

The Burger Court Opinion Writing Database

Personnel Administrator of Massachusetts v. Feeney
442 U.S. 256 (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

May 23, 1979

Re: 78-233 - Personnel Administrator of Massachusetts
v. Feeney

Dear Potter:

I join.

Regards,

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 6, 1979

RE: No. 78-233 Personnel Administrator v. Feeney

Dear Thurgood:

You and I are in dissent in this. I'll be glad
to try my hand at it.

Sincerely,



Mr. Justice Marshall

Mr. Justice BRENNAN
Mr. Justice BRENNAN

Mr. Justice BRENNAN

Mr. Justice BRENNAN

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-233

Personnel Administrator of
Massachusetts et al.,
Appellants,
v.
Helen B. Feeney. } On Appeal from the United
States District Court for the
District of Massachusetts.

[May —, 1979]

MR. JUSTICE BRENNAN, dissenting.

I would affirm for the reasons stated in Judge Campbell's concurring opinion below. See 451 F. Supp. 143, 150 (Mass. 1978).

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 25, 1979

RE: No. 78-233 Personnel Administrator of Massachusetts
v. Feeney

Dear Thurgood:

Please join me in the dissenting opinion you have
prepared in the above.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 30, 1979

RE: No. 78-233 Personnel Administrator, etc. v. Feeney

Dear Thurgood:

Since I've joined your fine dissent in the above,
I'll withdraw my separate dissent.

Sincerely,



Mr. Justice Marshall

cc: The Conference

PT
~~RECORDED~~
To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Brennan
Mr. Justice Stevens

From: Mr. Justice Stewart
7 May 1979
Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

—
No. 78-233
—

Personnel Administrator of
Massachusetts et al.,
Appellants,
v.
Helen B. Feeney,

On Appeal from the United
States District Court for the
District of Massachusetts.

[May —, 1979]

MR. JUSTICE STEWART delivered the opinion of the Court.

This case presents a challenge to the constitutionality of the Massachusetts Veterans Preference Statute, Mass. Gen. Laws, ch. 31, § 23, on the ground that it discriminates against women in violation of the Equal Protection Clause of the Fourteenth Amendment. Under ch. 31, § 23,¹ all veterans who qualify for state civil service positions must be considered for appointment ahead of any qualifying nonveterans. The preference operates overwhelmingly to the advantage of males.

The appellee Helen B. Feeney is not a veteran. She brought this action pursuant to 42 U. S. C. § 1983 alleging that the absolute preference formula established in ch. 31, § 23 inevitably operates to exclude women from consideration for the best Massachusetts civil service jobs and thus unconstitutionally denies them the equal protection of the laws.² The

¹ For the text of ch. 31, § 23, see n. 10, *infra*. The general Massachusetts Civil Service law, Mass. Gen. Laws, ch. 31, was recodified on Jan. 1, 1979, 1978 Mass. Acts, ch. 383, and the veterans' preference is now found at Mass. Gen. Laws Ann., ch. 31, § 26 (West 1979). Citations in this opinion, unless otherwise indicated, are to the ch. 31 codification in effect when this litigation was commenced.

² No statutory claim was brought under Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.* Section 712 of the Act, 42

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 6, 1979

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 78-233 - Personnel Administrator of Mass. v. Feeney.

No. 78-897 - Texas Education Agency v. United States.

The only case being held for Feeney is the Austin school desegregation case. The petitioner claims, inter alia, that the Court of Appeals erred in finding that there had been intentional discrimination against Mexican-American students in the Austin system. In a previous opinion reversing the findings of the District Court on this issue, the Court of Appeals had intimated that the use of neighborhood schools in a district with segregated residential patterns might--based on a foreseeable consequences test--suffice to show segregative intent. 532 F. 2d 380, 392 (CA 5 1976). Upon this Court's remand for reconsideration in light of Washington v. Davis, see 429 U.S. 990, the Court of Appeals identified this statement as the problem part of its opinion. It acknowledged that the use of a neutral neighborhood school policy neutrally applied could not, after Washington and Arlington, be the controlling factor in proving segregative intent. However, it did not read Washington as entirely ruling out "foreseeability" as probative of intent when combined with other types of circumstantial evidence in a school case. It emphasized that in this instance the neighborhood school policy had not controlled its finding, that in any event that policy had not been neutrally applied, and that the other evidence of intentional segregation--both direct and circumstantial--was substantial.

The petitioner contends that the Court of Appeals--notwithstanding its opinion to the contrary---found segregative intent solely by applying "a foreseeable consequences standard to disproportionate impact." This case was apparently held for Feeney because a similar

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 17, 1979

Re: No. 78-233 — Personnel Administrator
of Massachusetts, et al.
v. Helen B. Feeney

Dear John:

Please add my name to your concurring
opinion in this case.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

I agree with your observation
that no one ever goes back to
read a lower court's opinion.
I could write a couple paragraphs,
if you're willing, explaining
the basis for Judge Campbell's
opinion.

of the United States
D. C. 20543

dlr

May 8, 1979

Re: No. 78-233 - Personnel Administrator of
Massachusetts v. Feeney

Dear Potter:

I await the dissent.

