The Burger Court Opinion Writing Database

EEOC v. Associated Dry Goods Corp.

449 U.S. 590 (1981)

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

January 8, 1981

RE: 79-1068 - EEOC v. Associated Dry Goods Corp.

Dear Potter:

I join.

Regards,

WEB

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 29, 1980

RE: No.79-1068 EEOC v. Associated Dry Goods Corp.

Dear Potter:

I agree.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

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

From: Mr. Justice Stewart

Circulated: 12 DEC 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1068

Equal Employment Opportunity Commission, Petitioner, *v.* Associated Dry Goods Corporation.	On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[January —, 1981]

JUSTICE STEWART delivered the opinion of the Court.

Title VII of the Civil Rights Act of 1964 limits the authority of the Equal Employment Opportunity Commission to make public disclosure of information it has obtained in investigating and attempting to resolve a claim of employment discrimination.[1] We granted certiorari in this case to con-

[1] Section 706 (b) of Title VII, 42 U. S. C. § 2000e-5 (b), provides in relevant part:

"Charges shall be made in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. . . . If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. . . ."

Section 709 (e) of Title VII, 42 U. S. C. § 2000e-8 (e), provides:

"It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the in-

p 14

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

From: Mr. Justice Stewart

Circulated: _____

2nd DRAFT Recirculated: 23 JAN 1981

SUPREME COURT OF THE UNITED STATES

No. 79-1068

Equal Employment Opportunity Commission, Petitioner, *v.* Associated Dry Goods Corporation.	On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[January —, 1981]

JUSTICE STEWART delivered the opinion of the Court.

Title VII of the Civil Rights Act of 1964 limits the authority of the Equal Employment Opportunity Commission to make public disclosure of information it has obtained in investigating and attempting to resolve a claim of employment discrimination.[1] We granted certiorari in this case to con-

[1] Section 706 (b) of Title VII, 42 U. S. C. § 2000e-5 (b), provides in relevant part:

"Charges shall be made in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. . . . If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. . . ."

Section 709 (e) of Title VII, 42 U. S. C. § 2000e-8 (e), provides:

"It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the in-

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 23, 1981

MEMORANDUM TO THE CONFERENCE

Re: No. 79-1068, EEOC v. Associated Dry Goods

I plan to make no further changes in the opinion of the Court, and, so far as I am concerned, it is ready for announcement on next Monday.

P.S.

P.S.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 29, 1980

Re: 79-1068 - EEOC v. Associated Dry Goods Corp.

Dear Potter,

Please join me.

Sincerely yours,

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 29, 1980

Re: No. 79-1068 - EEOC v. Associated Dry Goods

Dear Potter:

Please join me.

Sincerely,

T.M.

T.M.

Justice Stewart

cc: The Conference

November 17, 1980

Re: No. 79-1068 - EEOC v. Associated Dry Goods Corporation

Dear John:

You voted to affirm in this case. I was inclined that way but perhaps on a somewhat different rationale. All the others were to reverse except Bill Rehnquist, who was out, and Lewis, who passed and may not participate. Please feel free to write what you wish in dissent. It may be that I could join you or else write separately. Is that all right with you?

Sincerely,

HAB

Mr. Justice Stevens

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 23, 1980

Re: No. 79-1068 - EEOC v. Associated Dry Goods Corp.

Dear Potter:

For now, I shall await the dissent.

Sincerely,

H. A. B.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 14, 1981

Re: No. 79-1068 - EEOC v. Associated Dry Goods Corp.

Dear Potter:

As you know, I was waiting for John's dissent. That dissent reveals that his disagreement with what will be the Court's opinion is far sharper than mine. I therefore shall write briefly. What I have to say will be around shortly but not before Friday's Conference.

Sincerely,

H.A.B.

Mr. Justice Stewart

cc: The Conference

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: JAN 22 '80

Recirculated: _____

No. 79-1068 - EEOC v. Associated Dry Goods Corporation

JUSTICE BLACKMUN, concurring in part and dissenting in part.

In my view, the proper standard for evaluating disclosures of information by the Equal Employment Opportunity Commission (EEOC) was expressed by Senator Humphrey, the cosponsor of the bill that became Title VII. As the Court notes, ante, at 8-9, Senator Humphrey stated that the prohibitions against public disclosure in §§706(b) and 709(e) of Title VII, 42 U.S.C. §§ 2000e-5(b) and 2000e-8(e), do not forbid "such disclosure as is necessary to the carrying out of the Commission's duties under the statute." 110 Cong. Rec. 12723 (1964). I would adhere to this standard and require the Commission to justify any disclosure of its investigative files by demonstrating that the disclosure is "necessary to the carrying out of [its] duties."*/ Because the Commission must communicate charges to respondents,

p. 2

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1068

Equal Employment Opportunity Commission, Petitioner, *v.* Associated Dry Goods Corporation.	On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[January —, 1981]

JUSTICE BLACKMUN, concurring in part and dissenting in part.

