

# The Burger Court Opinion Writing Database

*Griggs v. Duke Power Co.*

401 U.S. 424 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

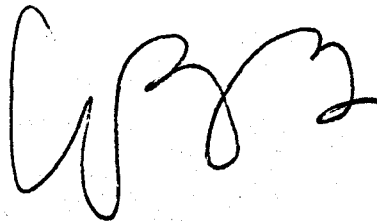
January 26, 1971

Re: No. 124 - Griggs v. Duke Power Co.

MEMORANDUM TO THE CONFERENCE:

Enclosed is draft of opinion in the above.

Regards,

A handwritten signature in dark ink, appearing to be "W. J. Brennan", is written below the typed word "Regards,". The signature is fluid and cursive, with the first letter "W" being particularly large and stylized.

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1

*WFB*  
*out*

To: Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Burger

From: Mr. Justice  
Circulated: JAN 28 1971  
Recirculated: \_\_\_\_\_

No. 124 -- Griggs v. Duke Power Company

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted the writ in this case to resolve the question whether an employer is prohibited by the Civil Rights Act of 1964, Title VII, from requiring a high school education or passing of a standardized general intelligence test as a condition of employment in or transfer to jobs when (a) neither standard is shown to be significantly related to successful job performance, (b) both requirements operate to disqualify Negroes at a substantially higher rate than white applicants, and (c) the jobs in question

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OP RM

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

January 29, 1971

CHAMBERS OF  
THE CHIEF JUSTICE

Re: No. 124 -- Griggs v. Duke Power Company

Dear Hugo:

Thank you for your note of January 27.

When I completed my draft I was uncertain as to the precise treatment I should use in the dispositive paragraph and I am flexible as to that so we should be able to work it out. At the moment it seems to me that "vacate and remand" is more appropriate than "reverse" since a large part of the C.A. holding is affirmed.

For convenience of your office, I am sending the original to your Chambers and this copy will reach you in Florida.

The weather shows signs of moderating here and we hope you and Elizabeth have 80 degree weather in Florida.

Regards,

WRB

Mr. Justice Black

cc: Conference

TM

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

CHAMBERS OF  
THE CHIEF JUSTICE

February 5, 1971

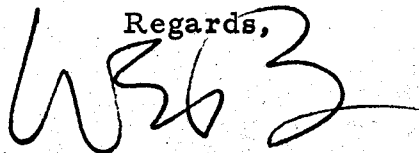
Re: No. 124 -- Griggs v. Duke Power Company

MEMORANDUM TO THE CONFERENCE:

I enclose revised draft with areas of change, omission and additions marginally marked.

I believe it takes into account some problems raised by memos.

Regards,

A handwritten signature in dark ink, appearing to be "W.B. 3", written in a cursive style.

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See pages 5, 6, 9,  
13, 14, 15

To: Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan ✓  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall

2nd Draft

From: Mr. Chief Justice

No. 124 -- Griggs v. Duke Power Company

Circulated: \_\_\_\_\_

Recirculated: FEB 8 1971

MR. CHIEF JUSTICE BURGER delivered the opinion of  
the Court.

We granted the writ in this case to resolve the question whether an employer is prohibited by the Civil Rights Act of 1964, Title VII, from requiring a high school education or passing of a standardized general intelligence test as a condition of employment in or transfer to jobs when (a) neither standard is shown to be significantly related to successful job performance, (b) both requirements operate to disqualify Negroes at a substantially higher rate than white applicants, and (c) the jobs in question

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see pgs 7 + 12

printed  
1st DRAFT

To: Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

Circulated: \_\_\_\_\_  
MAR 5 1971  
Recirculated: \_\_\_\_\_

No. 124.—OCTOBER TERM, 1970

Willie S. Griggs et al., } On Writ of Certiorari to the  
Petitioners, } United States Court of  
v. } Appeals for the Fourth  
Duke Power Company. } Circuit.

[March —, 1971]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted the writ in this case to resolve the question whether an employer is prohibited by the Civil Rights Act of 1964, Title VII, from requiring a high school education or passing of a standardized general intelligence test as a condition of employment in or transfer to jobs when (a) neither standard is shown to be significantly related to successful job performance, (b) both requirements operate to disqualify Negroes at a substantially higher rate than white applicants, and (c) the jobs in question formerly had been filled only by white employees as part of a longstanding practice of giving preference to whites.<sup>1</sup>

<sup>1</sup> The Act provides:  
“Sec. 703 (a) It shall be an unlawful employment practice for an employer—

“(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.

“(h) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer . . .

