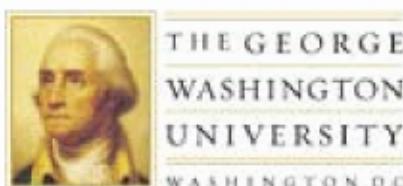


# The Burger Court Opinion Writing Database

*Schlesinger v. Ballard*  
419 U.S. 498 (1975)

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

January 8, 1975

Re: 73-776 - Schlesinger v. Ballard

Dear Potter:

Please join me in your circulation of January 2.

Regards,

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

December 4, 1974

Dear Potter:

In 73-776, SCHLESINGER v. BALLARD,  
I voted the other way but will acquiesce in  
your opinion. If a dissent is written, I'll  
take another look.

cc: 11  
WILLIAM O. DOUGLAS

Mr. Justice Stewart  
cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

December 27, 1974

Dear Bill:

Please join me in your dissent in  
73-776, Schlesinger v. Ballard.

William O. Douglas

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

October 29, 1974

Dear Bill:

In the last argument session I note that you and I and usually Thurgood but sometimes someone else are in dissent in the following:

No. 73-776 Schlesinger v. Ballard

No. 73-748 American Radio Association v. Mobile Steamship Association

No. 73-1012 Gulf Oil Co. v. Copp Paving Co.

No. 73-1270 Kelley v. So. Pacific Co.

No. 73-5677 Schick v. Reed.

I would be glad to take on No. 73-748 American Radio Assn. v. Mobile Steamship Assn. and No. 73-1270 Kelley v. Southern Pacific Co. if you wish me to.

Sincerely,



Mr. Justice Douglas



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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 4, 1974

RE: No. 73-776 Schlesinger v. Ballard

Dear Potter:

I shall circulate a dissent in the above  
in due course.

Sincerely,



Mr. Justice Stewart

cc: The Conference

To The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

## 2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-776

James R. Schlesinger, Secretary of Defense, et al.,  
Appellants,  
*v.*  
Robert C. Ballard.

On Appeal from the United States District Court for the Southern District of California.

Argued: 12/24/74

[January —, 1975]

MR. JUSTICE BRENNAN, dissenting.

The Court concludes that the statutory scheme which results in different periods of tenure for male and female line lieutenants of the Navy does not contravene the Due Process Clause of the Fifth Amendment because "Congress may . . . quite rationally have believed that women line officers had less opportunity for promotion than did their male counterparts, and that a longer period of tenure for women officers would, therefore, be consistent with the goal to provide woman officers with 'fair and equitable career advancement programs.'" *Ante*, at —. I believe, however, that a legislative classification that is premised solely upon gender must be subjected to close judicial scrutiny. *Frontiero v. Richardson*, 411 U. S. 677 (1973); *Kahn v. Shevin*, 416 U. S. 351 (1974) (BRENNAN, J., dissenting). Such suspect classifications can be sustained only if the Government demonstrates that the classification serves compelling interests that cannot be otherwise achieved. Here, the Government as much as concedes that the gender-based distinctions in separation provisions for Navy officers fulfill no compelling purpose.

Further, the Court goes far to conjure up a legislative purpose which *may* have underlay the gender-based distinction here attacked. I find nothing in the statutory scheme or the legislative history to support the supposi-

To: The Chief

Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

From: Stewart, J.

DEC 3 1974 SUPREME COURT OF THE UNITED STATES

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

No. 73-776

Recirculated: \_\_\_\_\_

James R. Schlesinger, Secretary of Defense, et al.,  
Appellants,  
v.  
Robert C. Ballard.

On Appeal from the United States District Court for the Southern District of California.

[December —, 1974]

MR. JUSTICE STEWART delivered the opinion of the Court.

Appellee Robert C. Ballard is a lieutenant in the United States Navy. After more than nine years of active service as a commissioned officer, he failed, for a second time, to be selected for promotion to the grade of lieutenant commander, and was therefore subject to mandatory discharge under 10 U. S. C. § 6382 (a).<sup>1</sup> He

<sup>1</sup> 10 U. S. C. § 6382 provides:

"(a) Each officer on the active list of the Navy serving in the grade of lieutenant, except an officer in the Nurse Corps, and each officer on the active list of the Marine Corps serving in the grade of captain shall be honorably discharged on June 30 of the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time. However, if he so requests, he may be honorably discharged at any time during that fiscal year.

"(d) This section does not apply to women officers appointed under section 5590 of this title or to officers designated for limited duty."

