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Pension Benefit Guaranty Corporation v. R.A. Gray & Co.

467 U.S. 717 (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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
THE CHIEF JUSTICE

84 JUN 13 P3:35

June 13, 1984

RE: 83-245) - Pension Benefit Guaranty Corp. v. Gray &
Co.
83-291) - Oregon-Washington Carpenters-Employers
Pension Trust Fund v. Gray & Co.

Dear Bill:

I join.

Regards,



Justice Brennan

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

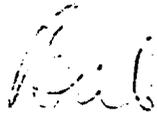
CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 4, 1984

Dear Chief,

Lewis has been good enough to let me have Nos. 83-245 and 83-291, Pension Benefit Corp. v. Gray, etc., and I'm happy to have it. I assume that Davis v. Scherer, No. 83-490, in which Lewis has suggested writing a per curiam, will be assigned to him.

Sincerely,



The Chief Justice

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RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 MAY 23 AM 11:49

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

From: Justice Brennan

Circulated: 5/23/84

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-245 AND 83-291

PENSION BENEFIT GUARANTY CORPORATION
83-245

v.

R. A. GRAY & COMPANY

OREGON-WASHINGTON CARPENTERS-EMPLOYERS
PENSION TRUST FUND

83-291

v.

R. A. GRAY & COMPANY

ON APPEALS FROM THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[May —, 1984]

JUSTICE BRENNAN delivered the opinion of the Court.

The question presented by this case is whether application of the withdrawal liability provisions of the Multiemployer Pension Plan Amendments Act of 1980 to employers withdrawing from pension plans during a five-month period prior to the statute's enactment violates the Due Process Clause of the Fifth Amendment. We hold that it does not.

I

A

In 1974, after careful study of private retirement pension plans, Congress enacted the Employee Retirement Income Security Act (ERISA), 88 Stat. 829, 29 U. S. C. § 1001-1381 (1976). Among the principal purposes of this "comprehensive and reticulated statute" was to ensure that employees and their beneficiaries would not be deprived of anticipated retirement benefits by the termination of pension plans before sufficient funds have been accumulated in the plans.

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 25, 1984

Re: Pension Benefit Guaranty Corp. v. R.A. Gray & Co.,
Nos. 83-245 & 83-291

Dear Lewis:

As always, I appreciate your suggestions, and hope that the following modifications to the opinion will accommodate your concerns:

(1) I would be happy to change the relevant sentence in footnote 6 to read as follows: "We therefore reject the constitutional underpinnings of the analysis employed by the Court of Appeals in Nachman, although we have no occasion to consider whether the factors mentioned by that court might in some circumstances be relevant in determining whether retroactive legislation is rational."

(2) I must confess that I understood the carry-over sentence on pages 10-11 to be stating a general principle that is modified by the discussion in the next two paragraphs. In other words, although retroactive legislation must meet an additional burden, we accord a similar deference to the legislation when making that separate inquiry. To make this clearer, however, I would be willing to change the first full sentence on page 11 to read as follows: "Provided that the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches."

(3) Although we may someday be at odds about the relevancy of advance "notice" of congressional actions, I would be willing to make it clearer that the "doubts" expressed on page 13 are concerned with lack of notice by itself, and not with notice as one factor among many in a rationality analysis. Thus, the relevant sentence could read: "We have doubts, however, that retroactive application of the MPPAA would be invalid under the Due Process Clause for lack of notice even if it was suddenly enacted"

(4) I would be happy to amend the last sentence of footnote 7 to read as follows: "Because these issues were

not addressed by the Court of Appeals, cf. supra, n. 5, and are not pressed by the parties before this Court, we assume for purposes of our decision in this case that the prospective effects of the MPPAA satisfy constitutional standards."

I hope the foregoing substantially meets your concerns, and that you might be able to join the opinion.

Sincerely,


WJB, Jr.

Justice Powell

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9-4, 13

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 MAY 29 AIO:13

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

From: Justice Brennan

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Recirculated: 5/28/84

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-245 AND 83-291

PENSION BENEFIT GUARANTY CORPORATION
83-245

v.

R. A. GRAY & COMPANY

OREGON-WASHINGTON CARPENTERS-EMPLOYERS
PENSION TRUST FUND

83-291

v.

