

The Burger Court Opinion Writing Database

Smith v. Robinson

468 U.S. 992 (1984)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



5

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

CHAMBERS OF
THE CHIEF JUSTICE

June 19, 1984

Re: 82-2120 - Smith v. Robinson, Et al.

Dear Harry:

I join.

Regards,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 2, 1984

No. 82-2120

Smith v. Robinson, etc., et al.

Dear Byron,

John, you and I are in dissent in
the above. Would you be willing to try
your hand at the dissent?

Sincerely,



Justice White

Copy to Justice Stevens

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

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SUPREME COURT
JUSTICE MARS

84 JUN -4

June 4, 1984

No. 82-2120

Smith v. Robinson, et al.

Dear Harry,

I'll await the dissent in the
above.

Sincerely,

Bill

Justice Blackmun

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

Smith v. Robinson

No. 82-2120

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

JUSTICE BRENNAN, dissenting.

'84 JUN 28 09:37

From: Justice Brennan

Circulated: 6/28/84

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In this case we are called upon to analyze the interaction among five statutory provisions: §1 of the Civil Rights Act of 1871, as amended, 42 U.S.C. §1983; §2 of the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. §1988; §504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794; §505(b) of the Rehabilitation Act, 29 U.S.C. §794a(b); and §615(e)(2) of the Education of the Handicapped Act (EHA or Act), 84 Stat. 175, as amended, 20 U.S.C. §1415(e)(2).

Section 1983 provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (Emphasis added.)"

And §1988 provides that the prevailing party in an action prosecuted under §1983 may be awarded reasonable attorney's fees. Similarly, §§504 and 505(b) of the Rehabilitation Act provide a cause of action and attorney's fees, respectively, to an individual who, "solely by reason of his handicap," has been "excluded from participation in, ... denied the benefits of, .. or subjected to discrimination under any program or activity receiving Federal financial assistance." Finally, §615(e)(2) of the EHA authorizes judicial review of the States' provision of

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W.B.
Please see me in your district
JH

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES:

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

From: Justice Brennan

Circulated: _____

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-2120

THOMAS F. SMITH, JR., ET AL., PETITIONERS *v.* WIL-
LIAM P. ROBINSON, JR., RHODE ISLAND ASSOCIATE
COMMISSIONER OF EDUCATION, ET AL.

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

[July —, 1984]

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

In this case we are called upon to analyze the interaction among five statutory provisions: § 1 of the Civil Rights Act of 1871, as amended, 42 U. S. C. § 1983; § 2 of the Civil Rights Attorney's Fees Awards Act of 1976, 42 U. S. C. § 1988; § 504 of the Rehabilitation Act of 1973, as amended, 29 U. S. C. § 794; § 505(b) of the Rehabilitation Act, 29 U. S. C. § 794a(b); and § 615(e)(2) of the Education of the Handicapped Act (EHA or Act), as added, 89 Stat. 789, 20 U. S. C. § 1415(e)(2).

Section 1983 provides:

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of *any rights, privileges, or immunities secured by the Constitution* and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.” (Emphasis added).

And § 1988 provides that the prevailing party in an action prosecuted under § 1983 may be awarded reasonable attorney's fees. Similarly, §§ 504 and 505(b) of the Rehabilitation

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 2, 1984

Re: 82-2120 -
Smith v. Robinson, etc., et al.

Dear Bill,

Unless bowled over by the majority, I
shall undertake a dissent in this case.

Sincerely,



Justice Brennan

cc: Justice Stevens

cpm

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JUSTICE MARSHALL
D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

84 JUN -4 P2:49

June 4, 1984

Re: 82-2120 - Smith v. Robinson

Dear Harry,

I had thought there was a fairly good argument that Maher controlled this case, and my conference vote was cast on that basis. However, the views I have expressed in the past make me sympathetic to your draft; and if it commands a majority, which I assume it will, I shall table a planned dissent and sign on with you.

Sincerely,

Byron

Justice Blackmun

Copies to the Conference

✓

W

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 15, 1984

Re: 82-2120 - Smith v. Robinson

Dear Harry,

Having looked this case over again, I
join your draft.

Sincerely yours,



Justice Blackmun

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 28, 1984

Re: No. 82-2120-Smith v. Robinson

Dear Bill:

Please join me in your dissent.

Sincerely,



T.M.

Justice Brennan

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: JUN 1 1984

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HAB
Please find me
[initials]

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-2120

THOMAS F. SMITH, JR., ET AL., PETITIONERS *v.*
WILLIAM P. ROBINSON, JR., RHODE ISLAND
ASSOCIATE COMMISSIONER OF
EDUCATION ET AL.

