The Burger Court Opinion Writing Database

Logan v. Zimmerman Brush Co.

455 U.S. 422 (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

January 7, 1982

Re: No. 80-5950 - Logan v. Zimmerman Brush Co.

Dear Harry:

I join Parts I and II.

Regards,

WEB

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 29, 1981

RE: 80-5950 Logan v. Zimmerman Brush Co.

Dear Harry:

I agree.

Sincerely,

W.J.B.

Justice Blackmun

CC: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 16, 1982

RE: No. 80-5950 Logan v. Zimmerman Brush Co.

Dear Harry:

I join both your opinion for the Court and your separate opinion.

Sincerely,

Bill

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 31, 1981

Re: 80-5950 - Logan v. Zimmerman Brush Co.

Dear Harry,

I join Parts I and II of your circulating draft. As for Part III, I would much prefer to omit it.

Sincerely yours,

Justice Blackmun

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 28, 1981

Re: No. 80-5950 - Logan v. Zimmerman Brush Co.

Dear Harry:

Please join me.

Sincerely,

T.M.

T.M.

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 18, 1982

Re: No. 80-5950 - Logan v. Zimmerman Brush Co.

Dear Harry:

Please join me in both of your opinions.

Sincerely,

T.M.

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 21, 1981

MEMORANDUM TO THE CONFERENCE

Re: No. 80-5950 - Logan v. Zimmerman Brush Co.

Although the Conference vote was unanimously to reverse, the announced route to that reversal was not uniform. Four expressed a preference for equal protection and four for due process. The Chief Justice, while finally voting to reverse, expressed no preference. I thus have no positive guidance from the conference vote.

My work on the case, however, persuades me that the Illinois statute under challenge here cannot withstand either equal protection or due process attack. Accordingly, I have covered both routes to a reversal in a proposed opinion, and send it along for your consideration, approval, or dissection. I realize that standing on one Clause or the other alone is our usual treatment, but we have taken a double approach on occasion in the past.

Harry

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

From: Justice Blackmun

Circulated: DEC 22 1981

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–5950

LAVERNE L. LOGAN *v.* ZIMMERMAN BRUSH COMPANY, ET AL

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

[December ——, 1981]

JUSTICE BLACKMUN delivered the opinion of the Court.

The issue in this case is whether a State may terminate a complainant's cause of action because a state official, for reasons beyond the complainant's control, failed to comply with a statutorily mandated procedure.

I

A

The Illinois Fair Employment Practices Act (FEPA or Act), Ill. Rev. Stat., ch. 48, ¶851 *et seq.* (1979), barred employment discrimination on the basis of "physical . . . handicap unrelated to ability." ¶853(a). It also established a comprehensive scheme for adjudicating allegations of discrimination. To begin the process, a complainant had to bring a charge of unlawful conduct before the Illinois Fair Employment Practices Commission (Commission) within 180 days of the occurrence of the allegedly discriminatory act. ¶858(a). The statute—in the provision directly at issue here—then gave the Commission 120 days within which to convene a factfinding conference designed to obtain evidence, ascertain the positions of the parties, and explore the possibility of a negotiated settlement. ¶858(b). If the Commission found "substantial evidence" of illegal conduct, it was to attempt to "eliminate the effect thereof . . . by means of con-

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 30, 1981

Re: No. 80-5950 - Logan v. Zimmerman Brush Company

Dear Sandra:

This is in response to your letter of December 22. I appreciate your careful consideration of the proposed opinion and your helpful suggestions. I shall do my best to accommodate your concerns.

Your second point related to the first sentence on page 11. I propose to substitute the following for that sentence:

> "To put it as plainly as possible, the State may not finally destroy a property interest without first giving the putative owner an opportunity to present his claim of entitlement."

I would then drop a footnote at the end of that sentence and have the footnote read as follows:

> "This is not to suggest, of course, that the State must consider the merits of the claim when the claimant fails to comply with a reasonable procedural requirement, or fails to file a timely charge. See infra, at 14."

