

The Burger Court Opinion Writing Database

District of Columbia Court of Appeals v. Feldman

460 U.S. 462 (1983)

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

RECEIVED
SUPREME COURT U.S.
JUSTICE MARSHALL

December 21, 1982 ^{'82} DEC 22 A10:12

Re: No. 81-1335, D.C. Court of Appeals v. Feldman

Dear Bill:

In response to your memo of December 20 I could decide this case on broader grounds and would reverse even absent the statute. However, I lean to reversals on narrow grounds as a general policy, unless our supervisory powers are implicated.

I can go with you on the narrow grounds.

Regards,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

February 21, 1983

Re: 81-1335 - D.C. Court of Appeals v. Feldman

Dear Bill:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'WB' or similar initials, written over the word 'Regards,'.

Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

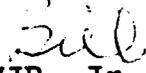
December 20, 1982

Re: No. 81-1335, D. C. Court of Appeals, et al. v.
Feldman

Dear Chief:

I have been assigned the opinion for the Court in the above case. As you will recall, I expressed the view at Conference that this case could be decided on the very narrow ground that Congress, by statute, has vested exclusive jurisdiction over bar admission matters in the local D.C. courts. I continue to adhere to that position and would appreciate your letting me know if there are any problems with deciding the case on this basis.

Sincerely,


WJB, Jr.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 23, 1982

RE: No. 81-1335 District of Columbia Court of Appeals v.
Feldman

Dear Chief:

The responses to my memorandum of December 20 indicate that there will not be four or more to agree with my disposition based on the view that the Congress foreclosed by statute any District Court intervention in Bar matters in the District of Columbia. There appear, however, to be a majority for the view that the U.S. Court of Appeals erred in holding that the action of the D.C. Court of Appeals was administrative and not judicial. Because I do think it is important that we get a Court on common grounds, I'll undertake an opinion for the Court along those lines.

Sincerely,



The Chief Justice

Copies to the Conference

Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: 2/4/83

Recirculated: _____

WLB
1/2

1st
-2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1335

DISTRICT OF COLUMBIA COURT OF APPEALS,
ET AL., PETITIONERS *v.* MARC FELDMAN
AND EDWARD J. HICKEY, JR.

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

[February —, 1983]

JUSTICE BRENNAN delivered the opinion of the Court.

We must decide in these cases what authority the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit have to review decisions of the District of Columbia Court of Appeals in bar admission matters. The United States Court of Appeals for the District of Columbia Circuit, reversing the United States District Court, held that the District Court had jurisdiction to review the District of Columbia Court of Appeals' denials of the respondents' requests for waivers of a bar admission rule that requires applicants to have graduated from an approved law school. We vacate the decision of the United States Court of Appeals for the District of Columbia Circuit and remand the case for proceedings consistent with this opinion.

I

We have discussed in detail in earlier opinions the changes in the structure of the District of Columbia court system effected by the District of Columbia Court Reform and Criminal Procedure Act of 1970. Pub. L. No. 91-358, 84 Stat. 473. See *Key v. Doyle*, 434 U. S. 59 (1977); *Palmore v. United States*, 411 U. S. 389 (1973). For purposes of this

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 15, 1983

Re: No. 81-1335, District of Columbia Court of Appeals v.
Feldman

Dear Bill:

Thank you for your letter of February 9.

I admit that there is some confusion about the precise meaning of "res judicata" and recognize that some have abandoned the term altogether in favor of labels such as "issue preclusion" and "claim preclusion." In my view, however, "res judicata" is still generally perceived as a generic term referring to all possible effects of a prior judgment on subsequent claims. I used the term because I want to give the district court the broadest possible latitude in determining the effect of the litigation in the D.C. Court of Appeals, and that court's judgment, on the claims subsequently filed in the district court. I think we are on the same wavelength.

Sincerely,


WJB, Jr.

Justice Rehnquist

cc: The Conference

STYLISTIC CHANGES THROUGHOUT

Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Brennan**Circulated: 3/11/83

Recirculated: _____

^{3rd}
5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1335

DISTRICT OF COLUMBIA COURT OF APPEALS,
 ET AL., PETITIONERS *v.* MARC FELDMAN
 AND EDWARD J. HICKEY, JR.

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

[March —, 1983]

JUSTICE BRENNAN delivered the opinion of the Court.

