The Burger Court Opinion Writing Database

Washington v. Davis

426 U.S. 229 (1976)

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 20, 1976

Re: 74-1492 - Washington v. Davis

MEMORANDUM TO THE CONFERENCE:

If we hear the last case now set for Wednesday we will run to 3:30 or 4:00 p.m.

This is no week to be running late with our problems on the Capital cases and Buckley, and I have instructed the Clerk to reset the above for our next sitting. (It is a local counsel case.)

Regards,

WEB

cc: The Clerk

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

CHAMBERS OF
THE CHIEF JUSTICE

February 20, 1976

Re: 74-1492 - Washington v. Davis

Dear Harry:

I have your memorandum concerning the 15 minute allowance time requested by the Solicitor General to argue this case. My reasons for granting it are two: first, it is now more than 20 years since I have had to deal with the Corporation Counsel's office in Washington, D. C. It is traditionally, at least in my time, made up of political hacks. In the Court of Appeals there were only two lawyers in that office who ever made adequate argument. One was Hubert B. Pair, who was later appointed to the local superior court, and a second man who is also now on that court. The second reason is that only this week I had to struggle with an utterly incompetent application by the District of Columbia in connection with the D. C. jails (A-685 - McGruder v. Campbell), in which the stay was granted.

In short, if we are going to get anything in the way of an adequate argument, it will come from the Solicitor General, not anyone representing the District of Columbia government. If it were feasible, what we should do is deny any time to the D. C. Counsel and allow full argument by the Solicitor General. The reason I would not press for this is that a miracle may happen and the argument on behalf of the District may be adequate.

If the time is not granted, please note me on the record as granting.

Regards,

WEB

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 2, 1976

Re: 74-1492 - Washington v. Davis

Dear Byron:

I join your proposed opinion dated June 1.

Regards,

WEB

Mr. Justice White

Copies to the Conference

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

From: Mr. Justice Brennan

Circulated: 5/26/76

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1492

Walter E. Washington, etc., et al., Petitioners, v. Alfred E. Davis et al.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[June —, 1976]

MR. JUSTICE BRENNAN, dissenting.

The Court holds that the job qualification examination (Test 21) given by the District of Columbia Metropolitan Police Department does not unlawfully discriminate on the basis of race under either constitutional or statutory standards.

Initially, it seems to me that the Court should not pass on the statutory questions, because they are not presented by this case. The Court says that respondents' summary judgment motion "rested on purely constitutional grounds," *ante*, at 5, and that "the Court of Appeals erroneously applied the legal standards applicable to Title VII cases in resolving the constitutional issue before it," *ante*, at 7. There is a suggestion, however, that petitioners are entitled to prevail because they met the burden of proof imposed by 5 U. S. C. § 3304. *Ante*, at 18 and n. 15. As I understand the opinion, the Court therefore holds that Test 21 is job-related under § 3304, but not necessarily under Title VII. But that provision, by the Court's own analysis, is no more in the case than Title VII; respondents' "complaint asserted no claim under § 3304." *Ante*, at 3 n. 2. Compare *id.*, at 7-8 n. 10. If it was "plain error" for the Court of Appeals to apply a statutory standard to this case, as the

1, 2

6-2-76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1492

Walter E. Washington, etc., et al., Petitioners, *v.* Alfred E. Davis et al.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[June —, 1976]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL joins, dissenting.

The Court holds that the job qualification examination (Test 21) given by the District of Columbia Metropolitan Police Department does not unlawfully discriminate on the basis of race under either constitutional or statutory standards.

