

The Burger Court Opinion Writing Database

Chapman v. Houston Welfare Rights Organization

441 U.S. 600 (1979)

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

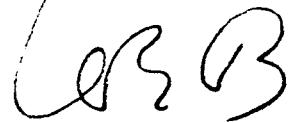
January 31, 1979

Re: 77-719 - Chapman v. Houston Welfare Rights
77-5324 - Gonzalez v. Young

Dear John:

I join your proposed opinion as modified in
the December 8 draft.

Régards,



Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

May 10, 1979

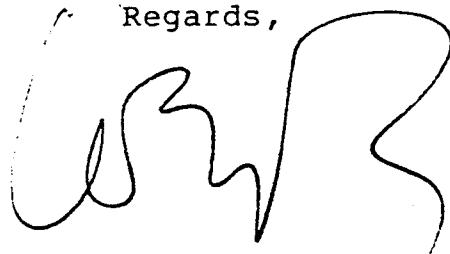
RE: 77-719 - Chapman v. Houston Welfare
Rights Organization

77-5324 - Gonzalez v. Young

Dear Lewis:

I have concluded to join your concurring opinion.

Regards,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 14, 1978

RE: No. 77-719 Chapman v. Houston Welfare Rights Og.
77-5324 Gonzalez v. Young

Dear Potter:

Please join me in your dissenting opinion in the
above.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 4, 1978

Re: Nos. 77-719 & 77-5324, Chapman v. Houston
Welfare Rights Org.

Dear John,

In due course I expect to circulate a dissenting opinion in these cases. While I'll make every effort to expedite matters, it is quite possible that my dissent will not get around in time for an announcement next Monday.

Sincerely yours,

P. S.
1/

Mr. Justice Stevens

Copies to the Conference

PS *me*
Pls. 8 AM

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

77-719 Jerome D. Chapman v. Houston Welfare Rights Organization
From: Mr. Justice Stewart
Circulated: 13 DEC 1978

77-5324 Julia Gonzalez v. James F. Young Recirculated: _____

10
MR. JUSTICE STEWART, dissenting.

My disagreement with the opinion and judgment of the Court in these cases is narrow but dispositive. Because 28 U.S.C. §1343(3) refers to "any Act of Congress providing for equal rights", because 42 U.S.C. §1983 is such an Act of Congress, and because §1983 by its terms clearly covers lawsuits such as the ones here involved, I would hold that the plaintiffs properly brought these cases in federal district court.^{1/}

First of all, it seems to me clear that this Court has already settled the question whether §1983 creates a cause of action for these plaintiffs. We have explicitly recognized that the case of "Rosado v. Wyman, 397 U.S. 397 (1970), held that suits in federal court under §1983 are proper to secure compliance with the provisions of the Social Security Act on the part of participating

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

From: Mr. Justice Stewart

Circulated: _____

1st PRINTED DRAFT

Recirculated: 18 DEC 1978

SUPREME COURT OF THE UNITED STATES

Nos. 77-719 AND 77-5324

Jerome D. Chapman, Commissioner
of Texas Department of Human
Resources, et al.,
Petitioners,
77-719 v.
Houston Welfare Rights
Organization et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Fifth Circuit.

Julia Gonzalez, Etc., Petitioner,
77-5324 v.
James F. Young, Director, Hudson
County Welfare Board, et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Third Circuit.

[January —, 1979]

MR. JUSTICE STEWART, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join, dissenting.

My disagreement with the opinion and judgment of the Court in these cases is narrow but dispositive. Because 28 U. S. C. § 1343 (3) refers to "any Act of Congress providing for equal rights," because 42 U. S. C. § 1983 is such an Act of Congress, and because § 1983 by its terms clearly covers lawsuits such as the ones here involved, I would hold that the plaintiffs properly brought these cases in federal district court.¹

¹ Accordingly, I do not reach the question whether jurisdiction may also exist by reason of § 1343 (4), nor the Supremacy Clause argument. I do agree with the Court that the Social Security Act is not itself a statute securing "equal rights" within § 1343 (3) or "civil rights" within § 1343 (4). Moreover, since the Court does not reach the merits in either of these cases, I see no need to discuss them, except to note that the result in No. 77-5324 is clearly controlled by *Quern v. Maudley*, 436 U. S. 725.

to: The Chief Justice,
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: 27 APR 1973

2nd DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

Nos. 77-719 AND 77-5324

Jerome D. Chapman, Commissioner
of Texas Department of Human
Resources, et al.,
Petitioners,
77-719 v.
Houston Welfare Rights
Organization et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Fifth Circuit.

