - Lorillard v. Pons

Dear Thurgood,

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

I would not be adverse to the suggestions contained in Lewis' letter to you of today; at least to the extent of deleting the word "wholly" from the last sentence in the text on page 9, and making appropriate changes in footnote 13. It seems to me important, however, to keep as much distance as possible between this case and Title VII cases where the courts have held, and I tentatively agree, that there is no right to a jury trial.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

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

①

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 8, 1978

76-1346: Lorillard v. Pons

Dear Thurgood,

I agree.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

M

26 JAN 1978

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1346

<p>Lorillard, A Division of Loew's Theatres, Inc., Petitioner, v. Frances P. Pons.</p>	}	<p>On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.</p>
--	---	--

[February —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case presents the question whether there is a right to a jury trial in private civil actions for lost wages under the Age Discrimination in Employment Act of 1967 (ADEA), 29 U. S. C. § 621 *et seq.* Respondent commenced this action against petitioner, her former employer, alleging that she had been discharged because of her age in violation of the ADEA. She sought reinstatement, lost wages, liquidated damages, attorney's fees and costs. Respondent demanded a jury trial on all issues of fact; petitioner moved to strike the demand. The District Court granted the motion to strike but certified the issue for interlocutory appeal pursuant to 28 U. S. C. § 1292 (b). The United States Court of Appeals for the Fourth Circuit allowed the appeal and vacated the trial court's order, ruling that the ADEA and the Seventh Amendment¹ afford respondent the right to a jury trial on her claim for lost wages, 549 F. 2d 950, 952-953.² We granted certiorari, —

¹ Judge Butzner filed an opinion concurring specially. Since he agreed with the court that the statute entitled respondent to a jury trial, he found no occasion to address the constitutional issue. 549 F. 2d 950, 954.

² The Court of Appeals did not decide whether respondent was entitled to a jury trial on her claim for liquidated damages because according to the District Court opinion, respondent had "conceded that the liquidated damages issue would not be triable to a jury." 69 F. R. D. 576 n. 2. We

changes page 9

8 FEB 1978

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1346

<p>Lorillard, A Division of Loew's Theatres, Inc., Petitioner, v. Frances P. Pons.</p>	}	<p>On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.</p>
--	---	--

[February —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case presents the question whether there is a right to a jury trial in private civil actions for lost wages under the Age Discrimination in Employment Act of 1967 (ADEA), 29 U. S. C. § 621 *et seq.* Respondent commenced this action against petitioner, her former employer, alleging that she had been discharged because of her age in violation of the ADEA. She sought reinstatement, lost wages, liquidated damages, attorney's fees and costs. Respondent demanded a jury trial on all issues of fact; petitioner moved to strike the demand. The District Court granted the motion to strike but certified the issue for interlocutory appeal pursuant to 28 U. S. C. § 1292 (b). The United States Court of Appeals for the Fourth Circuit allowed the appeal and vacated the trial court's order, ruling that the ADEA and the Seventh Amendment¹ afford respondent the right to a jury trial on her claim for lost wages, 549 F. 2d 950, 952-953.² We granted certiorari, —

¹ Judge Butzner filed an opinion concurring specially. Since he agreed with the court that the statute entitled respondent to a jury trial, he found no occasion to address the constitutional issue. 549 F. 2d 950, 954.

² The Court of Appeals did not decide whether respondent was entitled to a jury trial on her claim for liquidated damages because according to the District Court opinion, respondent had "conceded that the liquidated damages issue would not be triable to a jury." 69 F. R. D. 576 n. 2. We

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 15, 1978

No. 76-1346-- Lorillard v. Pons

Dear Bill:

I can appreciate the reasons for your discomfort with an "unadorned presumption" that Congress is always aware of lower court interpretations of statutes. I did not mean to suggest that Congress always is to be presumed to have had such knowledge. I thought that the discussion on page 6 concerning the extensive Congressional familiarity with the FLSA provisions served fairly to limit the presumption to cases in which there is some reason to believe that Congress was actually focussing in on the provisions of the incorporated law. However, I would be happy to add the qualifier "normally" after the word "Congress" in the last sentence of the full paragraph on page 5.

Sincerely,

T.M.
T.M.

Mr. Justice Rehnquist

p. 5

16 FEB 1978

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1346

<p>Lorillard, A Division of Loew's Theatres, Inc., Petitioner, v. Frances P. Pons.</p>	}	<p>On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.</p>
--	---	--

[February —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case presents the question whether there is a right to a jury trial in private civil actions for lost wages under the Age Discrimination in Employment Act of 1967 (ADEA), 29 U. S. C. § 621 *et seq.* Respondent commenced this action against petitioner, her former employer, alleging that she had been discharged because of her age in violation of the ADEA. She sought reinstatement, lost wages, liquidated damages, attorney's fees and costs. Respondent demanded a jury trial on all issues of fact; petitioner moved to strike the demand. The District Court granted the motion to strike but certified the issue for interlocutory appeal pursuant to 28 U. S. C. § 1292 (b). The United States Court of Appeals for the Fourth Circuit allowed the appeal and vacated the trial court's order, ruling that the ADEA and the Seventh Amendment¹ afford respondent the right to a jury trial on her claim for lost wages, 549 F. 2d 950, 952-953.² We granted certiorari, —

¹ Judge Butzner filed an opinion concurring specially. Since he agreed with the court that the statute entitled respondent to a jury trial, he found no occasion to address the constitutional issue. 549 F. 2d 950, 954.

