The Burger Court Opinion Writing Database

Hazelwood School District v. United States

433 U.S. 299 (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
THE CHIEF JUSTICE

June 20, 1977

Re: 76-255 - Hazelwood School District
v. United States

Dear Potter:

I join your opinion but I am asking Byron to show me as joining his "Caveat."

Regards,

WEB

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 9, 1977

RE: No. 76-255 Hazelwood School District v. United States

Dear Potter:

I agree.

Sincerely,

Mr. Justice Stewart

cc: 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: 6/20/77

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 76-255 O.T. 1976

Hazelwood School District, et al., Petitioners, v. United States

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

June ____ 1977

MR. JUSTICE BRENNAN, concurring.

I join the Court's opinion. Similarly to our recent decision in Dayton Board of Education v. Brinkman, ____ U.S. ____ (1977), I read today's opinion as revolving around the relative factfinding roles of district and circuit courts. It should be plain, however, that the liberal substantive standards for establishing a Title VII violation, including the usefulness of statistical proof, are reconfirmed.

In the present case, the District Court had adopted a wholly inappropriate legal standard of discrimination, and therefore did not evaluate the factual record before it in a meaningful way. This remand in effect orders it to do so. It is my understanding, as apparently it is Mr. Justice Stevens', post, at n. 4, that the statistical inquiry mentioned by the Court, ante, at n. 17

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: 6/22/77

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-255

Hazelwood School District et al., Petitioners, *v.* United States.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[June —, 1977]

MR. JUSTICE BRENNAN, concurring.

I join the Court's opinion. Similarly to our decision in *Dayton Board of Education* v. *Brinkman*, — U. S. — (1977), I read today's opinion as revolving around the relative factfinding roles of district and circuit courts. It should be plain, however, that the liberal substantive standards for establishing a Title VII violation, including the usefulness of statistical proof, are reconfirmed.

In the present case, the District Court had adopted a wholly inappropriate legal standard of discrimination, and therefore did not evaluate the factual record before it in a meaningful way. This remand in effect orders it to do so. It is my understanding, as apparently it is MR. JUSTICE STEVENS', *post*, at n. 5, that the statistical inquiry mentioned by the Court, *ante*, at n. 17 and accompanying text, can be of no help to the Hazelwood School Board in rebutting the Government's evidence of discrimination. Indeed, even if the relative comparison market is found to be 5.7% rather than 15.4% black, the applicable statistical analysis at most will not serve to bolster the Government's case. This obviously is of no aid to Hazelwood in meeting *its* burden of proof. Nonetheless I think that the remand directed by the Court is appropriate and will allow the parties to address these figures and calculations with greater care and precision. I also agree that given the misapplication of governing legal principles by the District

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 10, 1976

Re: No. 76-255, Hazelwood School District
v. United States

Dear John,

Please add my name to your dissenting opinion in this case.

Sincerely yours,

P.S.
1.

Mr. Justice Stevens

Copies to the Conference

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

From: Mr. Justice Stewart

Circulated: JUN 7 1977

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-255

Hazelwood School District et al., Petitioners, *v.* United States. | On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[June —, 1977]

MR. JUSTICE STEWART delivered the opinion of the Court.

The petitioner Hazelwood School District covers 78 square miles in the northern part of St. Louis County, Mo. In 1973 the Attorney General brought this lawsuit against Hazelwood and various of its officials, alleging that they were engaged in a "pattern or practice" of employment discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U. S. C. § 2000 (e) *et seq.* (1970 & Supp. V).[1] The complaint asked for an injunction requiring Hazelwood to cease its discriminatory practices, to take affirmative steps to obtain qualified Negro faculty members, and to offer employment and give backpay to victims of past illegal discrimination.

Hazelwood was formed from 13 rural school districts between 1949 and 1951 by a process of annexation. By the 1967–1968 school year, 17,550 students were enrolled in the

[1] Under 42 U. S. C. § 2000e–6 (a) (1970), the Attorney General was authorized to bring a civil action "[w]henever [he] has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by [Title VII], and that the pattern or practice is of such a nature and is intended to deny the full exercise of [those rights."] The 1972 amendments to Title VII directed that this function be transferred as of March 24, 1974, to the EEOC, at least with respect to private employers. *Id.*, § 2000e–6 (c) (Supp. V); see also *id.*, § 2000e–5 (f)(1). The present lawsuit was instituted more than seven months before that transfer.