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71A6

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 29, 1983

MEMORANDUM TO THE CONFERENCE

RE: Case Held for No. 81-1335, District of Columbia Court of Appeals v. Feldman

No. 82-397, State Bar of Texas v. Howell

This case presents jurisdictional and res judicata questions relating to federal district court review of state court disciplinary proceedings against a member of the state bar. The case has a long and complicated procedural history. Initially, the federal district court refused to entertain the respondent's section 1983 challenge to the constitutionality of the state disciplinary proceedings based on Younger abstention. In its order, however, the district court erroneously stated that the respondent could return to federal court after the state proceedings had been completed for adjudication of his federal constitutional claims. The district court cited England v. Board of Medical Examiners, 375 U.S. 411 (1964), in support of this proposition.

In apparent reliance on the district court's order, the respondent did not raise any federal constitutional claims in the state court. After the state court proceedings were completed, the respondent returned to federal district court to pursue his federal constitutional challenge. At this point, the petitioner renewed a motion to dismiss it had filed four years earlier. The respondent then sought, and was granted, leave to file an amended complaint. The respondent challenged the constitutionality of the state proceedings on a number of grounds and included an overbreadth and vagueness challenge to the validity of a state bar disciplinary rule. The district court granted the petitioner's motion to dismiss on what the Fifth Circuit construed as jurisdictional grounds.

The Fifth Circuit reversed. While recognizing that a federal district court generally lacks jurisdiction to review state court disciplinary proceedings, the court relied on the respondent's failure to raise his federal constitutional claims in the state court proceedings and on its decision in Dasher v. Supreme Court of Texas, 658 F.2d 1045 (CA5 1981), to hold that the district court had jurisdiction over the respondent's claims.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 20, 1982

Re: 81-1335 -

D. C. Court of Appeals v. Feldman

Dear Bill,

My vote was to affirm, but I shall be
interested in your resolution.

Sincerely yours,

A handwritten signature in dark ink, appearing to be 'Brennan', written in a cursive style.

Justice Brennan

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 15, 1983

Re: No. 81-1335, District of
Columbia Court of
Appeals, et al.
v. Feldman & Hickey

Dear Bill,

Please join me.

Sincerely,



Justice Brennan
Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 10, 1983

Re: 81-1335-District of Columbia Court of Appeals
v. Feldman and Hickey

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

December 22, 1982

Re: No. 81-1335 - D.C. Court of Appeals v. Feldman

Dear Bill:

Along with Byron, I lean toward an affirmance. Therefore, I too "shall be interested in your resolution."

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 3, 1983

Re: No. 81-1335, D.C. Court of Appeals v. Feldman

Dear Bill:

Please join me.

Sincerely,

A handwritten signature in dark ink, appearing to be "H.A.B.", with a small flourish underneath.

Justice Brennan

cc: The Conference

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

RECEIVED
SUPREME COURT U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

'82 DEC 22 A10:13

December 21, 1982

81-1335 D.C. Court of Appeals v. Feldman

Dear Bill:

I recall that you predicated your vote on the statute. My own view was that we took the case to decide the broader issue - one that is of large importance to the rule-making power of state supreme courts.

The states, from the beginning, have had the responsibility for admitting and disciplining lawyers. If one feels that constitutional rights have been violated, an appeal to this Court may be taken. But if federal district courts may oversee the application of rules adopted by state supreme courts, I am afraid we will be opening a large new field of litigation as well as intruding upon state authority long recognized.

If there were a Court to agree with me to reverse on this broader ground, I would very much prefer it. Rather than affirm the judgment of CADC, however, I suppose I could go along with your statutory view if the opinion leaves open the more important question.

Sincerely,

Lewis

Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 10, 1983

81-1335 DIST. COL. COURT OF APPEALS v. FELDMAN

Dear Bill:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "L. Powell".

Justice Brennan

Copies to the Conference

LFP/vde

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 22, 1982

Re: No. 81-1335 D.C. Court of Appeals v. Feldman

Dear Bill:

If you are calling for a general response from the members of the Conference on this question, I think that I would adhere to the view that Congress had not intended to treat the D.C. Court of Appeals differently in the bar statute than other state courts of last resort are treated for purposes of Section 1983. It seems to me that John Stevens expressed those views at Conference too, but it is probably best to let him speak for himself when he gets back from Chicago.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 9, 1983

Re: No. 81-1335 District of Columbia Court of
Appeals v. Feldman & Hickey

Dear Bill:

Please join me in your opinion.