In my view, the proper standard for evaluating disclosures of information by the Equal Employment Opportunity Commission (EEOC) was expressed by Senator Humphrey, the cosponsor of the bill that became Title VII. As the Court notes, *ante,* at 8-9, Senator Humphrey stated that the prohibitions against public disclosure in §§ 706 (b) and 709 (e) of Title VII, 42 U. S. C. §§ 2000e-5 (b) and 2000e-8 (e), do not forbid "such disclosure as is necessary to the carrying out of the Commission's duties under the statute." 110 Cong. Rec. 12723 (1964). I would adhere to this standard and require the Commission to justify any disclosure of its investigative files by demonstrating that the disclosure is "necessary to the carrying out of [its] duties."* Because the Commission

*As the Court notes, the agency adopted precisely this standard as a contemporaneous construction of the statute. Its first disclosure rules, issued in 1965, authorized disclosure to the charging party "as may be appropriate or necessary to the carrying out of the Commission's function." 30 Fed. Reg. 8409 (1965). This regulation remained unchanged until 1977, when it was amended to state a broader standard, although the agency disclaimed an intent to do so. See 42 Fed. Reg. 42024 (1977). Disclosure to a charging party, his or her attorney, and certain others is now permitted when it "is deemed necessary for securing appropriate relief." 29 CFR § 1601.22 (1979). That this is a departure from the previous standard is clear, since the Commission retained the "necessary

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 29, 1980

79-1068 EEOC v. Associated Dry Goods

Dear Potter:

Please show on the next draft of your opinion that I took no part in the decision of this case.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 17, 1980

Re: No. 79-1068 EEOC v. Associated Dry Goods Assoc.

Dear Potter:

Would you please note when you circulate the opinion in this case that I took no part in the consideration or decision of it.

Sincerely,

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 19, 1980

Re: No. 79-1068 EEOC v. Associated Dry Goods Corp.

Dear Potter:

Would you please note in this case that I took no part in the consideration or decision of it.

Sincerely,

Mr. Justice Stewart

Copies to the Conference

Brennan 80

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 18, 1980

Re: 79-1068 - EEOC v. Associated Dry Goods

Dear Harry:

Thanks for your note. Let me try my hand at a draft opinion which I will share with you before circulating. It may be that when I try to write it out I will find that my vote is not firm.

Respectfully,

Mr. Justice Blackmun

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnq

From: Mr. Justice Ste

Circulated: JAN 12 '81

Recirculated: _____

79-1068 - Equal Employment Opportunity Commission v. Associated Dry Goods Corp.

JUSTICE STEVENS, dissenting.

The Court construes a prohibition against public disclosure as an authorization for prelitigation discovery. A principle basis for the Court's unusual construction of rather plain statutory language is that because a charging party must know the contents of a charge, that party cannot be a member of the public to which disclosure is prohibited. In my view, the reason that the statute is not violated by the charging party's knowledge of the contents of a charge is that he is the source of the information contained in the charge; no disclosure occurs when he reads what he has written, regardless of whether he is a member of the public.

To encourage prompt and full disclosure of relevant information to a neutral conciliator, Congress assured employees and employers alike that no public disclosure of such information would occur prior to the institution of formal proceedings. To enforce this assurance, the statute imposes criminal penalties on Commission personnel who disclose information to the public. See 42 U.S.C. §2000-8(e).[1] It seems fanciful to me to conclude that

---

Footnote(s) 1 appear on following page(s).

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: JAN 14 '81

Printed

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1068

Equal Employment Opportunity Commission, Petitioner, *v.* Associated Dry Goods Corporation.	On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[January —, 1981]

JUSTICE STEVENS, dissenting.

The Court construes a prohibition against public disclosure as an authorization for prelitigation discovery. A principal basis for the Court's unusual construction of rather plain statutory language is that because a charging party must know the contents of a charge, that party cannot be a member of the public to which disclosure is prohibited. In my view, the reason that the statute is not violated by the charging party's knowledge of the contents of a charge is that he is the source of the information contained in the charge; no disclosure occurs when he reads what he has written, regardless of whether he is a member of the public.

To encourage prompt and full disclosure of relevant information to a neutral conciliator, Congress assured employees and employers alike that no public disclosure of such information would occur prior to the institution of formal proceedings. To enforce this assurance, the statute imposes criminal penalties on Commission personnel who disclose information to the public. See 42 U. S. C. § 2000-8 (e).[1] It seems fanciful to me to conclude that Congress intended to prohibit direct disclosure while permitting indirect disclosure. That result, however, is the consequence of the Court's view that direct

[1] A violation of the disclosure prohibition contained in § 2000-8 (e) is a misdemeanor punishable by one-year imprisonment and a $1,000 fine.