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 13, 1977

Re: No. 76-255 - Hazelwood School District v. United States

Dear Bill,

Thank you for your letter of June 10. I have made and sent to the printer several changes in the phraseology of the paragraph on page 8 that caused you concern -- along with several other changes in phraseology throughout the opinion. I think these language changes will satisfy your problem, without fundamentally altering the meaning of what I intended to say in the first circulation.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

stylistic changes
pp. 2-5, 7-11, 13
FNs 8-12 renumbered

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

From: Mr. Justice Stewart

Circulated: JUN 14 1977

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76–255

Hazelwood School District et al., Petitioners, *v.* United States.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[June —, 1977]

MR. JUSTICE STEWART delivered the opinion of the Court.

The petitioner Hazelwood School District covers 78 square miles in the northern part of St. Louis County, Mo. In 1973 the Attorney General brought this lawsuit against Hazelwood and various of its officials, alleging that they were engaged in a "pattern or practice" of employment discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U. S. C. § 2000e *et seq.* (1970 & Supp. V).[1] The complaint asked for an injunction requiring Hazelwood to cease its discriminatory practices, to take affirmative steps to obtain qualified Negro faculty members, and to offer employment and give backpay to victims of past illegal discrimination.

Hazelwood was formed from 13 rural school districts between 1949 and 1951 by a process of annexation. By the 1967–1968 school year, 17,550 students were enrolled in the

[1] Under 42 U. S. C. § 2000e–6 (a) (1970), the Attorney General was authorized to bring a civil action "[w]henever [he] has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by [Title VII], and that the pattern or practice is of such a nature and is intended to deny the full exercise of [those rights."] The 1972 amendments to Title VII directed that this function be transferred as of March 24, 1974, to the EEOC, at least with respect to private employers. *Id.*, § 2000e–6 (c) (Supp. V); see also *id.*, § 2000e–5 (f)(1). The present lawsuit was instituted more than seven months before that transfer.

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

76-255—OPINION

From: Mr. Justice Stewart

HAZELWOOD SCHOOL DISTRICT *v.* UNITED STATES

Circulated: _____

Recirculated: JUN 14 1977

We hold, therefore, that the Court of Appeals erred in disregarding the post-Act hiring statistics in the record, and that it should have remanded the case to the District Court for further findings as to the relevant labor market area and for an ultimate determination whether Hazelwood engaged in a pattern or practice of employment discrimination after March 24, 1972.[20] Accordingly, the judgment is vacated, and the case is remanded to the District Court for further proceedings consistent with this opinion.

It is so ordered.

---

percentage of Negro teachers and Negro pupils in Hazelwood, it did not undertake an evaluation of the relevant labor market, and its casual dictum that the inclusion of the city of St. Louis "distorted" the labor market statistics was not based upon valid criteria. 392 F. Supp., at 1287.

[20] It will also be open to the District Court on remand to determine whether sufficiently reliable applicant flow data are available to permit consideration of the petitioners' argument that those data may undercut a statistical analysis dependent upon percentages of hirings alone.

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 15, 1977

MEMORANDUM TO THE CONFERENCE

Re: No. 76-255, Hazelwood School District
v. United States

I plan to add the following sentence at the end of the first paragraph of footnote 16:

> A more precise method of analyzing these statistics confirms the results of the standard deviation analysis. See F. Mosteller, R. Rourke, & G. Thomas, Probability with Statistical Applications 494 (2d ed. 1970).

Please do not ask me to explain it.

P.S.

P.S.

