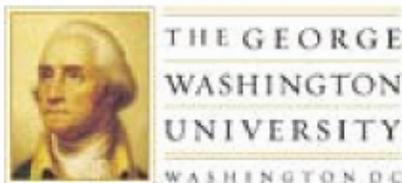


The Burger Court Opinion Writing Database

University of Tennessee v. Elliott

478 U.S. 788 (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

May 6, 1986

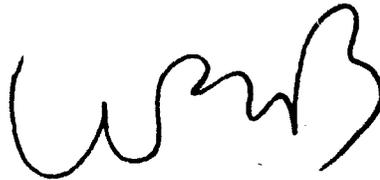
CHAMBERS OF
THE CHIEF JUSTICE

RE: 85-558 - University of Tennessee v. Elliott

Dear John:

Subject to how this case "writes out", will you be interested in taking on a dissent?

Regards,

A handwritten signature in black ink, appearing to be 'WB', written in a cursive style.

Justice Stevens
Justice Brennan
Justice Blackmun

4

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

CHAMBERS OF
THE CHIEF JUSTICE

June 18, 1986

RE: 85-588 - Univ. of Tenn. v. Elliott

Dear Byron:

I join.

Regards,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

July 2, 1986

No. 85-588

University of Tennessee v. Elliott

Dear Byron and John,

I intended to write separately in this case in order to express my concern that the Court had too quickly resorted to its common law powers without considering whether §1738 left us any such power. After considering several drafts, I have now concluded that the opinion "will not write." I therefore add my vote to John's opinion concurring in part and dissenting in part. I'm sorry I've held this case up.

Sincerely,



Justice White

Justice Stevens

Copies to the Conference

86 711 -5 65108

711
6

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

From: **Justice White**

Circulated: *Ms. 20 1986*

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-588

UNIVERSITY OF TENNESSEE, ET AL., PETITIONERS
v. ROBERT B. ELLIOTT

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

[May —, 1986]

JUSTICE WHITE delivered the opinion of the Court.

A state administrative law judge determined that petitioner was not motivated by racial prejudice in seeking to discharge respondent. The question presented is whether this finding is entitled to preclusive effect in federal court, where respondent has raised discrimination claims under under Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.* (as amended), and other civil rights laws.

I

In 1981, petitioner University of Tennessee informed respondent, a black employee of the University's Agricultural Extension Service, that he would be discharged for inadequate work performance and misconduct on the job. Respondent requested a hearing under the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 *et seq.*, to contest his proposed termination. Prior to the commencement of the administrative proceedings, respondent also filed suit in the United States District Court for the Western District of Tennessee, alleging that his proposed discharge was racially motivated and seeking relief under Title VII and other civil rights statutes, including 42

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 27, 1986

85-588 - University of Tennessee v. Elliott

Dear John,

I don't blame you for waiting. The vote was 4-4, and my draft is in the nature of a memorandum.

Sincerely yours,



Justice Stevens

Copies to the Conference

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

From: **Justice White**

Circulated: _____

Recirculated: JUN 5 1986

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 5

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-588

UNIVERSITY OF TENNESSEE, ET AL., PETITIONERS
v. ROBERT B. ELLIOTT

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

[June —, 1986]

JUSTICE WHITE delivered the opinion of the Court.

A state administrative law judge determined that petitioner was not motivated by racial prejudice in seeking to discharge respondent. The question presented is whether this finding is entitled to preclusive effect in federal court, where respondent has raised discrimination claims under under Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.* (as amended), and other civil rights laws.

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In 1981, petitioner University of Tennessee informed respondent, a black employee of the University's Agricultural Extension Service, that he would be discharged for inadequate work performance and misconduct on the job. Respondent requested a hearing under the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 *et seq.*, to contest his proposed termination. Prior to the commencement of the administrative proceedings, respondent also filed suit in the United States District Court for the Western District of Tennessee, alleging that his proposed discharge was racially motivated and seeking relief under Title VII and other civil rights statutes, including 42

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

From: **Justice White**

Circulated: _____

Recirculated: JUN 14 1986

p. 10
3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-588

UNIVERSITY OF TENNESSEE, ET AL., PETITIONERS
v. ROBERT B. ELLIOTT

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

[June —, 1986]

JUSTICE WHITE delivered the opinion of the Court.

