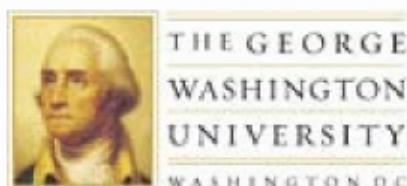


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*United States Parole Commission v.
Geraghty*

445 U.S. 388 (1980)

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

March 1, 1979

RE: 78-572 - U. S. Parole Commission v. Geraghty
78-904 - Deposit Guaranty National Bank v. Roper
78-1008 - Satterwhite v. Greenville, Texas

MEMORANDUM TO THE CONFERENCE:

I vote as follows:

78-572 - <u>U.S. Parole Commission v.</u> <u>Geraghty</u>	- Grant in full
78-904 - <u>Deposit Guaranty National</u> <u>Bank v. Roper</u>	- Grant Questions 1 and 2
78-1008 - <u>Satterwhite v.</u> <u>Greenville, Texas</u>	- Hold for 78-572 and 78-904.

Regards,

leB

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 23, 1979

MEMORANDUM TO THE CONFERENCE

Re: No. 78-572 - U.S. Parole Commission v. Geraghty;
No. 78-904 - Deposit Guaranty National Bank v. Roper;
No. 78-1008 - Minda Satterwhite v. Greenville, Texas.

The Conference voted to grant one or more of the above cases and was interested in a suggestion as to which should be selected.

I recommend that we grant both Roper and Geraghty and hold Satterwhite. The grant in Roper should be limited to questions 1 and 2 (may named plaintiff whose case has mooted out appeal the denial of class action certification) and in Geraghty to questions 1 (the same as the Roper issue); 3 (are parole guidelines inconsistent with the statute); and 4 (was the ex post facto clause violated by applying the guidelines in this case).

I enclose a memorandum about these cases prepared by my clerk, Gary Sasso.

Justice Powell - The problem with Geraghty is that the issues on the merits are complex, although it appears the court below wrongly decided them. Further, I do not see why a decision on the mootness issue in Roper will not take care of Geraghty. I would take only Roper.
Enclosure

why a decision on the mootness issue in Roper will not take care of Geraghty. I would take only Roper.
Paul

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: 23 FEB 1979

Recirculated: _____

MEMORANDUM

Re: No. 78-572 - U. S. Parole Comm'n v. Geraghty
No. 78-904 - Deposit Guaranty Nat'l Bank v. Roper
No. 78-1008 - Satterwhite v. City of Greenville

I would be inclined to grant both Geraghty and Roper and to hold Satterwhite. If the Court is settled on granting only one, however, Geraghty should probably be it.

In Satterwhite, the named plaintiff's claim was dismissed on its merits after the DC had already denied class certification without an evidentiary hearing. The CA 5, en banc, declined to permit the named plaintiff to represent a putative class of women victimized by sex discrimination, reasoning that Mrs. Satterwhite was not a proper class representative as required by Rule 23. The court thought that once her claim was adjudicated on the merits the ruling could not be ignored. And the merits determination indicated that Mrs. Satterwhite did not have claims typical of the members of the class nor did she have an adequate common interest or nexus with them.

The decision rested on an application of Rule 23, then, and not on the case or controversy doctrine. Moreover, the court placed some emphasis on the fact that a full hearing had not been held on the certification issue. In this case,

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 1, 1979

Re: No. 78-572: US Parole Comm'n v. Geraghty;
No. 78-904: Deposit Guaranty Nat'l Bank v.
Roper;
No. 78-1008: Satterwhite v. Greenville, TX.

Dear Harry,

I do not object to granting Geraghty across
the board.

Sincerely yours,



Mr. Justice Blackmun
Copies to the Conference
cmc

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 28, 1979

Re: No. 78-572 - U.S. Parole Commission v. Geraghty
No. 78-904 - Deposit Guaranty National Bank v. Roper
No. 78-1008 - Satterwhite v. Greenville, Texas

Dear Byron:

This relates to your letter of February 23 recommending that certiorari be granted in both Roper and Geraghty and that Satterwhite be held for the other two. I fully agree.

I am somewhat disturbed, however, at your proposed limitation of the grant in Geraghty. I think I would feel better if we grant Geraghty across the board. The second issue concerns the propriety of the Third Circuit's ruling that the District Court should have considered the possibility of certifying a subclass of plaintiffs sua sponte. This ruling is really related to the Third Circuit's ruling on the first issue because the Court of Appeals agreed that the plaintiff's proposed class was unmanageable. Thus, unless the trial court had a duty to consider subclass certification sua sponte, the case would be moot even under the rationale of the Court of Appeals. As the SG points out, a rule requiring trial judges to mull over possibly appropriate subclasses would impose unique and unprecedented burdens on trial judges.

H In a way, the presence of the second issue in Geraghty makes it an easier case because the Court could reverse on this issue alone.

I am also inclined to feel that the substantive issues in Geraghty are, indeed, ripe. As I read the opinion of the Court of Appeals in its entirety, it seems to me that the District Court is given no discretion on remand.

For these reasons, I am inclined to grant Geraghty on all issues.

Sincerely,

Mr. Justice White
cc: The Conference

Harry *I agree with
Justice Blackmun. My
first recommendation is to take only
Roper. But if Geraghty is taken, it
should be on all issues.* *Paul*