Your first concern relates to the sentence at the bottom of page 6. The point I was trying to make, I thought, was useful because it notes a connection between two apparently independent lines of due process cases. And I did not feel there was anything dangerously broad about it since, in my view, it fairly summarizes Boddie (a case I vividly recall because it was first argued before I arrived here and was reargued after I came). In an attempt to meet your concern, I propose substituting the following for the sentence in question:

> "Similarly, the Fourteenth Amendment's Due Process Clause has been interpreted as preventing the States from denying potential litigants use of established adjudicatory procedures, when such an action would be 'the equivalent of denying them an opportunity to be heard upon their claimed right[s],' Boddie v. Connecticut, 404 U.S. 371, 380 (1971)."

This makes it clear that States need not open their courts to all litigants seeking to vindicate any and all claimed rights; it implies only that -- as was recognized in Boddie -- States may not prevent litigants from using certain pre-existing judicial processes. Will this change not satisfy your concern?

Sincerely,

Harry

Justice O'Connor
cc: The Conference

STYLISTIC CHANGES
Pages: 6-7, 11
Footnotes 8-12 Renumbered

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

From: Justice Blackmun

Circulated: _____

Recirculated: JAN 5 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-5950

LAVERNE L. LOGAN *v.* ZIMMERMAN BRUSH COMPANY ET AL

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

[January ——, 1982]

JUSTICE BLACKMUN delivered the opinion of the Court.

The issue in this case is whether a State may terminate a complainant's cause of action because a state official, for reasons beyond the complainant's control, failed to comply with a statutorily mandated procedure.

I

A

The Illinois Fair Employment Practices Act (FEPA or Act), Ill. Rev. Stat., ch. 48, ¶851 *et seq.* (1979), barred employment discrimination on the basis of "physical . . . handicap unrelated to ability." ¶853(a). It also established a comprehensive scheme for adjudicating allegations of discrimination. To begin the process, a complainant had to bring a charge of unlawful conduct before the Illinois Fair Employment Practices Commission (Commission) within 180 days of the occurrence of the allegedly discriminatory act. ¶858(a). The statute—in the provision directly at issue here—then gave the Commission 120 days within which to convene a factfinding conference designed to obtain evidence, ascertain the positions of the parties, and explore the possibility of a negotiated settlement. ¶858(b). If the Commission found "substantial evidence" of illegal conduct, it was to attempt to "eliminate the effect thereof . . . by means of con-

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 5, 1982

MEMORANDUM TO THE CONFERENCE

Re: No. 80-5950 - Logan v. Zimmerman Brush Company

This is a statistical update. There is now a Court for parts I and II of the opinion and four votes for part III.

Those who have not finally voted have expressed views in line with their comments at conference. Thus, Lewis and Bill Rehnquist opt for equal protection, but John and Byron (who has voted) express concern about equal protection. The Chief Justice remains silent, and I do not know whether he will follow both approaches or only one.

The foregoing divergence of views, of course, is why I broke the case down into due process and equal protection. My thought was that some of you would join one part while others would join another part. As I indicated in my letter of transmittal of December 21, I am persuaded that the Illinois statute is vulnerable on both grounds.

With a Court for parts I and II and four votes for part III, I, for the present, am inclined to let the opinion stand as it is pending the receipt of word from the Chief and further word from Lewis, Bill Rehnquist, and John.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 2, 1982

Re: No. 80-5950 - Logan v. Zimmerman Brush Co.

Dear Lewis:

With John's circulation of yesterday, all the votes are now in. Although I do not agree with John, he has written penetratingly against the equal protection approach.

Seven have now joined the due process portion of the proposed opinion. Four have joined the equal protection portion (Part III) of the opinion. If either you or Bill Rehnquist were to join Part III, there would be a Court for equal protection. As I have indicated before, I do not believe your separate opinion on equal protection says anything very different from Part III of the proposed opinion other than characterizing the case as an insignificant one, a fact that I personally cannot help.

My alternatives, of course, are to (1) leave the opinion as it is, with only four of us on Part III, or to (2) eliminate Part III and let the case go off on due process. Sandra has said, in her note of January 7, that if Part III is omitted she will withdraw her joinder. What a withdrawal of Part III would mean therefore is that the case will be decided 6-3 on due process, but the equal protection approach then is relegated to a distinctly minority position. If you wish to be in that position, that, of course, is your privilege.