Julia Gonzalez, Etc., Petitioner,
77-5324 *v.*
James F. Young, Director, Hudson
County Welfare Board, et al. | On Writ of Certiorari
to the United States
Court of Appeals for
the Third Circuit.

[January —, 1979]

MR. JUSTICE STEWART, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join, dissenting.

My disagreement with the opinion and judgment of the Court in these cases is narrow but dispositive. Because 28 U. S. C. § 1343 (3) refers to "any Act of Congress providing for equal rights," because 42 U. S. C. § 1983 is such an Act of Congress, and because § 1983 by its terms clearly covers lawsuits such as the ones here involved, I would hold that the plaintiffs properly brought these cases in federal district court.²

¹ Accordingly, I do not reach the question whether jurisdiction may also exist by reason of § 1343 (4), nor the Supremacy Clause argument. I do agree with the Court that the Social Security Act is not itself a statute securing "equal rights" within § 1343 (3) or "civil rights" within § 1343 (4). Moreover, since the Court does not reach the merits in either of these cases, I see no need to discuss them, except to note that the result in No. 77-5324 is clearly controlled by *Quern v. Mandley*, 436 U. S. 725.

To: The Chief Justice
Mr. Justice Brandeis
Mr. Justice White
Mr. Justice Marsden
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated:

30 APR 1979
Recirculated:

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 77-719 AND 77-5324

Jerome D. Chapman, Commissioner
of Texas Department of Human
Resources, et al.,
Petitioners

77-719 v.
Houston Welfare Rights
Organization et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Fifth Circuit.

Julia Gonzalez, Etc., Petitioner,
77-5324 v.

James F. Young, Director, Hudson
County Welfare Board, et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Third Circuit.

[January — 1979]

MR. JUSTICE STEWART, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join,* dissenting.

My disagreement with the opinion and judgment of the Court in these cases is narrow but dispositive. Because 28 U. S. C. § 1343 (3) refers to "any Act of Congress providing for equal rights," because 42 U. S. C. § 1983 is such an Act of Congress, and because § 1983 by its terms clearly covers lawsuits such as the ones here involved, I would hold that the plaintiffs properly brought these cases in federal district court.¹

*MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL do not join footnote 2.

¹ Accordingly, I do not reach the question whether jurisdiction may also exist by reason of § 1343 (4), nor the Supremacy Clause argument. I do agree with the Court that the Social Security Act is not itself a statute securing "equal rights" within § 1343 (3) or "civil rights" within § 1343 (4). Moreover, since the Court does not reach the merits in either of these cases, I see no need to discuss them, except to note that

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 7, 1978

Re: No. 77-719 and 77-5324 -

Chapman v. Houston Welfare Rights
Organization;

Gonzalez v. Young

Dear John,

I expect to join your opinion but
to write separately in this case.

Sincerely yours,

Mr. Justice Stevens

Copies to the Conference

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

From: Mr. Justice White

Circulated: 9 JAN 1975

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

Nos. 77-719 AND 77-5324

Jerome D. Chapman, Commissioner
of Texas Department of Human
Resources, et al.

Petitioners,
77-719 v.
Houston Welfare Rights
Organization et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Fifth Circuit.

Julia Gonzalez, Etc., Petitioner,
77-5324 v.

James F. Young, Director, Hudson
County Welfare Board, et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Third Circuit.

[January --, 1979]

MR. JUSTICE WHITE, concurring.

