The Burger Court Opinion Writing Database

Railroad Retirement Board v. Fritz

449 U.S. 166 (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

November 17, 1980

Re: 79-870 - U.S. Railroad Retirement Board v. Fritz

Dear Bill:

I join.

Regards,

WEB

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 10, 1980

RE: No. 79-870 Railroad Retirement Board v. Fritz

Dear Bill:

I will be circulating a separate opinion, probably a dissent, in the above in due course.

Sincerely,

Bill

Mr. Justice Rehnquist

cc: The Conference

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: NOV 19 1980

Recirculated: _____

United States Railroad Retirement Board v. Fritz

No. 79-870

JUSTICE BRENNAN, dissenting:

Appellee Gerhard Fritz represents a class of retired former railroad employees who worked in that industry for more than ten and fewer than twenty-five years, and also worked in non-railroad jobs for at least forty quarters,[1] but who did not work for or have a "current connection" with a railroad in 1974. Prior to enactment of the Railroad Retirement Act of 1974, 45 U.S.C. §231b(h), appellees were statutorily entitled to Railroad Retirement and Social Security benefits, including an overlap herein called the "earned dual benefit." The enactment of the 1974 Act, however, divested them of their entitlement to the earned dual benefit. The Act did not affect the entitlements of other railroad employees with equal service in railroad and non-railroad jobs, however, who can be distinguished from appellees only because they worked at least one day for a railroad in 1974, or retained a "current connection" with a railroad in 1974.

The only question in this case is whether the equal protection component of the Fifth Amendment[2] bars Congress from allocating pension benefits in this manner. Recognizing that the

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[1]The appellee class satisfied all of the requirements for Social Security retirement eligibility. For a full description of those requirements, see U.S. Dep't of Health, Education, and Welfare, Social Security Handbook (1978).

[2]See Weinberger v. Wiesenfeld, 420 U.S. 636, 638 n.2 (1975).

organizational and stylistic changes throughout. See pp. 1-3, 5-9, 14-15, 18-19.

2d Draft

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: _____

Recirculated: NOV 24 19

United States Railroad Retirement Board v. Fritz

No. 79-870

JUSTICE BRENNAN, dissenting:

Appellee Gerhard Fritz represents a class of retired former railroad employees who were statutorily entitled to Railroad Retirement and Social Security benefits, including an overlap herein called the "earned dual benefit," until enactment of the Railroad Retirement Act of 1974, which divested them of their entitlement to the earned dual benefit. The Act did not affect the entitlements of other railroad employees with equal service in railroad and non-railroad jobs, who can be distinguished from appellees only because they worked at least one day for, or retained a "current connection" with, a railroad in 1974.

The only question in this case is whether the equal protection component of the Fifth Amendment[1] bars Congress from allocating pension benefits in this manner. The answer to this question turns in large part on the way in which the strictures of equal protection are conceived by this Court. See Morey v. Doud, 354 U.S. 457, 472 (1957) (Frankfurter, J., dissenting). The parties agree that the legal standard applicable to to this case is the "rational basis" test. The District Court applied this standard below, see Conclusion of law No. 7, reprinted at

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[1]See Weinberger v. Wiesenfeld, 420 U.S. 636, 638 n.2 (1975).

Stylistic changes throughout

3d

~~2nd~~ DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-870

United States Railroad Retirement Board, Appellant, *v.* Gerhard H. Fritz	On Appeal from the United States District Court for the Southern District of Indiana.

[December —, 1980]

JUSTICE BRENNAN, dissenting.

Appellee Gerhard Fritz represents a class of retired former railroad employees who were statutorily entitled to Railroad Retirement and Social Security benefits, including an overlap herein called the "earned dual benefit," until enactment of the Railroad Retirement Act of 1974, which divested them of their entitlement to the earned dual benefit. The Act did not affect the entitlements of other railroad employees with equal service in railroad and nonrailroad jobs, who can be distinguished from appellees only because they worked at least one day for, or retained a "current connection" with, a railroad in 1974.

