

# The Burger Court Opinion Writing Database

## *Alexander v. Choate*

469 U.S. 287 (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

January 3, 1985

Re: No. 83-727 - Alexander v. Choate

Dear Thurgood,

I join.

Regards,

WRB

Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

November 23, 1984

No. 83-727

Alexander v. Choate

Dear Thurgood,  
I agree.

Sincerely,



Justice Marshall  
Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 3, 1984

No. 83-727

Alexander v. Choate

Dear Thurgood,

I'm still with you.

Sincerely,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 17, 1984

Re: 83- 727 - Alexander v. Choate

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Dear Thurgood,

I would hope that you will look with favor on Bill Rehnquist's suggestion of December 10.

Sincerely yours,



Justice Marshall

Copies to the Conference

7

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 3, 1985

Re: 83-727 - Alexander v. Choate

---

Dear Thurgood,

Please join me.

Sincerely yours,



Justice Marshall

Copies to the Conference

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

PP. 2, 3, 8, 15, 18, 19

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

From: **Justice Marshall**

Circulated: NOV 14 1984

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83-727

LAMAR ALEXANDER, GOVERNOR OF THE STATE  
OF TENNESSEE, ET AL., PETITIONERS *v.*  
HERSHEL CHOATE ET AL.

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

[November —, 1984]

JUSTICE MARSHALL delivered the opinion of the Court.

In 1980, Tennessee proposed reducing the number of annual days of inpatient hospital care covered by its state Medicaid program. The question presented is whether the effect upon the handicapped that this reduction will have is cognizable under § 504 of the Rehabilitation Act of 1973 or its implementing regulations. We hold that it is not.

I

Faced in 1980-1981 with projected state Medicaid<sup>1</sup> costs of \$42 million more than the state's Medicaid budget of \$388 million, the directors of the Tennessee Medicaid program decided to institute a variety of cost-saving measures. Among these changes was a reduction from 20 to 14 in the number of inpatient hospital days per fiscal year that Tennessee Medic-

<sup>1</sup>Medicaid was established by Title XIX of the Social Security Act of 1965, 79 Stat. 343 and amended, 42 U. S. C. § 1396 *et. seq.* (1982). Medicaid is a joint state-federal funding program for medical assistance in which the federal government approves a State plan for the funding of medical services for the needy and then subsidizes a significant portion of the financial obligations the state has agreed to assume. Once a State voluntarily chooses to participate in Medicaid, the State must comply with the requirements of Title XIX and applicable regulations. *Harris v. McRae*, 448 U. S. 297, 301 (1980).

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 26, 1984

MEMORANDUM TO THE CONFERENCE

Re: No. 83-727-Alexander v. Choate

As soon as possible, I will circulate a completely revised opinion in this case.

Sincerely,

*Jm.*

T.M.

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Substantial changes throughout,  
particularly Part III

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

From: **Justice Marshall**

Circulated: \_\_\_\_\_

Recirculated: **NOV 30 1984**

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 83-727

LAMAR ALEXANDER, GOVERNOR OF THE STATE  
OF TENNESSEE, ET AL., PETITIONERS *v.*  
HERSHEL CHOATE ET AL.

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

[November —, 1984]

JUSTICE MARSHALL delivered the opinion of the Court.

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### I

Faced in 1980-1981 with projected state Medicaid<sup>1</sup> costs of \$42 million more than the state's Medicaid budget of \$388 million, the directors of the Tennessee Medicaid program decided to institute a variety of cost-saving measures. Among these changes was a reduction from 20 to 14 in the number of inpatient hospital days per fiscal year that Tennessee Medic-

<sup>1</sup>Medicaid was established by Title XIX of the Social Security Act of 1965, 79 Stat. 343 and amended, 42 U. S. C. § 1396 *et. seq.* (1982). Medicaid is a joint state-federal funding program for medical assistance in which the federal government approves a State plan for the funding of medical services for the needy and then subsidizes a significant portion of the financial obligations the state has agreed to assume. Once a State voluntarily chooses to participate in Medicaid, the State must comply with the requirements of Title XIX and applicable regulations. *Harris v. McRae*, 448 U. S. 297, 301 (1980).