I think that as a matter of nomenclature it would be preferable to use the phrase "estoppel by judgment" in place of the phrase "res judicata" on p. 26 of the second draft, since in the view of some the latter phrase applies only to the situation where the second action is the "same" action as the first, and here the second action is obviously not the "same" as the first. But I leave the matter to your discretion.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 22, 1982

Re: 81-1335 - D.C. Court of Appeals
v. Feldman

Dear Bill:

Bill Rehnquist's letter, which was read to me over the telephone, correctly expresses my position.

Respectfully,

A handwritten signature in cursive script, appearing to read "John P. Stevens". The signature is written in dark ink and is positioned to the right of the typed name "Justice Brennan".

Justice Brennan

Copies to the Conference

Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice O'Connor

From: **Justice Stevens**

Circulated: MAR 9 '83

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1335

DISTRICT OF COLUMBIA COURT OF APPEALS,
 ET AL., PETITIONERS *v.* MARC FELDMAN
 AND EDWARD J. HICKEY, JR.

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

[March —, 1983]

JUSTICE STEVENS, dissenting.

There are many crafts in which the State performs a licensing function. That function is important, not only to those seeking access to a gainful occupation but to the members of the public served by the profession as well. State-created rules governing the grant or denial of licenses must comply with constitutional standards and must be administered in accordance with due process of law. Given these acknowledged constitutional limitations on action by the State, it should be beyond question that a federal district court has subject matter jurisdiction over an individual's lawsuit raising federal constitutional challenges either to licensing rules themselves or to their application in his own case.¹ 28

U. S. C. § 1331 quite clearly (1976) provides, "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Curiously, however, the Court today ignores basic jurisdictional principles when it decides a jurisdictional issue affecting the licensing of members of the legal profession.

¹28 U. S. C. § 1331 (1976) provides, "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice O'Connor

From: **Justice Stevens**

Circulated: _____

Recirculated: MAR 17 '83

7.1

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1335

DISTRICT OF COLUMBIA COURT OF APPEALS,
 ET AL., PETITIONERS *v.* MARC FELDMAN
 AND EDWARD J. HICKEY, JR.

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

[March —, 1983]

JUSTICE STEVENS, dissenting.

There are many crafts in which the State performs a licensing function. That function is important, not only to those seeking access to a gainful occupation but to the members of the public served by the profession as well. State-created rules governing the grant or denial of licenses must comply with constitutional standards and must be administered in accordance with due process of law. Given these acknowledged constitutional limitations on action by the State, it should be beyond question that a federal district court has subject matter jurisdiction over an individual's lawsuit raising federal constitutional challenges either to licensing rules themselves or to their application in his own case.¹ Curiously, however, the Court today ignores basic jurisdictional principles when it decides a jurisdictional issue affecting the licensing of members of the legal profession.

The Court holds that respondents may make a general constitutional attack on the rules governing the admission of lawyers to practice in the District of Columbia. I agree.

omission

¹28 U. S. C. § 1331 (1976) provides, "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 13, 1982

No. 81-1335 D. C. Court of Appeals v.
Feldman

Dear Chief,

My vote in this case is to reverse and remand. I think the CADC erred in treating the action of the Court of Appeals as administrative rather than judicial.

I tend to believe the Court of Appeals was exercising a judicial function when it denied the respondents' petitions for waiver of the educational requirements. Nevertheless, it appears to me that respondents are not precluded from attacking the constitutionality of the rules for admission by a suit in the federal district court unless that issue is now res judicata. Since the CADC did not consider the res judicata issue, I would remand for that.

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 22, 1982

Re: No. 81-1335 D.C. Court of Appeals v. Feldman

Dear Bill,

I continue to hold the views I expressed at Conference on the appropriate resolution of this case. I do not believe Congress intended to grant any authority to the D.C. Court of Appeals beyond that which a state supreme court would have concerning admissions to the bar.

Sincerely,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 9, 1983

No. 81-1335 District of Columbia Court of
Appeals v. Hickey

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Brennan

Copies to the Conference