My inclination as of now is to omit Part III, but I shall not do so until I have heard further from you.

I am sending a copy of this letter to Sandra as well as to Bill Rehnquist, for it is the three of you who feel strongly about equal protection.

Sincerely,

Harry

Justice Powell

cc: Justice Rehnquist
Justice O'Connor

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 10, 1982

Re: No. 80-5950 - Logan v. Zimmerman Bursh Co.

Dear Bill:

I did my best to persuade Lewis to join Part III of the opinion as originally circulated. My approach was that if he did so, he had a Court for his equal protection approach. After consulting with Bill Rehnquist, he remained adamant.

This has finally persuaded me to drop Part III and to let the case come out 6-3 on due process (assuming that Sandra withdraws her joinder).

You have cited Logan v. Zimmerman, on page 3 of your dissent in No. 81-353, Spradling v. Texas, and have used the running head in so doing. I checked with Henry Lind who tells me that the running head should be Logan v. Zimmerman Brush Co. and not Logan v. Zimmerman. He will instruct the Atex unit accordingly. I mention this in case you wish to change the citation. Of course, your case may be down before Logan, and then you may wish to eliminate the cite.

Sincerely,

Harry

Justice Brennan

Brennan 81

Stylistic Changes, Pages 12 & 13
- Old Part III omitted, p. 15

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

From: Justice Blackmun

Circulated: _____

Recirculated: FEB 11 1982

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-5950

LAVERNE L. LOGAN *v.* ZIMMERMAN BRUSH COMPANY ET AL

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

[February ——, 1982]

JUSTICE BLACKMUN delivered the opinion of the Court.

The issue in this case is whether a State may terminate a complainant's cause of action because a state official, for reasons beyond the complainant's control, failed to comply with a statutorily mandated procedure.

I

A

The Illinois Fair Employment Practices Act (FEPA or Act), Ill. Rev. Stat., ch. 48, ¶851 *et seq.* (1979), barred employment discrimination on the basis of "physical . . . handicap unrelated to ability." ¶853(a). It also established a comprehensive scheme for adjudicating allegations of discrimination. To begin the process, a complainant had to bring a charge of unlawful conduct before the Illinois Fair Employment Practices Commission (Commission) within 180 days of the occurrence of the allegedly discriminatory act. ¶858(a). The statute—in the provision directly at issue here—then gave the Commission 120 days within which to convene a factfinding conference designed to obtain evidence, ascertain the positions of the parties, and explore the possibility of a negotiated settlement. ¶858(b). If the Commission found "substantial evidence" of illegal conduct, it was to attempt to "eliminate the effect thereof . . . by means of con-

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 11, 1982

Memorandum to the Conference

Re: No. 80-5950 - Logan v. Zimmerman Brush Co.

I anticipate some further writing in this matter, so I ask that you do not gel on my recirculation of this morning.

Harry

Part III
pp. 15-20

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

From: Justice Blackmun

Circulated: _____

Recirculated: FEB 16 1982

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-5950

LAVERNE L. LOGAN *v.* ZIMMERMAN BRUSH COMPANY ET AL

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

[February ——, 1982]

JUSTICE BLACKMUN delivered the opinion of the Court.

The issue in this case is whether a State may terminate a complainant's cause of action because a state official, for reasons beyond the complainant's control, failed to comply with a statutorily mandated procedure.

I

A

The Illinois Fair Employment Practices Act (FEPA or Act), Ill. Rev. Stat., ch. 48, ¶851 *et seq.* (1979), barred employment discrimination on the basis of "physical . . . handicap unrelated to ability." ¶853(a). It also established a comprehensive scheme for adjudicating allegations of discrimination. To begin the process, a complainant had to bring a charge of unlawful conduct before the Illinois Fair Employment Practices Commission (Commission) within 180 days of the occurrence of the allegedly discriminatory act. ¶858(a). The statute—in the provision directly at issue here—then gave the Commission 120 days within which to convene a factfinding conference designed to obtain evidence, ascertain the positions of the parties, and explore the possibility of a negotiated settlement. ¶858(b). If the Commission found "substantial evidence" of illegal conduct, it was to attempt to "eliminate the effect thereof . . . by means of con-

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 28, 1981

80-5950 Logan v. Zimmerman Brush Co.