PP. 6, 13-14, 16, 18, 19-21

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

From: **Justice Marshall**

Circulated: \_\_\_\_\_

Recirculated: DEC 20 1984

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83-727

LAMAR ALEXANDER, GOVERNOR OF THE STATE  
OF TENNESSEE, ET AL., PETITIONERS *v.*  
HERSHEL CHOATE ET AL.

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

[November —, 1984]

JUSTICE MARSHALL delivered the opinion of the Court.

In 1980, Tennessee proposed reducing the number of annual days of inpatient hospital care covered by its state Medicaid program. The question presented is whether the effect upon the handicapped that this reduction will have is cognizable under § 504 of the Rehabilitation Act of 1973 or its implementing regulations. We hold that it is not.

I

Faced in 1980-1981 with projected state Medicaid<sup>1</sup> costs of \$42 million more than the state's Medicaid budget of \$388 million, the directors of the Tennessee Medicaid program decided to institute a variety of cost-saving measures. Among these changes was a reduction from 20 to 14 in the number of inpatient hospital days per fiscal year that Tennessee Medic-

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STYLISTIC CHANGES THROUGHOUT.

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

From: Justice Marshall

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NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

## SUPREME COURT OF THE UNITED STATES

No. 83-727

LAMAR ALEXANDER, GOVERNOR OF THE STATE  
OF TENNESSEE, ET AL., PETITIONERS *v.*  
HERSHEL CHOATE ET AL.

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

[January 9, 1985]

JUSTICE MARSHALL delivered the opinion of the Court.

In 1980, Tennessee proposed reducing the number of annual days of inpatient hospital care covered by its state Medicaid program. The question presented is whether the effect upon the handicapped that this reduction will have is cognizable under § 504 of the Rehabilitation Act of 1973 or its implementing regulations. We hold that it is not.

### I

Faced in 1980-1981 with projected state Medicaid<sup>1</sup> costs of \$42 million more than the State's Medicaid budget of \$388 million, the directors of the Tennessee Medicaid program decided to institute a variety of cost-saving measures. Among these changes was a reduction from 20 to 14 in the number of inpatient hospital days per fiscal year that Tennessee Medic-

<sup>1</sup>Medicaid was established by Title XIX of the Social Security Act of 1965, 79 Stat. 343 and amended, 42 U. S. C. § 1396 *et. seq.* (1982). Medicaid is a joint state-federal funding program for medical assistance in which the Federal Government approves a State plan for the funding of medical services for the needy and then subsidizes a significant portion of the financial obligations the state has agreed to assume. Once a State voluntarily chooses to participate in Medicaid, the State must comply with the requirements of Title XIX and applicable regulations. *Harris v. McRae*, 448 U. S. 297, 301 (1980).

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(M)

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 20, 1984

Re: No. 83-727, Alexander v. Choate

Dear Thurgood:

Please join me.

Sincerely,

*HAB.*  
—

Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

November 19, 1984

83-727 Alexander v. Choate

Dear Thurgood:

I have concerns about your opinion similar to those expressed by Sandra in her letter of November 16.

There is a substantial amount of dicta that is unnecessary to a decision of this case, and that may cause trouble for us in subsequent cases. As I read the opinion, it strongly implies that §504 is not limited to intentional discrimination. It can be argued that §504 should be interpreted like Title VI as applicable only to intentional discrimination. I am not certain how I would eventually decide this question, but do not want to commit unnecessarily in this case.

I also am troubled by considering whether a "reasonable accommodation" should have been made for the handicapped. My understanding is that if a handicapped person has non-discriminatory access to a federally funded program, §504 does not require that some additional "reasonable accommodation" be made. In Southeastern Community College, where the handicapped person was denied access to the program, we reached the "reasonable accommodation" question.

Perhaps a second draft of your opinion will meet these concerns. For the present, I will await further writing.

Sincerely,



Justice Powell

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 26, 1984

83-727 Alexander v. Choate

Dear Thurgood:

Please join me.

Sincerely,

*Lewis*

Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

November 20, 1984

Re: No. 83-727 Alexander v. Choate

Dear Thurgood:

I, too, have concerns about your draft opinion, although they differ from those already expressed by Lewis and Sandra.