The only question in this case is whether the equal protection component of the Fifth Amendment [1] bars Congress from allocating pension benefits in this manner. The answer to this question turns in large part on the way in which the strictures of equal protection are conceived by this Court. See *Morey* v. *Doud,* 354 U. S. 457, 472 (1957) (Frankfurter, J., dissenting). The parties agree that the legal standard applicable to this case is the "rational basis" test. The District Court applied this standard below, see Conclusion of law No. 7, reprinted at App. to Juris. Statement, at 28a. The Court today purports to apply this standard, but in actuality fails to scrutinize the challenged classification in the manner

[1] See *Weinberger* v. *Wiesenfeld,* 420 U. S. 636, 638, n. 2 (1975).

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 10, 1980

RE: No. 79-870, United States Railroad Retirement Board v. Fritz

Dear Bill,

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 13, 1980

Re: No. 79-870, U.S. Railroad Retirement Board v. Fritz

Dear Bill,

I have no objection whatever to changes in your opinion along the lines specified in your letter to Lewis of November 13.

Sincerely yours,

P.S.

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 17, 1980

Re: 79-870 - U. S. Railroad
Retirement Board v. Fritz

Dear Bill,

Please join me.

Sincerely yours,

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 4, 1980

Re: No. 79-870 - U.S. Railroad Retirement Board v. Fritz

Dear Bill:

Please join me.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 10, 1980

Re: No. 79-870 - United States Railroad Retirement Board v. Fritz

Dear Bill:

Please join me.

Sincerely,

HAB.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 17, 1980

Re: No. 79-870 - United States Railroad Retirement Board v. Fritz

Dear Bill:

No word has been forthcoming as yet from the Chief, Byron or Thurgood. Thus, at the moment, your ability to command a Court depends on accommodation with Lewis and John.

For what it may be worth, I have no objections to the changes you describe in your letter of November 13 to Lewis.

Sincerely,

HAB

Mr. Justice Rehnquist

cc: Mr. Justice Stewart
Mr. Justice Powell
Mr. Justice Stevens

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 10, 1980

79-870 U.S. Railroad Retirement Board v. Fritz

Dear Bill:

I regret to say that your draft opinion's discussion of equal protection analysis may make it difficult for me to join the opinion in its present form.

On page 7, the draft reads:

> "The only issue presented by this case is the appropriate standard of judicial review to be applied when social and economic legislation enacted by Congress is challenged as being violative of the Fifth Amendment. . ."

I had not understood that this question actually is presented. The parties do not question the standard of judicial review. Rather, I understand from the briefs that they agree that the appropriate standard is the rational basis test, and the issue - as I perceive it - is whether the statutory scheme meets that test. I agree that it does.

But your framing of "the only issue presented" and your reliance on the language in Lindsley to the effect that "if any state of facts reasonably can be conceived that would sustain [the legislation]", and your further statement that after departing from the Lindsley test we more recently have returned to it, gives me a problem in view of what I have previously written.

I am reminded of my effort in Murgia to formulate a rational basis standard to which we all could subscribe. After getting caught in a "cross-fire", I finally said very little beyond the bare statement that the state's classification "rationally furthered the purpose identified by the state". Subsequently, in Maher v. Roe, again avoiding any attempt to "restate" the law of Equal

Protection, I merely said that the rational basis test "requires that the distinction drawn . . . be rationally related to a constitutionally permissible purpose."

I have never been happy with the "any conceivable basis" test applied in Lindsley and McGowan v. Maryland. Guessing what legislators "conceivably" might have intended does not appeal to me as any standard at all. In a number of cases that I wrote somewhat earlier (Weber, James v. Strange and Frontiero), I stated my view that "this Court requires, as a minimum, that a statutory classification bear a rational relationship to a legitimate state purpose."