I concur in the opinion of the Court, and agree that 28 U. S. C. § 1343 does not provide a basis for jurisdiction over challenges alleging inconsistency between state welfare practices and the Social Security Act. However, I believe it unfortunate that the Court poses but does not resolve the issue whether such challenges state a cause of action cognizable under § 1331 or any other jurisdictional provision in Title 28. *Ante*, at 15. The reach of the § 1983 cause of action has been properly preserved and presented for review in this Court.¹ Is

¹ Plaintiff recipients in both cases alleged a cause of action under § 1983, and in each case the district court refused the State's motion to dismiss for failure to state a claim upon which relief could be granted. Both district courts further held that there was jurisdiction over the § 1983 cause of action under § 1333 of Title 28. *Houston Welfare Rights Organization, Inc. v. Vowell*, 391 F. Supp. 223 (SD Tex. 1975); *Gonzalez v. Young*, 418 F. Supp. 566 (NJ 1976). On appeal, the Fifth Circuit, in No. 77-719, affirmed both these findings below, as well as the holding for

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 6/12

SEE PAGES: 6/12

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

From: Mr. Justice White

Circulated:

Recirculated: 17 JAN 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 77-719 AND 77-5324

Jerome D. Chapman, Commissioner
of Texas Department of Human
Resources, et al.,
Petitioners,
77-719 v.
Houston Welfare Rights
Organization et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Fifth Circuit.

Julia Gonzalez, Etc., Petitioner, 77-5324 *v.* James F. Young, Director, Hudson County Welfare Board, et al. On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[January —, 1979]

MR. JUSTICE WHITE, concurring.

I concur in the opinion of the Court, and agree that 28 U. S. C. § 1343 does not provide a basis for jurisdiction over challenges alleging inconsistency between state welfare practices and the Social Security Act. However, I believe it unfortunate that the Court poses but does not resolve the issue whether such challenges state a cause of action cognizable under § 1331 or any other jurisdictional provision in Title 28. *Ante*, at 15. The reach of the § 1983 cause of action has been properly preserved and presented for review in this Court,¹ is

¹ Plaintiff recipients in both cases alleged a cause of action under § 1983, and in each case the district court refused the State's motion to dismiss for failure to state a claim upon which relief could be granted. Both district courts further held that there was jurisdiction over the § 1983 cause of action under § 1333 of Title 28. *Houston Welfare Rights Organization, Inc. v. Vowell*, 391 F. Supp. 223 (SD Tex. 1975); *Gonzalez v. Young*, 418 F. Supp. 566 (NJ 1976). On appeal, the Fifth Circuit, in No. 77-719, affirmed both these findings below, as well as the holding for

- Except for pp. 15-16, 17-18, 27-28, substantially rewritten; - changes pp. 7, 8, 24.

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

From: Mr. Justice White

Circulated: _____

3rd DRAFT

Recirculated: 16 APR 1979

SUPREME COURT OF THE UNITED STATES

Nos. 77-719 AND 77-5324

Jerome D. Chapman, Commissioner
of Texas Department of Human
Resources, et al.,
Petitioners

77 719

Houston Welfare Rights Organization et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Fifth Circuit.

Julia Gonzalez, Etc., Petitioner,
77-5324 v.

James F. Young, Director, Hudson County Welfare Board, et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Third Circuit.

[April —, 1979]

MR. JUSTICE WHITE, concurring.

In order for there to be federal district court jurisdiction under 28 U. S. C. § 1333 (3), two requirements must be met. First, the suit must be "authorized by law." and, second, the suit must seek redress of a deprivation under color of state law of any right "secured by the Constitution or by any Act of Congress providing for equal rights. . . ." 42 U. S. C. § 1983 provides a cause of action for deprivations under color of state law of any right "secured by the Constitution and

¹ 28 U. S. C. § 1343 (3) provides:

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage of any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

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

- pp. 5-7, 12-13, 16, 22, 25, 27 -

From: Mr. Justice White

Circulated: _____

4th DRAFT

Recirculated: 1 MAY 1973

SUPREME COURT OF THE UNITED STATES

Nos. 77-719 AND 77-5324

Jerome D. Chapman, Commissioner
of Texas Department of Human
Resources, et al.,
Petitioners,
77-719 v.
Houston Welfare Rights
Organization et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Fifth Circuit.

Julia Gonzalez, Etc., Petitioner,
77-5324 *v.*
James F. Young, Director, Hudson
County Welfare Board, et al. | On Writ of Certiorari
to the United States
Court of Appeals for
the Third Circuit.