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

From: Mr. Justice Stewart

Circulated: JUN 17 1977

Recirculated:

In the early 1960s Hazelwood found it necessary to recruit new teachers, and for that purpose members of its staff visited a number of colleges and universities in Missouri and bordering States. All the institutions visited were predominantly white, and Hazelwood did not seriously recruit at either of the two predominantly Negro four-year colleges in Missouri.[4] As a buyer's market began to develop for public school teachers, Hazelwood curtailed its recruiting efforts. For the 1971–1972 school year, 3,127 persons applied for only 234 teaching vacancies; for the 1972–1973 school year, there were 2,373 applications for 282 vacancies. A number of the applicants who were not hired were Negroes.[5]

Hazelwood hired its first Negro teacher in 1969. The number of Negro faculty members gradually increased in successive years: six of 957 in the 1970 school year; 16 of 1,107 by the end of the 1972 school year; 22 of 1,231 in the 1973 school year. By comparison, according to 1970 census figures, of more than 19,000 teachers employed in that year in the St. Louis area, 15.4% were Negro. That percentage figure included the St. Louis City School District, which in recent years has followed a policy of attempting to maintain a 50% Negro teaching staff. Apart from that school district, 5.7% of the teachers in the county were Negro in 1970.

Drawing upon these historic facts, the Government mounted its "pattern or practice" attack in the District Court upon four different fronts. It adduced evidence of (1) a history of alleged racially discriminatory practices, (2) statistical disparities in hiring, (3) the standardless and largely subjective hiring procedures, and (4) specific instances of alleged discrimination against 55 unsuccessful Negro applicants for teaching jobs. Hazelwood offered virtually no additional evi-

[4] One of those two schools was never visited even though it was located in nearby St. Louis. The second was briefly visited on one occasion, but no potential applicant was interviewed.

[5] ~~It is not clear~~ exactly how many of the job applicants in each of the school years were Negroes.

The parties disagree whether it is possible to determine from the present record

(5)

pp. 3, 8-13

FNs after 15 Renumbered

6/20/77

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76–255

Hazelwood School District et al., Petitioners, *v.* United States.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[June —, 1977]

MR. JUSTICE STEWART delivered the opinion of the Court.

The petitioner Hazelwood School District covers 78 square miles in the northern part of St. Louis County, Mo. In 1973 the Attorney General brought this lawsuit against Hazelwood and various of its officials, alleging that they were engaged in a "pattern or practice" of employment discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U. S. C. § 2000e *et seq.* (1970 & Supp. V).[1] The complaint asked for an injunction requiring Hazelwood to cease its discriminatory practices, to take affirmative steps to obtain qualified Negro faculty members, and to offer employment and give backpay to victims of past illegal discrimination.

Hazelwood was formed from 13 rural school districts between 1949 and 1951 by a process of annexation. By the 1967–1968 school year, 17,550 students were enrolled in the

[1] Under 42 U. S. C. § 2000e–6 (a) (1970), the Attorney General was authorized to bring a civil action "[w]henever [he] has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by [Title VII], and that the pattern or practice is of such a nature and is intended to deny the full exercise of [those rights."] The 1972 amendments to Title VII directed that this function be transferred as of March 24, 1974, to the EEOC, at least with respect to private employers. *Id.*, § 2000e–6 (c) (Supp. V); see also *id.*, § 2000e–5 (f) (1). The present lawsuit was instituted more than seven months before that transfer.

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 21, 1977

MEMORANDUM TO THE CONFERENCE

Re: No. 76-255, Hazelwood School District
v. United States

I shall change the sentence beginning on the next to the last line on page 10 from "The Court of Appeals simply accepted without explanation the Government's argument . . ." to "The Court of Appeals accepted the Government's argument . . .". John Stevens will, in turn, delete the sentence in footnote 2 of his dissenting opinion that begins, "The foregoing quotation demonstrates . . .".

P.S.

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 21, 1977

No. 76-255 - Hazelwood School District
v. United States

Dear Chief,

This case cannot be announced on Friday unless No. 76-422, Dothard v. Rawlinson, is also announced on that day. If for no other reason, Byron's separate opinion makes it necessary that Hazelwood and Dothard be announced on the same day.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

BRW
I do not agree with your Per Curiam - if it gets a Court I will dissent unless we vote to grant

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: 12-7-76

Recirculated: ______________

1st DRAFT

SUPREME COURT OF THE UNITED STATES

HAZELWOOD SCHOOL DISTRICT ET AL *v.*
UNITED STATES

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

No. 76-255. Decided December —, 1976

PER CURIAM.

The petition for certiorari is granted, the judgment of the Court of Appeals for the Eighth Circuit is vacated, and the case is remanded for reconsideration in light of *Washington v. Davis*, 426 U. S. 229 (1976).

