The Burger Court Opinion Writing Database

Oscar Mayer & Co. v. Evans

441 U.S. 750 (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 5, 1979

Re: 78-275 - Oscar Mayer & Co. v. Evans

Dear Bill:

My first reading of your proposed opinion is that it does not reflect my recollection of the Conference decision. I will read it more closely, but as of now, I could not join it.

Regards,

WEB

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

May 16, 1979

Dear John:

Re: 78-275 Oscar Mayer & Co. v. Evans

Since your opinion reflects my conference views and vote, I join you.

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.

April 4, 1979

To: Conference

Re: No. 78-275, Oscar Mayer & Co. v. Evans

My recollection of conference is that we decided only that resort to state remedies was mandatory rather than optional under Section 14(b). I do not recall a decision on the question of whether the requirement of the statute was jurisdictional or non-jurisdictional. Nor do I recall a decision concerning the proper disposition in this particular case. Absent guidance, my original inclination was to hold

that the statutory mandate was non-jurisdictional and could be excused because of respondent's good faith reliance upon mistaken official advice. Further research persuaded me, however, that the question of jurisdiction was best avoided. (Indeed, I am doubtful whether the question of jurisdiction even properly arises.) The better course, in my present view, is to adhere to a literal construction of the statutory definition of commencement (whereby a state proceeding may be commenced at any time for purposes of the Section) and to suspend federal proceedings until respondent has fufilled the mandate of 14(b). I have written this opinion along those lines.

W.J.B. Jr.

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

From: Mr. Justice Brennan

Circulated: 4 Apr?

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–275

Oscar Mayer & Co., et al., Petitioners, v. Joseph W. Evans. | On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[April —, 1979]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Section 14 (b) of the Age Discrimination in Employment Act of 1967 (ADEA), 29 U. S. C. § 633 (b) provides in pertinent part:

> "In the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant and seek relief from such discriminatory practice, no suit may be brought under section 626 of this title before the expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated: Provided, . . . [i]f any requirement for the commencement of such proceedings is imposed by a State authority other than a requirement of a filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State authority."

This case presents three questions under that section. First, whether § 14 (b) requires an aggrieved person to resort to appropriate state remedies before bringing suit under § 7 (c)

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 6, 1979

To: Mr. Justice Stevens

Re: No. 78-275, Oscar Mayer & Co. v. Evans.

Dear John:

Thank you very much for your note. I am happy to have your joinder in Parts I and II of the Evans opinion. Perhaps I can clear up some of your difficulties with respect to Part III.

1. I don't think that I am breaking any new ground with respect to the disposition. In Love v. Pullman, 404 U.S. 522 (1972) a grievant filed with the EEOC without first filing with the appropriate state agency as required by Section 14(b)'s counterpart, Section 706(b) of Title VII. The EEOC referred the charge to the state agency and held the federal proceeding in "suspended animation", id. at 526, pending deferral. The Tenth Circuit condemned the suspended animation procedure on the grounds that it allowed circumvention of the requirement

that the grievant file with the appropriate state agency before filing a charge with the EEOC. We reversed and held the suspended animation procedure perfectly proper. We reasoned that to "require a second "filing" by the aggrieved party after termination of state proceedings would serve no purpose other than the creation of an additional procedural technicality. Such technicalities are particularly inappropriate in a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process." Id. at 526-27.

I don't see why this case should be distinguished. The proposed opinion simply directs the District Court to hold the federal proceeding in suspended animation pending deferral just as the EEOC held the federal proceeding in suspended animation in Love. This procedure has been followed by a number of lower courts. See cases cited in footnote 10 of the proposed opinion. Indeed, we tacitly approved such a procedure in Crosslin v. Mountain States Telephone and Telegraph Co., 400 U.S. 1004 (1971) where we vacated a judgment of dismissal for want of jurisdiction arising from a failure to defer to the appropriate state agency and remanded for consideration of a stay pending deferral.