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

CHAMBERS OF  
JUSTICE HUGO L. BLACK

February 8, 1971

Dear Chief,

Re: No. 124- Griggs v. Duke Power Company  
Your memo 1/29/71

"Vacate and remand" will satisfy this thought  
about your opinion. I do not recall here any ob-  
jection I had to your opinion as circulated.

Nice weather down here.

Regards.

*Hugo*  
Hugo

The Chief Justice

cc: Members of the Conference



January 26, 1971

Dear Chief:

In No. 124 - Griggs v. Duke Power,  
please note I join your opinion.

W. O. D.

The Chief Justice

W. O. D.  
#1487

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

CHAMBERS OF  
JUSTICE JOHN M. HARLAN

February 1, 1971

Re: No. 124 - Griggs v. Duke Power Co.

Dear Chief:

I agree with and am glad to join your opinion. But I have a few suggestions for modifications that I would like to submit for your consideration.

1. It seems to me that the disposition of the case in the last sentence of the opinion should be changed from its present form to something like this: "That portion of the Court of Appeals' judgment which is appealed from is reversed." My reason for this suggestion is that two groups of employees were involved in the case, first, those who were hired before the diploma and test requirements went into effect and, second, those who were hired thereafter. Only the second group is involved in the case as it comes to us. By the same token, I think it would be well to elaborate the statement of facts so as to reflect more clearly the existence of these two groups. As you are of course aware, the Court of Appeals reversed the District Court as to the first group, and that portion of its decision has not been appealed.

2. Your opinion as presently written seems to me insufficiently to treat with the legislative history upon which the Court of Appeals relied heavily for that part of its judgment which we are now reversing. More particularly, I have in mind Senator Tower's proposal that the tests should be in effect job-related, and also certain portions of the Clark-Case memorandum. I would think that this legislative history should be faced up to, although I think it is adequately answered by reliance on the EEOC guidelines to which you have already referred in your opinion. In other words,

what I am suggesting is that the discussion of the legislative history might be specifically correlated with what you have already said about the EEOC guidelines.

3. I am inclined to agree with Potter Stewart's suggestion that the two paragraphs referred to in his letter of January 28 should be omitted, although I have no strong preference on this score.

Sincerely,

  
J. M. H.

The Chief Justice.

CC: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

February 10, 1971

Re: No. 124 - Griggs v. Duke Power Co.

Dear Chief:

I agree with your recirculation of February 5, except that I would still prefer to see the disposition changed to that suggested in Item 1 of my letter of February 1, or simply to state that the judgment below is "reversed." I am also inclined to agree with the suggestions made in Potter Stewart's letter of February 8.

Sincerely,

J. M. H.

The Chief Justice

CC: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 28, 1971

No. 124 - Griggs v. Duke Power Co.

Dear Chief,

Although I agree generally with your opinion for the Court in this case, the last two paragraphs on page 9 cause me concern. Not everyone can be promoted. If an employer is allowed to refuse to hire a job applicant because the applicant cannot pass a test for a better or higher job, the employer will be able, if he wishes, to discriminate against applicants who are fully qualified for the jobs for which they apply.

I would hope that you might consider the elimination of these two paragraphs. I think they are not necessary in reaching our decision in the case before us.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 8, 1971

No. 124 - Griggs v. Duke Power Company

Dear Chief,

I am still unhappy with the discussion appearing on page 9 that begins with "In the context of this case . . .". Would you be willing to eliminate the word "well" in the 7th line from the bottom on page 9 and to consider the deletion of the last sentence on that page?

Sincerely yours,

P.S.  
/

The Chief Justice

Copies to the Conference

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January 28, 1971

Re: No. 124 - Griggs v. Duke Power  
Co.

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Dear Chief:

Please join me.

Sincerely,

B.R.W.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL


February 18, 1971

Re: No. 124 - Griggs v. Duke Power Co.

Dear Chief:

Please join me.

Sincerely,

  
T.M.

The Chief Justice

cc: The Conference

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February 10, 1971

Re: No. 124 - Griggs v. Duke Power Co.

Dear Chief:

This little suggestion may not please you. In the second line on page 15 appears the word "denigrating." In view of the context of this case, I wonder if some other word could be employed. The use of this word, with its racial origins, just might be offensive in some quarters. This suggestion is not important, but I would prefer to avoid unnecessary criticism, even though unfounded.

Sincerely,

HAB

The Chief Justice

February 10, 1971

Re: No. 124 - Griggs v. Duke Power Co.

Dear Chief:

I would not be averse to your adopting the suggestions made by Mr. Justice Stewart in his letter of February 8. In any event, please join me.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference