

The Burger Court Opinion Writing Database

EEOC v. Shell Oil Co.

466 U.S. 54 (1984)

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

November 14, 1983

Re: 82-825 - EEOC v. Shell Oil Company

Dear Bill:

Will you take on a dissent in the above?

Regards,



Justice Rehnquist

Copies to: Justice Powell
Justice O'Connor

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

CHAMBERS OF
THE CHIEF JUSTICE

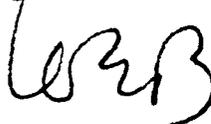
March 29, 1984

Re: 82-825 - EEOC v. Shell Oil Company

Dear Sandra:

Please show me joining your March 16 draft opinion
concurring in part and dissenting in part.

Regards,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 11, 1983

No. 82-825

EEOC v. Shell Oil Co.

Dear Chief,

Thurgood has agreed to take the
opinion for the Court in the above.

Sincerely,

Bill

The Chief Justice

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13

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 14, 1984 RECEIVED
SUPREME COURT
JUSTICE W. J. BRENNAN, JR.

'84 MAR 14 P2:26

No. 82-825

EEOC v. Shell Oil Company

Dear Thurgood,

Please join me.

Sincerely,

Bill

Justice Marshall

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2

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 13, 1984

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SUPREME COURT
JUSTICE BYRON R. WHITE

'84 MAR 13 P1:04

Re: 82-825 - EEOC v. Shell Oil Co.

Dear Thurgood,

I agree.

Sincerely,



Justice Marshall

Copies to the Conference

cpm

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

From: Justice Marshall

MAR - 8 1984

Circulated: _____

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-825

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, PETITIONER *v.* SHELL OIL COMPANY

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

[March —, 1984]

JUSTICE MARSHALL delivered the opinion of the Court.

Section 707(e) of Title VII of the Civil Rights Act of 1964, as amended, authorizes the Equal Employment Opportunity Commission (EEOC) "to investigate and act on a charge" that an employer has engaged in "a pattern or practice" of employment discrimination. Section 706(b) and regulations promulgated thereunder govern the form and content of such a charge and the manner in which the employer should be notified of the allegations of wrongdoing contained therein. The question presented in this case is how much information must be included in the charge and provided to the employer before the Commission may secure judicial enforcement of an administrative subpoena compelling the employer to disclose personnel records and other material relevant to the charge.

I

On September 27, 1979, Commissioner Eleanor Holmes Norton, then Chair of the EEOC, issued a sworn charge, alleging that respondent, Shell Oil Company, "has violated and continues to violate Sections 703 and 707 of the Civil Rights Act of 1964, as amended, by discriminating against Blacks and females on the basis of race and sex with respect to recruitment, hiring, selection, job assignment, training, testing, promotion, and terms and conditions of employment."

HAB

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 10, 1984

Memorandum to the Conference

Re: 82-825, EEOC v. Shell Oil Co.

The petition in A.E. Staley Manufacturing Co. v. EEOC, No. 83-401, was held for our decision in EEOC v. Shell Oil Co., No. 82-825. The facts of the two cases are similar. In both, a Commissioner of the EEOC filed a sworn charge alleging that a private employer had been engaging in a "pattern or practice" of employment discrimination, in violation of Title VII, since the effective date of the Civil Rights Act. The charge in each case identified, in general terms, various categories of employment positions from which Negroes and women allegedly had been excluded and various methods by which the alleged discrimination had been effected. Each employer was provided a copy of the charge. In each case, the employer refused to comply with a request by the EEOC for information pertaining to the charge, the Commission issued a subpoena duces tecum, and the Commission obtained enforcement of the subpoena in a district court. In Shell Oil, the Court of Appeals for the Eighth Circuit reversed, holding that the charge and the notice given to the employer failed to satisfy §706(b) of the Act or the Commission's own regulations. In Staley, a panel of the Court of Appeals for the Seventh Circuit, by a vote of 2 to 1, rejected the reasoning of the Eighth Circuit and affirmed the district court.

In Shell Oil, we reversed the Eighth Circuit, holding that the charge and notice were adequate. The reasoning of the Seventh Circuit in Staley Co. differs slightly from the analysis that underlies the opinion of the Court in Shell Oil. (For example, the Seventh Circuit implies that a district court in a subpoena enforcement action should engage in an assessment of the Commissioner's "good faith" in identifying a time period in which the alleged discrimination occurred.) But the result reached by the Seventh Circuit is plainly correct under the standards set forth in Shell Oil.

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SUPREME COURT U.S.
Supreme Court of the United States
Washington, D. C. 20543

'84 MAR 30 A9:13

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 30, 1984

Re: No. 82-825 - EEOC v. Shell Oil Company

Dear Thurgood:

Please join me.

Sincerely,



Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 14, 1984

82-825 EEOC v. Shell Oil Company

Dear Thurgood:

I will await Sandra's writing.