Low
but
[initials]

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

[June —, 1984]

JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents questions regarding the award of attorney's fees in a proceeding to secure a "free appropriate public education" for a handicapped child. At various stages in the proceeding, petitioners asserted claims for relief based on state law, on the Education of the Handicapped Act (EHA), 84 Stat. 175, as amended, 20 U. S. C. §§ 1400 *et seq.*, on § 504 of the Rehabilitation Act of 1973, 87 Stat. 394, as amended, 29 U. S. C. § 794, and on the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. The United States Court of Appeals for the First Circuit concluded that because the proceeding, in essence, was one to enforce the provisions of the EHA, a statute that does not provide for the payment of attorney's fees, petitioners were not entitled to such fees. *Smith v. Cumberland School Committee*, 703 F. 2d 4 (1983). Petitioners insist that this Court's decision in *Maher v. Gagne*, 448 U. S. 122 (1980), compels a different conclusion.

I

The procedural history of the case is complicated, but it is significant to the resolution of the issues. Petitioner Thomas F. Smith, III (Tommy), suffers from cerebral palsy and a va-

HA

June 6, 1984

Re: No. 82-2120 - Smith v. Robinson

Dear Bill:

Thank you for the footnote to the copy of your joinder letter of June 5. I shall make the addition you suggest in footnote 15. It will appear in the next draft.

Sincerely,

HAB

Justice Rehnquist

STYLISTIC CHANGES

4 p. 19

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'84 JUN 29 P1:58

To: The Chief Justice
Justice Brennan
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Justice O'Connor

From: Justice Blackmun

Circulated: _____

Recirculated: JUN 29 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-2120

THOMAS F. SMITH, JR., ET AL., PETITIONERS *v.* WIL-
LIAM P. ROBINSON, JR., RHODE ISLAND ASSOCIATE
COMMISSIONER OF EDUCATION, ET AL.

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

[June —, 1984]

JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents questions regarding the award of attorney's fees in a proceeding to secure a "free appropriate public education" for a handicapped child. At various stages in the proceeding, petitioners asserted claims for relief based on state law, on the Education of the Handicapped Act (EHA), 84 Stat. 175, as amended, 20 U. S. C. §§ 1400 *et seq.*, on § 504 of the Rehabilitation Act of 1973, 87 Stat. 394, as amended, 29 U. S. C. § 794, and on the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. The United States Court of Appeals for the First Circuit concluded that because the proceeding, in essence, was one to enforce the provisions of the EHA, a statute that does not provide for the payment of attorney's fees, petitioners were not entitled to such fees. *Smith v. Cumberland School Committee*, 703 F. 2d 4 (1983). Petitioners insist that this Court's decision in *Maher v. Gagne*, 448 U. S. 122 (1980), compels a different conclusion.

I

The procedural history of the case is complicated, but it is significant to the resolution of the issues. Petitioner Thomas F. Smith, III (Tommy), suffers from cerebral palsy and a variety of physical and emotional handicaps. When this pro-



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JUSTICE LEWIS F. POWELL, JR.

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Washington, D. C. 20543

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JUSTICE MARSHALL

'84 JUN -4 12:02

June 4, 1984

82-2120 Smith v. Robinson

Dear Harry:

Please join me.

Sincerely,

Lewis

Justice Blackmun

lfp/ss

cc: The Conference

B

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 5, 1984

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JUSTICE MARSHALL

JUN -5 P3:41

Re: No. 82-2120 Smith v. Robinson

Dear Harry:

Please join me.

Sincerely,

Wm

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 5, 1984

Re: No. 82-2120 Smith v. Robinson

Dear Harry:

Please join me.

Sincerely,



Justice Blackmun

cc: The Conference

P.S. to HAB only:

Dear Harry:

Perhaps I am mistaken, but I think footnote 15 may sweep more broadly than the cases which it cites--Bell v. Hood, 327 U.S. 678 (1946) and Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388, would warrant. Neither of those cases dealt with any effort by Congress to repeal the grant of federal question jurisdiction and take us back to pre-1875 days, but I think the two sentences of text do not precisely distinguish between jurisdiction and remedy for cases concededly within jurisdiction. Would you consider adding after the word "available" in the second sentence, or at some place else that you might deem more appropriate, the language "in cases within their jurisdiction."

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

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JUSTICE MARSHALL

'84 JUN 28 P3:16

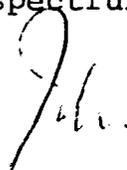
June 28, 1984

Re: 82-2120 - Smith v. Robinson

Dear Bill:

Please join me in your dissenting opinion.

Respectfully,



Justice Brennan

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(V)

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Washington, D. C. 20543

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JUSTICE MARSHALL

'84 JUN -4 P2:49

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 4, 1984

Re: No. 82-2120 Smith v. Robinson

Dear Harry,

Please join me.

Sincerely,

Sandra

Justice Blackmun

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