

The Burger Court Opinion Writing Database

Patsy v. Board of Regents of Florida
457 U.S. 496 (1982)

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 8, 1982

Re: No. 80-1874 - Patsy v. Board of Regents of Florida

Dear Lewis:

You and I seem to be alone in this case. Will you take on a dissent?

Regards,

A handwritten signature in black ink, appearing to be 'JP', written in a cursive style.

Justice Powell

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

CHAMBERS OF
THE CHIEF JUSTICE

June 10, 1982

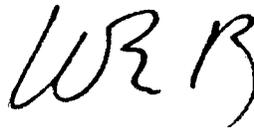
Re: No. 80-1874 - Patsy v. Bd. of Regents of Florida

Dear Lewis:

Please show me as joining Part II of your dissenting opinion. You may add at the end something like:

"I am authorized to state that Chief Justice Burger joins in Part II of this dissenting opinion."

Regards,

A handwritten signature in black ink, appearing to be 'WRB', written in a cursive style.

Justice Powell

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

CHAMBERS OF
THE CHIEF JUSTICE

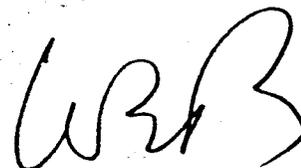
June 17, 1982

RE: 80-1874 - Patsy v. Board of Regents of the State
of Florida

Dear Lewis:

I join Part II of your dissent. Through inadvertence my
June 10 memo to you did not go to the Conference.

Regards,

A handwritten signature in black ink, appearing to be 'WBP', written in a cursive style.

Justice Powell

Copies to the Conference

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

M

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 8, 1982

RE: No. 80-1874 Patsy v. Board of Regents

Dear Chief:

Thurgood has agreed to take on the opinion for
the Court in the above.

Sincerely,



The Chief Justice
cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

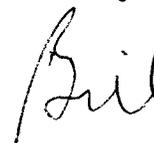
May 17, 1982

RE: No. 80-1874 Patsy v. Board of Regents of the
State of Florida, et al.

Dear Thurgood:

I join your opinion. Would you, however, please
add the attached statement at the foot of your opinion.

Sincerely,



Justice Marshall

cc: The Conference

No. 80-1874 Georgia Patsy v. Board of Regents of the State of Florida, etc.

I join the Court opinion. I continue to adhere, however, to my view that the Eleventh Amendment is not a defense for the reasons stated in my dissent in Employees v. Department of Public Health and Welfare, 411 U.S. 279, 309-324 (1973). See also Edelman v. Jordan, 415 U.S. 651, 687 (1974).

D

Supreme Court of the United States
Washington, D. C. 20543CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 3, 1982

S8

RE: No. 80-1874 Georgia Patsy v. Board of Regents of
the State of Florida

Dear Thurgood:

I'm still with you.

Sincerely,



Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 17, 1982

Re: 80-1874 - Patsy v. Florida

Dear Thurgood,

Although I voted to reverse, I shall await the dissent. In any event, I may well write indicating that the no exhaustion of administrative remedies rule does not necessarily mean that a defendant in an administrative enforcement proceeding may enjoin and sidetrack that proceeding by resorting to a §1983 action in federal court.

Sincerely yours,



Justice Marshall

Copies to the Conference

cpm

95 71

To: The Chief Justice
 Justice Brennan
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice White

Circulated: 6/15/82

Recirculated: _____

No. 80-1874 - Patsy v. Board of Regents

JUSTICE WHITE, concurring in all but Part III-B.

I fully agree with the Court that our frequent and unequivocal statements on exhaustion cannot be explained or distinguished away as the Fifth Circuit attempted to do. For nearly twenty years and on at least ten occasions, this Court has clearly held that no exhaustion of administrative remedies is required in a §1983 suit. Ante, at 3-4. Whether or not this initially was a wise choice, these decisions are stare decisis, and in a statutory case, a particularly strong showing is required that we have misread the relevant statute and its history. I have no difficulty in concluding that on the issue of exhaustion, unlike the question of municipal immunity faced in Monell v. New York City Dept. of Social Services, 436 U.S. 658 (1978), the Court has not previously misapprehended the meaning of the 1871 debates in rejecting an exhaustion rule in McNeese v. Board of Education, 373 U.S. 668, 671-673 (1963), and adhering to that position ever since. Our precedents and the legislative history are sufficient to support reversal, and I accordingly join the judgment and all but Part III-B of the opinion of the Court.