[April —, 1979]

MR. JUSTICE WHITE, concurring.

In order for there to be federal district court jurisdiction under 28 U. S. C. § 1333 (3), two requirements must be met. First, the suit must be "authorized by law," and, second, the suit must seek redress of a deprivation under color of state law of any right "secured by the Constitution or by any Act of Congress providing for equal rights. . . ." 42 U. S. C. § 1983 provides a cause of action for deprivations under color of state law of any right "secured by the Constitution and

28 U. S. C. § 1343 (3) provides:

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage of any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 2, 1979

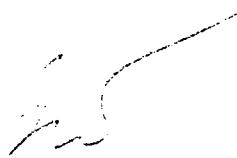
MEMORANDUM TO THE CONFERENCE

Re: Nos. 77-719 & 77-5324 -

Chapman v. Texas Department of Human
Resources, et al; and,

Gonzalez v. Young.

The most recent circulation (4th draft) failed to note in the margin a substantive change on page 28. A new page 28, with the change noted, is attached.



Attachment

cmc

page 28

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

From: Mr. Justice White

Circulated:

Recirculated: 1 MAY 1973

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 77-719 AND 77-5324

Jerome D. Chapman, Commissioner
of Texas Department of Human
Resources, et al.,
Petitioners,
77-719 v.
Houston Welfare Rights
Organization et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Fifth Circuit.

Julia Gonzalez, Etc., Petitioner,
77-5324 v.
James F. Young, Director, Hudson
County Welfare Board, et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Third Circuit.

[April —, 1979]

MR. JUSTICE WHITE, concurring.

In order for there to be federal district court jurisdiction under 28 U. S. C. § 1333 (3), two requirements must be met. First, the suit must be "authorized by law," and, second, the suit must seek redress of a deprivation under color of state law of any right "secured by the Constitution or by any Act of Congress providing for equal rights. . . ." 42 U. S. C. § 1983 provides a cause of action for deprivations under color of state law of any right "secured by the Constitution and

¹ 28 U. S. C. § 1333 (3) provides:
"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage of any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 7, 1978

Re: Nos. 77-719 and 77-5324-Chapman v.
Houston Welfare Rights Organization, et al.

Dear John:

I await the dissenting opinion.

Sincerely,

J.M.

T.M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 14, 1978

Re: No. 77-719 - Chapman v. Houston Welfare
Rights Organization
No. 77-5324 - Julia Gonzalez v. James F.
Young

Dear Potter:

Please join me in your dissent.

Sincerely,

J.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

December 11, 1978

Re: No. 77-719 - Chapman v. Houston Welfare
Rights Organization
No. 77-5324 - Gonzalez v. Young

Dear John:

My notes indicate that my position in this case was very close to that expressed by Byron. I therefore shall await his circulation although I, too, expect to join your opinion.

Incidentally, I wonder if the content of the very last sentence of your opinion is just backwards. Is it not No. 77-719 which should be reversed and No. 77-5324 which should be affirmed?

I wonder also whether it would be advisable to "reverse and remand" in No. 77-719. I suggest this because the respondents moved to amend the complaint to come within Hagans; the District Court denied that motion, but the CA 5 did not reach it. I suppose the Court of Appeals should have a shot at the issue.

Sincerely,

Harry

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 16, 1979

Re: No. 77-719 - Chapman v. Houston Welfare Rights
No. 77-5324 - Gonzalez v. Young

Dear John:

I am prepared to join Byron's concurrence, and thus to join you. I am curious, however, as to the approach Lewis is pursuing and thus shall withhold my formal vote until he circulates his opinion. In the meantime, you may regard this as a joinder so that you have a Court and may have the headnote prepared.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 20, 1979

Re: No. 77-719 - Chapman v. Houston Welfare Rights
No. 77-5324 - Gonzalez v. Young

Dear John:

This is a formal joinder of your opinion.

Sincerely,

Harry

—

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 4, 1979

No. 77-719 Chapman v. Houston Welfare Rights
No. 77-5324 Gonzales v. Young

Dear John:

As I have just written Thurgood with respect to his Illinois State Board case, I am embarrassed to find that I have not been in communication with you on the above cases.