Initially, it seems to me that the Court should not pass on the statutory questions, because they are not presented by this case. The Court says that respondents' summary judgment motion "rested on purely constitutional grounds," *ante,* at 5, and that "the Court of Appeals erroneously applied the legal standards applicable to Title VII cases in resolving the constitutional issue before it," *ante,* at 7. There is a suggestion, however, that petitioners are entitled to prevail because they met the burden of proof imposed by 5 U. S. C. § 3304. *Ante,* at 18 and n. 15. As I understand the opinion, the Court therefore holds that Test 21 is job-related under § 3304, but not necessarily under Title VII. But that provision, by the Court's own analysis, is no more in the case than Title VII; respondents' "complaint asserted no claim under § 3304." *Ante,* at 3 n. 2. Compare *id.,* at 7–8 n. 10. If it was "plain error" for the Court of Appeals to apply a statutory standard to this case, as the

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 30, 1976

Re: No. 74-1492, Washington v. Davis

Dear Byron,

As I have indicated to you orally, I have considerable doubt about the necessity and wisdom of Part III of your opinion for the Court. For the moment, therefore, I shall join Parts I and II only.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 2, 1976

74-1492 - Washington v. Davis

Dear Byron,

I should appreciate your adding the following at the foot of your opinion in this case:

MR. JUSTICE STEWART joins Parts I and II of the Court's opinion.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 4-22-76

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1492

Walter E. Washington, etc., et al., Petitioners, *v.* Alfred E. Davis et al.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[April —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case involves the validity of a qualifying test administered to applicants for positions as police officers in the District of Columbia Metropolitan Police Department. The test was sustained by the District Court but invalidated by the Court of Appeals. We are in agreement with the District Court and hence reverse the judgment of the Court of Appeals.

I

This action began on April 10, 1970, when two Negro police officers filed suit against the then Commissioner of the District of Columbia, the Chief of the District's Metropolitan Police Department and the Commissioners of the United States Civil Service Commission.[1] An

[1] Under § 4–103 of the District of Columbia Code, appointments to the Metropolitan police force were to be made by the Commissioner subject to the provisions of Title 5 of the United States Code relating to the classified civil service. The District of Columbia Council and the Office of Commissioner of the District of Columbia, established by Reorganization Plan No. 37 of 1967, were abolished as of January 2, 1975, and replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia.

pp. 2, 11, 13, 14, 18, 19

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: _____

Recirculated: 6-1-76

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1492

Walter E. Washington, etc., et al., Petitioners, *v.* Alfred E. Davis et al.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[April —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case involves the validity of a qualifying test administered to applicants for positions as police officers in the District of Columbia Metropolitan Police Department. The test was sustained by the District Court but invalidated by the Court of Appeals. We are in agreement with the District Court and hence reverse the judgment of the Court of Appeals.

I

This action began on April 10, 1970, when two Negro police officers filed suit against the then Commissioner of the District of Columbia, the Chief of the District's Metropolitan Police Department and the Commissioners of the United States Civil Service Commission.[1] An

[1] Under § 4–103 of the District of Columbia Code, appointments to the Metropolitan police force were to be made by the Commissioner subject to the provisions of Title 5 of the United States Code relating to the classified civil service. The District of Columbia Council and the Office of Commissioner of the District of Columbia, established by Reorganization Plan No. 37 of 1967, were abolished as of January 2, 1975, and replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia.

pp 6, 11, 17, 21

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: _____

Recirculated: 6-3-76

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1492

Walter E. Washington, etc., et al., Petitioners, *v.* Alfred E. Davis et al. | On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[June 7, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case involves the validity of a qualifying test administered to applicants for positions as police officers in the District of Columbia Metropolitan Police Department. The test was sustained by the District Court but invalidated by the Court of Appeals. We are in agreement with the District Court and hence reverse the judgment of the Court of Appeals.

I

This action began on April 10, 1970, when two Negro police officers filed suit against the then Commissioner of the District of Columbia, the Chief of the District's Metropolitan Police Department and the Commissioners of the United States Civil Service Commission.[1] An

[1] Under § 4-103 of the District of Columbia Code, appointments to the Metropolitan police force were to be made by the Commissioner subject to the provisions of Title 5 of the United States Code relating to the classified civil service. The District of Columbia Council and the Office of Commissioner of the District of Columbia, established by Reorganization Plan No. 37 of 1967, were abolished as of January 2, 1975, and replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 8, 1976

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Washington v. Davis — No. 74-1492
(June 7, 1976)

