SUPREME COURT OF THE UNITED STATES

No. 02–69

JOSEPH C. ROELL, PETRA GARIBAY, AND JAMES REAGAN, PETITIONERS *v.* JON MICHAEL WITHROW

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

[April 29, 2003]

JUSTICE SOUTER delivered the opinion of the Court.

The Federal Magistrate Act of 1979 (Federal Magistrate Act or Act), expanded the power of magistrate judges by authorizing them to conduct "any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case," as long as they are "specially designated . . . by the district court" and are acting "[u]pon the consent of the parties." 28 U. S. C. §636(c)(1). The question is whether consent can be inferred from a party's conduct during litigation, and we hold that it can be.

I

Respondent Jon Michael Withrow is a Texas state prisoner who brought an action under Rev. Stat. §1979, 42 U. S. C. §1983, against members of the prison's medical staff, petitioners Joseph Roell, Petra Garibay, and James Reagan, alleging that they had deliberately disregarded his medical needs in violation of the Eighth Amendment. See *Estelle* v. *Gamble,* 429 U. S. 97 (1976). During a preliminary hearing before a Magistrate Judge to determine whether the suit could proceed *in forma pauperis*, see 28

U. S. C. §1915, the Magistrate Judge told Withrow that he could choose to have her rather than the District Judge preside over the entire case. App. 10–11. Withrow agreed orally, *id.*, at 11, and later in writing, App. to Pet. for Cert. 20a. A lawyer from the Texas attorney general's office who attended the hearing, but was not permanently assigned to Withrow's case, indicated that she would have to "talk to the attorneys who have been assigned the case to see if [the petitioners] will execute consent forms." App. 11.

Without waiting for the petitioners' decision, the District Judge referred the case to the Magistrate Judge for final disposition, but with the caveat that "all defendants [would] be given an opportunity to consent to the jurisdiction of the magistrate judge," and that the referral order would be vacated if any of the defendants did not consent. App. to Pet. for Cert. 21a. The Clerk of Court sent the referral order to the petitioners along with a summons directing them to include "[i]n their answer or in a separate pleading . . . a statement that 'All defendants consent to the jurisdiction of a United States Magistrate Judge' or 'All defendants do not consent to the jurisdiction of a United States Magistrate Judge.'" App. 13. The summons advised them that "[t]he court shall not be told which parties do not consent." *Ibid.* Only Reagan, who was represented by private counsel, gave written consent to the referral; Roell and Garibay, who were represented by an assistant in the attorney general's office, filed answers but said nothing about the referral. App. to Pet. for Cert. 17a.

The case nevertheless proceeded in front of the Magistrate Judge, all the way to a jury verdict and judgment for the petitioners. When Withrow appealed, the Court of Appeals *sua sponte* remanded the case to the District Court to "determine whether the parties consented to proceed before the magistrate judge and, if so, whether the

consents were oral or written." *Id.,* at 13a. It was only then that Roell and Garibay filed a formal letter of consent with the District Court, stating that "they consented to all proceedings before this date before the United States Magistrate Judge, including disposition of their motion for summary judgment and trial." *Id.,* at 22a.

The District Court nonetheless referred the Court of Appeals's enquiry to the same Magistrate Judge who had conducted the trial, who reported that "by their actions [Roell and Garibay] clearly implied their consent to the jurisdiction of a magistrate." *Id.,* at 19a. She was surely correct, for the record shows that Roell and Garibay voluntarily participated in the entire course of proceedings before the Magistrate Judge, and voiced no objection when, at several points, the Magistrate Judge made it clear that she believed they had consented.[1] The Magistrate Judge observed, however, that under the Circuit's precedent "consent cannot be implied by the conduct of the parties," *id.,* at 18a, and she accordingly concluded that the failure of Roell and Garibay to give express consent before sending their postjudgment letter to the District Court meant that she had lacked jurisdiction to hear the case, *ibid.* The District Court adopted the report and

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[1] On at least three different occasions, counsel for Roell and Garibay was present and stood silent when the Magistrate Judge stated that they had consented to her authority. First, in a status teleconference involving the addition of a new defendant, Danny Knutson, who later settled with Withrow and was dropped from the suit, the Magistrate Judge stated that "all of the other parties have consented to my jurisdiction." App. 18. Petitioners later filed a motion for summary judgment, which the Magistrate Judge denied, noting in her order that "this case was referred to the undersigned to conduct all further proceedings, including entry of final judgment, in accordance with 28 U. S. C. §636(c)(1)." App. to Pet. for Cert. 26a. And finally, during jury selection, the Magistrate Judge told the panel that both sides had consented to her jurisdiction to hear the case. *Id.,* at 27a.

recommendation over the petitioners' objection. *Id.,* at 14a–15a.