Dear Harry:

My notes confirm that, indeed, you had no positive guidance by the Conference vote.

Given the division between equal protection and due process analysis, I quite understand your writing the opinion as you have. I prefer "equal protection" because it seems to me this is a narrower basis of decision. Also it is not easy to identify a limiting principle to a holding that any state law cause of action is a "property interest". Although your opinion may enable a state to control this, my guess is that a due process holding in this case will invite a good deal of litigation.

I rather agree with Bill Rehnquist that this case is a "sport". The state, through its inadvertence and entirely without fault on the part of Logan, created a unique classification. For all we know, Logan may be the only person in the class discriminated against. It therefore is unnecessary to make a broad constitutional holding of a denial of due process.

Perhaps your opinion presenting the alternatives will produce a majority position. I do not think I could join a due process holding, but will await further writing.

Sincerely,

Lewis

Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 6, 1982

80-5950 Logan v. Zimmerman Brush Co.

Dear Harry:

This is in response to your memorandum of January 5, in which you indciated a desire to hear from me and others..

Although I am not in accord with a due process resolution of this case, you have 5 votes and thus a Court decision. I would have assumed in these circumstances that it is unnecessary - and indeed undesirable - for the Court also to address the equal protection issue.

As I indicated in my earlier note, I would treat the case as a unique type of discrimination, and write it quite narrowly. I would simply concur in the judgment and write a page or two in summary terms saying there was a denial of equal protection.

Sincerely

Lewis

Justice Blackmun

Copies to the Conference

LFP/vde

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

From: Justice Powell

Circulated: JAN 18 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–5950

LAVERNE L. LOGAN, APPELLANT *v.* ZIMMERMAN BRUSH COMPANY ET AL.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

[January ——, 1982]

JUSTICE POWELL, concurring in the judgment.

As the challenged statute now has been amended, this is a case of little importance except to the litigants. The action commenced with an isolated example of bureaucratic oversight that resulted in the denial even of a hearing on petitioner's claim of discrimination. One would have expected this sort of negligence by the State to toll the statutory period within which a hearing must be held. The Supreme Court of Illinois, however, read the statutory terms as mandatory and jurisdictional.

The issue presented, at least for me, is too simple and straightforward to justify the Court's broad pronouncements on the law of procedural due process and equal protection. I am particularly concerned by the potential implications of the Court's expansive due process analysis. Nor do I see the justification for the Court's provision of alternative constitutional holdings—one of which must be essentially "advisory"—in a case that can be decided narrowly on its unusual facts.*

* It is necessary for this Court to decide cases during almost every Term on due process and equal protection grounds. Our opinions in these areas often are criticized, with justice, as lacking consistency and clarity. Because these issues arise in varied settings, and opinions are written by each of nine Justices, consistency of language is an ideal unlikely to be achieved. Yet I suppose we would all agree—at least in theory—that unnecessarily broad statements of doctrine frequently do more to confuse than to clarify our jurisprudence. I have not always adhered to this counsel of restraint in my own opinion writing, and therefore imply no criticism

February 8, 1982

80-5950 Logan v. Zimmerman Brush Co.

Dear Harry:

Upon my return to the Court today, I have again looked at the alternatives in this case suggested by your letter of February 2.

My primary concerns about your opinion have been the reliance on alternative constitutional grounds and the breadth of the due process analysis.

If the due process ground were eliminated from the opinion, I would join an equal protection disposition along the lines of your present Part III - though my preference has been to limit even equal protection analysis to the unusual facts of this case.

Entertaining the foregoing views, I am unwilling to join Part III as long as the opinion retains Part II. Since you have a strong Court for Part II, I suppose this leaves us where we are at present.

I appreciate your giving me the opportunity to take a second look.

Sincerely,

Justice Blackmun

cc - Justice Rehnquist

Justice O'Connor

LFP/vde

pgs 1, 2

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

From: Justice Powell

Circulated: _____

Recirculated: FEB 18 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–5950

LAVERNE L. LOGAN, APPELLANT *v.* ZIMMERMAN BRUSH COMPANY ET AL.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

[February ——, 1982]

JUSTICE POWELL, with whom JUSTICE REHNQUIST joins, concurring in the judgment.

