

# The Burger Court Opinion Writing Database

*Shaw v. Delta Air Lines, Inc.*

463 U.S. 85 (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  
JUSTICE Wm. J. BRENNAN, JR.

January 25, 1983



RE: No. 81-1578 Kramarsky v. Delta Air Lines, Inc.

Dear Lewis, John and Sandra:

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

Sincerely,

*Bill*

Justice Powell

Justice Stevens

Justice O'Connor

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 21, 1983

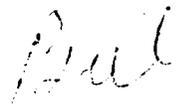
No. 81-1578

Shaw v. Delta Air Lines, Inc.

Dear Harry,

I agree.

Sincerely,



Justice Blackmun

Copies to the Conference

MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 17, 1983

Re: 81-1578 -

Shaw v. Delta Air Lines, Inc.

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Dear Harry,

Please join me in your 2nd draft in this case.

Sincerely yours,

*By*

Justice Blackmun

cc: The Conference

cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 13, 1983

Re: No. 81-1578-Shaw v. Delta Air Lines

Dear Harry:

Please join me.

Sincerely,

*T.M.*  
T.M.

Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 4, 1983

MEMORANDUM TO THE CONFERENCE

Re: No. 81-1578 - Shaw v. Delta Air Lines

The enclosed draft of Shaw v. Delta Air Lines does not address whether there is federal-question jurisdiction in the case. That issue was not raised in the lower courts or in this Court, and, according to my notes, was not discussed at Conference.

My view is that this type of case, in which a plaintiff seeks a declaration that federal law pre-empts a state law and an injunction against enforcement of that law, does present a federal question. In Franchise Tax Board the State sought a declaration that state law was not pre-empted by a federal statute; I believe that case is readily distinguishable.

The Court in the past has decided pre-emption cases raising the same jurisdictional issue as Shaw without discussing the problem. It would be possible to ignore the problem in Shaw as well, but my preference now is to resolve it somewhere expressly rather than by implication. It would be awkward to bring down Franchise Tax Board and Shaw on the same day or a few days apart without discussing the two aspects of the issue. If, as I suspect, there is no substantial disagreement about jurisdiction in Shaw, I could resolve the issue in a footnote in the second draft. Or, if it were all right with Bill Brennan, this could be done by a footnote in Franchise Tax Board, perhaps on page 18 or 19. I am open to suggestions if others prefer a different approach.

*Harry*

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

From: Justice Blackmun

Circulated: JUN 4 1983

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~~HATS~~  
~~Please join me~~  
~~SM~~

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-1578

ROBERT R. SHAW, ACTING COMMISSIONER, ETC., ET AL., APPELLANTS *v.* DELTA AIR LINES, INC., ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June —, 1983]

JUSTICE BLACKMUN delivered the opinion of the Court.

New York's Human Rights Law forbids discrimination in employment, including discrimination in employee benefit plans on the basis of pregnancy. The State's Disability Benefits Law requires employers to pay sick-leave benefits to employees unable to work because of pregnancy or other nonoccupational disabilities. The question before us is whether these New York laws are pre-empted by the federal Employee Retirement Income Security Act of 1974 (ERISA).

I

A

The Human Rights Law, N. Y. Exec. Law §§ 290-301 (McKinney 1982 and Supp. 1982-1983), is a comprehensive anti-discrimination statute prohibiting, among other practices, employment discrimination on the basis of sex. § 296.1(a).<sup>1</sup>

<sup>1</sup>Section 296.1 provides:

"1. It shall be an unlawful discriminatory practice:

"(a) For an employer or licensing agency, because of the age, race, creed, color, national origin, sex, or disability, or marital status of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment."

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Pages: 9, 10, 23  
Footnotes Renumbered  
Stylistic Changes

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

From: Justice Blackmun

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Recirculated: JUN 15 1983

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-1578

ROBERT R. SHAW, ACTING COMMISSIONER, ETC., ET AL., APPELLANTS *v.* DELTA AIR LINES, INC., ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June —, 1983]

JUSTICE BLACKMUN delivered the opinion of the Court.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 21, 1983

Re: No. 81-1578 - Shaw v. Delta Air Lines

Dear John:

I shall be glad to accommodate your concerns about footnote 14. It will be done in the new circulation which goes to the Unit today.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 21, 1983

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 81-1578, Shaw v. Delta Air Lines

1. Nos. 82-299, Metropolitan Life Ins. Co. v. Massachusetts,  
and 82-300, Travelers Ins. Co. v. Massachusetts (curve-lined).

A Massachusetts statute requires insurance policies sold to employee health care plans to provide specified minimum benefits to Mass. residents for the care of mental and nervous conditions. The State brought suit in state court for a declaration that the statute may be applied to ERISA plans, and for an injunction requiring appellants, issuers of health insurance policies to employee benefit plans (some of which are the product of collective bargaining), to comply with the statute. The State conceded that a similar statutory provision requiring the plans themselves to provide minimum benefits was pre-empted by ERISA; that provision is not at issue here. The Supreme Judicial Court held that neither ERISA nor the NLRA pre-empted the Mass. statute, and granted the requested relief.