I agree with most of your discussion of what is required to make out a prima facie case under §504, including your treatment of whether §504 reaches more than intentional discrimination. Like Lewis, however, I read the draft to imply that, even where meaningful access to the government benefit is provided, §504 may nevertheless require "reasonable accommodation" of benefits for the handicapped above and beyond meaningful access. The first sentence of Part IVB contains such an implication, and that implication seems to carry through Parts IVB & IVC. I don't think this question needs to be addressed, and whether or not there may be situations where such accommodations are required the question is best left for the future. I believe that you can address respondent's argument that the State must adopt plans with the least adverse effect on the handicapped without implying that §504 may sometimes require such accommodations.

Finally, I agree with Sandra's understanding of the Conference discussion. For me, the State's decision here to provide a benefit of 14 days of hospital coverage simply does not result in a "discriminatory impact" as I understand that concept. Only if the benefit provided were viewed as "adequate health care" would it be possible to find such a "discriminatory impact." But the State has not undertaken through Medicaid to provide all its citizens with adequate health care. In this case the State has defined the benefit as 14 days of hospital coverage; this definition is

reasonable and not designed to discriminate solely on the basis of handicap. The draft opinion indicates that my position is perhaps correct; however, I would be happier if it were endorsed more clearly. Certain statements on page 29 imply that the State's decision resulted in a disparate impact in this case.

If you could accommodate my views in a second draft, I would hope to be able to join.

Sincerely,

*W.M.*

Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 10, 1984

Re: No. 83-727 Alexander v. Choate

Dear Thurgood,

Your revised draft in this case answers many of the concerns I expressed in my previous memo, but I still have one general and a few specific problems that I hope you might be able to address.

The general problem involves your treatment of the Davis case and the idea that "reasonable accommodation" of benefits may be required by the Act. First, I note that although on page 13 you assume arguendo that Davis may require such accommodations, on page 20, the full paragraph, your language is considerably more direct, and indicates that Davis "requires" certain reasonable accommodations. I do not think that Davis "requires" any accommodations beyond meaningful access, although it does indicate that some tinkering with a benefit may be necessary to fulfill the Act's directive to provide meaningful access to an otherwise qualified handicapped person. Since on page 19 you conclude that the regulation at issue affords meaningful access, I find the paragraph on page 20, and some subsequent statements, very confusing, because they suggest that Davis requires reasonable accommodation of benefits when meaningful access is concededly afforded. As I said in my previous memo, I believe this question can await another day.

I am troubled by this paragraph for another reason. The final sentence states that the "reasonable accommodation" inquiry involves essentially a cost-benefit analysis each time a particular accommodation is urged on the courts. Sandra expresses problems, and I concur, with having courts undertake such an analysis each time a handicapped person argues that certain adjustments would cost less than the benefit they would confer.

I do not believe we need to decide these questions in this case; it would be sufficient to state that here meaningful access to the relevant benefit is provided, and that whatever Davis or the Act may say about accommodations necessary to provide meaningful access, or even about accommodations beyond meaningful access, the Act simply does not, as the draft points out, contemplate the complete restructuring of a state benefit program that is urged by respondent. I am afraid that any attempt to go further and define when accommodations may be necessary causes problems because it gets too far removed from the facts of this case.

Some specific requests in addition to the general:

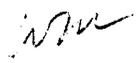
(1) In accordance with the above, could you omit footnote 22? As the footnote itself states, there is no need to get into that problem here.

(2) On page 23, if the full paragraph above "Part IV" remains as is, could you change "situation" in the second sentence to "requirement"? I believe "requirement" more appropriately states what the sentence is about.

(3) On page 6, the first full paragraph, second sentence, you state that Guardians suggests "at a minimum" that the regulations could make actionable the "disparate impact" here. I am not sure what you mean by "at a minimum," and I hope you could omit those three words.

I realize that these suggestions, if adopted, would entail a major change in your discussion of the "reasonable accommodation" requirement of the statute, and might even, if acceptable to you, be unacceptable to one or more of those who have "joined" you. I am therefore sending copies of this letter to the conference: if you can see your way clear to accommodate these suggestions, I will be happy to "join."

Sincerely,



Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 2, 1985

Re: No. 83-727 Alexander v. Choate

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 JOHN PAUL STEVENS

November 19, 1984

Re: 83-727 - Alexander v. Choate

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

November 16, 1984

No. 83-727 Alexander v. Choate

Dear Thurgood,

I have read your thorough draft opinion in this case and, although its scholarship is impressive, I am concerned that because of its length and complexity it may not furnish the helpful guidance that agencies affected by §504 need for their day to day operations. At present, I am disposed to circulate a brief concurrence in the judgment that would attempt to characterize what I believe to be the Court's essential holding.