As the challenged statute now has been amended, this is a case of little importance except to the litigants. The action commenced with an isolated example of bureaucratic oversight that resulted in the denial even of a hearing on petitioner's claim of discrimination. One would have expected this sort of negligence by the State to toll the statutory period within which a hearing must be held. The Supreme Court of Illinois, however, read the statutory terms as mandatory and jurisdictional.

The issue presented, at least for me, is too simple and straightforward to justify broad pronouncements on the law of procedural due process or of equal protection. I am particularly concerned by the potential implications of the Court's expansive due process analysis. In my view this is a case that should be decided narrowly on its unusual facts.*

* It is necessary for this Court to decide cases during almost every Term on due process and equal protection grounds. Our opinions in these areas often are criticized, with justice, as lacking consistency and clarity. Because these issues arise in varied settings, and opinions are written by each of nine Justices, consistency of language is an ideal unlikely to be achieved. Yet I suppose we would all agree—at least in theory—that unnecessarily broad statements of doctrine frequently do more to confuse than to clarify our jurisprudence. I have not always adhered to this coun-

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 23, 1981

Re: No. 80-5950 Logan v. Zimmerman Brush Co.

Dear Harry:

I had thought this case more or less of a "sport" (TCC language?) that could be reversed on the narrow equal protection rationale adumbrated in the second paragraph of page 18 of your proposed opinion circulated December 22nd. Since your opinion obviously covers much more ground than this, I will probably write separately concurring in the result.

Sincerely,

WHR

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 7, 1982

Re: No. 80-5950 Logan v. Zimmerman Brush Co.

Dear Harry:

I shall await the writing promised by Lewis in his letter to you of January 6th, and in all probability will join him concurring in the judgment.

Sincerely,

WHR

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 22, 1982

Re: No. 80-5950 Logan v. Zimmerman Brush Co.

Dear Lewis:

Please join me in your opinion concurring in the judgment.

Sincerely,

WHR

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 9, 1982

RE: No. 80-5950 Logan v. Zimmerman Brush Co.

Dear Harry:

Upon reviewing your letter to Lewis dated February 2nd, and Lewis' response to you dated February 8th, copies of both of which were sent to me, I find myself in substantial agreement with the position taken by Lewis in his letter.

Sincerely,

WHR

Justice Blackmun

cc: Justice Powell
Justice O'Connor

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 30, 1981

Re: 80-5950 - Logan v. Zimmerman Brush Co.

Dear Harry:

If a state negligently harms one individual by depriving him of a particular benefit -- whether cash, fire protection, or a hearing before an administrative tribunal -- I do not believe an equal protection issue even arises. It seems to me that there must be a deliberate classification of persons into separate groups before the Equal Protection Clause comes into play. Cf. Washington v. Davis, 426 U.S. 229. I do not believe the state has made any deliberate classification in this case. I see no reason why a state may not treat claims processed within 120 days differently from those that are processed less diligently provided, of course, that all claimants are given a fair opportunity to be heard. I am convinced by your reasoning in Part II that the denial of a fair opportunity to be heard is a constitutional deprivation of procedural due process but when that denial is not the result of any deliberate decision by the state, I cannot subscribe to the view that it violates the Equal Protection Clause as well. In sum, I am concerned that Part III of your opinion will really open a Pandora's box and vastly extend the potential reach of the Equal Protection Clause. If that part of your opinion could be omitted, I would be pleased to join your due process analysis.

Respectfully,

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 5, 1982

Re: 80-5950 - Logan v. Zimmerman Brush Co.

Dear Harry:

If there is a Court for Parts I and II, what is the justification for retaining Part III?

Respectfully,

JPS

Justice Blackmun

Copies to the Conference

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

80-5950 - Logan v. Zimmerman Brush Company

From: Justice Stevens

Circulated: FEB 1 '82

Recirculated: _____

JUSTICE STEVENS, concurring in part.

