The Burger Court Opinion Writing Database

Kremer v. Chemical Construction Corp.

456 U.S. 461 (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

December 15, 1981

Re: No. 80-6045 - Kremer v. Chemical Construction Corp.

Dear Byron:

Will you take on this case for our affirmance?

Regards,

WEB

Justice White

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

April 13, 1982

Re: 80-6045 - Kremer v. Chemical Construction Corp.

Dear Byron:

I join.

Regards,

WEB

Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 15, 1981

RE: No. 80-6045 Kremer v. Chemical Construction Corporation

Dear Thurgood, Harry and John:

We four are in dissent in the above. Would you be willing, John, to undertake the dissent?

Sincerely,

Bill

Justice Marshall

Justice Blackmun

Justice Stevens

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 15, 1981

RE: No. 80-6045 Kremer v. Chemical Construction Corp.

Dear Thurgood, Harry and John:

Just for the record, Harry has agreed to undertake the dissent in the above.

Sincerely,

Bill

Mr. Justice Marshall

Mr. Justice Blackmun

Mr. Justice Stevens

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 18, 1982

RE: No. 80-6045 Kremer v. Chemical Construction Corp.

Dear Byron:

I'll await the dissent in the above.

Sincerely,

Bill

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 31, 1982

RE: No. 80-6045 Kremer v. Chemical Construction

Dear Harry:

Please join me.

Sincerely,

Bill

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 16, 1981

Re: 80-6045 - Kremer v.
Chemical Const. Co.

Dear Chief,

As your notes no doubt indicate, my vote to affirm was a shaky one. Hence, I should not accept the assignment on the terms stated in your note of December 15. Of course, I should be glad to work on it but would understand if you would rather reassign.

Sincerely yours,

Byron

The Chief Justice

Copies to the Conference

cpm

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

From: Justice White

Circulated: 16 FEB 19

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-6045

RUBIN KREMER, PETITIONER *v.* CHEMICAL CONSTRUCTION CORPORATION

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

[February ——, 1982]

JUSTICE WHITE delivered the opinion of the Court.

As one of its first acts, Congress directed that all United States courts afford the same full-faith-and-credit to state court judgments that would apply in the state's own courts. Act of May 26, 1790, ch. 11, 1 Stat. 122, 28 U. S. C. 1738 (1976). More recently, Congress implemented the national policy against employment discrimination by creating an array of substantive protections and remedies which generally allows federal courts to determine the merits of a discrimination claim. Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U. S. C. §2000e *et seq.* (1976). The principal question presented by this case is whether Congress intended Title VII to supercede the principles of comity and repose embodied in §1738. Specifically, we decide whether a federal court in a Title VII case should give preclusive effect to a decision of a state court upholding a state administrative agency's rejection of an employment discrimination claim as meritless when the state court's decision would be res judicata in the state's own courts.

I

Petitioner Rubin Kremer emigrated from Poland in 1970 and was hired in 1973 by respondent Chemical Corporation ("Chemico") as an engineer. Two years later he was laid off,

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

From: Justice White

Circulated: _____

Recirculated: 23 MAR 1982

- pp. 15, 18-19 & stylistic -

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-6045

RUBIN KREMER, PETITIONER *v.* CHEMICAL CONSTRUCTION CORPORATION

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

[March ——, 1982]

JUSTICE WHITE delivered the opinion of the Court.

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I

Petitioner Rubin Kremer emigrated from Poland in 1970 and was hired in 1973 by respondent Chemical Corporation ("Chemico") as an engineer. Two years later he was laid off,

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

From: **Justice White**

pp. 9-11, 14, 16-19 & stylistic; Footnotes renumbered

Circulated: _____

Recirculated: 13 APR 1982

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–6045

RUBIN KREMER, PETITIONER *v.* CHEMICAL CONSTRUCTION CORPORATION

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

[April ——, 1982]

JUSTICE WHITE delivered the opinion of the Court.