The Supreme Judicial Court found that the statute "relates to" benefit plans within the meaning of ERISA §514(a). It also recognized that while §514(b) exempts a "law of any state which regulates insurance," §514(b)'s "deemer clause" prevents States from deeming plans to be insurers. The court then reconciled the "tension" between the general pre-emption clause and the savings clause by noting that there was no conflict between ERISA and the state law; ERISA is concerned primarily with plan administration, not substantive benefits. On appeal, appellants argue that this decision improperly permits the State to accomplish indirectly what it may not do directly, with the results that plans will feel pressure to self-insure and that the national uniformity ERISA was meant to foster will be defeated. On the NLRA issue, appellants contend that since health benefits are a mandatory subject of collective bargaining, the statute encroaches on a key area of labor-management relations.

In my view, the Supreme Judicial Court's resolution of both issues is questionable, at best. On the ERISA point, it apparently found that the Mass. law did not fall squarely within the exception to pre-emption contained in §514(b), but that the law nevertheless should be upheld because it was not in conflict with ERISA. While the ERISA issue here is not precisely the same as in Shaw, I believe the state court may profit from reconsideration in light of Shaw's analysis of ERISA's pre-emption provisions. I shall vote to vacate and remand for reconsideration in the light of Shaw.

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PP. 9-1072

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

From: **Justice Blackmun**

Circulated: \_\_\_\_\_

Recirculated: JUN 22 1983

3rd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 81-1578

ROBERT R. SHAW, ACTING COMMISSIONER, ETC., ET AL., APPELLANTS *v.* DELTA AIR LINES, INC., ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June —, 1983]

JUSTICE BLACKMUN delivered the opinion of the Court.

New York's Human Rights Law forbids discrimination in employment, including discrimination in employee benefit plans on the basis of pregnancy. The State's Disability Benefits Law requires employers to pay sick-leave benefits to employees unable to work because of pregnancy or other nonoccupational disabilities. The question before us is whether these New York laws are pre-empted by the federal Employee Retirement Income Security Act of 1974 (ERISA).

## I

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"1. It shall be an unlawful discriminatory practice:

"(a) For an employer or licensing agency, because of the age, race, creed, color, national origin, sex, or disability, or marital status of any individual, to refuse to hire or to employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment."

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 6, 1983

81-1578 Shaw v. Delta Air Lines, Inc.

Dear Harry:

Please join me.

Sincerely,



Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

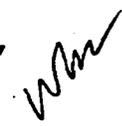
June 8, 1983

Re: No. 81-1578 Shaw v. Delta Air Lines Corp.

Dear Harry:

Please join me.

Sincerely,



Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

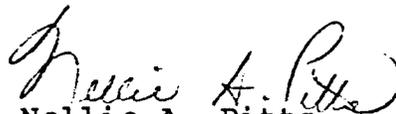
January 31, 1983

Re: 81-1578 - Kramarsky v. Delta Air Lines

Dear Justice Brennan:

Today I spoke with Justice Stevens regarding your letter of January 25th. He has asked me to inform you that he will be happy to undertake the dissent in this case.

Respectfully,

  
Nellie A. Pitts  
Secretary

Justice Brennan

cc: Justice Powell  
Justice O'Connor

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 7, 1983

Re: 81-1578 - Shaw v. Delta Air Lines

Dear Harry:

Although I voted the other way at conference, I find your opinion extremely persuasive. I had originally intended to write in dissent, but now expect to join you. However, I will wait to see what else may be written before finally casting my vote.

Respectfully,



Justice Blackmun

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20540

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 21, 1983

Re: 81-1578 - Shaw v. Delta Air Lines

Dear Harry:

Apart from a concern about the treatment of the jurisdictional issue in footnote 14, I am prepared to join your opinion. I am troubled by two aspects of the footnote. First, I am not sure that it is strictly accurate to say that a state regulation that is preempted "violates the Supremacy Clause of the Constitution." Rather, I believe it would be more correct to state that the plaintiff seeks injunctive relief "on the ground that such regulation is preempted by a federal statute which, by virtue of the Supremacy Clause of the Constitution, must prevail."

Second, it seems to me unpersuasive to rely on the case law concerning the doctrine of abstention and the Anti-Injunction Act since the affected state actions are "unconstitutional" in a different sense. I wonder, therefore, if you would be willing to omit everything in the second paragraph of the footnote after the citation to Hines v. Davidowitz, 312 U.S. 52 (1941).

If you can make these changes, I will join your opinion. Indeed, I will probably join you even if you find no merit in my suggestions, but I hope you will give consideration to them.

Respectfully,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 22, 1983

Re: 81-1578 - Shaw v. Delta Air Lines

Dear Harry:

Please join me.

Respectfully,



Justice Blackmun

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 21, 1983

No. 81-1578 Shaw v. Delta Air Lines, Inc.

Dear Harry,

Please join me.

Sincerely,

*Sandra*

Justice Blackmun

Copies to the Conference