All of us agree that Illinois may not reject petitioner's statutory claim simply because the hearing officer negligently failed to schedule a timely hearing. JUSTICE BLACKMUN'S opinion offers two separate grounds for this conclusion: first, the arbitrary denial of a fair opportunity to be heard deprived petitioner of property without due process of law; second, the statutory requirement that claims not heard within 120 days be dismissed creates a classification that violates the Equal Protection Clause of the Fourteenth Amendment.

The due process rationale is plainly correct and provides a sufficient basis for the Court's holding. The portion of JUSTICE BLACKMUN'S opinion discussing the Equal Protection Clause, however, is objectionable for two reasons. It violates the Court's traditional practice of avoiding the unnecessary discussion of constitutional questions; moreover, its analysis is unsound.

The Equal Protection Clause prevents a State from enacting

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

From: Justice Stevens

Circulated: _____

Recirculated: FEB 3 '82

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-5950

LAVERNE L. LOGAN, APPELLANT *v.* ZIMMERMAN BRUSH CO., ET AL.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

[February ——, 1982]

JUSTICE STEVENS, concurring in part.

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The due process rationale is plainly correct and provides a sufficient basis for the Court's holding. The portion of JUSTICE BLACKMUN'S opinion discussing the Equal Protection Clause, however, is objectionable for two reasons. It violates the Court's traditional practice of avoiding the unnecessary discussion of constitutional questions; moreover, its analysis is unsound.

The Equal Protection Clause prevents a State from enacting laws that classify persons in an arbitrary way. The Illinois statute does not create separate classes of persons; indeed, it does not even create separate classes of claims. It merely requires that a claim that has not been heard within 120 days be dismissed. There is nothing arbitrary about such a requirement, provided, of course, that the State provides claimants with an adequate opportunity to be heard

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

From: Justice Stevens

Circulated: _____

Recirculated: FEB 5 '82

2nd PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–5950

LAVERNE L. LOGAN, APPELLANT *v.* ZIMMERMAN BRUSH CO., ET AL.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

[February ——, 1982]

JUSTICE STEVENS, concurring in part.

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The Equal Protection Clause prevents a State from enacting laws that classify persons in an arbitrary way.[1] The Illinois statute does not create separate classes of persons; indeed, it does not even create separate classes of claims. It merely requires that a claim that has not been heard within

[1] The Equal Protection Clause provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 16, 1982

Re: 80-5950 - Logan v. Zimmerman Brush Co.

Dear Harry:

Since you have removed your discussion of equal protection from the opinion of the Court, I will withdraw my separate writing and join your Court opinion.

Respectfully,

JPS

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 22, 1981

No. 80-5950 Logan v. Zimmerman Brush Company

Dear Harry,

In view of the division of votes at Conference on the appropriate basis for reversal of the referenced case, I think you were wise to include both due process and equal protection. However, before I can feel comfortable about joining Section II of the opinion, there are two suggestions I am hoping you will consider.

The sentence beginning at the bottom of page 6 and concluding on page 7, which refers to the due process rights associated with access to the courts, strikes me as unnecessary to the opinion. I am wondering if you would be willing to delete it.

My second concern involves the first complete sentence on page 11 which asserts that the state may not "destroy" a property interest without considering the merits of the owner's claim. I suggest some modificiation to reflect that under certain circumstances, such as when a statute of limitations has run, or a procedural requirement has not been met, the state may require dismissal of the claim without consideration of the merits. Such qualifications of the right to a hearing on the merits are recognized on page 14, but may need to be acknowledged also on page 11.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 4, 1982

No. 80-5950 Logan v. Zimmerman Brush Co.

Dear Harry,

I am satisfied with the proposed changes as outlined in your letter of December 30. Please join me.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 7, 1982

No. 80-5950 Logan v. Zimmerman Brush Co.

Dear Harry,

If the equal protection section of the draft opinion is omitted, I shall have to withdraw my joinder.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 11, 1982

No. 80-5950 Logan v. Zimmerman Brush Co.

Dear Harry,

I will circulate a separate opinion concurring in the judgment based on the equal protection analysis which is no longer a part of your opinion.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 16, 1982

No. 80-5950 Logan v. Zimmerman Brush Co.

Dear Harry,

Please join me in your separate opinion dealing with the equal protection issue.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference