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Spencer v. South Carolina Tax Commission

471 U.S. 82 (1985)

Paul J. Wahlbeck, George Washington University
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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

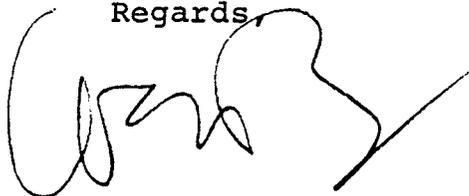
March 7, 1985

Re: No. 84-249 - Spencer v. South Carolina Tax
Commission

MEMORANDUM TO THE CONFERENCE

At Conference and at the time of assignments, I was very tentative on this case and I will come to rest in the next few days.

Regards,

A handwritten signature in black ink, appearing to be "W. B. Brennan", written over the word "Regards,".

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

[Handwritten mark]

KL2

CHAMBERS OF
THE CHIEF JUSTICE

March 15, 1985

Re: No. 84-249 - Spencer v. South Carolina Tax Commission

MEMORANDUM TO THE CONFERENCE

In making up the list of 4-4 cases, I found that since Conference, Sandra has cast a tentative "reverse" in this case.

My vote at Conference was a "very tentative" reverse. Harry was a "tentative reverse." I believe others were "shaky" also.

This is a difficult case, not made easier by excellent advocacy on both sides.

I'll put it on the "4-4" for the moment and we can discuss more fully next Friday.

Regards,

[Handwritten signature]

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

From: The Chief Justice

Circulated: MAR 25 1985

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SUPREME COURT OF THE UNITED STATES

No. 84-249

ROGER L. SPENCER, ET UX., PETITIONERS *v.* SOUTH
CAROLINA TAX COMMISSION ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH
CAROLINA

[March 27, 1985]

PER CURIAM.

The judgment is affirmed by an equally divided Court.

JUSTICE POWELL took no part in the decision of this case.

Supreme Court of the United States
Washington, D. C. 20543
April 2, 1985

CHAMBERS OF
THE CHIEF JUSTICE

Re: No. 84-976 - Bellevue Fire Fighters v. City of Bellevue

MEMORANDUM TO THE CONFERENCE:

This case was held for Spencer v. South Carolina Tax Commission (No. 84-249) which was affirmed by an equally divided Court on March 27, 1985. The petition will be discussed at the April 12 Conference.

Petitioners are firemen in Bellevue, Washington, which has an ordinance prohibiting them from participating in campaigns for Council positions. Petitioners sued, alleging that this ordinance violated state law, Wash. Rev. Code §46.06.250, as well as the free speech and association guarantees of the Federal and Washington State Constitutions. Petitioners sought declaratory and injunctive relief. Although the complaint did not expressly mention 42 U.S.C. §§1983 and 1988, it alleged that respondent had subjected petitioners, "under color of ordinance, regulation, custom and usage, to a deprivation of [federal] rights" App. 40a. The complaint also contained a prayer for attorney's fees. This is enough to invoke §§ 1983 and 1988.

The Superior Court held that the ordinance did not conflict with the state statute and was a constitutional regulation of public employees.

On direct review, the Washington Supreme Court reversed. Bellevue Fire Fighters v. Bellevue, 675 P. 2d 592 (Wash. 1984). The court held that the ordinance was pre-empted as a matter of state law by Wash. Rev. Code §41.06.250(5); that statute prohibited cities from enacting provisions which limited public employees' rights to participate in local political campaigns. In light of this holding, the court saw no reason to address petitioners' constitutional claims. Finally, the court declined to award attorney's fees under §1988, reasoning that fees were not available when petitioners prevailed solely on state law grounds.

Spencer presented the question whether a state court, whose jurisdiction is invoked both under state law and §1983 to hear a federal constitutional challenge, may exercise its jurisdiction solely pursuant to state law and thus avoid awarding attorney's fees under §1988. This petition, on the other hand, presents a narrow issue under our decision in Maher v. Gagne, 448 U.S. 122 (1980): whether petitioners' First Amendment claim was sufficiently substantial to warrant an award of attorney's fees.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 28, 1985

Re: No. 84-249 Spencer v. South Carolina Tax
Commission

MEMORANDUM TO THE CONFERENCE

With all of the discussion in the briefs about the intent of Congress when it enacted §1983, I took the highly unusual step of going back to the Statutes at Large and looking at what Congress had actually said in section 1 of the Civil Rights Act of 1871 (which is nowhere set forth in any of the briefs, so far as I am able to tell):

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress; such proceeding to be prosecuted in the several district or circuit courts of the United States, with and subject to the same rights of appeal, review upon error, and other remedies provided in like cases in such courts, under the provisions of the act of the ninth of April, eighteen hundred and sixty-six, entitled "An act to protect all persons in the United States in their civil rights, and to furnish the means of their

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vindication"; and the other remedial laws of the United States which are in their nature applicable to such cases." (emphasis added)

Sincerely,

W. M.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 26, 1985

Re: No. 84-249 Spencer v. South Carolina Tax Commission

Dear Chief,

I agree with the Per Curiam in this case.

Sincerely,

WR

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 4, 1985

No. 84-249 Spencer v. South Carolina Tax Comm'n.

Dear Chief,

I "passed" at the Conference on this case and have continued to read cases and other materials on point. My vote, which remains tentative, is in accord with yours - to reverse. Although I think the §1988 attorneys fees provision is enforceable in state court as part and parcel of §1983 actions, I do not believe injunctive relief need be given or that plaintiffs can bypass state administrative remedies. Of course, these last two matters are not raised in this case, but they will be "lurking" in the wings.

Sincerely,

Sandra

The Chief Justice

Copies to the Conference

RKL