SUPREME COURT OF THE UNITED STATES

No. 03–1601

CITY OF RANCHO PALOS VERDES, CALIFORNIA, ET AL., PETITIONERS *v.* MARK J. ABRAMS

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

[March 22, 2005]

JUSTICE STEVENS, concurring in the judgment.

When a federal statute creates a new right but fails to specify whether plaintiffs may or may not recover damages or attorney's fees, we must fill the gap in the statute's text by examining all relevant evidence that sheds light on the intent of the enacting Congress. The inquiry varies from statute to statute. Sometimes the question is whether, despite its silence, Congress intended us to recognize an implied cause of action. See, *e.g., Cannon* v. *University of Chicago*, 441 U. S. 677 (1979). Sometimes we ask whether, despite its silence, Congress intended us to enforce the pre-existing remedy provided in Rev. Stat. §1979, 42 U. S. C. §1983. See *Maine* v. *Thiboutot*, 448 U. S. 1, 4 (1980). And still other times, despite Congress' inclusion of specific clauses designed specifically to preserve pre-existing remedies, we have nevertheless concluded that Congress impliedly foreclosed the §1983 remedy. See *Middlesex County Sewerage Authority* v. *National Sea Clammers Assn.*, 453 U. S. 1, 13 (1981). Whenever we perform this gap-filling task, it is appropriate not only to study the text and structure of the statutory scheme, but also to examine its legislative history. See, *e.g., id.,* at 17–18; *Smith* v. *Robinson*, 468 U. S. 992, 1009 (1984); *Cannon*, 441 U. S., at 694.

In this case the statute's text, structure, and history all provide convincing evidence that Congress intended the Telecommunications Act of 1996 (TCA) to operate as a comprehensive and exclusive remedial scheme. The structure of the statute appears fundamentally incompatible with the private remedy offered by §1983.* Moreover, there is not a shred of evidence in the legislative history suggesting that, despite this structure, Congress intended plaintiffs to be able to recover damages and attorney's fees. Thus, petitioners have made "the *difficult showing* that allowing §1983 actions to go forward in these circumstances 'would be inconsistent with Congress' carefully tailored scheme.'" *Blessing* v. *Freestone*, 520 U. S. 329, 346 (1997) (emphasis added) (quoting *Golden State Transit Corp.* v. *Los Angeles*, 493 U. S. 103, 107 (1989)). I therefore join the judgment of the Court without reserva-

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*The evidence supporting this conclusion is substantial. It includes, *inter alia*, the fact that the private remedy specified in 47 U. S. C. §332(c)(7)(B)(v) requires all enforcement actions to be brought in any court of competent jurisdiction "within 30 days after such action or failure to act." Once a plaintiff brings such an action, the statute requires the court both to "hear and decide" the case "on an expedited basis." *Ibid.* As the Court properly notes, *ante,* at 9–10, the TCA's streamlined and expedited scheme for resolving telecommunication zoning disputes is fundamentally incompatible with the applicable limitations periods that generally govern §1983 litigation, see, *e.g., Wilson* v. *Garcia*, 471 U. S. 261 (1985), as well as the deliberate pace with which civil rights litigation generally proceeds. See, *e.g.,* H. R. Conf. Rep. No. 104–458, p. 208–209 (1996) (expressing the intent of the congressional Conference that zoning decisions should be "rendered in a reasonable period of time" and that Congress expected courts to "act expeditiously in deciding such cases" that may arise from disputed decisions). Like the Court, I am not persuaded that the statutory requirements can simply be mapped onto the existing structure of §1983, and there is nothing in the legislative history to suggest that Congress would have wanted us to do so. For these reasons, among others, I believe it is clear that Congress intended §332(c)(7) to operate as the exclusive remedy by which plaintiffs can obtain judicial relief for violations of the TCA.

tion.

Two flaws in the Court's approach, however, persuade me to write separately. First, I do not believe that the Court has properly acknowledged the strength of our normal presumption that Congress intended to preserve, rather than preclude, the availability of §1983 as a remedy for the enforcement of federal statutory rights. Title 42 U. S. C. §1983 was "intended to provide a remedy, to be broadly construed, against all forms of official violation of federally protected rights." *Monell* v. *New York City Dept. of Social Servs.*, 436 U. S. 658, 700–701 (1978). "We do not lightly conclude that Congress intended to preclude reliance on §1983 as a remedy . . . . Since 1871, when it was passed by Congress, §1983 has stood as an independent safeguard against deprivations of federal constitutional and statutory rights." *Smith*, 468 U. S., at 1012. Although the Court is correct to point out that this presumption is rebuttable, it remains true that only an *exceptional* case—such as one involving an unusually comprehensive and exclusive statutory scheme—will lead us to conclude that a given statute impliedly forecloses a §1983 remedy. See *Wright* v. *Roanoke Redevelopment and Housing Authority,* 279 U. S. 418, 452 (1979) (statutory scheme must be "sufficiently comprehensive and effective to raise a clear inference that Congress intended to foreclose a §1983 cause of action"). While I find it easy to conclude that petitioners have met that heavy burden here, there will be many instances in which §1983 will be available even though Congress has not explicitly so provided in the text of the statute in question. See, *e.g., id.,* at 424–425; *Blessing*, 520 U. S., at 346–348.

Second, the Court incorrectly assumes that the legislative history of the statute is totally irrelevant. This is contrary to nearly every case we have decided in this area of law, all of which have surveyed, or at least acknowledged, the available legislative history or lack thereof.

See, *e.g., Wright*, 479 U. S., at 424–426 (citing legislative history); *Smith*, 468 U. S., at 1009–1010 (same); *Sea Clammers*, 453 U. S., at 17–18 (noting that one of the relevant factors in the Court's inquiry "include[s] the legislative history"); *Cannon*, 441 U. S., at 694 (same).

Additionally, as a general matter of statutory interpretation, Congress' failure to discuss an issue during prolonged legislative deliberations may itself be probative. As THE CHIEF JUSTICE has cogently observed: "In a case where the construction of legislative language such as this makes so sweeping and so relatively unorthodox a change as that made here, I think judges as well as detectives may take into consideration the fact that a watchdog did not bark in the night." *Harrison* v. *PPG Industries, Inc.*, 446 U. S. 578, 602 (1980) (dissenting opinion). The Court has endorsed the view that Congress' silence on questions such as this one "can be likened to the dog that did not bark." *Chisom* v. *Roemer*, 501 U. S. 380, 396, n. 23 (1991) (citing A. Doyle, Silver Blaze, in The Complete Sherlock Holmes 335 (1927)). Congressional silence is surely probative in this case because, despite the fact that awards of damages and attorney's fees could have potentially disastrous consequences for the likely defendants in most private actions under the TCA, see *Primeco Personal Communications* v. *Mequon*, 352 F. 3d 1147, 1152 (CA7 2003), nowhere in the course of Congress' lengthy deliberations is there any hint that Congress wanted damages or attorney's fees to be available. That silence reinforces every other clue that we can glean from the statute's text and structure.

For these reasons, I concur in the Court's judgment.