Your opinion does end up stating that a Court must determine whether the "fit" between the legislative purpose and its means of accomplishing that purpose is "rational". But in the same sentence, you also state:

> "Where the legislative purpose of the enactment may be extremely obscure, it may be appropriate to search for some unannounced, but underlying 'purpose of the statute' . . .".

It may be that a majority of the Court will agree with what you have written. In that event, I will join the judgment and probably write separately. I do think, however, that the portions of your opinion mentioned above are unnecessary, and that the question as stated by you presents an issue not before us.

Where social and economic legislation are concerned, my own disposition is to be tolerant of a legislative classification. But in view of what I have written, often joined by a majority of the Court, I would be uncomfortable with the portions of your opinion I have identified.

Sincerely,

L Lewis

Mr. Justice Rehnquist

cc: The Conference

lfp/ss

November 17, 1980

79-870 U.S. Railroad Retirement Board v. Fritz

Dear Bill:

Thank you for your letter of November 13, proposing changes in the first draft of your opinion for the Court.

To a substantial degree, the suggested changes meet my concerns. I would hope, however, that you would state the issue as it is presented by the parties. See the Question as framed by appellee.

In view of the changes you have made that eliminate the language that presented the greatest difficulty for me, I will join your opinion to assure that you have a Court.

I do add this observation: Your concern is that lower courts today can "pick and choose" among the various "tests" found in Court's precedents. I would think the best way to convey your message to the contrary is to emphasize that certainly since Dandridge/Hackney the Court has adhered consistently, with respect to classifications involving social and economic benefits, to the straightforward rational basis test. Putting it differently, apart from being irrelevant as I view them, it seems to me that harking back to Lindsley (1911) and Royster (1920) could merely divert attention from the consistent way in which certainly a majority of the Court has applied the rational basis test to legislation of this kind. The decisions last Term in Harris v. McRae, and Zbaraz are recent examples, although the vote in those cases for understandable reasons was close.

Having shared these views with you, I repeat that in view of the changes you are willing to make, I will join your opinion.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

cc: Mr. Justice Stewart
Mr. Justice Blackmun
Mr. Justice Stevens

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 21, 1980

79-870 U.S. Railroad Retirement Board v. Fritz

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-870

United States Railroad Retirement Board, Appellant, *v.* Gerhard H. Fritz	On Appeal from the United States District Court for the Southern District of Indiana.

[November —, 1980]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

The United States District Court for the Southern District of Indiana held unconstitutional a section of the Railroad Retirement Act of 1974, 45 U. S. C. § 231 *et seq.*, and the United States Railroad Retirement Board has appealed to this Court pursuant to 28 U. S. C. § 1252.

The 1974 Act fundamentally restructured the railroad retirement system. The Act's predecessor statute, adopted in 1937, provided a system of retirement and disability benefits for persons who pursued careers in the railroad industry. Under that statute, a person who split employment between railroad and nonrailroad service, and thus qualified for both railroad retirement benefits and social security benefits, 42 U. S. C. § 401 *et seq.*, could receive retirement benefits under both systems and an accompanying "windfall" benefit.[1]

[1] Under the old Act, as under the new, an employee who worked 10 years in the railroad business qualified for railroad retirement benefits. If the employee also worked outside the railroad industry for a sufficient enough time to qualify for social security benefits, he qualified for dual benefits. Due to the formula under which those benefits were computed, however, persons who split their employment between railroad and nonrailroad employment received dual benefits in excess of the amount they would have received had they not split their employment. For

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 13, 1980

Re: No. 79-870 Railroad Retirement Board v. Fritz

Dear John:

Before receiving your letter of November 12th, I had spoken to Lewis on the telephone and prepared the attached letter to him. While your letter of November 12th is technically correct when it says at footnote 1 that "Neither the district court nor the appellees even cited Royster Guano v. Virginia, 253 U.S. 412", they do cite Johnson v. Robison, 415 U.S. 361 (1974) which uses the Royster language. At any rate, I attach a copy of the letter which I have written to Lewis, and sent to Potter and Harry after they had joined my proposed opinion, so that you may see what the current state of the debate or exchange is.