As one of its first acts, Congress directed that all United States courts afford the same full-faith-and-credit to state court judgments that would apply in the state's own courts. Act of May 26, 1790, ch. 11, 1 Stat. 122, 28 U. S. C. 1738 (1976). More recently, Congress implemented the national policy against employment discrimination by creating an array of substantive protections and remedies which generally allows federal courts to determine the merits of a discrimination claim. Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U. S. C. §2000e *et seq.* (1976). The principal question presented by this case is whether Congress intended Title VII to supercede the principles of comity and repose embodied in §1738. Specifically, we decide whether a federal court in a Title VII case should give preclusive effect to a decision of a state court upholding a state administrative agency's rejection of an employment discrimination claim as meritless when the state court's decision would be res judicata in the state's own courts.

I

Petitioner Rubin Kremer emigrated from Poland in 1970 and was hired in 1973 by respondent Chemical Corporation ("Chemico") as an engineer. Two years later he was laid off,

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

From: **Justice White**

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STYLISTIC CHANGES THROUGHOUT.
PAGES: 9

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-6045

RUBIN KREMER, PETITIONER *v.* CHEMICAL CONSTRUCTION CORPORATION

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

[May ——, 1982]

JUSTICE WHITE delivered the opinion of the Court.

As one of its first acts, Congress directed that all United States courts afford the same full-faith-and-credit to state court judgments that would apply in the state's own courts. Act of May 26, 1790, ch. 11, 1 Stat. 122, 28 U. S. C. 1738 (1976). More recently, Congress implemented the national policy against employment discrimination by creating an array of substantive protections and remedies which generally allows federal courts to determine the merits of a discrimination claim. Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U. S. C. § 2000e *et seq.* (1976). The principal question presented by this case is whether Congress intended Title VII to supercede the principles of comity and repose embodied in § 1738. Specifically, we decide whether a federal court in a Title VII case should give preclusive effect to a decision of a state court upholding a state administrative agency's rejection of an employment discrimination claim as meritless when the state court's decision would be res judicata in the state's own courts.

I

Petitioner Rubin Kremer emigrated from Poland in 1970 and was hired in 1973 by respondent Chemical Corporation ("Chemico") as an engineer. Two years later he was laid off,

HAB

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 17, 1982

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for No. 80-6045 -
Kremer v. Chemical Construction Co.

No. 81-656 -- Consolidated Foods Corp. v. Unger.

In 1972, respondent was dismissed from her position as a sales representative for petitioner. She was rehired, but assigned to a less desirable territory. After being rehired, respondent challenged her earlier dismissal by filing a charge of sex discrimination with the Illinois Fair Employment Practices Commission. Before her claim was heard, however, petitioner discharged her from her second job. Respondent thereupon filed a second claim with the Commission, in which she alleged that she had been fired in retaliation for bringing her earlier claim.

Respondent was unsuccessful in her claims before the Commission. She won a reversal of the Commission's decision in the Illinois trial court. But the trial court was in turn reversed by the Illinois Appellate Court, and the State Supreme Court denied review.

After receiving a right-to-sue letter from the EEOC, respondent filed a Title VII suit in District Court, claiming sex discrimination and retaliatory discharge. After a trial de novo, the District Court found for respondent on both counts. CA 7 upheld the District Court's finding of discrimination, holding that the state adjudiction was not entitled to res judicata effect in the federal courts. The Seventh Circuit expressly refused to follow CA 2's position which we now affirm in Kremer. I will vote to grant, vacate, and remand this case for reconsideration in light of Kremer.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 18, 1982

Re: No. 80-6045 - Kremer v. Chemical Construction Corporation

Dear Byron:

I await the dissent.

Sincerely,

T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 1, 1982

Re: No. 80-6045 - Kremer v. Chemical Construction

Dear Harry:

Please join me in your dissent.

Sincerely,

T.M.

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 16, 1982

Re: No. 80-6045 - Kremer v. Chemical Construction Corp.

Dear Byron:

In due course, I shall try my hand at a dissent in this case.

Sincerely,

Harry

Justice White

cc: The Conference

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

From: **Justice Blackmun**

Circulated: _____

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-6045

RUBIN KREMER, PETITIONER *v.* CHEMICAL CONSTRUCTION CORPORATION

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

[April ——, 1982]

JUSTICE BLACKMUN, dissenting.