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 15, 1977

Re: No. 76-255 - Hazelwood School District v. U.S.
No. 76-422 - Dothard v. Mieth

Dear Potter:

I join your circulation of June 14 in Hazelwood, but may write a few lines of concurrence.

I shall await the dissent in Dothard.

Sincerely,

Mr. Justice Stewart

Copies to 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: 6-17-77

Recirculated: _____

No. 76-255, Hazelwood School District v. United States
No. 76-422, Dothard v. Mieth

Mr. Justice White, concurring in No. 76-255 and dissenting in 76-422.

I join the Court's opinion in Hazelwood, No. 76-255, but with reservations with respect to the relative neglect of applicant pool data in finding a prima facie case of employment discrimination and heavy reliance on the disparity between the area-wide percentage of black public school teachers and the percentage of blacks on Hazelwood's teaching staff. Since the issue is whether Hazelwood discriminated against blacks in hiring after Title VII became applicable to it in 1972, perhaps the Government should have looked initially to Hazelwood's hiring practices in the 1972-1973 and 1973-1974 academic years with respect to the available applicant pool, rather than to history and to comparative work force statistics from other school districts. Indeed, there is evidence in the record suggesting that Hazelwood, with a black enrollment of only 2%, hired a higher percentage of black applicants than of white applicants for these two years. The Court's opinion of course permits Hazelwood

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 9, 1976

Re: No. 76-255, Hazelwood School District v. United States

Dear Byron:

I do not agree with your Per Curiam. If it gets a Court, I will either write or vote to grant.

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 10, 1977

Re: No. 76-255 - Hazelwood School District v. U.S.

Dear Potter:

Please join me.

Sincerely,

T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 8, 1976

Re: No. 76-255 - Hazelwood School District v. United States

Dear Byron:

Please join me.

Sincerely,

HAB.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 15, 1977

Re: No. 76-255 - Hazelwood School District
v. United States

Dear Potter:

Please join me in your recirculation of June 14.

Sincerely,

H.A.B.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

Case? 76-255

June 20, 1977

Dear Potter:

I am advised that the enclosure is the formula for a standard deviation. This ought to straighten out any confusion that may exist among all of us.

Sincerely,

H.

Mr. Justice Stewart

cc: Mr. Justice Brennan ✓

$P(x)$

$$\bar{X} = \sum x P(x)$$

$$\sigma^2 = \sum (x - \bar{x})^2 P(x)$$

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 11, 1976

No. 76-255 Hazelwood School District
v. United States

Dear Byron:

When we discussed this case at the Conference yesterday, I had not read John Stevens dissent.

I must say that he has persuaded me that a straight remand on Washington v. Davis probably would not be the best resolution of this petition. Accordingly I will either vote to deny or grant at the Conference on January 7.

I am quite persuaded that CA8 went too far in its opinion, and I may be persuaded to grant. At the moment, however, I have not come to rest.

Sincerely,

Lewis

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 10, 1977

No. 76-255 Hazelwood School District
v. United States

Dear Potter:

Please join me.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 8, 1976

Re: No. 76-255 Hazelwood School District v. United States

Dear Byron:

Please join me in your proposed per curiam.

Sincerely,

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 10, 1977

Re: No. 76-255 - Hazelwood School District v. United States

Dear Potter:

I realize this is a very poor time of year to communicate to the author of a circulating opinion generalized misgivings about a paragraph in it, instead of offering specific suggestions for changes in language. Since I voted with you in the case at Conference, but since I am not presently ready to join your circulation, I nonetheless take that tack.

The paragraph by which I am troubled is the one on page 8, except for the first sentence of that paragraph with which I fully concur. But the remaining sentences of the paragraph seem to me to put the matter too much in terms of a question of law, and too little as a question of fact. They also seem to give less recognition than I think should be given to the role of the District Court as a finder of fact.

I have always thought that there was a relationship between the Dayton case and the Hazelwood case, not because of their legal subject matter, but because the Courts of Appeals in each case, while undoubtedly acting in good faith, did not play the game strictly by the rules. I think that the portion of your paragraph 8 about which I have reservations

gives in a little to this tendency, though of course I am well aware that from page 9 on you give the Court of Appeals some licks.