2. I don't think that the issues discussed in Part III can be avoided. This is true for two reasons. First, the discussion is necessary to support the ultimate disposition of suspension pending deferral. Second, the discussion is necessary to meet respondent's argument that his non-compliance with the requirements of Section 14(b) should be excused because of his reliance upon mistaken official advice by the Department of Labor. Respondent contends that the mandate of Section 14(b) should be regarded as similar to a statute of limitations which may be tolled for equitable reasons. See e.g. Burnett v. New York Central Railroad, 380 U.S. 424 (1965). He argues that a contrary interperation would be inconsistent with the remedial purposes of the ADEA because it would create procedural pitfalls for unwary litigants and would lead to unjust results that Congress could never have intended.

There is considerable force to this argument. After all the ADEA is a remedial statute and its statutory scheme is one "in which laymen, unassisted by trained lawyers, initiate the process." Love v. Pullman, supra. at 526. Interestingly, the Courts of Appeal that have held the mandate of Section 14(b) to be mandatory have also held the mandate to be non-jurisdictional. (See Goger v. H.K. Porter, Inc. 492 F. 2d

13 (3d Cir. 1974). See also the original panel decision in this case.) In my view, the only answer to respondent's argument is that unvarying insistence upon strict adherence to the requirements of Section 14(b) will not lead to inequitable results at variance with the remedial purposes of the ADEA, because 14(b) defects may be cured at any time.

I realize that it would have been preferable if the parties had discussed this issue more fully rather than merely alluding to it in their briefs. See e.g. Petition for Certiorari at 2; Brief for the United States at 31; Reply Brief for Petitioner at 9 n.7. But their negligence cannot excuse us from giving a complete and accurate answer to respondent's argument that "noncompliance with Section 14(b) of the ADEA may be allowed for equitable considerations." Brief for Respondent at 24.

I hope that this discussion has been helpful. If you have any further difficulties please feel free to let me know.

Bill

W.J.B. Jr.

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 9, 1979

Re: No. 78-275 - Oscar Mayer v. Evans

Dear John:

Thank you for your note of April 6, 1979. I'm sure our colleagues are awaiting the end of our exchange so I'll try to close it out with the following comments.

I find it difficult to accept your suggestion that the statutory language supports your suggested distinction between Love and the present case. Section 706(b) of Title VII, the relevant provision in Love says "no charge may be filed" with the EEOC until after deferral to the appropriate state agency. Section 14(b) of the ADEA provides that "no suit may be brought" in federal court until after deferral to the appropriate state agency. It seems to me that these two provisions can and should be construed in pari materia.

I also find it difficult to see how the reasoning of Love supports your distinction. In Love we rejected the objection to the suspended animation procedure on the grounds that:

> "To require a 'second filing' by the aggrieved party after termination of state proceedings would serve no purpose other than the creation of an additional procedural technicality. Such technicalities are particularly inappropriate in a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process." Love v. Pullman, 404 U.S. 522, 526-27 (1972).

Doesn't this logic apply with equal force to the present case?

I also doubt that there is anything unique about federal courts and federal agencies that supports your distinction. I've always thought that federal agencies were as limited as federal courts by the statutes that create them - indeed, perhaps even more so. See United States v. Mine Workers, 330 U.S. 258, 289 (1947).

Finally, I disagree that the questions decided in Part III were never presented. The applicability of state statutes of limitations was directly presented in the question for which we granted certiorari:

> "Whether the Court of Appeals for the Eighth Circuit erred in finding that the commencement of proceedings in a timely fashion before a state agency is not a mandatory prerequisite to the institution of a civil suit under the Age Discrimination in Employment Act, 29 U.S.c. §621 et seq in states having laws prohibiting age discrimination in employment and establishing agencies empowered to grant or to seek relief from such discriminatory practices." Petition for Certiorari at 2 (emphasis added).

And the suspension of proceedings pending deferral issue was discussed in the Brief for the United States from page 31 to page 33.

THIRTY !!