A state administrative law judge determined that petitioner was not motivated by racial prejudice in seeking to discharge respondent. The question presented is whether this finding is entitled to preclusive effect in federal court, where respondent has raised discrimination claims under Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.* (as amended), and other civil rights laws.

I

In 1981, petitioner University of Tennessee informed respondent, a black employee of the University's Agricultural Extension Service, that he would be discharged for inadequate work performance and misconduct on the job. Respondent requested a hearing under the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 *et seq.*, to contest his proposed termination. Prior to the commencement of the administrative proceedings, respondent also filed suit in the United States District Court for the Western District of Tennessee, alleging that his proposed discharge was racially motivated and seeking relief under Title VII and other civil rights statutes, including 42

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

From: **Justice White**

Circulated: _____

Recirculated: _____

STYLISTIC CHANGES THROUGHOUT.
SEE PAGE 3.

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-588

UNIVERSITY OF TENNESSEE, ET AL., PETITIONERS
v. ROBERT B. ELLIOTT

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

[June —, 1986]

JUSTICE WHITE delivered the opinion of the Court.

A state Administrative Law Judge determined that petitioner was not motivated by racial prejudice in seeking to discharge respondent. The question presented is whether this finding is entitled to preclusive effect in federal court, where respondent has raised discrimination claims under Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U. S. C. §2000e *et seq.*, and other civil rights laws.

I

In 1981, petitioner University of Tennessee informed respondent, a black employee of the University's Agricultural Extension Service, that he would be discharged for inadequate work performance and misconduct on the job. Respondent requested a hearing under the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. §4-5-101 *et seq.* (1985), to contest his proposed termination. Prior to the commencement of the administrative proceedings, respondent also filed suit in the United States District Court for the Western District of Tennessee, alleging that his proposed discharge was racially motivated and seeking relief under Title VII and other civil rights statutes, including 42

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

From: Justice White

Circulated: _____

Recirculated: JUN 20 1986

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES 6

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-588

UNIVERSITY OF TENNESSEE, ET AL., PETITIONERS
v. ROBERT B. ELLIOTT

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

[June —, 1986]

JUSTICE WHITE delivered the opinion of the Court.

A state Administrative Law Judge determined that petitioner was not motivated by racial prejudice in seeking to discharge respondent. The question presented is whether this finding is entitled to preclusive effect in federal court, where respondent has raised discrimination claims under various civil rights laws, including Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U. S. C. § 2000e *et seq.*, and 42 U. S. C. § 1983.

I

In 1981, petitioner University of Tennessee informed respondent, a black employee of the University's Agricultural Extension Service, that he would be discharged for inadequate work performance and misconduct on the job. Respondent requested a hearing under the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 *et seq.* (1985), to contest his proposed termination. Prior to the start of the hearing, respondent also filed suit in the United States District Court for the Western District of Tennessee, alleging that his proposed discharge was racially motivated and seeking relief under Title VII and other civil

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES:

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. 85-588

UNIVERSITY OF TENNESSEE, ET AL., PETITIONERS
v. ROBERT B. ELLIOTT

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

[July 7, 1986]

JUSTICE WHITE delivered the opinion of the Court.

A state Administrative Law Judge determined that petitioner was not motivated by racial prejudice in seeking to discharge respondent. The question presented is whether this finding is entitled to preclusive effect in federal court, where respondent has raised discrimination claims under various civil rights laws, including Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U. S. C. § 2000e *et seq.*, and 42 U. S. C. § 1983.