In Part III-B, the Court unnecessarily and unwisely ventures further to find support where none may be had. The wisdom of a general no-exhaustion rule in §1983 suits was not at issue when Congress considered and passed the Civil Rights of Institutionalized Persons Act, 42 U.S.C. §1997 et seq. (1976 ed.,

To: The Chief Justice
 ✓ Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice** WHITE

Circulated: _____

Recirculated: _____ 16 JUN 1982

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1874

GEORGIA PATSY, PETITIONER *v.* BOARD OF REGENTS OF THE STATE OF FLORIDA, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June —, 1982]

JUSTICE WHITE, concurring in all but Part III-B.

I fully agree with the Court that our frequent and unequivocal statements on exhaustion cannot be explained or distinguished away as the Fifth Circuit attempted to do. For nearly twenty years and on at least ten occasions, this Court has clearly held that no exhaustion of administrative remedies is required in a § 1983 suit. *Ante*, at 3-4. Whether or not this initially was a wise choice, these decisions are *stare decisis*, and in a statutory case, a particularly strong showing is required that we have misread the relevant statute and its history. I have no difficulty in concluding that on the issue of exhaustion, unlike the question of municipal immunity faced in *Monell v. New York City Dept. of Social Services*, 436 U. S. 658 (1978), the Court has not previously misapprehended the meaning of the 1871 debates in rejecting an exhaustion rule in *McNeese v. Board of Education*, 373 U. S. 668, 671-673 (1963), and adhering to that position ever since. Our precedents and the legislative history are sufficient to support reversal, and I accordingly join the judgment and all but Part III-B of the opinion of the Court.

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To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Marshall**

Circulated: MAY 12 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1874

GEORGIA PATSY, PETITIONER *v.* BOARD OF REGENTS OF THE STATE OF FLORIDA, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[May —, 1982]

JUSTICE MARSHALL delivered the opinion of the Court.

This case presents the question whether exhaustion of state administrative remedies is a prerequisite to an action under 42 U. S. C. § 1983. Petitioner Georgia Patsy filed this action, alleging that her employer, Florida International University (FIU), had denied her employment opportunities solely on the basis of her race and sex. By a divided vote, the United States Court of Appeals for the Fifth Circuit found that petitioner was required to exhaust "adequate and appropriate" administrative remedies, and remanded the case to the District Court to consider the adequacy of the administrative procedures. *Patsy v. Florida International University*, 634 F. 2d 900 (CA5 1981) (en banc). We reverse the decision of the Court of Appeals.

I

Petitioner alleges that even though she is well-qualified and has received uniformly excellent performance evaluations from her supervisors, she has been rejected for more than thirteen positions at FIU.¹ She further claims that

¹ Because this case is here on a motion to dismiss, we accept as true the factual allegations in petitioner's amended complaint. In her initial complaint, petitioner named FIU as the defendant. Relying on *Byron v. Uni-*

Changes

2, 3-15, 24, 30

footnotes renumbered

To: The Chief Justice
Justice Brennan ✓
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Marshall

Circulated: _____

Recirculated: JUN 0 1 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1874

GEORGIA PATSY, PETITIONER *v.* BOARD OF
REGENTS OF THE STATE OF FLORIDA, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

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Brennan 81

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Changes:
pp. 3-15 of 2d draft deleted &
footnotes renumbered

other changes:
pp: 3, 4, 16, 19, 20

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Marshall**

Circulated: _____

Recirculated: 6/3/82

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1874

GEORGIA PATSY, PETITIONER *v.* BOARD OF
REGENTS OF THE STATE OF FLORIDA, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

[June —, 1982]

JUSTICE MARSHALL delivered the opinion of the Court.