Sincerely

W.J.B. Jr.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 17, 1979

RE: No. 78-275 Oscar Mayer & Co. v. Evans

Dear Bill:

I agree that mention was made of jurisdiction at the Conference. I don't recall, however, a decision along the lines you recollect. My memory is that the question was left open for further study by the opinion writer. My study of the legislative history and subsequent construction of section 14(b) of the ADEA and section 706(b) of Title VII persuaded me along the lines set out in Part III of the circulation opinion.

Sincerely,

Mr. Justice Rehnquist

cc: The Conference

footnotes removed
4-11-79

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

From: Mr. Justice Brennan

Circulated: _____

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–275

Oscar Mayer & Co., et al., Petitioners, v. Joseph W. Evans. | On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[April —, 1979]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Section 14 (b) of the Age Discrimination in Employment Act of 1967 (ADEA), 29 U. S. C. § 633 (b) provides in pertinent part:

> "In the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant and seek relief from such discriminatory practice, no suit may be brought under section 626 of this title before the expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated: Provided, . . . [i]f any requirement for the commencement of such proceedings is imposed by a State authority other than a requirement of a filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State authority."

This case presents three questions under that section. First, whether § 14 (b) requires an aggrieved person to resort to appropriate state remedies before bringing suit under § 7 (c)

To: The Chief Justice
Mr. Justice Stewa
Mr. Justice White
Mr. Justice Marsh
Mr. Justice Black
Mr. Justice Powel
Mr. Justice Rehnq
Mr. Justice Steve

From: Mr. Justice Bre

Circulated: 23 MAY 1979

Recirculated: _____

May 21, 1979

To: Conference

Re: Cases held for Oscar Mayer Co. v. Evans, 78-275

Three cases were held for Oscar Mayer Co. v. Evans: Jos. Schlitz Brewing Co. v. Smith 78-419, Chrysler Corp. v. Gabriele 78-1, and Whirlpool v. Simpson, 78-53. In Schlitz the plaintiff attempted to file a timely state complaint with the New York Human Relations Commission but was turned away by an official of the agency who,explained that the state agency had no jurisdiction because Schlitz was no longer operating in the state. Plaintiff was advised to file a complaint in New Jersey, which he did. Schlitz subsequently argued, and the District Court agreed, that plaintiff's state complaint should have been filed in New York, not New Jersey. Accordingly the District Court dismissed the complaint. The Third Circuit reversed holding that resort to state remedies under 14(b) is optional rather than mandatory. I recommend a grant, vacate and remand.

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 5, 1979

Re: No. 78-275, Oscar Mayer & Co. v. Evans

Dear Bill,

Your proposed opinion for the Court takes a position I did not anticipate, based as it is upon a ground I am sure we did not discuss at the Conference -- the total inapplicability of a state statute of limitations. Your opinion is nonetheless a quite convincing one, and I am willing to join it if at least three others do likewise. If at least three others are not so disposed, however, I shall reconsider my position.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 4, 1979

Re: 78-275 - Oscar Mayer & Co. v. Evans

Dear Bill:

I am glad to join your opinion for the Court.

Sincerely yours,

PS

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 17, 1979

Re: No. 78-275 - Oscar Mayer & Co.
v. Evans

Dear Bill,

Please join me.

Sincerely yours,

Mr. Justice Brennan

Copies to the Conference

cmc

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 9, 1979

Re: 78-275 - Oscar Mayer & Co. v. Evans

Dear Bill:

Please join me.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: 10 APR 1979

Recirculated: _____

No. 78-275 - Oscar Mayer & Co., et al. v. Evans

MR. JUSTICE BLACKMUN, concurring.

My preference in this case would have been to affirm the judgment of the Court of Appeals. I am so inclined because I regard the Age Discrimination in Employment Act to be a remedial statute that is to be liberally construed, and because I feel that an affirmance would give full recognition to that remedial character. In addition, I am persuaded that state procedures and remedies in existence at the time the Act was passed in 1967 were not particula helpful for the complainant and were procedurally frustrating; that the fact that a federal proceeding supercedes one on the state side

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

From: Mr. Justice Blackmun

Circulated: _____

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1st Printed DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-275

Oscar Mayer & Co., et al., Petitioners, v. Joseph W. Evans. | On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[April —, 1979]

MR. JUSTICE BLACKMUN, concurring.

