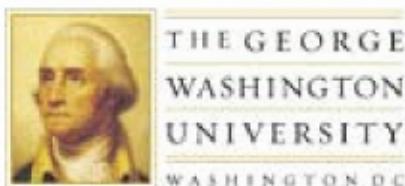


The Burger Court Opinion Writing Database

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,



Mr. Justice White

cc: The Conference

B.P.W.
Please keep the
original
in
the
file.

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: 1-18-77

Recirculated: _____

1st DRAFT

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.

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

Circulated: _____

2nd DRAFT

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.

Mr. Justice White

cc: The Conference