The Court of Appeals affirmed the District Court, agreeing that "[w]hen, pursuant to §636(c)(1), the magistrate judge enters a final judgment, lack of consent and defects in the order of reference are jurisdictional errors" that cannot be waived. 288 F. 3d 199, 201 (CA5 2002). It also reaffirmed its prior holding that "§636(c) consent must be express; it cannot be implied by the parties' conduct." *Ibid.* Finally, the appellate court decided that petitioners' postjudgment consent did not satisfy §636(c)(1)'s consent requirement. *Id.*, at 203. We granted certiorari, 537 U. S. 999 (2002), and now reverse.

II

The Federal Magistrate Act provides that "[u]pon the consent of the parties, a full-time United States magistrate judge . . . may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court." 28 U. S. C. §636(c)(1). Unlike nonconsensual referrals of pretrial but case-dispositive matters under §636(b)(1), which leave the district court free to do as it sees fit with the magistrate judge's recommendations, a §636(c)(1) referral gives the magistrate judge full authority over dispositive motions, conduct of trial, and entry of final judgment, all without district court review. A judgment entered by "a magistrate judge designated to exercise civil jurisdiction under [§636(c)(1)]" is to be treated as a final judgment of the district court, appealable "in the same manner as an appeal from any other judgment of a district court." §636(c)(3).[2]

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[2] Prior to the 1996 amendments to the Act, see Federal Courts Improvement Act of 1996, Pub. L. 104–317, §207(1)(B), 110 Stat. 3850,

Section 636(c)(2) establishes the procedures for a §636(c)(1) referral. "If a magistrate judge is designated to exercise civil jurisdiction under [§636(c)(1)], the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate judge to exercise such jurisdiction." §636(c)(2). Within the time required by local rule, "[t]he decision of the parties shall be communicated to the clerk of court." *Ibid.* Federal Rule of Civil Procedure 73(b) specifies that the parties' election of a magistrate judge shall be memorialized in "a joint form of consent or separate forms of consent setting forth such election," see Fed. Rules Civ. Proc. Form 34, and that neither the magistrate nor the district judge "shall . . . be informed of a party's response to the clerk's notification, unless all parties have consented to the referral of the matter to a magistrate judge." The procedure created by 28 U. S. C. §636(c)(2) and Rule 73(b) thus envisions advance, written consent communicated to the clerk, the point being to preserve the confidentiality of a party's choice, in the interest of protecting an objecting party against any possible prejudice at the magistrate judge's hands later on. See also §636(c)(2) ("Rules of court for the reference of civil matters to magistrate judges shall include procedures to protect the voluntariness of parties' consent").

Here, of course, §636(c)(2) was honored in the breach, by a referral before Roell and Garibay gave their express

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parties could also elect to appeal to "a judge of the district court in the same manner as on an appeal from a judgment of the district court to a court of appeals." 28 U. S. C. §636(c)(4) (1994 ed.) (repealed 1996). If the latter course was pursued, the court of appeals could grant leave to appeal the district court's judgment. §636(c)(5) (same). In all events, whether the initial appeal was to the court of appeals under §636(c)(3) or to the district court under §636(c)(4), the parties retained the right to seek ultimate review from this Court. §636(c)(5) (same).

consent, without any statement from them, written or oral, until after judgment. App. to Pet. for Cert. 19a. Nonetheless, Roell and Garibay "clearly implied their consent" by their decision to appear before the Magistrate Judge, without expressing any reservation, after being notified of their right to refuse and after being told that she intended to exercise case-dispositive authority. *Ibid.*[3] The only question is whether consent so shown can count as conferring "civil jurisdiction" under §636(c)(1), or whether adherence to the letter of §636(c)(2) is an absolute demand.

