

# The Burger Court Opinion Writing Database

## *Richmond Unified School District v. Berg*

434 U.S. 158 (1977)

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  
JUSTICE WM. J. BRENNAN, JR.

January 19, 1977

RE: No. 75-1069 Richmond Unified School Dist. v. Berg, etc.

Dear Byron:

.Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Mr. Justice White

cc: 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

1st DRAFT

From: Mr. Justice White

**SUPREME COURT OF THE UNITED STATES**

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**RICHMOND UNIFIED SCHOOL DISTRICT ET AL. v.  
 SONJA LYNN BERG, etc.**

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

No. 75-1069. Decided January —, 1977

MR. JUSTICE WHITE, dissenting.

The Court grants the petition for a writ of certiorari in this case, vacates the judgment below and remands the case for reconsideration in light of our decision in *General Electric Co. v. Gilbert*, — U. S. L. W. —. Because the principle on which *Gilbert* was decided has no application to this case and because the issue in this case is important, I would grant the petition for a writ of certiorari and set the case for oral argument.

The health benefit plans involved in *Gilbert* were sustained over a Title VII sex-discrimination challenge because, purely as a *factual* matter, no discriminatory purpose or effect was shown. The health benefit plans involved in *Gilbert* were a form of compensation for work. The plans, which did not include coverage for pregnancy, were, so far as the record revealed, worth at least as much to women as to men. Although only women get pregnant, women still received as much compensation for their work as men, ~~no discrimination~~ was shown. *and*

In this case the petitioner school board *requires* women to cease work for a fixed period toward the end of pregnancy, under certain circumstances. Pregnant people are allowed to work less and thus get paid less than nonpregnant people; and only women get pregnant. Consequently, a discriminatory effect is clearly shown. The lower court will simply be confused by a remand for reconsideration in light of a case in which a discriminatory effect was not shown. The question whether the school board's policy violates Title VII is important, and I would simply grant the petition.



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

2nd DRAFT

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

Recirculated: 1-21-77

## SUPREME COURT OF THE UNITED STATES

RICHMOND UNIFIED SCHOOL DISTRICT ET AL. v.  
SONJA LYNN BERG, ETC.

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

No. 75-1069. Decided January —, 1977

MR. JUSTICE WHITE, dissenting.

*joined by Mr. Justice Brennan,  
Mr. Justice Marshall and  
Mr. Justice Powell.*

The Court grants the petition for a writ of certiorari in this case, vacates the judgment below and remands the case for reconsideration in light of our decision in *General Electric Co. v. Gilbert*, — U. S. L. W. —. Because the principle on which *Gilbert* was decided has no application to this case and because the issue in this case is important, I would grant the petition for a writ of certiorari and set the case for oral argument.

The health benefit plans involved in *Gilbert* were sustained over a Title VII sex-discrimination challenge because, purely as a *factual* matter, no discriminatory purpose or effect was shown. The health benefit plans involved in *Gilbert* were a form of compensation for work. The plans, which did not include coverage for pregnancy, were, so far as the record revealed, worth at least as much to women as to men. Although only women get pregnant, women still received as much compensation for their work as men. Consequently, no discrimination was shown.

In this case the petitioner school board *requires* women to cease work for a fixed period toward the end of pregnancy, under certain circumstances. Pregnant people are prevented from working as much and thus get paid less than nonpregnant people; and only women get pregnant. Consequently, a discriminatory effect is clearly shown. The lower court will simply be confused by a remand for reconsideration in light of a case in which a discriminatory effect was not shown. The question whether the school board's policy violates Title VII is important, and I would simply grant the petition.



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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 21, 1977

Re: No. 75-1069, Richmond Unified School District v.  
Sonja Lynn Berg

Dear Byron:

Please join me in your dissent.

Sincerely,

*T.M.*  
T.M.

Mr. Justice White

cc: The Conference