My preference in this case would have been to affirm the judgment of the Court of Appeals. I am so inclined because I regard the Age Discrimination in Employment Act to be a remedial statute that is to be liberally construed, and because I feel that an affirmance would give full recognition to that remedial character. In addition, I am persuaded that state procedures and remedies in existence at the time the Act was passed in 1967 were not particularly helpful for the complainant and were procedurally frustrating; that the fact that a federal proceeding supercedes one on the state side indicates which is to be dominant; that ADEA proceedings have their analogy in Fair Labor Standards Act litigation and not in Title VII proceedings; that no waiting period is required before a complainant may resort to a federal remedy (whereas, in striking contrast, under Title VII, state jurisdiction is exclusive for 60 days); that one could reasonably regard the statute as affording a complainant the option of filing either on the state side or on the federal side, and the constraints of § 14 (b) as applicable only if he pursues the state remedy; that it seems so needless to require an untimely state filing that inevitably, and automatically, is to be rejected; that the legislative history of the 1978 amendments, see *ante*, at 6–7,*

*"[A]n individual who has been discriminated against because of age is free to proceed either under state law or under federal law. The choice

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 4, 1979

Re: No. 78-275 - Oscar Mayer & Co. v. Evans

Dear Bill:

After the flurry of correspondence some time ago, this case appears to be moribund. In order to get it off dead center, I therefore am recasting my short concurrence so that I am joining the opinion and the judgment. I shall retain the body of the concurrence, however, for I believe I can express my more sympathetic leanings toward the claimant and yet join your opinion. It seems to me that if I do not do this, the Court may well go the other way and deny the claimant any relief whatsoever.

I have spoken with Potter by telephone, and he has assured me that if I do this he will also join you, as indicated in his letter of April 5.

If, by chance, Potter should change his mind and this does not work out, I would like to reserve the privilege of returning to my initial concurrence in the judgment.

Sincerely,

Harry

Mr. Justice Brennan

pp. 1-2

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marsh
Mr. Justice Powe
Mr. Justice Rehn
Mr. Justice Stev

From: Mr. Justice Bl

Circulated: _____

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–275

Oscar Mayer & Co., et al., Petitioners, v. Joseph W. Evans. | On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[April —, 1979]

MR. JUSTICE BLACKMUN, concurring

My preference in this case would have been to affirm the judgment of the Court of Appeals. I am so inclined because I regard the Age Discrimination in Employment Act to be a remedial statute that is to be liberally construed, and because I feel that an affirmance would give full recognition to that remedial character. In addition, I could be persuaded that state procedures and remedies in existence at the time the Act was passed in 1967 were not particularly helpful for the complainant and were procedurally frustrating; that the fact that a federal proceeding supercedes one on the state side indicates which is to be dominant; that ADEA proceedings have their analogy in Fair Labor Standards Act litigation and not in Title VII proceedings; that no waiting period is required before a complainant may resort to a federal remedy (whereas, in striking contrast, under Title VII, state jurisdiction is exclusive for 60 days); that one could reasonably regard the statute as affording a complainant the option of filing either on the state side or on the federal side, and the constraints of § 14 (b) as applicable only if he pursues the state remedy; that it seems so needless to require an untimely state filing that inevitably, and automatically, is to be rejected; that the legislative history of the 1978 amendments, see *ante*, at 6–7,*

* "[A]n individual who has been discriminated against because of age is free to proceed either under state law or under federal law. The choice

April 21, 1979

No 78-275 Mayer & Co. v. Evans

Dear Bill:

I have concluded reluctantly (since I am quite sympathetic to Evans' position that he was misled) that John is right as to the absence of power in the District Court properly to hold Evans' suit in "suspended animation" while he complies with state remedies.