R. A. GRAY & COMPANY

ON APPEALS FROM THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[May —, 1984]

JUSTICE BRENNAN delivered the opinion of the Court.

The question presented by these cases is whether applica-
tion of the withdrawal liability provisions of the Multiem-
ployer Pension Plan Amendments Act of 1980 to employers
withdrawing from pension plans during a five-month period
prior to the statute's enactment violates the Due Process
Clause of the Fifth Amendment. We hold that it does not.

I

A

In 1974, after careful study of private retirement pension
plans, Congress enacted the Employee Retirement Income
Security Act (ERISA), 88 Stat. 829, 29 U. S. C. §1001-1381
(1976). Among the principal purposes of this "comprehen-
sive and reticulated statute" was to ensure that employees
and their beneficiaries would not be deprived of anticipated
retirement benefits by the termination of pension plans be-
fore sufficient funds have been accumulated in the plans.

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P. 10

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN -6 AM 11:52

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

From: Justice Brennan

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-245 AND 83-291

PENSION BENEFIT GUARANTY CORPORATION
83-245
v.
R. A. GRAY & COMPANY

OREGON-WASHINGTON CARPENTERS-EMPLOYERS
PENSION TRUST FUND
83-291
v.
R. A. GRAY & COMPANY

ON APPEALS FROM THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1984]

JUSTICE BRENNAN delivered the opinion of the Court.

The question presented by these cases is whether applica-
tion of the withdrawal liability provisions of the Multiem-
ployer Pension Plan Amendments Act of 1980 to employers
withdrawing from pension plans during a five-month period
prior to the statute's enactment violates the Due Process
Clause of the Fifth Amendment. We hold that it does not.

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In 1974, after careful study of private retirement pension
plans, Congress enacted the Employee Retirement Income
Security Act (ERISA), 88 Stat. 829, 29 U. S. C. § 1001-1381
(1976). Among the principal purposes of this "comprehen-
sive and reticulated statute" was to ensure that employees
and their beneficiaries would not be deprived of anticipated
retirement benefits by the termination of pension plans be-
fore sufficient funds have been accumulated in the plans.

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 15, 1984

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 83-245, Pension Benefit Guaranty Corp. v. R.A. Gray & Co., and for No. 83-291, Oregon-Washington Carpenters-Employers Pension Trust Fund v. R.A. Gray & Co.

(1) No. 83-507, Carpenters Pension Trust for Southern California v. Shelter Framing Corp. and G&R Roofing Co. -- The petition in this case seeks to review the identical opinion for the Court of Appeals of the Ninth Circuit that we unanimously reversed in our opinion in Nos. 83-245 & 83-291. In particular, the petitioner raises three issues for review. First, whether retroactive application of the Multiemployer Pension Plan Amendments Act violates the Due Process Clause -- the precise issue we addressed in our opinion. Second, whether prospective application of the MPPAA satisfies constitutional standards -- an issue the Court of Appeals explicitly refused to consider because of its holding on the first issue, see 705 F. 2d 1402, 1514-1515 (CA9 1983). And third, whether attorney's fees were properly awarded to the prevailing employers under 29 U.S.C. §1451(e) -- an issue that is now moot because the employers are no longer prevailing on their constitutional claims. I will vote to GVR. OK

(2) No. 83-541, Republic Industries, Inc. v. Teamsters Joint Council No. 83 of Virginia Pension Fund -- In this case, the Court of Appeals for the Fourth Circuit sustained the constitutionality of the MPPAA. The petition for certiorari raises two issues. The first relates to the statute's retroactivity. Although the Court of Appeals applied a constitutional analysis we explicitly rejected in our opinion, see Slip op. at 9, n. 6, the court upheld the statute even in the face of this heightened scrutiny; there would therefore be little point in remanding the case to that court for reconsideration of the retroactivity issue. Second, the petitioners lodge a constitutional attack on the procedures included in the MPPAA for the assessment, collection, and adjudication of withdrawal liability. The petitioner concedes, however, that the lower courts "have uniformly rejected the argument that [the MPPAA's] compulsory arbitration provision violates either the Due Process Clause or the Seventh Amendment" Petition at 20. I

Supreme Court of the United States

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SUPREME COURT U.S. 20543
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE BYRON R. WHITE

24 JUN -4 A9:52

June 4, 1984

Re: 83-245 and 83-291 - Pension Benefit
Guaranty Corporation v. Gray Co., etc.