Your opinion is extremely well written, and I am happy to join it. My only reservation relates to the scope of the "and laws" language in §1983, an issue that you do not address. Although I can well understand the argument in favor of leaving this for "another day", I do think that deciding the 1343(3) issue alone will create considerable uncertainty. I therefore am giving some thought to writing a brief concurring opinion.

Sincerely,



Mr. Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 10, 1979

77-719 Chapman v. Houston Welfare Rights Org.

Dear John:

Byron's concurring opinion encourages me to try my hand in presenting "another view".

I am skeptical as to the correctness of the view that §1983 creates a cause of action for the deprivation of all federal statutory rights under color of state law. Your carefully written opinion, which I have joined, perhaps wisely stops short of addressing this question. But unless you take issue with Byron and wish to move into this question in your opinion, I will see whether a different view "will write".

As I will not be able to get to this until after January 22, I am afraid I will hold you up a bit. I will do the best I can.

Sincerely,



Mr. Justice Stevens

lfp/ss

cc: The Conference

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

From: Mr. Justice Powell

Circulated: 14 MAR 1979

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

Nos. 77-719 AND 77-5324

Jerome D. Chapman, Commissioner
of Texas Department of Human
Resources, et al.,
Petitioners

77-719

Houston Welfare Rights Organization et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Fifth Circuit.

Julia Gonzalez, Etc., Petitioner,
77-5324 v.
James F. Young, Director, Hudson
County Welfare Board, et al

On Writ of Certiorari
to the United States
Court of Appeals for
the Third Circuit

[March — 1979]

MR. JUSTICE POWELL concurring.

I join the Court's opinion and agree that it is not necessary in these cases to decide the meaning of the phrase "Constitution and laws" in 42 U. S. C. § 1983. See Ct. Op., *ante*, at 15. MR. JUSTICE WHITE has taken a contrary view, however, and has concluded that because the statute now codified as § 1983 includes the words "and laws," it provides a private cause of action for the deprivation, under color of state law, of any federal statutory right. Anyone who ventures into the thicket of the legislative history of § 1983 quickly realizes that there is no clearly marked path to the correct interpretation of this statute. Yet, there is sufficient evidence to indicate rather convincingly that the phrase "and laws" was intended as no more than a shorthand reference to the equal rights legislation enacted by Congress. Because I do not think MR. JUSTICE WHITE's interpretation can survive careful examination of the legislative history of § 1983, I write separately.

1, 2, 5, 10, 11, 12, 15,
16, 17, 18, 19, 22, 23

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

From: Mr. Justice Powell

Circulated:

24 APR 1979

Recirculated:

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 77-719 AND 77-5324

Jerome D. Chapman, Commissioner
of Texas Department of Human
Resources, et al.,
Petitioners.

On Writ of Certiorari
to the United States
Court of Appeals for
the Fifth Circuit.

Julia Gonzalez, Etc., Petitioner,
77-5324 *v.*

James F. Young, Director, Hudson
County Welfare Board, et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Third Circuit.

[March --, 1979]

MR. JUSTICE POWELL, with whom MR. JUSTICE REHNQUIST joins, concurring.

I join the Court's opinion and agree that it is not necessary in these cases to decide the meaning of the phrase "Constitution and laws" in 42 U. S. C. § 1983. See Ct. Op., *ante*, at 15. MR. JUSTICE WHITE has taken a contrary view, however, and has concluded that because the statute now codified as § 1983 includes the words "and laws," it provides a private cause of action for the deprivation, under color of state law, of any federal statutory right. Anyone who ventures into the thicket of the legislative history of § 1983 quickly realizes that there is no clearly marked path to the correct interpretation of this statute. Yet, there is sufficient evidence to indicate rather convincingly that the phrase "and laws" was intended as no more than a shorthand reference to the equal rights legislation enacted by Congress. Because I do not think MR. JUSTICE WHITE's interpretation can survive careful examination of the legislative history of § 1983, I write separately.