Sincerely,

JM

T.M.

Mr. Justice Stewart

cc: The Conference

cc: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Marshall

Circulated: 24 MAY 1973

Recirculated: _____

No. 78-233

Personnel Administrator of Massachusetts v. Feeney

MR. JUSTICE MARSHALL, dissenting.

Although acknowledging that in some circumstances, discriminatory intent may be inferred from the inevitable or foreseeable impact of a statute, ante at 22, n. 25, the Court concludes that no such intent has been established here. I cannot agree. In my judgment, Massachusetts' choice of an absolute veterans' preference system evinces purposeful gender-based discrimination. And because the statutory scheme bears no substantial relationship to a legitimate governmental objective, it cannot withstand scrutiny under the Equal Protection Clause.

31 MAY 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-233

Personnel Administrator of
Massachusetts et al., Appellants, v. Helen B. Feeley, On Appeal from the United States District Court for the District of Massachusetts,

[June — 1979]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, dissenting.

Although acknowledging that in some circumstances, discriminatory intent may be inferred from the inevitable or foreseeable impact of a statute, *ante*, at 22 n. 25, the Court concludes that no such intent has been established here. I cannot agree. In my judgment, Massachusetts' choice of an absolute veterans' preference system evinces purposeful gender-based discrimination. And because the statutory scheme bears no substantial relationship to a legitimate governmental objective, it cannot withstand scrutiny under the Equal Protection Clause.

1

The District Court found that the "prime objective" of the Massachusetts Veterans Preference Statute, Mass. Gen. Laws, ch. 31, § 23, was to benefit individuals with prior military service. 415 F. Supp. 485, 497 (Mass. 1976). See 451 F. Supp. 143, 145 (Mass. 1978). Under the Court's analysis, this factual determination "necessarily compels the conclusion that the state intended nothing more than to prefer 'veterans.' Given this finding, simple logic suggests that an intent to exclude women from significant public jobs was not at work in this law." *Ante*, at 20. I find the Court's logic neither simple nor compelling.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 8, 1979

Re: 78-233 - Personnel Administrator of Mass. v. Feeney

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart
cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 8, 1979

78-233 Personnel Administrator v. Feeney

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 7, 1979

Re: No. 78-233 - Personnel Administrator of Massachusetts
v. Feeney

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

Mr. 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: MAY 14 1979

Recirculated: _____

78-233 - Personnel Administrator of Massachusetts v. Feeney

MR. JUSTICE STEVENS, concurring.

While I concur in the Court's opinion, I confess that I am not at all sure that there is any difference between the two questions posed at pages 16-17, ante. If a classification is not overtly based on gender, I am inclined to believe the question whether it is covertly gender-based is the same as the question whether its adverse effects reflect invidious gender-based discrimination. However the question is phrased, for me the answer is largely provided by the fact that the number of males disadvantaged by Massachusetts' Veterans Preference (1,867,000) is sufficiently large--and sufficiently close to the number of disadvantaged females (2,954,000)--to refute the claim that the rule was intended to benefit males as a class over females as a class.

To: The United 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: MAY 15 197

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-233

Personnel Administrator of
Massachusetts et al., }
Appellants, } On Appeal from the United
 v. States District Court for the
 Helen B. Feeney. } District of Massachusetts.

[May —, 1979]

MR. JUSTICE STEVENS, concurring.

While I concur in the Court's opinion, I confess that I am not at all sure that there is any difference between the two questions posed at pp. 16-17, *ante*. If a classification is not overtly based on gender, I am inclined to believe the question whether it is covertly gender-based is the same as the question whether its adverse effects reflect invidious gender-based discrimination. However the question is phrased, for me the answer is largely provided by the fact that the number of males disadvantaged by Massachusetts' Veterans Preference (1,867,000) is sufficiently large—and sufficiently close to the number of disadvantaged females (2,954,000)—to refute the claim that the rule was intended to benefit males as a class over females as a class.

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: MAY 31 79

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-233

Personnel Administrator of
Massachusetts et al., } On Appeal from the United
Appellants, } States District Court for the
v. } District of Massachusetts.
Helen B. Feeney.

[June —, 1979]

MR. JUSTICE STEVENS, with whom MR. JUSTICE WHITE joins, concurring.

While I concur in the Court's opinion, I confess that I am not at all sure that there is any difference between the two questions posed at pp. 16-17, *ante*. If a classification is not overtly based on gender, I am inclined to believe the question whether it is covertly gender-based is the same as the question whether its adverse effects reflect invidious gender-based discrimination. However the question is phrased, for me the answer is largely provided by the fact that the number of males disadvantaged by Massachusetts' Veterans Preference (1,867,000) is sufficiently large—and sufficiently close to the number of disadvantaged females (2,954,000)—to refute the claim that the rule was intended to benefit males as a class over females as a class.