The Burger Court Opinion Writing Database

Cannon v. University of Chicago
441 U.S. 677 (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

April 9, 1979

Dear John:

Re: 77-926 Cannon v. Univ. of Chicago

I voted to DIG at Conference, and Bill assigned the opinion to you.

I conclude to join you in the judgment, and I may indicate in some way that I am in general agreement with Bill Rehnquist's concurring opinion.

Regards,

WEB

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 27, 1979

RE: No. 77-926 Cannon v. University of Chicago

Dear John:

I agree.

Sincerely,

Bill

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 5, 1979

Re: 77-926 - Cannon v. University of Chicago

Dear John:

I am glad to join your opinion in this case. At our Conference discussion, Bill Rehnquist indicated an intention to write a concurring opinion, and I shall await with particular interest what he has to say.

Sincerely yours,

P.S.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 14, 1979

Re: No. 77-926, Cannon v. University of Chicago

Dear Bill,

Please add my name to your concurring opinion.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 1, 1979

Re: No. 77-926 - Cannon v. University of Chicago, et al.

Dear John,

In all likelihood, I shall file a dissent in this case--in due course, of course.

Sincerely yours,

Mr. Justice Stevens

Copies to the Conference

cmc

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: 6 APR 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-926

Geraldine G. Cannon, Petitioner, v. University of Chicago et al. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[April —, 1979]

MR. JUSTICE WHITE, dissenting.

In avowedly seeking to provide an additional means to effectuate the broad purpose of § 901 of the Education Amendments of 1972, 20 U. S. C. § 1681, to end sex discrimination in federally funded educational programs, the Court fails to heed the concomitant legislative purpose not to create a new private remedy to implement this objective. Because in my view the legislative history and statutory scheme show that Congress intended not to provide a new private cause of action, and because under our previous decisions such intent is controlling,[1] I dissent.

I

The Court recognizes that because Title IX was explicitly patterned after Title VI of the Civil Rights Act of 1964, 42 U. S. C. § 2000 (d) *et seq.*, it is difficult to infer a private cause of action in the former but not in the latter. I have set out once before my reasons for concluding that a new private cause of action to enforce Title VI should not be implied, *University of California Regents* v. *Bakke*, 438 U. S. 265, 379 (1978) (separate opinion of WHITE, J.), and I find nothing in the legislative materials reviewed by the Court that convinces

[1] *Cort* v. *Ash*, 422 U. S. 66, 78 (1975); *Securities Investor Protection Corp.* v. *Barbour*, 421 U. S. 412 (1975); *National Railroad Passenger Corp.* v. *National Assn. of Railroad Passengers*, 414 U. S. 453 (1974).

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: 10 APR 1979

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 3, 8

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-926

Geraldine G. Cannon, Petitioner, *v.* University of Chicago et al. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[April —, 1979]

MR. JUSTICE WHITE, dissenting. with Mr. JUSTICE BLACKMUN,

In avowedly seeking to provide an additional means to effectuate the broad purpose of § 901 of the Education Amendments of 1972, 20 U. S. C. § 1681, to end sex discrimination in federally funded educational programs, the Court fails to heed the concomitant legislative purpose not to create a new private remedy to implement this objective. Because in my view the legislative history and statutory scheme show that Congress intended not to provide a new private cause of action, and because under our previous decisions such intent is controlling,[1] I dissent.

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5-7, 9

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-926

Geraldine G. Cannon, Petitioner, *v.* University of Chicago et al. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[April —, 1979]

MR. JUSTICE WHITE, with whom MR. JUSTICE BLACKMUN joins, dissenting.

In avowedly seeking to provide an additional means to effectuate the broad purpose of § 901 of the Education Amendments of 1972, 20 U. S. C. § 1681, to end sex discrimination in federally funded educational programs, the Court fails to heed the concomitant legislative purpose not to create a new private remedy to implement this objective. Because in my view the legislative history and statutory scheme show that Congress intended not to provide a new private cause of action, and because under our previous decisions such intent is controlling,[1] I dissent.

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[1] *Cort* v. *Ash*, 422 U. S. 66, 78 (1975); *Securities Investor Protection Corp.* v. *Barbour*, 421 U. S. 412 (1975); *National Railroad Passenger Corp.* v. *National Assn. of Railroad Passengers*, 414 U. S. 453 (1974).

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 9, 1979

Re: No. 77-926 - Cannon v. University of Chicago

Dear John:

Please join me.

Sincerely,

T.M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 5, 1979

Re: No. 77-926 - Cannon v. University of Chicago

Dear John:

I, too, shall await the dissent.

Sincerely,

Harry

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 9, 1979

Re: No. 77-926 - Cannon v. University of Chicago

Dear Byron:

Please join me in your dissent.

Sincerely,

Harry

Mr. Justice White

cc: The Conference

H.A.B.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 9, 1979

Re: No. 77-926 - Cannon v. University of Chicago

Dear Byron:

Please join me in your dissent.