May 8, 1979

PERSONAL

77-719 and 77-5324 Chapman

Dear Chief:

I am sending my concurring opinion in this case back to the printer today for a few stylistic changes. If this is ready by Friday, I believe all of the writing in Chapman will be in.

Unless my memory disserves me, I believe you have expressed agreement with the position I take in my concurring opinion with respect to the scope of §1983. Only Bill Rehnquist has joined me. You may well have made a judgment not to join, which - of course - I would quite understand. I write merely to be sure that - amid the flurry of many circulating drafts - you may not have made a decision.

Sincerely,

The Chief Justice

lfp/ss

1, 7, 16, 18, 19, 22, 23

o: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

3rd DRAFT

From: Mr. Justice Powell

SUPREME COURT OF THE UNITED STATES

9 MAY 1979

Nos. 77-719 AND 77-5324 Recirculated:

Jerome D. Chapman, Commissioner
of Texas Department of Human
Resources, et al.,
Petitioners,
77-719 v.
Houston Welfare Rights
Organization et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Fifth Circuit.

Julia Gonzalez, Etc., Petitioner,
77-5324 v.
James F. Young, Director, Hudson
County Welfare Board, et al. On Writ of Certiorari
to the United States
Court of Appeals for
the Third Circuit.

[March —, 1979]

MR. JUSTICE POWELL, with whom MR. JUSTICE REHNQUIST joins, concurring.

I join the Court's opinion¹ and agree that it is not necessary in these cases to decide the meaning of the phrase "Constitution and laws" in 42 U. S. C. § 1983. See Ct. Op., *ante*, at 15. MR. JUSTICE WHITE has taken a contrary view, however, and has concluded that because the statute now codified as § 1983 includes the words "and laws," it provides a private cause of action for the deprivation, under color of state law, of any federal statutory right. Anyone who ventures into the thicket of the legislative history of § 1983 quickly realizes that there is no clearly marked path to the correct interpretation of

¹ I join MR. JUSTICE STEVENS' opinion for the Court on the understanding that it draws no conclusions about the legislative history of 42 U. S. C. § 1343 (3) beyond those necessary to support its rather narrow holding with respect to the scope of that statute. I do not necessarily agree with every observation in the Court's opinion concerning the history of the post-Civil War civil rights legislation.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 7, 1978

Re: Nos. 77-719 and 77-5324 Chapman v. Houston Welfare
Rights Organization, et al.

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 19, 1979

Re: No. 77-719 - Chapman v. Houston Welfare Rights Org.

Dear Lewis:

Having already joined John's opinion for the Court, and having been valuably instructed by the cross fire between you and Byron, I now ask that you join me in your separate concurring opinion which also concurs in John's opinion.

Sincerely,



Mr. Justice Powell

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

From: Mr. Justice Stevens

Circulated: DEC 8 1978

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 77-719 AND 77-5324

Jerome D. Chapman, Commissioner
of Texas Department of Human
Resources, et al.,
Petitioners,
77-719 v.
Houston Welfare Rights
Organization et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Fifth Circuit.

Julia Gonzalez, Etc., Petitioner,
77-5324 *v.* On Writ of Certiorari
James F. Young, Director, Hudson to the United States
County Welfare Board, et al. Court of Appeals for
the Third Circuit.

[December —, 1978]

MR. JUSTICE STEVENS delivered the opinion of the Court.

The United States District Courts have jurisdiction over civil actions claiming a deprivation of rights secured by the Constitution of the United States or by acts of Congress providing for equal rights or for the protection of civil rights, including the right to vote.¹ The question presented by these

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage of any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

(4) To recover damages or to secure equitable or other relief under

rep. 10-11

New R. 28

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

From: Mr. Justice Stevens

Circulated: DEC 8 1975

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 77-719 AND 77-5324

Jerome D. Chapman, Commissioner
of Texas Department of Human
Resources, et al.

77-719 v.
Houston Welfare Rights
Organization et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Fifth Circuit.

Julia Gonzalez, Etc., Petitioner,
77-5324 v.
L. E. N. Director, H. B.

On Writ of Certiorari
to the United States
Court of Appeals for
the Third Circuit.

[December —, 1978]

MR. JUSTICE STEVENS delivered the opinion of the Court.