I

In 1981, petitioner University of Tennessee informed respondent, a black employee of the University's Agricultural Extension Service, that he would be discharged for inadequate work performance and misconduct on the job. Respondent requested a hearing under the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 *et seq.* (1985), to contest his proposed termination. Prior to the start of the hearing, respondent also filed suit in the United States District Court for the Western District of Tennessee, alleging that his proposed discharge was racially motivated and seeking relief under Title VII and other civil rights statutes, including 42 U. S. C. § 1983.¹ The relief

¹ Respondent's complaint also included claims under 42 U. S. C. §§ 1981, 1985, 1986, and 1988, as well as the First, Thirteenth, and Fourteenth

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 24, 1986

MEMORANDUM TO THE CONFERENCE

Re: Case held for University of Tennessee v. Elliot, No. 85-588.

Buckhalter v. Pepsi-Cola Gen. Bottlers, Inc., No. 85-6094.

SUR

Petr is a black man fired by resp under a rule prohibiting possession of drugs or alcohol on company property. Petr filed a complaint of racial discrimination with a state agency, alleging that he had been treated differently than white employees found in violation of the rule. The ALJ who presided over the hearing found that petr's discharge was not the result of racial discrimination. A panel of the Illinois Human Rights Commission affirmed the ALJ's decision. Rather than seeking review in state court, petr filed an action in federal court, raising claims of racial discrimination under Title VII and 42 U.S.C. §1981. The District Court held petr's action barred by res judicata. The Seventh Circuit affirmed, holding that "administrative res judicata" applies to petr's discrimination claims under both Title VII and §1981. 768 F.2d 842 (July 18, 1985), rhg denied Sept 27, 1985.

While petr was pursuing his case in federal court, resp was pursuing a motion in state court for an award of attorney's fees, alleging that petr's complaint to the state agency was patently frivolous. Resp's motion was denied by a state trial court, a decision that was affirmed in an opinion of the Illinois Court of Appeals in a decision issued October 10, 1985, some two weeks after the Seventh Circuit denied rehearing in resp's Title VII/§1981 action. The Ill. Ct. App. held that "there was sufficient proof to support a conclusion that [petr's] claim was not frivolous, unreasonable, or groundless, and that it was not continued after it became clearly so." Supplemental App. to Petition for Cert SA-10.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 18, 1986

Re: No. 85-588-University of Tennessee v. Elliott

MEMORANDUM TO THE CONFERENCE

Having discovered that a cousin of mine is one of the attorneys for respondent, I must disqualify myself from this case.

Sincerely,

T.M.
T.M.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 5, 1986

Re: No. 85-588-University of Tennessee v. Elliott

Dear Byron:

Please mention that I took no part in this one.

Sincerely,



T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 25, 1986

Re: No. 85-588, University of Tennessee v. Elliott

Dear Byron:

I am joining John in this case and thereby join Parts I, II, and III of your opinion.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 25, 1986

Re: No. 85-588, University of Tennessee v. Elliott

Dear John:

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a long horizontal flourish extending to the right.

Justice Stevens

cc: The Conference

2

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 5, 1986

85-588 University of Tennessee v. Elliott

Dear Byron:

Please join me.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 28, 1986

Re: 85-588 - University of Tennessee v. Elliott

Dear Byron:

Please join me.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 7, 1986

Re: 85-588 - University of Tennessee v.
Elliott

Dear Chief:

I will be happy to take on the dissent in this case unless, of course, Byron writes something that we find we can join.

Respectfully,

JPM

The Chief Justice

cc: Justice Brennan
Justice Blackmun

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 22, 1986

Re: 85-588 - University of Tennessee v.
Elliott

Dear Byron:

The Chief Justice asked me to take on the dissent in this case, but since my Conference notes remind me that there may be some question about your obtaining five votes to reverse on the § 1983 question, I will defer writing until it appears likely that you will have a Court. At the moment, I remain persuaded that the policy considerations that motivated the enactment of the civil rights legislation during the reconstruction period strongly militate against the conclusion that you reach in Part IV.

I believe I could go along with a rule that generally gives preclusive effect to administrative factfinding, but the concern with the quality of justice administered to blacks by state governments shortly after the Civil War seems to me to call for a different result in this particular context.

Respectfully,



Justice White

Copies to the Conference

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

From: **Justice Stevens**

Circulated: JUN 24 1986

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-588

UNIVERSITY OF TENNESSEE, ET AL., PETITIONERS
v. ROBERT B. ELLIOTT

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

[June —, 1986]

JUSTICE STEVENS, concurring in part and dissenting in part.

