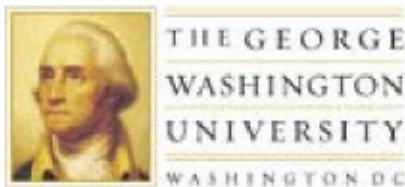


# The Burger Court Opinion Writing Database

## *Nashville Gas Co. v. Satty*

434 U.S. 136 (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

December 1, 1977

Dear Bill:

Re: 75-536 Nashville Gas Co. v. Satty

I join.

Regards,

Mr. Justice Rehnquist

cc: The Conference

WSB

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

CHAMBERS OF  
JUSTICE WM.J. BRENNAN, JR.

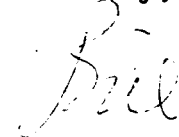
October 17, 1977

RE: No. 75-536 Nashville Gas Co. v. Satty

Dear Lewis:

The vote in the above is unanimous on the issue of loss of seniority for promotional purposes but 6 to 3 on the question of sick leave. Thurgood, you and I are to Affirm and our 6 colleagues to Reverse. If a dissent is indicated after Bill Rehnquist circulates his opinion would you be interested in taking it on?

Sincerely,



Mr. Justice Powell

cc: Mr. Justice Marshall

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✓

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

November 11, 1977

RE: No. 75-536 Nashville Gas Company v. Satty

Dear Lewis:

Please join me.

Sincerely,

*Bill*

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM.J. BRENNAN, JR.

November 14, 1977

RE: No. 75-536 Nashville Gas Company v. Satty

Dear Lewis:

Please join me in your November 14 circulation in  
the above.

Sincerely,

*Bill*

Mr. Justice Powell

cc: The Conference

✓

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

CHAMBERS OF  
JUSTICE POTTER STEWART

October 28, 1977

No. 75-536, Nashville Gas v. Satty

Dear Bill,

I am glad to join your opinion for  
the Court in this case.

Sincerely yours,

P.S.  
/

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

October 28, 1977

Re: No. 75-536 - Nashville Gas Co. v. Satty

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 16, 1977

Re: No. 75-536, Nashville Gas Company v. Satty

Dear Lewis:

Please join me.

Sincerely,



T. M.

Mr. Justice Powell

cc: The Conference



✓

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

October 31, 1977

Re: No. 75-536 - Nashville Gas Co. v. Satty

Dear Bill:

Please join me.

Sincerely,

*H.A.B.*

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

Rochester, Minnesota

November 21, 1977

Re: No. 75-536 - Nashville Gas Co. v. Satty

Dear Bill:

I am still with you.

Sincerely,

H. A. B.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

October 17, 1977

No. 75-536 Nashville Gas Co. v. Satty

Dear Bill:

Thank you for note about the above case.

As you suggest, if a dissent is indicated after Bill Rehnquist circulates his opinion, I will be glad to draft one.

Sincerely,



Mr. Justice Brennan

lfp/ss

cc: Mr. Justice Marshall

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

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 75-536

From: Mr. Justice Powell

Circulated: NOV 9 1977

Recirculated: \_\_\_\_\_

Nashville Gas Company,  
Petitioner,  
v.  
Nora D. Satty.

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

[November —, 1977]

MR. JUSTICE POWELL, concurring.

I join Part I of the opinion of the Court affirming the decision of the Court of Appeals that petitioner's policy denying accumulated seniority for job-bidding purposes to female employees returning from pregnancy leave violates Title VII.<sup>1</sup>

I also concur in the result in Part II, for the legal status under Title VII of petitioner's policy of denying accumulated sick-pay benefits to female employees while on pregnancy leave requires further factual development in light of *General Electric Co. v. Gilbert*, 429 U. S. 125 (1976). I write separately, however, because the Court appears to have constricted unnecessarily the scope of inquiry on remand by holding prematurely that respondent has failed to meet her burden of establishing a prima facie case that petitioner's sick-leave policy is discriminatory under Title VII. This case was tried in the District Court and reviewed in the Court of Appeals before our decision in *Gilbert*, at a time when the Courts of

<sup>1</sup> I would add, however, that petitioner's seniority policy, on its face, does not "appear[] to be neutral in its treatment of male and female employees." Slip op. 3. As the District Court noted below, "only pregnant women are required to take leave and thereby lose job-bidding seniority and no leave is required in other non-work related disabilities. . . ." 384 F. Supp. 765, 771 (1974). This mandatory maternity leave is not "identical to the formal leave of absence granted to employees, male or female, in order that they may pursue additional education." Slip op. 3 n. 2.

Changes on pp. 1, 4, 5

LF  
Please join me

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

From: Mr. Justice Powell

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

Recirculated NOV 14 1977

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-536

Nashville Gas Company,  
Petitioner,  
v.  
Nora D. Satty.

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

[November —, 1977]

MR. JUSTICE POWELL, concurring.

I join Part I of the opinion of the Court affirming the decision of the Court of Appeals that petitioner's policy denying accumulated seniority for job-bidding purposes to female employees returning from pregnancy leave violates Title VII.<sup>1</sup>

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<sup>1</sup> I would add, however, that petitioner's seniority policy, on its face, does not "appear[] to be neutral in its treatment of male and female employees." Slip op. 3. As the District Court noted below, "only pregnant women are required to take leave and thereby lose job-bidding seniority and no leave is required in other non-work related disabilities. . . ." 384 F. Supp. 765, 771 (1974). This mandatory maternity leave is not "identical to the formal leave of absence granted to employees, male or female, in order that they may pursue additional education." Slip op. 3 n. 2.

