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

Dear Harry:

I join.

Regards,

Justice Blackmun

Copies to the Conference
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
No. 82-2120

Smith v. Robinson, et al.

Dear Harry,

I'll await the dissent in the above.

Sincerely,

Bill

Justice Blackmun

Copies to the Conference

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


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
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
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
Re: 82-2120 - Smith v. Robinson

Dear Harry,

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

Sincerely yours,

Justice Blackmun

Copies to the Conference
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
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.

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-
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
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.

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-
June 4, 1984

82-2120 Smith v. Robinson

Dear Harry:

Please join me.

Sincerely,

Justice Blackmun

lfp/ss

cc: The Conference
June 5, 1984

Re: No. 82-2120 Smith v. Robinson

Dear Harry:

Please join me.

Sincerely,

Justice Blackmun

cc: The Conference
June 5, 1984

Re: No. 82-2120 Smith v. Robinson

Dear Harry:

Please join me.

Sincerely,

[Signature]

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."
June 28, 1984

Re: 82-2120 - Smith v. Robinson

Dear Bill:

Please join me in your dissenting opinion.

Respectfully,

Justice Brennan

Copies to the Conference
June 4, 1984

Re: No. 82-2120  Smith v. Robinson

Dear Harry,

Please join me.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference