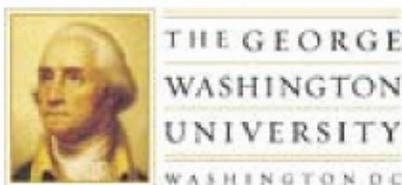


The Burger Court Opinion Writing Database

Webb v. Dyer County Board of Education
471 U.S. 234 (1985)

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

April 9, 1985

Re: No. 83-1360 - Leonard Webb v. County Board of
Education of Dyer County, Tennessee

Dear John,

I join.

Regards,

Handwritten signature of Justice Stevens, consisting of the letters 'W', 'R', and 'B' in a stylized, cursive script.

Justice Stevens

Copies to the Conference

.87 205-0 0321

11
205

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 13, 1985

No. 83-1360

Webb v. County Board of Education
of Dyer County

Dear John,

I voted at Conference to reverse the judgment of the Sixth Circuit and to remand for a resolution on the merits. Although I agree with much of your analysis, I continue to take a broader view of the circumstances in which fees for work before an administrative tribunal may be awarded in a §1983 action. I also believe that Webb has presented enough evidence to require district court resolution of his entitlement to additional fees, if any. Accordingly, I think I'll try my hand at an opinion concurring in part and dissenting in part. I'll get it around as quickly as I can.

Sincerely,

Bill

Justice Stevens

Copies to the Conference

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

From: Justice Brennan

Circulated: MAR 20 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1360

LEONARD WEBB, PETITIONER *v.* DYER COUNTY
BOARD OF EDUCATION OF DYER COUNTY,
TENNESSEE, ET AL.

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

[March —, 1985]

JUSTICE BRENNAN, concurring in part and dissenting in part.

The Court concludes today that attorney's fees for work in optional state administrative proceedings are not "automatically" awardable to a prevailing civil rights litigant under 42 U. S. C. § 1988, but that fees may be awarded for a "discrete portion" of such work to the extent that it was "useful and of a type ordinarily necessary" to the successful outcome of the subsequent litigation. *Ante*, at 6, 8. I agree with these conclusions but write separately on two counts. First, it is important in light of the American Rule and the confusion among lower courts that we identify with precision the reason why such awards *ever* may be authorized pursuant to § 1988.¹ Second, I disagree with the Court's conclusion that the petitioner in this case presented insufficient evidence to justify a district court award of fees for a "discrete portion" of his work at the state level. The District Court did not consider the evidentiary merits of this issue, holding instead

¹This Court repeatedly has held that, with several narrow exceptions, the American Rule bars recovery of attorney's fees in the absence of an express statutory authorization. See, e. g., *Summit Valley Industries, Inc. v. United Brotherhood of Carpenters and Joiners*, 456 U. S. 717, 721 (1982); *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U. S. 240, 247 (1975).

2
PWT

U.S. SUPREME COURT LIBRARY OF THE HOUSE OF REPRESENTATIVES

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

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 13-14

From: Justice Brennan

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Recirculated: _____ MAR 29 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1360

LEONARD WEBB, PETITIONER *v.* DYER COUNTY
BOARD OF EDUCATION OF DYER COUNTY,
TENNESSEE, ET AL.

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

[March —, 1985]

JUSTICE BRENNAN, concurring in part and dissenting in part.

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with whom
JUSTICE
BLACKMUN
JOINS

¹This Court repeatedly has held that, with several narrow exceptions, the American Rule bars recovery of attorney's fees in the absence of an express statutory authorization. See, e. g., *Summit Valley Industries, Inc. v. Carpenters*, 456 U. S. 717, 721 (1982); *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U. S. 240, 247 (1975).

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

W
CHAMBERS OF
JUSTICE BYRON R. WHITE

February 18, 1985

83-1360 - Webb v. Dyer County Board of
Education of Dyer County, TN

Dear John,

Join me, please.

Sincerely yours,

Byron

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

October 17, 1984

MEMORANDUM TO MR. STEVAS:

Re: No. 83-1360 - Webb v. County Board of
Education of Dyer County,
Tennessee, et al.

I have just discovered that I am disqualified
in this case.

T.M.
T.M.

CC: The Conference

*Do be
argued
Oct 19*

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 4, 1985

Re: No. 83-1360 - Webb v. Dyer County

Dear John:

Please add at the bottom of your opinion:
"JUSTICE MARSHALL did not participate in the
consideration or decision of this case."

Sincerely,

JM.

Justice Stevens

cc: The Conference

LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 29, 1985

Re: No. 83-1360, Webb v. Board of Education

Dear Bill:

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

Sincerely,



Justice Brennan

cc: The Conference

84 APR 30 10 30

22
208

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

4
CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 19, 1985

83-1360 Webb v. Dyer County

Dear John:

Please join me.

Sincerely,

Lewis
2

Justice Stevens

lfp/ss

cc: The Conference

OFFICE OF THE CLERK OF THE SUPREME COURT OF THE UNITED STATES
LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 15, 1985

Re: No. 83-1360 Webb v. Dyer County Board of Education

Dear John,

Please join me.

Sincerely,

Justice Stevens

cc: The Conference

LIBRARY OF CONGRESS

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

From: Justice Stevens

Circulated: FEB 12 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1360

LEONARD WEBB, PETITIONER *v.* DYER COUNTY
BOARD OF EDUCATION OF DYER COUNTY,
TENNESSEE, ET AL.