So far as it concerns full-time magistrate judges,[4] the font of a magistrate judge's authority, §636(c)(1), speaks only of "the consent of the parties," without qualification as to form, and §636(c)(3) similarly provides that "[t]he consent of the parties allows" a full-time magistrate judge to enter a final, appealable judgment of the district court. These unadorned references to "consent of the parties" contrast with the language in §636(c)(1) covering referral to certain part-time magistrate judges, which requires not only that the parties consent, but that they do so by "specific written request." Cf. also 18 U. S. C. §3401(b) (allowing magistrate judges to preside over misdemeanor trials only if the defendant "expressly consents . . . in writing or orally on the record"). A distinction is thus being made between consent simple, and consent expressed in a "specific written request." And although the

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[3] See Black's Law Dictionary 95 (7th ed. 1999) ("'The term "appearance" . . . designate[s] the overt act by which [a party] submits himself to a court's jurisdiction . . . . An appearance may be expressly made by formal written or oral declaration, or record entry, or it may be implied from some act done with the intention of appearing and submitting to the court's jurisdiction'" (quoting 4 Am. Jur. 2d, Appearance §1, p. 620 (1995))).

[4] The parties do not dispute that the Magistrate Judge who presided over the trial was a full-time Magistrate Judge.

specific referral procedures in 28 U. S. C. §636(c)(2) and Federal Rule of Civil Procedure 73(b) are by no means just advisory, the text and structure of the section as a whole suggest that a defect in the referral to a full-time magistrate judge under §636(c)(2) does not eliminate that magistrate judge's "civil jurisdiction" under §636(c)(1) so long as the parties have in fact voluntarily consented. See *King* v. *Ionization Int'l, Inc.*, 825 F. 2d 1180, 1185 (CA7 1987) (noting that the Act "does not require a specific form . . . of consent").[5]

These textual clues are complemented by a good pragmatic reason to think that Congress intended to permit implied consent. In giving magistrate judges case-

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[5]The textual evidence cited by the dissent is far from conclusive. The dissent focuses on the fact that §636(c)(1) allows a magistrate judge to exercise authority only "[u]pon" the parties' consent, and it concludes that this temporal connotation forecloses accepting implied consent. But the timing of consent is a different matter from the manner of its expression, and it is perfectly in keeping with the sequence of events envisioned by §636(c)(1) to infer consent from a litigant's initial act of appearing before the magistrate judge and submitting to her jurisdiction, instead of insisting on trial before a district judge. An "appearance" being commonly understood as "[t]he first act of the defendant in court," J. Ballentine, Law Dictionary with Pronunciations 91 (2d ed. 1948), any subsequent proceedings by the court will occur "[u]pon the consent of the parties," §636(c)(1).

Furthermore, it is hardly true, contrary to the dissent's claim, *post*, at 3 (opinion of THOMAS, J.), that §636(c)(2) and Rule 73(b) are pointless if implied consent is permitted under §636(c)(1). Certainly, notification of the right to refuse the magistrate judge is a prerequisite to any inference of consent, so that aspect of §636(c)(2)'s protection is preserved. And litigants may undoubtedly insist that they be able to communicate their decision on the referral to the clerk, in order to guard against the risk of reprisals at the hands of either judge. The only question is whether a litigant who forgoes that procedural opportunity, but still voluntarily gives his consent through a general appearance before the magistrate judge, is still subject to the magistrate judge's "civil jurisdiction," and we think that the language of §636(c)(1) indicates that he is.

dispositive civil authority, Congress hoped to relieve the district courts' "mounting queue of civil cases" and thereby "improve access to the courts for all groups." S. Rep. No. 96–74, p. 4 (1979); see H. R. Rep. No. 96–287, p. 2 (1979) (The Act's main object was to create "a supplementary judicial power designed to meet the ebb and flow of the demands made on the Federal judiciary"). At the same time, though, Congress meant to preserve a litigant's right to insist on trial before an Article III district judge insulated from interference with his obligation to ignore everything but the merits of a case. See *Commodity Futures Trading Comm'n* v. *Schor,* 478 U. S. 833, 848 (1986) (Article III protects litigants' "'right to have claims decided before judges who are free from potential domination by other branches of government'" (quoting *United States* v. *Will,* 449 U. S. 200, 218 (1980))). It was thus concern about the possibility of coercive referrals that prompted Congress to make it clear that "the voluntary consent of the parties is required before a civil action may be referred to a magistrate for a final decision." S. Conf. Rep. No. 96–322, p. 7 (1979); see also S. Rep. No. 96–74, at 5 ("The bill clearly requires the voluntary consent of the parties as a prerequisite to a magistrate's exercise of the new jurisdiction. The committee firmly believes that no pressure, tacit or expressed, should be applied to the litigants to induce them to consent to trial before the magistrates"); H. R. Rep. No. 96–287, at 2 (The Act "creates a vehicle by which litigants can consent, freely and voluntarily, to a less formal, more rapid, and less expensive means of resolving their civil controversies").[6]

