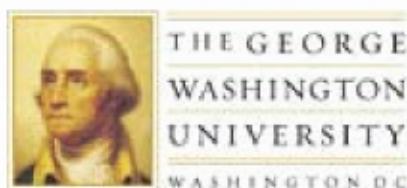


The Burger Court Opinion Writing Database

Southeastern Community College v. Davis
442 U.S. 397 (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

June 5, 1979

Re: 78-711 - Southeastern Community College
v. Davis

Dear Lewis:

I join.

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.

May 1, 1979

RE: No. 78-711 Southeastern Community College v.
Davis

Dear Thurgood:

You and I are in dissent in the above but
frankly I doubt that I'll be able to hold out.
It may be therefore that I'll end up joining
the Court.

Sincerely,



Mr. Justice Marshall

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

May 31, 1979

RE: No. 78-711 Southeastern Community College v. Davis

Dear Lewis:

I confess to very considerable reluctance to join
your result but I see no way out. Please join me.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 31, 1979

Re: 78-711 - Southeastern Community College v.
Davis

Dear Lewis:

I am glad to join your opinion for the
Court.

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 31, 1979

Re: 78-711 - Southeastern Community College
v. Davis

Dear Lewis,

Please join me.

Sincerely yours,



Mr. Justice Powell

Copies to the Conference

cmc

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 4, 1979

Re: No. 78-711 - Southeastern Community College v.
Davis

Dear Lewis:

I surrender - Please join me.

Sincerely,

T.M.

T.M.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 8, 1979

Re: No. 78-711 - Southeastern Community College v. Davis

Dear Lewis:

Please join me.

Sincerely,

HB

Mr. Justice Powell
cc: The Conference

~~Pls. send to me~~

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

First Draft

Circulated: 29 MAY 1973

No. 78-711 Southeastern Community College ~~Recd. 5/29/73~~ Davis

Mr. Justice Powell delivered the opinion of the Court.

This case presents a matter of first impression for this Court: Whether § 504 of the Rehabilitation Act of 1973, which prohibits discrimination against an "otherwise qualified handicapped individual" in federally funded programs "solely by reason of his handicap," forbids professional schools from imposing physical qualifications for admission to their clinical training programs.

I

Respondent, who suffers from a serious hearing disability, seeks to be trained as a registered nurse. During the 1973-1974 academic year she was enrolled in the College Parallel program of Southeastern Community College, a state institution that receives federal funds. Respondent hoped to progress to Southeastern's Associate Degree Nursing program, completion of which would make her eligible for state certification as a registered nurse. In the course of her application to the nursing program, she was interviewed by a member of the nursing faculty. It became apparent that respondent had difficulty understanding questions asked, and on inquiry she acknowledged a history of hearing problems and dependence on a hearing aid. She was advised to consult an audiologist.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 31, 1979

78-711 Southeastern Community College v. Davis

Dear Thurgood:

Thank you for your telephone call yesterday.

As requested, I have taken a look at the last sentence in part IV (p. 13) of my opinion, and I am happy to change it to read as follows:

"Nor has there been any showing in this case that any action short of a substantial change in Southeastern's program would render unreasonable its hearing qualification."

I believe this meets the point you raised.

Sincerely,



Mr. Justice Marshall

1fp/ss

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

From: Mr. Justice Powell

Circulated: 1 JUN 1979

1st PRINTED DRAFT

Received by: _____

SUPREME COURT OF THE UNITED STATES

No. 78-711

Southeastern Community College, Petitioner,
v.
Frances B. Davis. } On Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit.

[June —, 1979]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents a matter of first impression for this Court: Whether § 504 of the Rehabilitation Act of 1973, which prohibits discrimination against an "otherwise qualified handicapped individual" in federally funded programs "solely by reason of his handicap," forbids professional schools from imposing physical qualifications for admission to their clinical training programs.