Today the Court follows an isolated Second Circuit approach and holds that a discrimination complainant cannot bring a Title VII suit in federal court after unsuccessfully seeking state court "review" of a state antidiscrimination agency's unfavorable decision. The Court embraces a rule that has been subject to challenge within the Second Circuit[1]

[1] Before the Court of Appeals addressed the issue, one District Court in the Second Circuit held that a state court affirmance of a decision by the New York State Division of Human Rights did not preclude a subsequent Title VII suit. *Benneci* v. *Department of Labor, New York State Division of Employment*, 388 F. Supp. 1080 (SDNY 1975). Then in *Mitchell* v. *National Broadcasting Co.*, 553 F. 2d 265 (CA2 1977), the Second Circuit ruled, over a strong dissent, that a state court affirmance of a state agency decision barred a subsequent civil rights suit under 42 U. S. C. § 1981. Later, in a brief *per curiam* decision, *Sinicropi* v. *Nassau County*, 601 F. 2d 60 (CA2), cert. denied, 444 U. S. 983 (1979), the Circuit concluded that *Mitchell* dictated the same res judicata result for Title VII, despite the significant differences between § 1981 and the complex structure of Title VII, which expressly addresses the role of state proceedings in the resolution of discrimination claims. The District Judge in this case appropriately felt himself bound by *Sinicropi*, but he wrote a persuasive opinion questioning its wisdom. 477 F. Supp. 587, 591–594 (SDNY 1979). On appeal, a panel of the Second Circuit also found the outcome in this case dictated by *Sinicropi*. 623 F. 2d 786 (CA2 1980). Two judges of that court voted for rehearing en banc. App. 80.

pp. 4-8, 20-21, 24
*Page references to majority opinion revised
*Footnotes 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: Apr 1 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–6045

RUBIN KREMER, PETITIONER *v.* CHEMICAL CONSTRUCTION CORPORATION

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

[April ——, 1982]

JUSTICE BLACKMUN, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, dissenting.

Today the Court follows an isolated Second Circuit approach and holds that a discrimination complainant cannot bring a Title VII suit in federal court after unsuccessfully seeking state court "review" of a state antidiscrimination agency's unfavorable decision. The Court embraces a rule that has been subject to challenge within the Second Circuit[1]

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March 12, 1982

80-6045, Kremer v. Chemical Construction Co.

Dear Byron:

I am essentially in agreement with your opinion in this case, and I expect to join it. As I indicated to you on the telephone, my hesitation arises mostly from my continuing concern over some of the broad "due process" language in Logan v. Zimmerman Brush Co., a case on which you rely.

Perhaps because of my anxiety over Zimmerman Brush, I am concerned that the paragraph in which you cite that case (pages 17-18) might be misunderstood. My reasons are as follows.

In your first paragraph on page 17 you state that the question is whether the "administrative proceedings and judicial review" given preclusive effect in New York "should be deemed so fundamentally flawed as to be denied recognition under § 1738." I assume this refers to a "composite" of administrative proceedings and judicial review. On page 18, however, you state that a "right to obtain redress in administrative proceedings" is a "cause of action." Your opinion then states that a claim may not be dismissed "without affording a party a constitutionally adequate opportunity to present his claim and have it adjudicated." (emphasis mine.). This language troubles me, because it may suggest that administrative process, under Logan v. Zimmerman, must meet the same due process standards applicable to judicial proceedings. In other words, your opinion might be read as saying that a State cannot create a right to administrative review without also providing a right to judicial review.

If you agree as to this ambiguity, one way to clarify the situation would be simply to omit the long paragraph that runs from pages 17 to 18. This paragraph is concerned wholly with the conditions required for a judgment to be entitled to preclusive effect in the State in which it was

entered. The question before us, however, as made clear in the preceding paragraph and reiterated on page 19, is "whether the procedures in this case comported with the Due Process Clause." (p. 19). As this question is not addressed directly by the paragraph in which you rely on Logan v. Zimmerman, I do not think that your opinion would suffer from that paragraph's deletion. It you prefer to keep the paragraph, language changes could clarify it.

Aside from this single paragraph, I think that you have written a fine opinion.