This case presents the question whether exhaustion of state administrative remedies is a prerequisite to an action under 42 U. S. C. § 1983. Petitioner Georgia Patsy filed this action, alleging that her employer, Florida International University (FIU), had denied her employment opportunities solely on the basis of her race and sex. By a divided vote, the United States Court of Appeals for the Fifth Circuit found that petitioner was required to exhaust "adequate and appropriate" administrative remedies, and remanded the case to the District Court to consider the adequacy of the administrative procedures. *Patsy v. Florida International University*, 634 F. 2d 900 (CA5 1981) (en banc). We reverse the decision of the Court of Appeals.

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¹ Because this case is here on a motion to dismiss, we accept as true the factual allegations in petitioner's amended complaint. In her initial complaint, petitioner named FIU as the defendant. Relying on *Byron v. Uni-*

PP. 4, 5, 14, 15, 19

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Marshall**

Circulated: _____

Recirculated: JUN 8 1982

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1874

GEORGIA PATSY, PETITIONER *v.* BOARD OF
REGENTS OF THE STATE OF FLORIDA, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

[June —, 1982]

JUSTICE MARSHALL delivered the opinion of the Court.

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¹ Because this case is here on a motion to dismiss, we accept as true the factual allegations in petitioner's amended complaint. In her initial complaint, petitioner named FIU as the defendant. Relying on *Byron v. Uni-*

PP. 16, 20

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Marshall**

Circulated: _____

Recirculated: JUN 16 1982

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1874

**GEORGIA PATSY, PETITIONER v. BOARD OF
REGENTS OF THE STATE OF FLORIDA, ETC.**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

[June —, 1982]

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This case presents the question whether exhaustion of state administrative remedies is a prerequisite to an action under 42 U. S. C. § 1983. Petitioner Georgia Patsy filed this action, alleging that her employer, Florida International University (FIU), had denied her employment opportunities solely on the basis of her race and sex. By a divided vote, the United States Court of Appeals for the Fifth Circuit found that petitioner was required to exhaust "adequate and appropriate" administrative remedies, and remanded the case to the District Court to consider the adequacy of the administrative procedures. *Patsy v. Florida International University*, 634 F. 2d 900 (CA5 1981) (en banc). We reverse the decision of the Court of Appeals.

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¹ Because this case is here on a motion to dismiss, we accept as true the factual allegations in petitioner's amended complaint. In her initial complaint, petitioner named FIU as the defendant. Relying on *Byron v. Uni-*

13

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 7, 1982

Re: No. 80-1874 - Patsy v. Board of Regents of Florida

Dear Thurgood:

On the understanding that the two minor changes that I have suggested will be made, I am glad to join your recirculation of June 3.

Sincerely,
H.A.B.
—

Justice Marshall

cc: The Conference

March 9, 1982

80-1874 Patsy v. Board of Regents

Dear Chief:

I will be glad to write a dissent in this case.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 14, 1982

80-1874 Patsy v. Board of Regents

Dear Thurgood:

In due time, I will circulate a dissent.

Sincerely,



Justice Marshall

lfp/ss

cc: The Conference

To: The Chief Justice
Justice Brennan ✓
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: _____

Recirculated: _____

FIRST DRAFT

MAY 28 1972
Powell

Patsy v. Board of Regents, No. 80-1874.

Justice Powell, dissenting.

The Court holds that the Board of Regents of the State of Florida, a state instrumentality, is subject to suit in federal court notwithstanding the bar of the Eleventh Amendment. The Court reaches this conclusion through an unprecedented--and far reaching--expansion of the holding in Ex Parte Young, 209 U.S. 123 (1908). As I consider the Court's holding a serious departure from established constitutional doctrine, this dissent addresses primarily the Eleventh Amendment issue.