I

Respondent, who suffers from a serious hearing disability, seeks to be trained as a registered nurse. During the 1973-1974 academic year she was enrolled in the College Parallel program of Southeastern Community College, a state institution that receives federal funds. Respondent hoped to progress to Southeastern's Associate Degree Nursing program, completion of which would make her eligible for state certification as a registered nurse. In the course of her application to the nursing program, she was interviewed by a member of the nursing faculty. It became apparent that respondent had difficulty understanding questions asked, and on inquiry she acknowledged a history of hearing problems and dependence on a hearing aid. She was advised to consult an audiologist.

On the basis of an examination at Duke University Medical

At

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 5, 1979

78-711 Southeastern Community College v. Davis

MEMORANDUM TO THE CONFERENCE:

Before my first printed draft was circulated, Thurgood requested me to consider changing the last sentence in Part IV (top of page 15). He thinks the sentence can be read to apply broadly to situations other than §504.

Although I do not think this is likely, I see Thurgood's point, and am willing to substitute the following sentence:

"Nor has there been any showing in this case that any action short of a substantial change in Southeastern's program would render unreasonable the qualifications it imposed."

I will make this change in the next draft, unless there is objection.

L. F. P.

L.F.P., Jr.

ss

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

141,15

From: Mr. Justice Powell

Circulated: _____

2nd DRAFT Recirculated: 6 JUN 1979

SUPREME COURT OF THE UNITED STATES

No. 78-711

Southeastern Community College, Petitioner,
v.
Frances B. Davis.

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

[June —, 1979]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents a matter of first impression for this Court: Whether § 504 of the Rehabilitation Act of 1973, which prohibits discrimination against an "otherwise qualified handicapped individual" in federally funded programs "solely by reason of his handicap," forbids professional schools from imposing physical qualifications for admission to their clinical training programs.

I

Respondent, who suffers from a serious hearing disability, seeks to be trained as a registered nurse. During the 1973-1974 academic year she was enrolled in the College Parallel program of Southeastern Community College, a state institution that receives federal funds. Respondent hoped to progress to Southeastern's Associate Degree Nursing program, completion of which would make her eligible for state certification as a registered nurse. In the course of her application to the nursing program, she was interviewed by a member of the nursing faculty. It became apparent that respondent had difficulty understanding questions asked, and on inquiry she acknowledged a history of hearing problems and dependence on a hearing aid. She was advised to consult an audiologist.

On the basis of an examination at Duke University Medical

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 12, 1979

MEMORANDUM TO THE CONFERENCE

Case Held for No. 78-711: Southeastern Community College v.
Davis

Trageser v. Libbie Rehabilitation Center, Inc., No. 78-1454

Recommendation: Deny

Petitioner, a registered nurse, was discharged from a privately operated nursing home after State health officials called attention to her deteriorating vision. She sued her employer under § 504 of the Rehabilitation Act of 1973. The district court dismissed, holding that § 504 did not provide a cause of action for private suits and that the nursing home was not covered by the Act, inasmuch as the only federal funds it received were in the form of reimbursement for patient charges. The Fourth Circuit affirmed, deciding only that in light of the 1978 amendments of the 1973 Act, a private right of action was limited to instances where providing employment was the primary objective of the federal aid involved or where discrimination in employment necessarily caused discrimination against the primary beneficiaries of the federal aid.

We did not pass on the implied cause of action issue in Davis. As this case does not involve state action, the question whether § 1983 might provide an alternative source for the cause of action, which we also avoided in Davis, is not presented here. It is noteworthy that two members of the panel of the court below were members of the Davis panel, including the author of that opinion. The 1978 amendments, which had not been enacted at the time Davis was decided, addressed the cause of action issue, and the court below reappraised and limited its previous holding in light of them. The court's construction of these amendments seems reasonable, and there is no conflict. Accordingly, I recommend that we deny the petition.

L.F.P.
L.F.P., Jr.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 31, 1979

Re: No. 78-711 - Southeastern Community College v. Davis

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 30, 1979

Re: 78-711 - Southeastern Community College
v. Davis

Dear Lewis:

Please join me.

Respectfully,



Mr. Justice Powell
Copies to the Conference