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[6] Originally, the third sentence of §636(c)(2) provided that once the decision of the parties was communicated to the clerk, "neither the district judge nor the magistrate shall attempt to persuade or induce any party to consent to reference of any civil matter to a magistrate." 93 Stat. 643. In the 1990 amendments to the Act, Congress amended

When, as here, a party has signaled consent to the magistrate judge's authority through actions rather than words, the question is what outcome does better by the mix of congressional objectives. On the one hand, the virtue of strict insistence on the express consent requirement embodied in §636(c)(2) is simply the value of any bright line: here, absolutely minimal risk of compromising the right to an Article III judge. But there is another risk, and insisting on a bright line would raise it: the risk of a full and complicated trial wasted at the option of an undeserving and possibly opportunistic litigant. This risk is right in front of us in this case. Withrow consented orally and in writing to the Magistrate Judge's authority following notice of his right to elect trial by an Article III district judge; he received the protection intended by the statute, and deserves no boon from the other side's failure to cross the bright line. In fact, there is even more to Withrow's unworthiness, since under the local rules of the District Court, it was Withrow's unmet responsibility as plaintiff to get the consent of all parties and file the completed consent form with the clerk. See Gen. Order No. 80–5, Art. III(B)(2) (SD Tex., June 16, 1980), p. 5, App. to Brief in Opposition 7a. In another case, of course, the shoe might be on the other foot; insisting on the bright line would allow parties in Roell's and Garibay's position to sit back without a word about their failure to file the form, with a right to vacate any judgment that turned out not to their liking.

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§636(c)(2) to provide that even after the parties' decision is made, "either the district court judge or the magistrate may again advise the parties of the availability of the magistrate, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences." Judicial Improvements Act of 1990, Pub. L. 101–650, §308, 104 Stat. 5112. The change reflected Congress's diminishing concern that communication between the judge and the parties would lead to coercive referrals. See H. R. Rep. No. 101–734, p. 27 (1990).

The bright line is not worth the downside. We think the better rule is to accept implied consent where, as here, the litigant or counsel was made aware of the need for consent and the right to refuse it, and still voluntarily appeared to try the case before the Magistrate Judge. Inferring consent in these circumstances thus checks the risk of gamesmanship by depriving parties of the luxury of waiting for the outcome before denying the magistrate judge's authority. Judicial efficiency is served; the Article III right is substantially honored. See *Schor*, *supra*, at 849–850 (finding that the litigant "effective[ly] waive[d]" his right to an Article III court by deciding "to seek relief before the [Commodity Futures Trading Commission] rather than in the federal courts"); *United States* v. *Raddatz,* 447 U. S. 667, 676, n. 3 (1980) (eschewing a construction of the Act that would tend to "frustrate the plain objective of Congress to alleviate the increasing congestion of litigation in the district courts").[7]

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[7] We doubt that this interpretation runs a serious risk of "spawn[ing] a second litigation of significant dimension." *Buckhannon Board & Care Home, Inc.* v. *West Virginia Dept. of Health and Human Resources,* 532 U. S. 598, 609 (2001) (internal quotation marks omitted). In the first place, implied consent will be the exception, not the rule, since, as we discuss above, district courts remain bound by the procedural requirements of §636(c)(2) and Federal Rule of Civil Procedure 73(b). See *supra*, at 6–7, and n. 5. The dissent surmises, *post*, at 5, that our position raises "ambiguities" as to whether an inference of consent will be supported in a particular case, but we think this concern is greatly exaggerated: as long as parties are notified of the availability of a district judge as required by §636(c)(2) and Rule 73(b), a litigant's general appearance before the magistrate judge will usually indicate the necessary consent. In all events, whatever risk of "second[ary] litigation" may exist under an implied consent rule pales in comparison to the inefficiency and unfairness of requiring relitigation of the entire case in circumstances like these.

III

Roell's and Garibay's general appearances before the Magistrate Judge, after they had been told of their right to be tried by a district judge, supply the consent necessary for the Magistrate Judge's "civil jurisdiction" under §636(c)(1).[8] We reverse the judgment of the Court of Appeals and remand the case for proceedings consistent with this opinion.

It is so ordered.

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[8] Because we conclude that Roell and Garibay impliedly consented to the Magistrate Judge's authority, we need not address whether express postjudgment consent would be sufficient in a case where there was no prior consent, either express or implied. We also have no opportunity to decide whether the Court of Appeals was correct that lack of consent is a "jurisdictional defect" that can be raised for the first time on appeal.