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Changes AT 7, 13-16

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall ✓
 Justice Blackmun
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice Powell

Circulated: 5/29/82

Recirculated: _____

Printed
 1st DRAFT
 ^

SUPREME COURT OF THE UNITED STATES

No. 80-1874

GEORGIA PATSY, PETITIONER *v.* BOARD OF RE-
 GENTS OF THE STATE OF FLORIDA, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE FIFTH CIRCUIT

[June —, 1982]

JUSTICE POWELL, dissenting.

The Court holds that the Board of Regents of the State of Florida, a state instrumentality, is subject to suit in federal court notwithstanding the bar of the Eleventh Amendment. The Court reaches this conclusion through an unprecedented—and far reaching—expansion of the holding in *Ex Parte Young*, 209 U. S. 123 (1908). As I consider the Court's holding a serious departure from established constitutional doctrine, this dissent addresses primarily the Eleventh Amendment issue.

I dissent also from the Court's rejection of the rule of "flexible" exhaustion of state administrative remedies developed and stated persuasively by the Court of Appeals for the Fifth Circuit, sitting *en banc*. In disagreeing with the 17 judges of the Court of Appeals who adopted the flexible exhaustion principle, this Court places mistaken reliance on the Civil Rights of Institutionalized Persons Act, 42 U. S. C. § 1997 *et seq.* (1976 ed., Supp. IV). I disagree with both portions of the Court's holding and therefore dissent.

I The Eleventh Amendment

A

In this "reverse discrimination" action, petitioner, an employee of the Florida International University, brought suit

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 1, 1982

80-1874 Patsy v. Board of Regents

Dear Thurgood:

As you have made substantial changes in your opinion for the Court, my dissent also will have to be revised.

It may be two or three days before I can recirculate.

Sincerely,

Lewis

Justice Marshall

lfp/ss

cc: The Conference

Substantially Rewritten
Pages 5-13 are new
1-4, 15-17

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun ✗
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: _____

Recirculated: JUN 9 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1874

GEORGIA PATSY, PETITIONER v. BOARD OF
REGENTS OF THE STATE OF FLORIDA, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

[June —, 1982]

JUSTICE POWELL, dissenting.

The Court holds that the limitations on federal judicial power embodied in the Eleventh Amendment and in the doctrine of sovereign immunity are not jurisdictional. I consider this holding to be a serious departure from established constitutional doctrine.

I dissent also from the Court's rejection of the rule of "flexible" exhaustion of state administrative remedies developed and stated persuasively by the Court of Appeals for the Fifth Circuit, sitting *en banc*. In disagreeing with the 17 judges of the Court of Appeals who adopted the flexible exhaustion principle, this Court places mistaken reliance on the Civil Rights of Institutionalized Persons Act, 42 U. S. C. § 1997 *et seq.* (1976 ed., Supp. IV). I disagree with both portions of the Court's holding and therefore dissent.

I. The Eleventh Amendment¹

A

In this "reverse discrimination" action, petitioner, an em-

¹The Eleventh Amendment provides:

"The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

5

Changes At
4, 9, 11, 12-16, 18

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: _____

Recirculated: **JUN 17 1982**

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1874

GEORGIA PATSY, PETITIONER *v.* BOARD OF
REGENTS OF THE STATE OF FLORIDA, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

[June —, 1982]

JUSTICE POWELL, dissenting.

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— 3, 4,

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall ✓
 Justice Blackmun
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Powell**

Circulated: _____

Recirculated:

⁴
 3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1874

GEORGIA PATSY, PETITIONER *v.* BOARD OF
 REGENTS OF THE STATE OF FLORIDA, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE FIFTH CIRCUIT

[June —, 1982]

JUSTICE POWELL, dissenting.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 14, 1982

Re: No. 80-1874 Patsy v. Board of Regents

Dear Thurgood:

Although I voted for the result which your opinion reaches at Conference, I have some difficulty with your treatment of the Eleventh Amendment issues in the opinion, and will await any separate writing that may be forthcoming. As a last resort, I may write separately myself.