But I think that in the last three sentences in the paragraph on page 8, your language condones more than it should the efforts of the Court of Appeals to act as a fact finder, in a situation where it is reversing a judgment of the District Court without expressly holding that the factual findings of the District Court were clearly erroneous. The "general approach of comparing the racial composition of Hazelwood's teaching staff to the racial composition of qualified teachers in the relevant labor market", to which you refer, would to my mind be a perfectly proper approach of a District Court sitting as an initial finder of fact; it would, as your citation to Teamsters, indicates, at least be addressed to the issue of whether there had been discrimination in hiring after the effective date of the Act. But for the Court of Appeals to mandate this "general approach" for the District Court, when what we are talking about is not a legal issue but an issue of fact, is to my mind far from clear.

As to the last sentence, I would be perfectly willing, as a judge of a Court of Appeals, to firm a conclusion of the District Court on the basis of the evidence recited there that a prima facie case of racial bias in hiring had made out, but I am not at all sure that I am prepared to approve either this Court or the Court of Appeals' reversing the District Court on this point and deciding as a matter of law that such a prima facie case had made out. If these were basically factual issues, and if, as your opinion later rightly emphasizes, statistics come in many sizes and shapes, there must be considerable latitude for the District Court to allow or reject statistical

evidence depending on its relevance and on the availability or not of better evidence. I would have no difficulty if the last sentence on page 8 approved the action of the Court of Appeals in reversing the District Court's dismissal of the complaint, and remanded the case for further proceedings by the District Court on the issue of whether there was sufficient statistical evidence to make out a prima facie case. But that is not what the Court of Appeals did, and I cannot, as of the present, agree with the sentence as you have it written, which approves the action of the Court of Appeals not merely in reversing for what is in effect a new trial on the issue of whether a prima facie case was made out, but reversing and directing the District Court to conclude as a matter of law that such a case had been made out.

If my comments seem to have any force to you, either one of us could obviously work out changes in language in the paragraph which would accommodate them to a greater or lesser extent. If they do not appeal to you, I am sure you would not agree to any proposed changes of mine which took a "Trojan horse" tack in suggesting "stylistic changes".

Sincerely,

WWM

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 14, 1977

Re: No. 76-255 - Hazelwood School District v. United States

Dear Potter:

Please join me in your second draft opinion.

Sincerely,

Mr. Justice Stewart

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: 12/9/76

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

HAZELWOOD SCHOOL DISTRICT ET AL. *v.* UNITED STATES

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

No. 76-255. Decided December —, 1976

MR. JUSTICE STEVENS, dissenting.

The Court's summary disposition of this case is difficult to understand.

The principal issues in the Court of Appeals were whether the government had proved its charge that specified applicants for teaching positions had been denied employment because of their race, and whether the relevant market for evaluating the statistical evidence was the entire area of St. Louis County and St. Louis City, or just the area in which the school district is located. These issues were relevant to the ultimate question whether the government had proved a violation of the Amendments to Title VII of the Civil Rights Act which became effective on March 24, 1972. No constitutional question was presented to, or decided by, the Court of Appeals.

Unless the Court is implying that there is some doubt about the constitutionality of Title VII,

Washington v. *Davis*, — U. S. —, has no bearing on the outcome of this case. *Washington* v. *Davis* establishes that purpose is a necessary part of a state violation of the Equal Protection Clause, while under Title VII discriminatory impact suffices to create a violation. If congressional power to extend Title VII to government bodies derived solely from the enforcement section of the Fourteenth Amendment, there might be some question about whether Congress could ban practices which did not themselves violate the Equal Protection Clause because of the absence of discriminatory intent. In extending Title VII to the government bodies, however, Congress also relied on its power under the Commerce Clause. See S. Rep. No. 92-415,

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: _____

Recirculated: 12/10/76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

HAZELWOOD SCHOOL DISTRICT ET AL. *v.* UNITED STATES

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

No. 76-255. Decided December —, 1976

MR. JUSTICE STEVENS, dissenting.