Based on the discussion at Conference, I understood a majority of the Court to believe that, without addressing whether discriminatory intent is necessary to establish a violation of §504, the type of disparate effect involved here does not constitute a prima facie case of unlawful discrimination. Tennessee, consistent with state and federal law concerning Medicaid, has chosen to provide 14 days of coverage for inpatient hospital care. That decision is not alleged to reflect discriminatory intent, and the State has not defined the benefit in a way to exclude or deny access solely on the basis of a person's handicapped condition. Instead, the State has provided the same benefit -- 14 days of coverage -- to both handicapped and nonhandicapped persons. Section 504 does not require a state to define benefits so as to guarantee equal results or effectiveness for handicapped recipients. The fact that the handicapped need or desire more of the benefit than the State has chosen to provide does not in itself constitute discrimination in violation of the statute.

My concurrence will briefly elaborate on these views as the grounds for reversing the Court of Appeals.

Sincerely,



Justice Marshall

Copies to the Conference

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

From: **Justice O'Connor**

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83-727

LAMAR ALEXANDER, GOVERNOR OF THE STATE  
OF TENNESSEE, ET AL., PETITIONERS *v.*  
HERSHEL CHOATE ET AL.

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

[November —, 1984]

JUSTICE O'CONNOR, concurring in the judgment.

Although I concur in the Court's judgment, I write separately because I do not endorse the potentially far reaching consequences of the Court's opinion. This is an area in which clear guidance concerning the application of § 504 of the Rehabilitation Act is essential for both recipients of federal financial assistance and for the lower courts. Unfortunately, the Court's opinion fails to clarify precisely what the Court does and does not decide.

I

In this case we consider whether a proposed reduction in the number of hospital days covered by the Tennessee Medicaid program constitutes a prima facie violation of § 504 because statistical evidence indicates that the change will disproportionately affect the handicapped. As the majority acknowledges, see *ante*, at 13, we need not address and do not decide whether proof of discriminatory intent is necessary to establish a violation of § 504. Even if we assume *arguendo* that the statute and its implementing regulations may, in certain circumstances, proscribe conduct that has disparate adverse effects, the challenged reduction in the number of hospital days covered by Medicaid does not result in discrimination prohibited by § 504.

pp. 1, 2, 3, 4, 5, 6

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

From: Justice O'Connor

Circulated: \_\_\_\_\_

Recirculated: DEC 4 '84 \_\_\_\_\_

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-727

LAMAR ALEXANDER, GOVERNOR OF THE STATE  
OF TENNESSEE, ET AL., PETITIONERS v.  
HERSHEL CHOATE ET AL.

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

[December —, 1984]

JUSTICE O'CONNOR, concurring in the judgment.

Although I concur in the Court's judgment, I write separately because I am unwilling to endorse the unnecessary suggestion in the majority opinion that § 504 imposes an undefined and open-ended obligation on a recipient of federal funds to make "reasonable accommodations" in the nature of the benefit or program. Under the circumstances of this case, I believe that the Court's conclusion that handicapped persons have equal and meaningful access to the relevant benefit, see *ante*, at 19, is sufficient to establish that respondents have failed to show a prima facie violation of § 504.

I

In this case we consider whether a proposed reduction in the number of hospital days covered by the Tennessee Medicaid program constitutes a prima facie violation of § 504 because statistical evidence indicates that the change will disproportionately affect the handicapped. As the majority acknowledges, see *ante*, at 11, we need not address and do not decide whether proof of discriminatory intent is necessary to establish a violation of § 504. Even if we assume *arguendo* that the statute and its implementing regulations may, in certain circumstances, proscribe conduct that has disparate adverse effects, the challenged reduction in the num-

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CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

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

December 20, 1984

No. 83-727 Alexander v. Choate

Dear Thurgood,

I have read your third draft with interest. You have sufficiently addressed my concerns so that I now withdraw my separate concurrence in the judgment and join your opinion. Thank you for skillfully handling this rather difficult case and the various suggestions which were made.

Sincerely,

Justice Marshall

Copies to the Conference