Ballard's scheduled discharge carried with it an entitlement to a "lump sum" severance payment of approximately \$15,000, 10 U. S. C. § 6382 (c), but would have terminated Ballard's total service time

pp 81D

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-776 Circulated: \_\_\_\_\_

Recirculated: DEC 5 1974

James R. Schlesinger, Secretary of Defense, et al.,  
Appellants,  
v.  
Robert C. Ballard.

On Appeal from the United States District Court for the Southern District of California.

[December —, 1974]

MR. JUSTICE STEWART delivered the opinion of the Court.

Appellee Robert C. Ballard is a lieutenant in the United States Navy. After more than nine years of active service as a commissioned officer, he failed, for a second time, to be selected for promotion to the grade of lieutenant commander, and was therefore subject to mandatory discharge under 10 U. S. C. § 6382 (a).<sup>1</sup> He

<sup>1</sup> 10 U. S. C. § 6382 provides:

"(a) Each officer on the active list of the Navy serving in the grade of lieutenant, except an officer in the Nurse Corps, and each officer on the active list of the Marine Corps serving in the grade of captain shall be honorably discharged on June 30 of the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time. However, if he so requests, he may be honorably discharged at any time during that fiscal year.

"(d) This section does not apply to women officers appointed under section 5590 of this title or to officers designated for limited duty."

Ballard's scheduled discharge carried with it an entitlement to a "lump sum" severance payment of approximately \$15,000, 10 U. S. C. § 6382 (c), but would have terminated Ballard's total service time

P10

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice White  
~~Mr. Justice Marshall~~  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

3rd DRAFT From: Stewart, J.

SUPREME COURT OF THE ~~UNITED~~ STATES

No. 73-776 Recirculated:

James R. Schlesinger, Secretary of Defense, et al.,  
Appellants,  
v.  
Robert C. Ballard.

On Appeal from the United States District Court for the Southern District of California.

[December —, 1974]

MR. JUSTICE STEWART delivered the opinion of the Court.

Appellee Robert C. Ballard is a lieutenant in the United States Navy. After more than nine years of active service as a commissioned officer, he failed, for a second time, to be selected for promotion to the grade of lieutenant commander, and was therefore subject to mandatory discharge under 10 U. S. C. § 6382 (a).<sup>1</sup> He

<sup>1</sup> 10 U. S. C. § 6382 provides:

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"(d) This section does not apply to women officers appointed under section 5590 of this title or to officers designated for limited duty."

Ballard's scheduled discharge carried with it an entitlement to a "lump sum" severance payment of approximately \$15,000, 10 U. S. C. § 6382 (c), but would have terminated Ballard's total service time

PP 10, 11

To: The Chief Justice  
 Mr. Justice Douglas  
 Mr. Justice Brennan  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist

4th DRAFT

From: Stewart, J.

Circulated:

No. 73-776

Recirculated JAN 2 1975

## SUPREME COURT OF THE UNITED STATES

James R. Schlesinger, Secretary of Defense, et al.,  
 Appellants,  
 v.  
 Robert C. Ballard.

On Appeal from the United States District Court for the Southern District of California.

[December —, 1974]

MR. JUSTICE STEWART delivered the opinion of the Court.

Appellee Robert C. Ballard is a lieutenant in the United States Navy. After more than nine years of active service as a commissioned officer, he failed, for a second time, to be selected for promotion to the grade of lieutenant commander, and was therefore subject to mandatory discharge under 10 U. S. C. § 6382 (a).<sup>1</sup> He

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 5, 1974

Re: No. 73-776 - Schlesinger v. Ballard

Dear Potter:

I shall await the dissent in this case.

Sincerely,



Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 6, 1975

Re: No. 73-776 - Schlesinger v. Ballard

Dear Bill:

Would you please add to the foot of your dissenting opinion the following:

Agreeing for the most part with Mr. Justice Brennan's dissenting opinion, I also dissent from the judgment of the Court.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 27, 1974

Re: No. 73-776 -- James R. Schlesinger, et al. v.  
Robert C. Ballard

Dear Bill:

Please join me in your dissent.

Sincerely,

  
T. M.

Mr. Justice Brennan

cc: The Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION

Supreme Court of the United States  
Washington, D. C. 20543CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 9, 1974

Re: No. 73-776 - Schlesinger, Secretary v. Ballard

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 4, 1974

No. 73-776 Schlesinger v. Ballard

Dear Potter:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Stewart

1fp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 5, 1974

Re: No. 73-776 - Schlesinger v. Ballard

Dear Potter:

Please join me.

Sincerely,

Mr. Justice Stewart

Copies to the Conference