Sincerely,

Mr. Justice Stevens

Copy to Mr. Justice Powell
Copy to Mr. Justice Stewart
Copy to Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 13, 1980

Re: No. 79-870 United States Railroad Retirement Board v. Fritz

Dear Lewis:

I have read your letter of November 10th, and spoken to you about it on the telephone. If all claims of constitutional invalidity under the Equal Protection Clause were to be decided by this Court, I would be able to write the opinion in this case with a statement of facts and a series of string citations to opinions from this Court, and probably get six or seven votes for the opinion without any trouble. For me there are two difficulties with this approach to writing the opinion: first, the string citations would necessarily include some statements that were not consistent with one another, and second, all challenges to state or federal legislation on equal protection grounds will not be decided by this Court. A district judge or a Court of Appeals may therefore pick and choose among the various "standards" or "tests", depending on whether it is desired to invalidate the statute or sustain it. Granted that it is very

difficult to define the "rational basis" standard, if we leave the case law the way it is now we will, in my opinion, be leaving in the hands of four or five hundred lower federal court judges an authority very much like a governor's veto: the statute is unwise, the legislative "purpose" could have been accomplished in a seemingly more fair way, ergo the statute a violates the equal protection guarantee. Since each of us was here during the agonizing debates over Murgia and Dukes during the October '75 Term, it may not be possible to get any agreement beyond merely saying that the standard in this case is that of a "rational basis". But I would like to make one more effort to indicate that it is a legal standard, and not simply a "chancellor's foot" veto; with that in mind, I suggest the following changes in my first draft which I am willing to make in response to your letter if Potter and Harry, who have already joined the draft, are agreeable to them.

Pages 1 through the first part of 7 would remain as they are.

On page 7, I would rephrase the paragraph beginning at the bottom of the page as follows:

Despite the narrowness of the issue, this Court in earlier cases has not been altogether consistent in its pronouncement in this area. In Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78-79 (1911), the Court said that "When the classification in

such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time that the law was enacted must be assumed." 220 U.S. 61, 78-79. On the other hand, only nine years later in Royster Guanno Co. v. Virginia, 253 U.S. 412, 415 (1920), the Court said that for a classification to be valid under the Equal Protection Clause it "must rest upon some ground of difference having a fair and substantial relation to the object of the legislation ...".

In more recent years, however, we have determined that in cases involving social and economic benefits, the Court has consistently refused to invalidate on equal protection grounds legislation which ~~they~~ simply deemed unwise or unartfully drawn.

Thus in Dandridge v. Williams, 397 U.S. 471, 485-486 (1970), the Court rejected a claim that Maryland welfare legislation violated the Equal Protection Clause of the Fourteenth Amendment. It said:

> "In the area of economic and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its law are imperfect. If the classification has some 'reasonable basis', it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78. 'The problems of government are

> practical ones and may justify, if they do not require, rough accommodations -- illogical, it may be, and unscientific.' Metropolis Theatre Co. v. City of Chicago, 228 U.S. 61, 68-70 ....
>
> "[The rational basis standard] is true to the principle that the Fourteenth Amendment gives the federal courts no power to impose upon the States their views of what constitutes wise economic or social policy."

Of like tenor are Vance v. Bradley, 440 U.S. 93, 97 (1979), and New Orelans v. Dukes, 427 U.S. 297, 303 (1975). Earlier, in Flemming v. Nestor, 363 U.S. 603, 611 (1960), the Court upheld the constitutionality of the social security eligibility provision, saying that :

> "It is not within our authority to determine whether the congressional judgment expressed in that Section is sound or equitable, or whether it comports well or ill with purposes of the Act. .... The answer to such inquiries must come from Congress, not the Courts. Our concern here, as often, is with power, not with wisdom."