In Mathews v. Eldridge, 424 U.S. 319, we noted that while certain aspects of the administrative exhaustion requirement may be waived by the agency, there is a basic, non-waivable element upon which the reviewing court's jurisdiction depends. In Mathews, this was the requirement that that the social security claimant's case be presented to the Secretary and denied by him. Weinberger v. Salfi, 422 U.S. 749, is to the same effect.

The state remedies requirement under ADEA is not a true exhaustion rule, since the claimant does not have to wait until relief from state sources is denied. He need only commence a request for such relief, and then wait 60 days. Yet, I see no distinction in principle between this requirement and that held to be jurisdictional in Eldridge and Salfi. In each of those cases, Congress directed that a basic step be taken before federal jursidction may be invoked.

I have concluded, therefore, that holding this case in abeyance until the state-remedies requirement is satisfied would be impermissible.

Accordingly, I will join only Parts I and II of your opinion.

Sincerely,

Mr. Justice Brennan

lfp/ss
cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 23, 1979

No 78-275 Mayer & Co. v. Evans

Dear Bill:

I have concluded reluctantly (since I am quite sympathetic to Evans' position that he was misled) that Jo is right as to the absence of power in the District Court properly to hold Evans' suit in "suspended animation" whil he complies with state remedies.

In Mathews v. Eldridge, 424 U.S. 319, we noted t while certain aspects of the administrative exhaustion requirement may be waived by the agency, there is a basic non-waivable element upon which the reviewing court's jurisdiction depends. In Mathews, this was the requireme that that the social security claimant's case be presente the Secretary and denied by him. Weinberger v. Salfi, 4 U.S. 749, is to the same effect.

The state remedies requirement under ADEA is not a true exhaustion rule, since the claimant does not have to wait until relief from state sources is denied. He need only commence a request for such relief, and then wait 60 days. Yet, I see no distinction in principle between this requirement and that held to be jurisdictional in Eldridge and Salfi. In each of those cases, Congress directed th basic step be taken before federal jursidction may be invoked.

I have concluded, therefore, that holding this in abeyance until the state-remedies requirement is sati would be impermissible.

Accordingly, I will join only Parts I and II o your opinion.

Sincerely,

Mr. Justice Brennan

lfp/ss
cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 14, 1979

78-275 Oscar Mayer v. Evans

Dear John:

Please join me in your concurring and dissenting opinion.

Sincerely,

Lewis

Mr. Justice Stevens

Copies to the Conference

LFP/lab

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 16, 1979

Re: No. 78-275 Oscar Mayer v. Evans

Dear Bill:

I apologize for my delay in responding to your draft opinion for the Court in this case. I have read with interest the correspondence between you and John and others regarding Part III of the opinion.

Having reviewed my Conference notes, my recollection, which comports with John's, is that we decided that §14(b) established a jurisdictional prerequisite to suit and that respondent's noncompliance with § 14(b) could not be excused because of reliance upon mistaken official advice. While this is certainly not the first time that any of us have found when assigned an opinion that in the writer's view the Conference result could not or should not be written out, I would prefer for now to decide this case along the lines of our Conference discussion.

Therefore, while I agree with Parts I and II of your opinion, I am not presently disposed to join Part III.

Sincerely,

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 14, 1979

Re: No. 78-275 Oscar Mayer v. Evans

Dear John:

Please join me in your concurring and dissenting opinion in this case.

Sincerely,

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 5, 1979

Re: 78-275 - Oscar Mayer & Co. v. Evans

Dear Bill:

Although I am prepared to join Parts I and II of your opinion, I have two difficulties with Part III.

First, if your analysis in Part II is correct, the statute did not authorize this suit to be brought until after a complaint had been filed with the Iowa Commission. How can we therefore order the District Court to hold in abeyance a suit that should not have been brought?

Second, I am always reluctant to give advisory opinions about questions that have not been briefed and argued. You may well be correct in your analysis, and it may be unfortunate that respondent did not employ a lawyer as competent as you, but does that justify the volunteering of this kind of advice?