The United States District Courts have jurisdiction over civil actions claiming a deprivation of rights secured by the Constitution of the United States or by acts of Congress providing for equal rights or for the protection of civil rights, including the right to vote.¹ The question presented by these

¹ "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage of any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

"(4) To recover damages or to secure equitable or other relief under

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 11, 1979

Re: 77-719 - Chapman v. Houston Welfare
Rights Organization

Dear Lewis:

Since both you and Byron have joined my opinion, I would much prefer to have the two of you debate the § 1983 issue while I remain comfortably perched in the middle of the fence.

Please take whatever time is necessary to formulate your views.

Respectfully,

J. H.

Mr. Justice Powell

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

From: Mr. Justice Stevens

78-719 - Reproductive Services, Inc. v.

Circulated: JAN 11 1979

Honorable Dee Brown Walker

Recirculated: _____

The petition for a writ of certiorari is denied for want of jurisdiction.

MR. JUSTICE STEVENS.

On June 23, 1978, the Texas Supreme Court denied petitioner's application for a writ of mandamus and dissolved its earlier order requiring discovery concerning certain patients of petitioner's abortion clinic. On July 10, 1978, MR. JUSTICE BRENNAN stayed the order of the Texas Supreme Court. On July 17, 1978, MR. JUSTICE BRENNAN vacated that stay and filed an opinion, stating in part:

"The question sought to be raised by applicant--whether the names of abortion patients can be obtained by discovery for use in a civil suit against a person or clinic performing abortions where, as here, the parties have not agreed to a protective order to ensure the privacy of those patients--is a serious one. If this question were in fact presented by this case, I am of the view that four Members of this Court would vote to grant certiorari to hear it. However, this issue is not presented here. First, the order of the trial court challenged by applicant's petition for mandamus did in fact provide that the names of applicant's patients could be deleted. Second, the State of Texas has represented in its

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 19, 1979

Re: 77-719 - Chapman v. Houston Welfare
Rights Organization
77-5324 - Gonzalez v. Young

Dear Harry:

The recent flurry of activity in these cases prompted me to reexamine my files and to reread your letter of December 11th suggesting that the disposition in No. 77-719 be to "reverse and remand" rather than simply to "reverse." You are correct, and I will make that change in the opinion. That way, it will be clear that the Court of Appeals remains free to consider whether the District Court erred in denying respondents' motion to amend the complaint to bring it within Hagans.

Many thanks for the suggestion.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference

9.22

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

From: Mr. Justice Stevens

Circulated:

Recirculated: APR 27 '79

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 77-719 AND 77-5324

Jerome D. Chapman, Commissioner
of Texas Department of Human
Resources, et al.,
Petitioners,
77-719 v.
Houston Welfare Rights
Organization et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Fifth Circuit.

Julia Gonzalez, Etc., Petitioner,
77-5324 v.
James F. Young, Director, Hudson
County Welfare Board, et al. } On Writ of Certiorari
to the United States
Court of Appeals for
the Third Circuit.

[May —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

The United States District Courts have jurisdiction over civil actions claiming a deprivation of rights secured by the Constitution of the United States or by acts of Congress providing for equal rights or for the protection of civil rights, including the right to vote.¹ The question presented by these

¹ "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage of any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

"(4) To recover damages or to secure equitable or other relief under

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

From: Mr. Justice Stevens

Circulated: _____

Recirculated: APR 30 79

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 77-719 AND 77-5324

Jerome D. Chapman, Commissioner
of Texas Department of Human
Resources, et al.,
Petitioners,
77-719 v.
Houston Welfare Rights
Organization et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Fifth Circuit.

Julia Gonzalez, Etc., Petitioner,
77-5324 v. On Writ of Certiorari
James F. Young, Director, Hudson to the United States
County Welfare Board, et al. Court of Appeals for
the Third Circuit.

[May —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

The United States District Courts have jurisdiction over civil actions claiming a deprivation of rights secured by the Constitution of the United States or by acts of Congress providing for equal rights or for the protection of civil rights, including the right to vote.¹ The question presented by these

¹ "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person;

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage of any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

"(4) To recover damages or to secure equitable or other relief under