An administrative assistant to the Vice President for Agriculture of the University of Tennessee conducted a hearing and determined that respondent's proposed discharge was not racially motivated. The Court today correctly holds that 28 U. S. C. § 1738 does not require that this determination by an administrative assistant be given full faith and credit in subsequent federal litigation. The Court also correctly refuses to fashion a federal common law rule of preclusion that would bar respondent from litigating his claim against the University under Title VII of the Civil Rights Act of 1964. I agree with these conclusions and therefore join Parts I, II, and III of the Court's opinion.

In Part IV of its opinion, however, the Court concludes that the findings of the administrative assistant may bar respondent's claims under 42 U. S. C. § 1983 and other of the Reconstruction-era Civil Rights Acts. Although its reading of the legislative history of the 1964 Civil Rights Act persuades the Court that it should not interpose a judicially-created bar to the cause of action authorized by that statute, it creates such a bar to claims authorized by the earlier Civil Rights statutes without even mentioning the concerns that prompted their enactment. As a consequence, the Court's analysis is incomplete and ultimately unconvincing.

To: The Chief Justice

- Justice Brennan
- Justice White
- Justice Marshall
- Justice Blackmun
- Justice Powell
- Justice Rehnquist
- Justice O'Connor

STYLISTIC CHANGES THROUGHOUT
SEE PAGES. 1

From: **Justice Stevens**

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Recirculated: JUN 6 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-588

UNIVERSITY OF TENNESSEE, ET AL., PETITIONERS
v. ROBERT B. ELLIOTT

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

[June 30, 1986]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and
JUSTICE BLACKMUN join, concurring in part and dissenting in
part.

An administrative assistant to the Vice President for Agri-
culture of the University of Tennessee conducted a hearing
and determined that respondent's proposed discharge was
not racially motivated. The Court today correctly holds that
28 U. S. C. § 1738 does not require that this determination by
an administrative assistant be given full faith and credit in
subsequent federal litigation. The Court also correctly
refuses to fashion a federal common-law rule of preclusion
that would bar respondent from litigating his claim against
the University under Title VII of the Civil Rights Act of
1964. I agree with these conclusions and therefore join
Parts I, II, and III of the Court's opinion.

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that the findings of the administrative assistant may bar re-
spondent's claims under 42 U. S. C. § 1983 and other of the
Reconstruction-era Civil Rights Acts. Although its reading
of the legislative history of the 1964 Civil Rights Act per-
suades the Court that it should not interpose a judicially-cre-
ated bar to the cause of action authorized by that statute, it
creates such a bar to claims authorized by the earlier Civil
Rights statutes without even mentioning the concerns that

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

7.1

From: Justice Stevens

Circulated: _____

Recirculated: _____

3rd
2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-588

UNIVERSITY OF TENNESSEE, ET AL., PETITIONERS
v. ROBERT B. ELLIOTT

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

[July —, 1986]

JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins,
concurring in part and dissenting in part.

An administrative assistant to the Vice President for Agriculture of the University of Tennessee conducted a hearing and determined that respondent's proposed discharge was not racially motivated. The Court today correctly holds that 28 U. S. C. § 1738 does not require that this determination by an administrative assistant be given full faith and credit in subsequent federal litigation. The Court also correctly refuses to fashion a federal common-law rule of preclusion that would bar respondent from litigating his claim against the University under Title VII of the Civil Rights Act of 1964. I agree with these conclusions and therefore join Parts I, II, and III of the Court's opinion.

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CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

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

June 4, 1986

No. 85-588 University of Tennessee v. Elliott

Dear Byron,

I join your opinion in this case, but I would appreciate your considering adding a sentence just before the last sentence of Part II along the following lines: "Although §1738 is a governing statute with regard to the judgments and records of state courts, because §1738 antedates the development of administrative agencies it clearly does not represent a congressional determination that the decisions of state administrative agencies should not be given preclusive effect."

Sincerely,

Justice White

Copies to the Conference