There are two petitions being held for Washington v. Davis:

1. No. 75-734 — Smith v. Troyan. In this case, CA 6 rejected Fourteenth Amendment challenges to requirements by the City of East Cleveland that applicants for jobs on the city's police force be of a certain height and that they pass the Army General Classification Test (AGCT). Petitioner, who is a black woman, contended that the height requirement discriminated against her on the basis of sex, and that the test discriminated against her on the basis of race. CA 6 concluded that the height requirement was not based on gender, but merely affected one gender disproportionately and thus was valid under Gedulgig v. Aiello, 417 U.S. 484 (1974). The court went on to say that even if the requirement were viewed as gender discrimination, it bore a "rational relationship to a [legitimate] state objective." In so saying, the court relied on Satty v. Nashville Gas Co., 522 F.2d 850 (CA 6 1975), cert. pending, No. 75-536 [held for General Electri v. Gilbert, No. 74-1589]. With respect to the AGCT, CA 6 held that petitioner had failed to make out a prima facie case that the test was unconstitutionally discriminatory. The court, rejecting the circuit court's holding in Davis v. Washington, reasoned that the disproportionate racial impact necessary to support a claim of unconstitutional racial discrimination must be "in the hiring, rather than in the test results in and of themselves." That holding is consistent with Washington v. Davis, and accordingly I will vote to deny. The alternate ground for upholding the height requirement makes it unnecessary, in my view, to hold this petition, like Satty, for Gilbert.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 22, 1976

Re: No. 74-1492 -- Walter E. Washington v. Alfred E. Davis

Dear Byron:

In due course I shall circulate a dissent in this case.

Sincerely,

T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 1, 1976

Re: No. 74-1492 -- Walter E. Washington v. Alfred E. Davis

Dear Bill:

Please join me.

Sincerely,

T. M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 19, 1976

Re: No. 74-1492 - Washington, Mayor v. Davis

Dear Chief:

The motion of the Solicitor General for additional time for oral argument is among the chambers actions for tomorrow.

I, for one, vote to deny this request. My reasons are:

1. This case was on the January session list but went over because of lack of time. Despite its readiness for argument, no request for time was made by the SG in January. For me, no special reasons have emerged in the meantime.

2. The SG has filed a brief. It sets forth his views in full and in detail. I think we are capable of comprehending his position.

3. I regard the case as not that important and the issue as not that difficult. I could find other uses for the time.

Sincerely,

HAB.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 28, 1976

Re: No. 74-1492 - Washington v. Davis

Dear Byron:

Please join me.

Sincerely,

Harry

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 28, 1976

No. 74-1492 Washington v. Davis

Dear Byron:

Please join me.

Sincerely,

Lewis

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 28, 1976

Re: No. 74-1492 - Washington v. Davis

Dear Byron:

Please join me.

Sincerely,

Mr. Justice White

Copies to the Conference

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

From: Mr. Justice Stevens

Circulated: 5/19/76

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1492

Walter E. Washington, etc., et al., Petitioners, *v.* Alfred E. Davis et al.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[May —, 1976]

MR. JUSTICE STEVENS, concurring.

While I agree with the Court's disposition of this case, I add these comments on the constitutional issue discussed in Part II and the statutory issue discussed in Part III of the Court's opinion.

The requirement of purposeful discrimination is a common thread running through the cases summarized in Part II. These cases include criminal convictions which were set aside because blacks were excluded from the grand jury, a reapportionment case in which political boundaries were obviously influenced to some extent by racial considerations, a school desegregation case, and a case involving the unequal administration of an ordinance purporting to prohibit the operation of laundries in frame buildings. Although it may be proper to use the same language to describe the constitutional claim in each of these contexts, the burden of proving a prima facie case may well involve differing evidentiary considerations. The extent of deference that one pays to the trial court's determination of the factual issue, and indeed, the extent to which one characterizes the intent issue as a question of fact or a question of law will vary in different contexts.

Frequently the most probative evidence of intent will be objective evidence of what actually happened rather