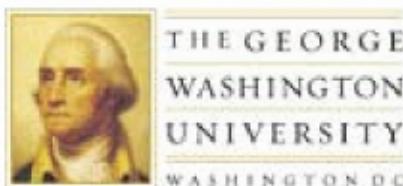


The Burger Court Opinion Writing Database

Alexander v. Fioto

430 U.S. 634 (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. 20542

CHAMBERS OF
THE CHIEF JUSTICE

March 31, 1977

Re: 75-1704 Alexander v. Fioto

Dear John:

I join.

Regards,

WSB

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 21, 1977

RE: No. 75-1704 Alexander v. Fioto, etc.

Dear John:

I agree.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 18, 1977

Re: No. 75-1704, Alexander v. Fioto

Dear John,

I am glad to join your opinion for the Court.

Sincerely yours,



Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 21, 1977

Re: No. 75-1703 - Alexander v. Fioto

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 1, 1977

Re: No. 75-1704 - Alexander v. Fioto

Dear John:

Please join me.

Sincerely,



T. M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 18, 1977

✓

Re: No. 75-1704 - Alexander, Secretary v. Fioto

Dear John:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Stevens

cc: The Conference

HA

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

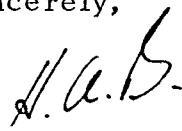
March 18, 1977

Re: No. 75-1704 - Alexander, Secretary v. Fioto

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

cc: The Conference

P.S. [to JPS only] Should not Bill Rehnquist be marked as not participating?

H. A. B.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 18, 1977

No. 75-1704 Alexander v. Fioto

Dear John:

Please join me.

Sincerely,

L Lewis

Mr. Justice Stevens

1fp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 23, 1977

Re: No. 75-1704 - Alexander v. Fioto

Dear John:

Please show me as taking no part in the consideration or decision of this case.

Sincerely,

WR

Mr. Justice Stevens

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

MAR 17 1977
Circulated: _____

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1704

Clifford L. Alexander, Jr.,
Secretary of the Army, } On Appeal from the United
Appellant, } States District Court for the
v. } Eastern District of New York,
Louis J. Fioto, etc. }

[March —, 1977]

MR. JUSTICE STEVENS delivered the opinion of the Court.

After World War II Congress authorized retirement pay for nonregular military personnel with at least 20 years of service in the Reserves or National Guard.¹ However, under 10 U. S. C. § 1331 (c), those who had been in the Reserves before World War II were not eligible for benefits unless they performed active duty during wartime.² Appellee is such a person.³ He contends that he may not be denied benefits for

¹ The Army and Air Force Vitalization and Retirement Equalization Act of 1948, 62 Stat. 1081, as amended, 10 U. S. C. § 1331 *et seq.*, authorizes retirement pay for reservists and guardsmen who have accumulated 20 years of eligible service, are 60 years of age, and are not disqualified by § 1331 (c).

² Section 1331 (c) provides:

“(c) No person who, before August 16, 1945, was a Reserve of an armed force, or a member of the Army without component or other category covered by section 1332 (a)(1) of this title except a regular component, is eligible for retired pay under this chapter, unless he performed active duty after April 5, 1917, and before November 12, 1918, or after September 8, 1940, and before January 1, 1947, or unless he performed active duty (other than for training) after June 26, 1950, and before July 28, 1953.”

³ Appellee served in the National Guard from 1933 to 1940 and again from 1947 to 1967. The record does not reveal the reason for appellee's

3
pp. 6

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: MAR 24 1977

Recirculated:

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1704

Clifford L. Alexander, Jr.,
 Secretary of the Army,
 Appellant,
 v.
 Louis J. Fioto, etc. } On Appeal from the United
 States District Court for the
 Eastern District of New York,

[March —, 1977]

MR. JUSTICE STEVENS delivered the opinion of the Court.

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³ Appellee served in the National Guard from 1933 to 1940 and again from 1947 to 1967. The record does not reveal the reason for appellee's