Sincerely,

Justice White

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 23, 1982

80-6045 Kremer v. Chemical Construction Corp.

Dear Byron:

Please join me.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 25, 1982

Re: No. 80-6045 Kremer v. Chemical Construction Corp.

Dear Byron:

Please join me in your opinion of the Court.

Sincerely,

WHR

Justice White

Copies to the Conference

HAB

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 14, 1982

MEMORANDUM TO THE CONFERENCE

Re: Case held for Mills v. Habluetzel, No. 80-6298

Mills held that the one-year period of limitation imposed by Texas Family Code § 13.01 upon suits to establish paternity violated the Equal Protection Clause of the Fourteenth Amendment. In Williams v. Lucky, No. 80-5861, the Texas Court of Civil Appeals, Fifth Supreme Judicial District, held that § 13.01 was not tolled during minority and did not deny equal protection or due process. Williams arose in the same way as Mills: suit was brought to establish the paternity of a child after that child's first birthday. Because Williams and the lower-court decision in Mills reached the same conclusion, on the basis of the same Texas authority, I recommend that we GVR Williams for further consideration in light of Mills.

Sincerely,

WHR

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 17, 1982

Re: 80-6045 - Kremer v. Chemical Construction Corporation

Dear Byron:

Your opinion is persuasive, but I will wait for the dissent.

Respectfully,

John

Justice White

Copies to the Conference

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

From: **Justice Stevens**

Circulated: APR

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-6045

RUBIN KREMER, PETITIONER, *v.* CHEMICAL CONSTRUCTION CORPORATION

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

[April ——, 1982]

JUSTICE STEVENS, dissenting.

The issue that divides the Court is fairly narrow. The Majority concedes that state agency proceedings will not bar a federal claim under Title VII, *ante*, at 8, n. 7, and JUSTICE BLACKMUN assumes *arguendo* that a state court decision on the merits of a discrimination claim would create such a bar, *ante*, at 9, n. 9, 22 (dissenting opinion). Thus, the area of dispute is limited to cases in which an adverse agency decision has been reviewed and upheld by a state court.

The proper resolution of the dispute depends, I believe, on the character of the judicial review to which the agency decision is subjected. If it is the equivalent of a *de novo* trial on the merits, then I would agree that the analysis in the Court's opinion leads to the conclusion that 28 U. S. C. § 1738 forecloses a second lawsuit in a federal court. But as JUSTICE BLACKMUN has demonstrated, *ante*, at 5–8, that is not the character of the relevant judicial review in New York. The New York court's holding that the agency decision was not arbitrary or capricious merely establishes as a matter of law that a rational adjudicator might have resolved the discrimination issue either way.* It is therefore entirely

* The Court's citation to *Flah's Inc.* v. *Schneider*, 71 A.D. 2d 993, 420 N.Y.S. 2d 283 (1979), for the general proposition that a New York court's

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

From: **Justice Stevens**

Circulated: _____

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–6045

RUBIN KREMER, PETITIONER, *v.* CHEMICAL CONSTRUCTION CORPORATION

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

[April ——, 1982]

JUSTICE STEVENS, dissenting.

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The proper resolution of the dispute depends, I believe, on the character of the judicial review to which the agency decision is subjected. If it is the equivalent of a *de novo* trial on the merits, then I would agree that the analysis in the Court's opinion leads to the conclusion that 28 U. S. C. § 1738 forecloses a second lawsuit in a federal court. But as JUSTICE BLACKMUN has demonstrated, *ante*, at 5–8, that is not the character of the relevant judicial review in New York. The New York court's holding that the agency decision was not arbitrary or capricious merely establishes as a matter of law that a rational adjudicator might have resolved the discrimination issue either way.* It is therefore entirely

* In the two cases cited in *Flah's Inc.* v. *Schneider*, 71 A.D. 2d 993, 420 N.Y.S. 2d 283 (1979), the Appellate Division had developed the standard

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 16, 1982

No. 80-6045 Kremer v. Chemical Construction Corporation

Dear Byron,

Please join me in your opinion in the referenced case.

Sincerely,

Sandra

Justice White

Copies to the Conference

P.S. Should the word "litigation" at bottom of p. 9 be "legislation"?