And in a case not dissimilar from the present one, in that the state was forced to make a choice which would undoubtedly seem inequitable to some members of a class, we said:

> "Applying the traditional standard of review under [the Equal Protection Clause], we cannot say that Texas' decision to provide somewhat lower welfare benefits for AFDC recipients is invidious or irrational. Since budgetary constraints do not allow the payment of the full standard of need for all welfare recipients, the

> State may have concluded that the aged and infirm are the least able of the categorial grant recipients to bear the hardships of an inadequate standard of living. While different policy judgments are of course possible, it is not irrational for the State to believe that the young are more adaptable than the sick and elderly, especially because the latter have less hope of improving their situation in the years remaining to them. Whether or not one agrees with this state determination, there is nothing in the Constitution that forbids it." Jefferson v. Hackney, 406 U.S. 535, 549.

I would then propose to go over to page 10 of the present draft, and, omitting the first two lines on that page, keep pages 10, 11, and 12 as they are.

If this or something very much like it would be acceptable to you, and to Potter and Harry was well, I would be glad to redraft those parts of the opinion which I have discussed.

Sincerely,

Mr. Justice Powell

Copy to Mr. Justice Stewart
Copy to Mr. Justice Blackmun
Copy to Mr. Justice Stevens

STYLISTIC CHANGES THROUGHOUT

See pp. 7-10

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

From: Mr. Justice Rehnquist

Circulated: _____

Recirculated: NOV 21 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-870

United States Railroad Retirement Board, Appellant, *v.* Gerhard H. Fritz	On Appeal from the United States District Court for the Southern District of Indiana.

[November —, 1980]

JUSTICE REHNQUIST delivered the opinion of the Court.

The United States District Court for the Southern District of Indiana held unconstitutional a section of the Railroad Retirement Act of 1974, 45 U. S. C. § 231 *et seq.*, and the United States Railroad Retirement Board has appealed to this Court pursuant to 28 U. S. C. § 1252.

The 1974 Act fundamentally restructured the railroad retirement system. The Act's predecessor statute, adopted in 1937, provided a system of retirement and disability benefits for persons who pursued careers in the railroad industry. Under that statute, a person who worked for both railroad and nonrailroad employers and who qualified for railroad retirement benefits and social security benefits, 42 U. S. C. § 401 *et seq.*, received retirement benefits under both systems and an accompanying "windfall" benefit.[1] The legislative

[1] Under the old Act, as under the new, an employee who worked 10 years in the railroad business qualified for railroad retirement benefits. If the employee also worked outside the railroad industry for a sufficient enough time to qualify for social security benefits, he qualified for dual benefits. Due to the formula under which those benefits were computed, however, persons who split their employment between railroad and nonrailroad employment received dual benefits in excess of the amount they would have received had they not split their employment. For

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 24, 1980

Re: No. 79-870 U.S. Railroad Retirement Bd. v. Fritz

Dear John:

I appreciate your letter of November 21st, suggesting additional changes in the second draft of the opinion. I had the feeling that in revising that draft as I did in accordance with the discussions I had with Lewis, I went about as far as I cared to go in the matter. Since Lewis has now joined, and I seem to have a Court opinion, I am loath to try to make any additional changes that would embroil us still further in the Murgia and Dukes discussions of October Term, 1975. Therefore, I believe I will let the matter rest as is.

Sincerely,

Mr. Justice Stevens

Copies to the Conference

STYLISTIC CHANGES THROUGHOUT

P.9

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

From: Mr. Justice Rehnquist

Circulated: DEC 5 1980

Recirculated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-870

United States Railroad Retirement Board, Appellant, *v.* Gerhard H. Fritz	On Appeal from the United States District Court for the Southern District of Indiana.