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

[February —, 1985]

JUSTICE STEVENS delivered the opinion of the Court.

The Civil Rights Attorney's Fee Award Act of 1976, 90 Stat. 2641, 42 U. S. C. § 1988, authorizes a court to award a reasonable attorney's fee to the prevailing party in "any action or proceeding" to enforce certain statutes, including 42 U. S. C. § 1983.¹ Petitioner was represented by counsel in local administrative proceedings and in a subsequent § 1983 action challenging the termination of his employment as a public school teacher. He ultimately prevailed and was awarded attorney's fees for the time his lawyer spent on the judicial proceedings, but denied fees for the time spent in proceedings before the local school board. The question presented is whether the District Court correctly excluded the time spent pursuing optional administrative proceedings from the calculation of a "reasonable fee" for the prevailing party.

In the spring of 1974 the respondent, Dyer County Board of Education, terminated the employment of petitioner, who

¹ In relevant part, the statute provides:

"In any action or proceeding to enforce a provision of §§ 1981, 1982, 1983, 1985 and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." 42 U. S. C. § 1988.

*Wait for
Opinion.
WJB*

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STYLISTIC CHANGES THROUGHOUT,
SEE PAGES:

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

From: Justice Stevens

Circulated: _____

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1360

LEONARD WEBB, PETITIONER *v.* BOARD OF
EDUCATION OF DYER COUNTY,
TENNESSEE, ET AL.

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

[February —, 1985]

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Wait

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 3, 7, 8, 9

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

From: Justice Stevens

Circulated: _____

Recirculated: MAR 25 1985

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1360

LEONARD WEBB, PETITIONER *v.* BOARD OF
EDUCATION OF DYER COUNTY,
TENNESSEE, ET AL.

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

[March —, 1985]

JUSTICE STEVENS delivered the opinion of the Court.

The Civil Rights Attorney's Fees Awards Act of 1976, 90 Stat. 2641, 42 U. S. C. § 1988, authorizes a court to award a reasonable attorney's fee to the prevailing party in "any action or proceeding" to enforce certain statutes, including 42 U. S. C. § 1983.¹ Petitioner was represented by counsel in local administrative proceedings and in a subsequent § 1983 action challenging the termination of his employment as a public school teacher. He ultimately prevailed and was awarded attorney's fees for the time his lawyer spent on the judicial proceedings, but denied fees for the time spent in proceedings before the local school board. The question presented is whether the District Court correctly excluded the time spent pursuing optional administrative proceedings from the calculation of a "reasonable fee" for the prevailing party.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

Dear John
Please add at the bottom
A
April 3, 1985

Re: 83-1360 - Webb v. Dyer County Board
of Education

Dear Thurgood:

It just dawned on me that the reason you have not responded to my circulation in this case is that you disqualified yourself from considering the merits. Unless you prefer a different statement, I shall therefore add at the end of the circulating opinion: "JUSTICE MARSHALL did not participate in the consideration or decision of this case."

Respectfully,

John

Justice Marshall

Copies to the Conference

81 11 11 11 11

JM

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

7. 10

From: Justice Stevens

Circulated: _____

Recirculated: APR 5 1985

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1360

**LEONARD WEBB, PETITIONER v. BOARD OF
EDUCATION OF DYER COUNTY,
TENNESSEE, ET AL.**

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

[March —, 1985]

JUSTICE STEVENS delivered the opinion of the Court.

The Civil Rights Attorney's Fees Awards Act of 1976, 90 Stat. 2641, 42 U. S. C. § 1988, authorizes a court to award a reasonable attorney's fee to the prevailing party in "any action or proceeding" to enforce certain statutes, including 42 U. S. C. § 1983.¹ Petitioner was represented by counsel in local administrative proceedings and in a subsequent § 1983 action challenging the termination of his employment as a public school teacher. He ultimately prevailed and was awarded attorney's fees for the time his lawyer spent on the judicial proceedings, but denied fees for the time spent in proceedings before the local school board. The question presented is whether the District Court correctly excluded the time spent pursuing optional administrative proceedings from the calculation of a "reasonable fee" for the prevailing party.

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7A
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 16, 1985

MEMORANDUM TO THE CONFERENCE

Re: Hold for 83-1360 - Webb v. Dyer County
Board of Education

No. 83-6676 - Garcia v. Ingram. Petitioner was a recipient of Homemaker Services under Title XX of the Social Security Act, 42 U.S.C. §1397. After receiving notice that her benefits were to be terminated, she requested an administrative hearing for which she retained counsel. The hearing officer found that the notice was insufficient. Thereafter the parties stipulated that she could withdraw her appeal and that the State of New Mexico would restore her eligibility for benefits. The stipulation contained an express reservation for counsel to seek attorney's fees. The fees were, however, denied by the state agency and thereafter petitioner filed a federal action claiming fees as a prevailing party in a "proceeding" to enforce §1983. The District Court held that the fee provisions of §1988 do not apply to state administrative proceedings and CA10 affirmed. The disposition is consistent with our opinion in Webb. I shall therefore vote to DENY.

Respectfully,



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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 13, 1985

No. 83-1360 Webb v. Dyer County Board of
Education

Dear John,

You have persuaded me and I join.

Sincerely,

Sandra

Justice Stevens

Copies to the Conference

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