Sincerely,



Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 22, 1984

82-825 EEOC v. Shell Oil Company

Dear Sandra:

Please join me in your opinion concurring in part
and dissenting in part.

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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CHAMBERS OF THE
CHIEF JUSTICE

'83 NOV 14 P3:26

November 14, 1983

Re: No. 82-825 EEOC v. Shell Oil Company
No. 82-766 Secretary of State v. Munson

Dear Chief:

By letter dated today, you assigned to Sandra the dissent in Jos. H. Munson Co., and to me the dissent in EEOC v. Shell Oil Company. For reasons which I have explained to you and Sandra, I would prefer to have the dissent in Munson and let Sandra have the dissent in Shell Oil Co. Sandra has agreed to this if it is alright with you, and the purpose of this letter is to confirm my telephone conversation with you explaining the situation, in which you agreed to the trade.

Sincerely,



The Chief Justice

cc: Justice O'Connor

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 22, 1984

Re: No. 82-825 EEOC v. Shell Oil Company

Dear Sandra:

Please join me in your opinion concurring in part and
dissenting in part.

Sincerely,



Justice O'Connor

cc: The Conference



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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

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SUPREME COURT OF THE UNITED STATES
JUSTICE JOHN PAUL STEVENS

'84 MAR 12 A9:51
March 12, 1984

Re: 82-825 - EEOC v. Shell Oil Co.

Dear Thurgood:

Please join me.

Respectfully,

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

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CHAMBERS OF THE
CHIEF JUSTICE

'83 NOV 15 A9:54 :

November 14, 1983

No. 82-825 EEOC v. Shell Oil Company
No. 82-766 Secretary of State v. Munson

Dear Chief,

You asked me to take on the dissent in Munson, which I am willing to do, however, Bill Rehnquist has indicated he would prefer to have it. It is agreeable to me to write a dissent in EEOC v. Shell Oil Co. instead if you agree.

Sincerely,

Sandra

The Chief Justice

cc: Justice Rehnquist

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 12, 1984

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SUPREME COURT U.S.
JUSTICE O'CONNOR

'84 MAR 12 A11:07

No. 82-825 EEOC v. Shell Oil Company

Dear Thurgood,

I will circulate something in a few days concurring
in part and dissenting in part.

Sincerely,



Justice Marshall

Copies to the Conference

PP. 19, 12

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: MAR 16 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-825

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, PETITIONER v.
SHELL OIL COMPANY**

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

[March —, 1984]

JUSTICE O'CONNOR, concurring in part and dissenting in part.

I agree with much of what the Court has written. But the Court has deliberately declined to come to grips with the crucial threshold issue in this case: Is inadequate notice a legitimate defense to a subpoena enforcement action brought by the Equal Employment Opportunity Commission (EEOC or Commission)? If it is not, the Court's concern that a meaningful notice requirement would impede EEOC's investigations is wholly unfounded. The Court clearly suggests it is inclined to answer the question in the negative, see *ante*, at 10-11, 20-22, but then proceeds on the assumption that the question has not been properly presented or briefed. I believe the question is before us and should be addressed.

While Shell has maintained throughout that a subpoena may not be enforced if the notice filed in connection with the investigation was unlawful, the EEOC has not conceded the point. In connection with the statement cited by the Court *ante*, at 11, n. 17, the Government conceded that questions concerning the adequacy of the notice may be raised at the enforcement proceeding. But I find no clear concession here or in the Government's briefs that if notice is inadequate a District Court should then quash EEOC's subpoena. To the contrary, the entire thrust of the Government's position is

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PP. 1

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SUPREME COURT U.S.
JUSTICE

'84 MAR 33 A9:43

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: _____

Recirculated: MAR 30

2th DRAFT
SUPREME COURT OF THE UNITED STATES

No. 82-825

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, PETITIONER v.
SHELL OIL COMPANY**

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

[April 2, 1984]

JUSTICE O'CONNOR, with whom CHIEF JUSTICE BURGER,
JUSTICE POWELL, and JUSTICE REHNQUIST join, concurring
in part and dissenting in part.

I agree with much of what the Court has written. But the Court has deliberately declined to come to grips with the crucial threshold issue in this case: Is inadequate notice a legitimate defense to a subpoena enforcement action brought by the Equal Employment Opportunity Commission (EEOC or Commission)? If it is not, the Court's concern that a meaningful notice requirement would impede EEOC's investigations is wholly unfounded. The Court clearly suggests it is inclined to answer the question in the negative, see *ante*, at 10-11, 20-22, but then proceeds on the assumption that the question has not been properly presented or briefed. I believe the question is before us and should be addressed.

While respondent Shell Oil Company (Shell) has maintained throughout that a subpoena may not be enforced if the notice filed in connection with the investigation was unlawful, the EEOC has not conceded the point. In connection with the statement cited by the Court *ante*, at 11, n. 17, the Government conceded that questions concerning the adequacy of the notice may be raised at the enforcement proceeding. But I find no clear concession here or in the Government's briefs that if notice is inadequate a District Court should then

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