Sincerely,

Harry

Mr. Justice White

cc: The Conference

[note to Justice White only]

I suppose you have noticed that the numbering of the footnotes on page 3 is out of line (footnote 3 is missing). I think the difficulty is that each footnote on that page is elevated one number.

H.A.B.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 8, 1979

Dear John:

I shall sit tight, now, in No. 77-926 - Cannon v. University of Chicago, and in Nos. 77-719 - Chapman v. Houston Welfare Rights, and 77-5324 - Gonzalez v. Young.

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 16, 1979

77-926 Cannon v. Univ. of Chicago

Dear Byron:

I understand that you will write a dissent generally along the lines of your Bakke opinion on Title VI, and I am with you.

It is possible that I may add a brief concurrence, but will await your circulation.

Sincerely,

Lewis

Mr. Justice White

lfp/ss

cc: The Chief Justice
Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 1, 1979

77-926 Cannon v. University of Chicago

Dear John:

I will await Byron's dissent, and may also add a few words.

Sincerely,

Lewis

Mr. Justice Stevens

lfp/ss

cc: The Conference

April 9, 1979

77-926 Cannon v. University of Chicago

Dear John:

I have been awaiting Byron's dissent, circulated April 6th.

Although I agree with much that he says, Byron refers to his views as to the "and laws" clause of § 1983, which he has expressed in his Chapman concurring opinion. In addition, he does not express the reservations I have developed concerning the entire problem of implied private causes of actions from federal statutes.

I therefore am working on a separate dissent in Cannon, and will try not to hold you up much longer.

Sincerely,

Mr. Justice Stevens

Copies to the Conference

LFP/lab

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 10, 1979

77-926 Cannon v. University of Chicago

Dear John:

I have been awaiting Byron's dissent, circulated April 6th.

Although I agree with much that he says, Byron refers to his views as to the "and laws" clause of § 1983, which he has discussed in his Chapman concurring opinion. In addition, he does not express the reservations I have developed concerning the entire problem of implied private causes of actions from federal statutes.

I therefore am working on a separate dissent in Cannon, and will try not to hold you up much longer.

Sincerely,

Lewis

Mr. Justice Stevens

Copies to the Conference

LFP/lab

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: 30 APR 1979

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 77-926

Geraldine G. Cannon, Petitioner, *v.* University of Chicago et al. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[April —, 1979]

MR. JUSTICE POWELL, dissenting.

I agree with MR. JUSTICE WHITE that even under the standards articulated in our prior decisions, it is clear that no private action should be implied here. It is evident from the legislative history reviewed in his dissenting opinion that Congress did not intend to create a private action through Title IX of the Education Amendments of 1972. It also is clear that Congress deemed the administrative enforcement mechanism it did create to be fully adequate to protect Title IX rights. But as mounting evidence from the courts below suggests, and the decision of the Court today demonstrates, the mode of analysis we have applied in the recent past cannot be squared with the doctrine of the separation of powers. The time has come to reappraise our standands for the judicial implication of private causes of action.[1]

Under Art. III, Congress alone has the responsibility for determining the jurisdiction of the lower federal courts. As the Legislative Branch, Congress also should determine when private parties are to be given causes of action under legislation it adopts. As countless statutes demonstrate,

[1] The phrase "private cause of action" may not have a completely clear meaning. As the term is used herein, I refer to the right of a private party to seek judicial relief from injuries caused by another's violation of a legal requirement. In the context of legislation enacted by Congress, the legal requirement involved is a statutory duty.

1,3,6,7,10,11,12
14-20

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

2nd DRAFT Circulated: 8 MAY 1979

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 77-926

Geraldine G. Cannon, Petitioner, *v.* University of Chicago et al. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[April —, 1979]

MR. JUSTICE POWELL, dissenting.

I agree with MR. JUSTICE WHITE that even under the standards articulated in our prior decisions, it is clear that no private action should be implied here. It is evident from the legislative history reviewed in his dissenting opinion that Congress did not intend to create a private action through Title IX of the Education Amendments of 1972. It also is clear that Congress deemed the administrative enforcement mechanism it did create fully adequate to protect Title IX rights. But as mounting evidence from the courts below suggests, and the decision of the Court today demonstrates, the mode of analysis we have applied in the recent past cannot be squared with the doctrine of the separation of powers. The time has come to reappraise our standands for the judicial implication of private causes of action.[1]

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[1] The phrase "private cause of action" may not have a completely clear meaning. As the term is used herein, I refer to the right of a private party to seek judicial relief from injuries caused by another's violation of a legal requirement. In the context of legislation enacted by Congress, the legal requirement involved is a statutory duty.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 7, 1979

Re: No. 77-926 - Cannon v. University of Chicago

Dear John:

Having joined your separate opinion in Bakke, I of course join your opinion in this case. I do anticipate writing separately along the lines Potter indicated in his "join" letter to you.

