

The Burger Court Opinion Writing Database

Library of Congress v. Shaw

478 U.S. 310 (1986)

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

June 18, 1986

RE: 85-54 - Library of Congress v. Shaw

Dear Harry:

I join.

Regards,

Justice Blackmun

Copies to the Conference

M

Supreme Court of the United States
Washington, D. C. 20543CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 11, 1986

No. 85-54

Library of Congress v. Shaw

Dear Thurgood and John,

We three are in dissent in the
above. I'll take on the dissent.

Sincerely,

Bill

Justice Marshall

Justice Stevens

.82 MAR 11 1986

Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

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W/IS
Please give me in your dissent
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-54

LIBRARY OF CONGRESS, ET AL., PETITIONERS
v. TOMMY SHAW

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

[June —, 1986]

JUSTICE BRENNAN, dissenting.

The Court today applies the rules for construing waivers of sovereign immunity in a wooden and archaic fashion to conclude that the United States has not waived its immunity to interest on attorney's fee awards. Because the result reached by the Court frustrates the clear intention of Congress, I respectfully dissent.

The so-called "no-interest rule" is, as the Court suggests, one of considerable antiquity.¹ *Ante*, at —. It is a corollary of the ancient principle that the sovereign is immune from suit and from liability for damages in the absence of an express waiver of immunity. And, as a corollary of the general sovereign immunity doctrine, the no-interest rule logically should be governed by the same canons of construction we employ to interpret waivers of sovereign immunity for suits for damages. Just two Terms ago, we explained that "waiver of sovereign immunity is accomplished not by 'a ritualistic formula;' rather, intent to waive immunity and the scope of such a waiver can only be ascertained by reference to

¹ While the "no-interest rule" is an old one, we have not always treated it as an absolute prohibition against the award of interest against the United States in the absence of an express waiver of the rule. In both *Standard Oil v. United States*, 267 U. S. 76 (1925) (Holmes, J.), and *United States v. The Tekla*, 266 U. S. 328 (1924) (Holmes, J.), the Court authorized just such awards with little explanation or analysis.

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES 1

- 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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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-54

LIBRARY OF CONGRESS, ET AL., PETITIONERS
v. TOMMY SHAW

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

[June —, 1986]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL and
JUSTICE STEVENS join, dissenting.

The Court today applies the rules for construing waivers of sovereign immunity in a wooden and archaic fashion to conclude that the United States has not waived its immunity to interest on attorney's fee awards. Because the result reached by the Court frustrates the clear intention of Congress, I respectfully dissent.

The so-called "no-interest rule" is, as the Court suggests, one of considerable antiquity.¹ *Ante*, at —. It is a corollary of the ancient principle that the sovereign is immune from suit and from liability for damages in the absence of an express waiver of immunity. And, as a corollary of the general sovereign immunity doctrine, the no-interest rule logically should be governed by the same canons of construction we employ to interpret waivers of sovereign immunity for suits for damages. Just two Terms ago, we explained that "waiver of sovereign immunity is accomplished not by 'a ritualistic formula;' rather, intent to waive immunity and the

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 10, 1986

85-54 - Library of Congress v. Shaw

Dear Harry,

Please join me.

Sincerely yours,



Justice Blackmun

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 27, 1986

Re: No. 85-54-Library of Congress v. Tommy Shaw

Dear Bill:

Please join me in your dissent.

Sincerely,

JM.
T.M.

Justice Brennan

cc: The Conference

To: The Chief Justice

Justice Brennan
 Justice White
 Justice Marshall
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Blackmun**Circulated: JUN 10 1986

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

 No. 85-54

LIBRARY OF CONGRESS, ET AL., PETITIONERS
 v. TOMMY SHAW

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

[June —, 1986]

JUSTICE BLACKMUN delivered the opinion of the Court.

The no-interest rule is to the effect that interest cannot be recovered in a suit against the Government in the absence of an express waiver of sovereign immunity from an award of interest. In this case, attorney's fees as well as interest on those fees were awarded to a plaintiff who prevailed against petitioner Library of Congress in a suit brought under Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U. S. C. §2000e *et seq.* We therefore must decide whether Congress, in enacting Title VII, expressly waived the Government's immunity from interest.

I

Respondent Tommy Shaw is an employee of the Library of Congress. He is black. During 1976 and 1977, he filed three complaints with the Library's Equal Employment Office alleging job-related racial discrimination. Following an investigation, Library officials rejected his complaints. Thereafter, respondent's counsel pursued administrative relief and settlement negotiations, and eventually reached a settlement with the Library. The latter agreed to promote Shaw retroactively with backpay provided that the Comptroller General first determined that the Library had authority to do so in the absence of a specific finding of racial discrimination. The Comptroller General ruled that the

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 24, 1986

MEMORANDUM TO THE CONFERENCE

Re: Hold for No. 85-54, Library of Congress v. Shaw

GVR
One case is held for Shaw. It is No. 85-50, Shultz v. Palmer. In this case, respondents successfully sought relief against petitioner State Department on a Title VII sex discrimination claim. Subsequently, they sought the award of attorney's fees under 42 U.S.C. §2000e-5(k). The District Court awarded fees in an amount designed to compensate for the delay that had occurred between the time the attorneys had performed the work and the time they were to be paid. Delay was figured into the attorney's fee award by calculating the hourly rate on the basis of then current rates (1984), rather than by using the lower rates that prevailed when the work was performed (1979). The DC rejected the Government's claim that this award amounted to an unconsented award of interest against the United States. CADC affirmed in a brief order, citing its earlier opinion in Library of Congress v. Shaw, which held that an award of interest against the Government was permissible under 42 U.S.C. §2000e-5(k).

In Library of Congress v. Shaw, this Court will reverse the decision of CADC, and will hold that (1) interest may not be awarded against the United States in the absence of express waiver as to interest awards (the "no-interest rule"); (2) 42 U.S.C. §2000e-5(k) does not contain the requisite waiver; and (3) because both payment for delay and an award of interest compensate for the belated receipt of money, both increases are prohibited by the no-interest rule.

I shall vote to GVR Schultz v. Palmer in light of No. 85-54, Library of Congress v. Shaw.

HCB

NY

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 12, 1986

85-54 Library of Congress v. Shaw

Dear Harry:

Please join me.

Sincerely,

Lewis

Justice Blackmun

lfp/ss

cc: The Conference



CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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

June 16, 1986

Re: No. 85-54 Library of Congress v. Shaw

Dear Harry,

Please join me.

Sincerely,

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 25, 1986

Re: 85-54 - Library of Congress v. Shaw

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

Copies to the Conference

W

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 10, 1986

No. 85-54 Library of Congress v. Shaw

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

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