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Unless the Court is implying that there is some doubt about the constitutionality of Title VII, *Washington* v. *Davis*, — U. S. —, has no bearing on the outcome of this case. *Washington* v. *Davis* establishes that purpose is a necessary part of a state violation of the Equal Protection Clause, while under Title VII discriminatory impact suffices to create a violation. If congressional power to extend Title VII to government bodies derived solely from the enforcement section of the Fourteenth Amendment, there might be some question about whether Congress could ban practices which did not themselves violate the Equal Protection Clause because of the absence of discriminatory intent. In extending Title VII to the government bodies, however, Congress also

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

76-255 - Hazelwood School District v. United States

Circulated: JUN 9 '77

Recirculated: _____

MR. JUSTICE STEVENS, dissenting.

The Court correctly concludes that the Government's evidence was sufficient "to establish a prima facie case of racial bias in hiring." Ante, at 8. As the Court notes, petitioner "offered virtually no evidence in response." Ante, at 4. Since petitioner failed to rebut the prima facie case, the judgment of the Court of Appeals should be affirmed.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 15, 1977

Re: 76-255 - Hazelwood School District v. United States

Dear Potter:

As I am sure you expect, your revisions have required a rewriting of my dissent which should be ready sometime tomorrow.

Respectfully,

Mr. Justice Stewart

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: _____

Recirculated: JUN 17 1977

76-255 - Hazelwood School District v. United States

MR. JUSTICE STEVENS, dissenting.

The basic framework in a pattern-or practice suit brought by the Government under Title VII of the Civil Rights Act is the same as in any other law suit. The plaintiff has the burden of proving a prima facie case; if it does so, the burden of rebutting that case shifts to the defendant.[1/] In this case, since neither party complains that any relevant evidence was excluded, our task is to decide (1) whether the Government's evidence established a prima facie case; and (2) if so, whether the remaining evidence is sufficient to carry Hazelwood's burden of rebutting that prima facie case.

I

The first question is clearly answered by the Government's statistical evidence, its historical evidence, and its evidence relating to specific acts of discrimination.

As noted in Mr. Justice Clark's opinion for the Court of Appeals, one-third of the teachers hired by Hazelwood resided in the City of St. Louis at the time of their initial employment. 534 F.2d 805, 811-812, at 10 n. 7. It was therefore appropriate

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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

76-255 - Hazelwood School District v. United States

From: Mr. Justice Stevens

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1/ "At the initial,'liability' stage of a pattern or practice suit the Government is not required to offer evidence that each person for whom it will ultimately seek relief was a victim of the employer's discriminatory policy. Its burden is to establish a prima facie case that such a policy existed. The burden then shifts to the employer to defeat the prima facie showing of a pattern or practice by demonstrating that the Government's proof is either inaccurate or

Pp. 2-4, 6.

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76-255 - Hazelwood School District v. United States

From: Mr. Justice Stevens

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SUPREME COURT OF THE UNITED STATES

No. 76-255

Hazelwood School District et al., Petitioners, *v.* United States.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[June —, 1977]

MR. JUSTICE STEVENS, dissenting.

The basic framework in a pattern-or-practice suit brought by the Government under Title VII of the Civil Rights Act is the same that as in any other lawsuit. The plaintiff has the burden of proving a prima facie case; if it does so, the burden of rebutting that case shifts to the defendant.[1] In this case, since neither party complains that any relevant evidence was excluded, our task is to decide (1) whether the Government's evidence established a prima facie case; and (2) if so, whether the remaining evidence is sufficient to carry Hazelwood's burden of rebutting that prima facie case.

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[1] "At the initial, 'liability' stage of a pattern or practice suit the Government is not required to offer evidence that each person for whom it will ultimately seek relief was a victim of the employer's discriminatory policy. Its burden is to establish a prima facie case that such a policy existed. The burden then shifts to the employer to defeat the prima facie showing of a pattern or practice by demonstrating that the Government's proof is either inaccurate or insignificant. An employer might show, for example, that the claimed discriminatory pattern is a product of pre-Act hiring rather than unlawful post-Act discriminaton, or that during the period it is alleged to have pursued a discriminatory policy it made too few employment decisions to justify the inference that it had engaged in a regular practice of discrimination." *International Brotherhood of Teamsters* v. *United States*, No. 75-636 (May 31, 1977), Slip op., at 33-34.