Dear Bill,

I agree.

Sincerely yours,



Justice Brennan

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 23, 1984

Re: Nos. 83-245 and 291-Pension Benefit Guaranty
Corp and Oregon-Washington Carpenters-
Employers Pension Trust Fund v. R.A. Gray & Co.

Dear Bill:

Please join me.

Sincerely,

T.M.
T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 29, 1984

Re: No. 83-245) Pension Benefit Guaranty Corp.
v. R. A. Gray & Company
No. 83-291) Oregon-Washington Carpenters-Employers
Pension Trust Fund v. R. A. Gray & Company

Dear Bill:

Please join me.

Sincerely,



RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 MAY 29 10:14

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 24, 1984

83-245 Pension Benefit Guaranty Corp. v. Gray & Co.

Dear Bill:

Your opinion is excellent, and - subject to the minor suggestions below - I will be happy to join it.

1. Footnote 6 "reject[s] the constitutional analysis employed by the Court of Appeals in" Nachman Corp. v. Pension Benefit Guaranty Corp., 592 F. 2d 947 (CA7 1979). It seems unnecessary to reject the entire analysis of Nachman. CA7 did err in relying on Allied Structural Steel and Alton Railroad. But the "Nachman factors" could well be pertinent in some cases to the inquiry whether retroactive legislation is rational. The last full sentence might read:

"We therefore reject the constitutional underpinnings of the analysis employed by the Court of Appeals in Nachman, although we do not question that the factors considered by that court in some circumstances may be relevant to whether retroactive legislation is rational."

2. The last sentence on p. 10 states:

"We further explained that the strong deference accorded legislation in the field of national economic policy is no less applicable when that legislation is applied retroactively."

I do not recall this precise statement in Turner Elkhorn. Indeed, as your opinion continues in the first full paragraph on p. 11, you recognize that "retroactive legislation does have to meet a burden not faced by legislation that has only future effects." This is the law, as I understand it, and it seems inconsistent - at least in its implications - with the sentence mentioned above that begins at the bottom of page 10.

3. On p. 13, your opinion expressed doubts whether retroactive application "would be invalid under the Due Process Clause even if [a statute] were suddenly enacted by Congress" with no notice to anyone. As there was ample notice in this case, it is unnecessary for us to say what might be the situation in a different case. I am inclined to agree with you that the Due Process Clause alone would not require a period of notice. Rather, there may be cases where - in considering the question of rationality of a particular statute in light of the circumstances - the extent to which injured persons may have been aware of congressional consideration could be relevant.

4. Finally, Bill, I make a minor point. Footnote 7 of your opinion notes that the Courts of Appeals have upheld the prospective application of the Act and "therefore" assumes that such application is constitutional. We make this assumption, not because of the unanimity among the Courts of Appeals, but rather because the issue of prospective application is not before us on the present appeal. It might be best to make this point explicit, especially as appellees still may raise the issue on remand.

Sincerely,

Lewis

Justice Brennan

lfp/ss

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

'84 MAY 29 10:13

May 25, 1984

83-245 Pension Benefit Guaranty Corp. v. R.A. Gray Co.

Dear Bill:

Please join me.

Sincerely,



Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 25, 1984

83-245 Pension Benefit Guaranty Corp. v. R.A. Gray Co.

Dear Bill:

Please join me.

Sincerely,



Justice Brennan

lfp/ss

cc: The Conference

Many thanks for making the changes.

L.F.P., Jr.



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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 24, 1984

Re: Nos. 83-245 & 83-291 Pension Benefit Guaranty
Corp. v. R. A. Gray & Company

Dear Bill:

Please join me.

Sincerely,

WR

Justice Brennan

cc: The Conference

84 MAY 24 1984

1984

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 24, 1984

Re: 83-245 - Pension Benefit Guaranty Corp.
v. R.A. Gray & Co.
83-291 - Oregon-Washington Carpenters-
Employers Pension Trust Fund v.
R.A. Gray & Co.

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

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24:59 AS YAN 18

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3068

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 24, 1984

No. 83-245 Pension Benefit Guaranty Corp
v. R. A. Gray & Company
No. 83-291 Oregon-Washington Carpenters-
Employers Pension Trust Fund

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Brennan

Copies to the Conference

20 JUN 20 1984
AS AM 20