In short, although perhaps I can be persuaded, for the present I would prefer to adhere to the decision made at Conference.

Respectfully,

John

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 6, 1979

RE: No. 78-275 - Oscar Mayer v. Evans

Dear Bill:

Thank you for your letter of April 6, 1979. Unfortunately, I still have difficulties with Part III.

First, although "suspended animation" may be acceptable for an administrative agency, I am not sure that such reasoning necessarily applies to a judicial proceeding that "may not be brought" under the statute. Second, even though no Member of the Court seemed to be aware of the argument advanced in Part III of your draft opinion, it is my recollection that we voted unanimously to reject the argument that noncompliance with 14(b) could be excused because of reliance upon mistaken official advice. Therefore, it is a little difficult for me to accept your suggestion that Part III is the only possible basis for rejecting that argument.

I hate to be old fashioned about these things, but I am still convinced that Part III decides a question that was neither argued nor presented in this case.

Respectfully,

Mr. Justice Brennan

Copies to the Court

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: MAY 14 79

Recirculated: _____

78-275 - Oscar Mayer v. Evans

MR. JUSTICE STEVENS, concurring in part and dissenting in part.

Section 14(b) of the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 633(b) explicitly states that "no suit may be brought" under the Act until the individual has first resorted to appropriate state remedies. Respondent has concededly never resorted to state remedies. In my judgment, this means that his suit should not have been brought and should now be dismissed.

Throughout this litigation both parties have assumed that dismissal would be required if § 14(b) is construed to mandate individual resort to state remedies in deferral states. In Part II of its opinion, which I join, the Court so construes the statute. However, in Part III of its opinion, the Court volunteers some detailed legal advice about the effect of a

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

P. 1

Printed

From: Mr. Justice Stevens

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1st DRAFT

Recirculated: MAY

SUPREME COURT OF THE UNITED STATES

No. 78-275

Oscar Mayer & Co., et al., Petitioners, v. Joseph W. Evans. | On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[May —, 1979]

MR. JUSTICE STEVENS, with whom MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST join, concurring in part and dissenting in part.

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Throughout this litigation both parties have assumed that dismissal would be required if § 14 (b) is construed to mandate individual resort to state remedies in deferral States. In Part II of its opinion, which I join, the Court so construes the statute. However, in Part III of its opinion, the Court volunteers some detailed legal advice about the effect of a suggested course of conduct that respondent may now pursue and then orders that his suit be held in abeyance while he follows that advice.

Regardless of whether the Court's advice is accurate—a question that should not be answered until some litigant has raised it—I am unable to join Part III. If respondent should decide at this point to resort to state remedies, and if his complaint there is found to be time barred, and if he should then seek relief in federal court, the question addressed in Part III

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

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-275

Oscar Mayer & Co., et al., Petitioners, *v.* Joseph W. Evans. | On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[May —, 1979]

MR. JUSTICE STEVENS, with whom THE CHIEF JUSTICE, MR. JUSTICE POWELL, and MR. JUSTICE REHNQUIST join, concurring in part and dissenting in part.

Section 14 (b) of the Age Discrimination in Employment Act of 1967, 29 U. S. C. § 633 (b) explicitly states that "no suit may be brought" under the Act until the individual has first resorted to appropriate state remedies. Respondent has concededly never resorted to state remedies. In my judgment, this means that his suit should not have been brought and should now be dismissed.

Throughout this litigation both parties have assumed that dismissal would be required if § 14 (b) is construed to mandate individual resort to state remedies in deferral States. In Part II of its opinion, which I join, the Court so construes the statute. However, in Part III of its opinion, the Court volunteers some detailed legal advice about the effect of a suggested course of conduct that respondent may now pursue and then orders that his suit be held in abeyance while he follows that advice.

Regardless of whether the Court's advice is accurate—a question that should not be answered until some litigant has raised it—I am unable to join Part III. If respondent should decide at this point to resort to state remedies, and if his complaint there is found to be time barred, and if he should then seek relief in federal court, the question addressed in Part III