[November —, 1980]

JUSTICE REHNQUIST delivered the opinion of the Court.

The United States District Court for the Southern District of Indiana held unconstitutional a section of the Railroad Retirement Act of 1974, 45 U. S. C. § 231 *et seq.*, and the United States Railroad Retirement Board has appealed to this Court pursuant to 28 U. S. C. § 1252.

The 1974 Act fundamentally restructured the railroad retirement system. The Act's predecessor statute, adopted in 1937, provided a system of retirement and disability benefits for persons who pursued careers in the railroad industry. Under that statute, a person who worked for both railroad and nonrailroad employers and who qualified for railroad retirement benefits and social security benefits, 42 U. S. C. § 401 *et seq.*, received retirement benefits under both systems and an accompanying "windfall" benefit.[1] The legislative

[1] Under the old Act, as under the new, an employee who worked 10 years in the railroad business qualified for railroad retirement benefits. If the employee also worked outside the railroad industry for a sufficient enough time to qualify for social security benefits, he qualified for dual benefits. Due to the formula under which those benefits were computed, however, persons who split their employment between railroad and nonrailroad employment received dual benefits in excess of the amount they would have received had they not split their employment. For

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 12, 1980

Re: 79-870 - Railroad Retirement Board v. Fritz

Dear Bill:

Before receiving Lewis' letter, I had sketched out the attached draft of an opinion concurring in the judgment. As you will note, I also had concluded that your opinion was somewhat misleading because there had been no argument addressed to the way in which the standard of review should be formulated.

In all events, this is just a preliminary draft which I probably will withdraw if you are able to accommodate Lewis, or if he writes a more thorough concurrence.

Respectfully,

Mr. Justice Rehnquist

Copies to the Conference

FIRST DRAFT

79-870 - Railroad Retirement Board v. Fritz

MR. JUSTICE STEVENS, concurring in the judgment.

Unlike the Court, I do not believe that the outcome in this case depends on the phrasing of the standard for deciding whether the statutory classification has a "reasonable basis". See ante, at 7, 9.[1] Rather, the decisive questions are (1) whether Congress can rationally reduce the vested benefits of some

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[1] Neither the District Court nor the appellees even cited Royster Guano v. Virginia, 253 U.S. 412; nor did they disagree about the phrasing of the appropriate standard of review. The court's discussion of what it describes as "the only issue presented by this case," ante, at 7, is therefore the purest form of dictum. The basis for the District Court's decision is summarized in Conclusions of Law 19-20, reading as follows:

> "19. The classification created by the Railroad Retirement Act of 1974 as defined in Conclusion 2 above is not rationally related to either the purpose of making the Railroad Retirement Fund actuarially sound or the purpose of protecting completely those persons who were entitled to receive both Social Security and Railroad Retirement Act benefits under previous law.
>
> "20. The classification as defined in Conclusion 2 above is unconstitutional under the equal protection component of the due process clause of the Fifth Amendment of the United States Constitution. Such classification is arbitrary, capricious and irrational and denies Plaintiff Class equal protection under the law." Juris. Statement 30a-31a.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 13, 1980

Re: 79-870 - Railroad Retirement Board v. Fritz

Dear Bill:

Thank you for sharing your letter to Lewis with me. My disagreement with your draft in this case does not qualify in the slightest my great respect for your cooperative approach to the task of preparing Court opinions.

As I understand your proposed changes, however, you intend to retain the statement on page 7 that the "only issue presented by this case is the appropriate standard of judicial review . . . ." That sentence presents me with what is probably an insurmountable hurdle. The litigants did not present us with that issue but instead did raise other issues; therefore, as I presently view the case, I will not be able to join an opinion which either contains that statement or is organized as a response to a similar statement. In all events, I will await the outcome of your negotiations with Lewis before trying to put my separate concurrence in final form.