Sincerely,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 1, 1982

Re: No. 80-1874 Patsy v. State of Florida

Dear Thurgood:

I am presently persuaded by Lewis' dissent as to the Eleventh Amendment aspect of this case. I am not, as of now, persuaded by his treatment of the "exhaustion of administrative remedies" treatment. I realize that it is unlikely that you would be agreeable to simply pretermittting discussion of the Eleventh Amendment issue on the grounds that neither of the lower courts passed upon it, but unless some way is found to simply avoid the Eleventh Amendment argument in this opinion, I think I will probably end up joining Part I of Lewis' dissent.

Sincerely,



Justice Marshall

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 9, 1982

Re: No. 80-1874 Patsy v. Board of Regents of the
State of Florida

Dear Sandra:

Please join me in your separate concurrence.

Sincerely,

WRV

Justice O'Connor

cc: The Conference

v/

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 9, 1982

Re: No. 80-1874 Patsy v. Board of Regents of the
State of Florida

Dear Thurgood:

Please join me.

Sincerely,
WM

Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 21, 1982

Re: 80-1874 - Patsy v. Board of Regents
of Florida

Dear Thurgood:

Please join me.

Respectfully,



Justice Marshall

Copies to the Conference

.85 40 51 58 23

(2)

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

86

June 4, 1982

Re: 80-1874 - Patsy v. Florida

Dear Thurgood:

Although I was content with your Eleventh Amendment analysis, I am still with you on your most recent circulation.

Respectfully,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 19, 1982

No. 80-1874 Patsy v. Board of Regents of the State of Florida

Dear Thurgood,

I will await the additional writing in this case before finally deciding whether to join the Court's opinion.

Sincerely,



Justice Marshall

Copies to the Conference

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

From: **Justice O'Connor**

Circulated: **JUN 7 1982**

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1874

**GEORGIA PATSY, PETITIONER *v.* BOARD OF
 REGENTS OF THE STATE OF FLORIDA, ETC.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE FIFTH CIRCUIT**

[June —, 1982]

JUSTICE O'CONNOR, concurring.

As discussed in JUSTICE POWELL's dissenting opinion, as well as in the opinion of the court below, considerations of sound policy suggest that a § 1983 plaintiff should be required to exhaust adequate state administrative remedies before filing his complaint. At the very least, prior state administrative proceedings would resolve many claims, thereby decreasing the number of § 1983 actions filed in the federal courts, which are now straining under excessive caseloads. However, for the reasons set forth in the Court's opinion, this Court already has ruled that, in the absence of additional congressional legislation, exhaustion of administrative remedies is not required in § 1983 actions. Perhaps Congress' enactment of the Civil Rights of Institutionalized Persons Act, 42 U. S. C. § 1997 *et. seq.*, which creates a limited exhaustion requirement for prisoners bringing § 1983 suits, will prompt it to reconsider the possibility of requiring exhaustion in the remainder of § 1983 cases. Reluctantly, I concur.

.85 100-3 100-80

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

From: **Justice O'Connor**

Circulated: _____

JUN 10 1982

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1874

GEORGIA PATSY, PETITIONER *v.* BOARD OF
 REGENTS OF THE STATE OF FLORIDA, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE FIFTH CIRCUIT

[June —, 1982]

JUSTICE O'CONNOR, with whom JUSTICE REHNQUIST
 joins, concurring.

As discussed in JUSTICE POWELL's dissenting opinion, as well as in the opinion of the court below, considerations of sound policy suggest that a § 1983 plaintiff should be required to exhaust adequate state administrative remedies before filing his complaint. At the very least, prior state administrative proceedings would resolve many claims, thereby decreasing the number of § 1983 actions filed in the federal courts, which are now straining under excessive caseloads. However, for the reasons set forth in the Court's opinion, this Court already has ruled that, in the absence of additional congressional legislation, exhaustion of administrative remedies is not required in § 1983 actions. Perhaps Congress' enactment of the Civil Rights of Institutionalized Persons Act, 42 U. S. C. § 1997 *et. seq.*, which creates a limited exhaustion requirement for prisoners bringing § 1983 suits, will prompt it to reconsider the possibility of requiring exhaustion in the remainder of § 1983 cases. Reluctantly, I concur.

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