² The Court of Appeals did not decide whether respondent was entitled to a jury trial on her claim for liquidated damages because according to the District Court opinion, respondent had "conceded that the liquidated damages issue would not be triable to a jury." 69 F. R. D. 576 n. 2. We

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 1, 1978

MEMORANDUM TO THE CONFERENCE

RE: Cases held for No. 76-1346, Lorillard v. Pons
No. 77-172, Morelock v. NCR Corporation

Petitioners brought this action pursuant to the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621 et. seq. (1970). Respondent's motion to strike petitioners' jury demand was denied and the case was tried to a jury which found for petitioners. The District Court granted a judgment notwithstanding the verdict on the ground that there was no substantial evidence presented to support the claims of age discrimination. Petitioners appealed from the judgment notwithstanding the verdict and respondent cross-appealed challenging the decision of the trial court to grant petitioners a jury trial on their age discrimination claims.

The Court of Appeals for the Sixth Circuit vacated the judgment and remanded the case to the District Court for the entry of findings of fact and conclusions of law. The Court held that there was no constitutional right to a jury trial, characterizing petitioners claims as equitable in nature under the Seventh Amendment.

The Court did not address the statutory issue. Since we found the statutory issue to be dispositive in Lorillard, I intend to vote to grant, vacate and remand this case for reconsideration in light of Lorillard.


T.M.

✓

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 26, 1978

Re: No. 76-1346 - Lorillard v. Pons

Dear Thurgood:

At the end of your opinion will you please add a notation to the effect that I took no part in the consideration or decision of this case.

Sincerely,

Harry

Mr. Justice Marshall

cc: The Conference

4

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 1, 1978

No. 76-1346 Lorillard v. Pons

Dear Thurgood:

Subject to the comments below, I will be happy to join your opinion.

I am concerned about footnotes 13 and 14 and the accompanying text. Although you may well be right, I would not have thought it necessary or desirable to express an opinion as to backpay under ADEA being "a matter of right" following a finding of a violation. I would reserve judgment on this until the question is presented to us, with full briefing and argument.

The last sentence on page 9 of your opinion states: "Petitioner's reliance on Title VII, therefore, is wholly misplaced." In view of the substantive similarity - indeed almost identity - of the two Acts, I think petitioner's reliance on Title VII presented a fairly close question. As several of us expressed at the Conference, it really "makes little sense" to have procedures for age discrimination that differ from those for race or sex discrimination. Thus, my vote (and I thought that of others) was predicated primarily - as your opinion properly emphasizes - on the language "legal or equitable relief" in ADEA. In addition, as your opinion correctly states, our holding derives some support from the legislative history. But I could not say that petitioner's reliance on Title VII is wholly misplaced.

Sincerely,

Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 14, 1978

No. 76-1346 Lorillard v. Pons

Dear Thurgood:

Please join me.

Sincerely,

A handwritten signature in cursive script, reading "Lewis".

Mr. Justice Marshall

Copies to the Conference

LFP/lab

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 9, 1978

Re: No. 76-1346 - Lorillard v. Pons

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

P.S. (To TM only)

Dear Thurgood:

My join is an unconditional one, not dependent upon whether you adopt the following suggestion. Nonetheless, I am slightly uncomfortable with the emphasis placed on page 5 on the unanimity of the lower courts in interpreting the FLSA and the presumption that Congress had knowledge of those interpretations. I have no trouble with that presumption when it is one of our decisions which interprets the statute in question. I am likewise not troubled with this sort of argument when Congress specifically discusses in the legislative history the lower court cases, as was the case in Albemarle Paper Co. v. Moody, 422 U.S. 405, 414 n.8 (1975), or the administrative interpretations, as was the case in NLRB v. Gullett Gin Co.,

- 2 -

B ✓
340 U.S. 361, 366 (1951). But when it is merely the interpretations of lower courts and there is nothing in the legislative history to indicate Congress' familiarity with the lower court decisions, I am less at ease with the presumption. As I read your opinion on pages 5 and 6, however, the legislative history reveals that Congress was aware of both the provisions of the FLSA and their judicial interpretations. Accordingly, I see little reason to rely on an unadorned presumption that Congress is always aware of such interpretations. I would thus feel more comfortable if you modified the last two sentences in the full paragraph on page 5 to indicate that in this case we need not even rely on the presumption of congressional awareness because the legislative history reveals that Congress was in fact aware of the prior lower court interpretations of the FLSA.

WHR

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 15, 1978

Re: No. 76-1346 - Lorillard v. Pons

Dear Thurgood:

The suggestion contained in your letter of February 15th suits me fine.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 26, 1978

Re: 76-1346 - Lorillard v. Pons

Dear Thurgood:

Please join me.

Respectfully,



Mr. Justice Marshall

Copies to the Conference