Respectfully,

John

Mr. Justice Rehnquist

cc: Mr. Justice Stewart
Mr. Justice Blackmun
Mr. Justice Powell

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 21, 1980

Re: 79-870, U.S. Railroad Retirement Board v. Fritz

Dear Bill:

The changes that you have made in order to accommodate Lewis prompted me to restudy the question whether I might join you. I recognize that at this stage you may well feel that you've invested enough time in trying to accommodate your colleagues, particularly since you probably have a Court. Nevertheless, I will identify the specific points that still trouble me. I will join your opinion if you would make the following changes.

Page 9: In the last line of the text substitute the words "provides the answer to" for the words "marks the beginning and end of".

Page 9: Omit footnote 10 entirely.

Page 11: Rewrite the last few lines of the text to read this way: "Where, as here, there are acceptable reasons for Congress' action, our inquiry is at an end. This Court has never insisted that the legislative body ... "

Page 12, line 5: Substitute "favored" for "favorite" and two lines later substitute the date 1976 for 1970.

Omit the second sentence in the full paragraph on page 12.

If I join you, I will of course withdraw my separate writing. However, I would thoroughly understand if you simply say you've made all the changes you intend to make.

Respectfully,

John

Mr. Justice Rehnquist

cc: Mr. Justice Powell

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

FIRST DRAFT

From: Mr. Justice Stevens

79-870 - Railroad Retirement Board v. Fritz

Circulated: NOV 25 1980

Recirculated: _____

JUSTICE STEVENS, concurring in the judgment.

In my opinion JUSTICE BRENNAN'S criticism of the Court's approach to this case merits a more thoughtful response than that contained in footnote 10, ante, at 9. JUSTICE BRENNAN correctly points out that if the analysis of legislative purpose requires only a reading of the statutory language in a disputed provision, and if any "conceivable basis" for a discriminatory classification will repel a constitutional attack on the statute, judicial review will constitute a mere tautological recognition of the fact that Congress did what it intended to do. JUSTICE BRENNAN is also correct in reminding us that even though the statute is an example of "social and economic legislation," the challenge here is mounted by individuals whose legitimate expectations of receiving a fixed retirement income are being frustrated by, in effect, a breach of a solemn commitment by their government. When Congress deprives a small class of persons of vested rights that are protected--and, indeed, even enhanced[1]--for others who are in a similar, though not identical,

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[1] The 1974 Act provided increased benefits for spouses, widows, survivors and early retirees. See 45 U.S.C. §231c(g).

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: DEC 1 '80

1st PRINTED DRAFT Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 79-870

United States Railroad Retirement Board, Appellant, *v.* Gerhard H. Fritz.	On Appeal from the United States District Court for the Southern District of Indiana.

[December —, 1980]

JUSTICE STEVENS, concurring in the judgment.

In my opinion JUSTICE BRENNAN's criticism of the Court's approach to this case merits a more thoughtful response than that contained in footnote 10, *ante*, at 9. JUSTICE BRENNAN correctly points out that if the analysis of legislative purpose requires only a reading of the statutory language in a disputed provision, and if any "conceivable basis" for a discriminatory classification will repel a constitutional attack on the statute, judicial review will constitute a mere tautological recognition of the fact that Congress did what it intended to do. JUSTICE BRENNAN is also correct in reminding us that even though the statute is an example of "social and economic legislation," the challenge here is mounted by individuals whose legitimate expectations of receiving a fixed retirement income are being frustrated by, in effect, a breach of a solemn commitment by their government. When Congress deprives a small class of persons of vested rights that are protected—and, indeed, even enhanced [1]—for others who are in a similar though not identical position, I believe the Constitution requires something more than merely a "conceivable" or a "plausible" explanation for the unequal treatment.

I do not, however, share JUSTICE BRENNAN's conclusion that every statutory classification must further an objective that

[1] The 1974 Act provided increased benefits for spouses, widows, survivors and early retirees. See 45 U. S. C. § 231c (g).