Sincerely,

Mr. Justice Stevens

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 Stevens

From: Mr. Justice Rehnquist

Circulated: 14 MAR 79

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-926

Geraldine G. Cannon, Petitioner, v. University of Chicago et al. } On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[March —, 1979]

MR. JUSTICE REHNQUIST, concurring.

Having joined the Court's opinion in this case, my only purpose in writing separately is to make explicit what seems to me already implicit in that opinion. I think the approach of the Court, reflected in its analysis of the problem in this case and cases such as *Santa Clara Pueblo v. Martinez*, 436 U. S. 49 (1978), *Cort* v. *Ash*, 422 U. S. 66 (1975), and *National Railroad Passenger Corp.* v. *National Association of Railroad Passengers*, 414 U. S. 453 (1974), is quite different from the analysis in earlier cases such as *J. I. Case Co.* v. *Borak*, 377 U. S. 426 (1964). The question of the existence of a private right of action is basically one of statutory construction. See *ante*, at 9. And while state courts of general jurisdiction still enforcing the common law as well as statutory law may be less constrained than are federal courts enforcing laws enacted by Congress, the latter must surely look to those laws to determine whether there was an intent to create a private right of action under them.

We do not write on an entirely clean slate, however, and the Court's opinion demonstrates that Congress at least during the period of the enactment of the several titles of the Civil Rights Act tended to rely to a large extent on the courts to *decide* whether there should be a private right of action, rather than determining this question for itself. Cases such as *J. I. Case* v. *Borak*, *supra*, and numerous cases from other federal

P. 1 of 2

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Bl
Mr. Justice Po
Mr. Justice St

From: Mr. Justice I

Circulated: _____

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-926

Geraldine G. Cannon, Petitioner, v. University of Chicago et al. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[March —, 1979]

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

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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: FEB 24 79

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-926

Geraldine G. Cannon, Petitioner. v. University of Chicago et al. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[February —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

Petitioner's complaints allege that her applications for admission to medical school were denied by the respondents because she is a woman.[1] Accepting the truth of those allegations for the purpose of its decision, the Court of Appeals held that petitioner has no right of action against respondents that may be asserted in a federal court. 559 F. 2d 1063. We granted certiorari to review that holding. — U. S. —.

Only two facts alleged in the complaints are relevant to our decision. First, petitioner was excluded from participation in the respondents' medical education programs because of her sex. Second, these education programs were receiving federal financial assistance at the time of her exclusion. These facts, admitted, *arguendo*, by respondents' motion to dismiss the

[1] Each of petitioner's two complaints names as defendant a private university—the University of Chicago and Northwestern University—and various officials of the medical school operated by that university. In addition, both complaints name the Secretary and the Region V director of the Department of Health, Education, and Welfare. Although all of these defendants prevailed below, and are respondents here, the federal defendants have taken a position that basically accords with the position advanced by petitioner. See Brief for the Federal Respondents. Unless otherwise clear in context, all references to respondents in this opinion will refer to the private defendants named in petitioner's complaints.

stylistic changes

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: _____

APR 11 79

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-926

Geraldine G. Cannon, Petitioner, *v.* University of Chicago et al. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[April —, 1979]

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pp. 31-32

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: APR 18 '79

Recirculated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-926

Geraldine G. Cannon, Petitioner, *v.* University of Chicago et al. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[April —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

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P. 24; footnotes renumbered

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-926

Geraldine G. Cannon, Petitioner, *v.* University of Chicago et al. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[May —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

Petitioner's complaints allege that her applications for admission to medical school were denied by the respondents because she is a woman.[1] Accepting the truth of those allegations for the purpose of its decision, the Court of Appeals held that petitioner has no right of action against respondents that may be asserted in a federal court. 559 F. 2d 1063. We granted certiorari to review that holding. — U. S. —.

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HAB

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 14, 1979

MEMORANDUM TO THE CONFERENCE

RE: Case Held for No. 77-926 - Cannon v. Univ. of Chicago

No. 78-1172 - Tormey v. De La Cruz

Respondents, several current and prospective female students at the community colleges in San Mateo County, California, brought suit against the Board of Trustees of the community colleges alleging that their refusal to set up on-campus child care facilities had a disproportionate impact on women students, was intended to harm women, and therefore violated the Equal Protection Clause and Title IX. The District Court dismissed the suit on a 12(b)(6) motion, but the Court of Appeals (Kilkenny, Palmieri of S.D.N.Y.; Wallace dissenting) reversed, concluding that (1) Title IX establishes a private cause of action and (2) respondents' complaint alleged sufficient facts to establish sex discrimination claims under the Equal Protection Clause and Title IX. Judge Wallace argued in dissent that even if respondents could prove disproportionate impact and discriminatory intent, there could be no liability under either the Equal Protection Clause or Title IX for the Board's refusal to offer child care services. The case was remanded to the District Court for further proceedings.

This case was held for Cannon on issue (1) above. The Court of Appeals' decision is consistent with our decision in Cannon so that a "deny" is appropriate on