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

P. 3

From: Mr. Justice Powell

4th DRAFT

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

**SUPREME COURT OF THE UNITED STATES**

Re-circulated: **DEC 2 1977**

No. 75-536

Nashville Gas Company,  
 Petitioner,  
 v.  
 Nora D. Satty.

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

[November —, 1977]

MR. JUSTICE POWELL, concurring *in the result and concurring in part.*

I join Part I of the opinion of the Court affirming the decision of the Court of Appeals that petitioner's policy denying accumulated seniority for job-bidding purposes to female employees returning from pregnancy leave violates Title VII.<sup>1</sup>

I also concur in the result in Part II, for the legal status under Title VII of petitioner's policy of denying accumulated sick-pay benefits to female employees while on pregnancy leave requires further factual development in light of *General Electric Co. v. Gilbert*, 429 U. S. 125 (1976). I write separately, however, because the Court appears to have constricted unnecessarily the scope of inquiry on remand by holding prematurely that respondent has failed to meet her burden of establishing a prima facie case that petitioner's sick-leave policy is discriminatory under Title VII. This case was tried in the District Court and reviewed in the Court of Appeals before our decision in *Gilbert*. The appellate court upheld her claim in accord with the then uniform view of the

<sup>1</sup> I would add, however, that petitioner's seniority policy, on its face, does not "appear[] to be neutral in its treatment of male and female employees." *Ante*, at 3. As the District Court noted below, "only pregnant women are required to take leave and thereby lose job-bidding seniority and no leave is required in other non-work related disabilities. . . ." 384 F. Supp. 765, 771 (MD Tenn. 1974). This mandatory maternity leave is not "identical to the formal leave of absence granted to employees, male or female, in order that they may pursue additional education." *Ante*, at 3 n. 2.

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

From: Mr. Justice Rehnquist

OCT 27 1977  
Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-536

Nashville Gas Company,	} On Writ of Certiorari to the United	
Petitioner,		States Court of Appeals for the
v.		Sixth Circuit.
Nora D. Satty.		

[October —, 1977]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner requires pregnant employees to take a formal leave of absence. The employee does not receive sick pay while on pregnancy leave. She also loses all accumulated job seniority; as a result, while petitioner attempts to provide the employee with temporary work upon her return, she will be employed in a permanent job position only if no employee presently working for petitioner also applies for the position. The United States District Court for the Middle District of Tennessee held that these policies violate Title VII of the Civil Rights Act of 1965, 78 Stat. 253, as amended, 42 U. S. C. § 2000e *et seq.* 384 F. Supp. 765 (1974). The Court of Appeals for the Sixth Circuit affirmed. 522 F. 2d 850 (1975). We granted certiorari to decide, in light of our opinion last Term in *General Electric Co. v. Gilbert*, 429 U. S. 125 (1976), whether the lower courts properly applied Title VII to petitioner's policies respecting pregnancy.

Two separate policies are at issue in this case. The first is petitioner's practice of giving sick pay to employees disabled by reason of nonoccupational sickness or injury but not to those disabled by pregnancy. The second is petitioner's practice of denying accumulated seniority to female employees

1 —  
T. 10  
STYLISTIC CHANGES

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

2nd DRAFT

From: Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

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

No. 75-536

Recirculated: NOV 11 1977

Nashville Gas Company,  
Petitioner,  
v.  
Nora D. Satty.

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

[October —, 1977]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner requires pregnant employees to take a formal leave of absence. The employee does not receive sick pay while on pregnancy leave. She also loses all accumulated job seniority; as a result, while petitioner attempts to provide the employee with temporary work upon her return, she will be employed in a permanent job position only if no employee presently working for petitioner also applies for the position. The United States District Court for the Middle District of Tennessee held that these policies violate Title VII of the Civil Rights Act of 1965, 78 Stat. 253, as amended, 42 U. S. C. § 2000e *et seq.* 384 F. Supp. 765 (1974). The Court of Appeals for the Sixth Circuit affirmed. 522 F. 2d 850 (1975). We granted certiorari to decide, in light of our opinion last Term in *General Electric Co. v. Gilbert*, 429 U. S. 125 (1976), whether the lower courts properly applied Title VII to petitioner's policies respecting pregnancy.

Two separate policies are at issue in this case. The first is petitioner's practice of giving sick pay to employees disabled by reason of nonoccupational sickness or injury but not to those disabled by pregnancy. The second is petitioner's practice of denying accumulated seniority to female employees



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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 3, 1978

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 75-536 - Nashville Gas Co. v. Satty; and No. 75-1069 - Richmond Unified School District v. Berg

1. No. 77-79 - EEOC v. Children's Hospital of Pittsburg.

When Harriet Baum, an employee of respondent, learned that she was pregnant, she requested a voluntary five-month pregnancy-related leave of absence to commence after she had exhausted her sick leave and vacation time. Respondent agreed to the leave of absence, but informed Baum that they would not pay sick leave for any pregnancy-related period of absence. Baum voluntarily began her leave four days prior to the birth of her daughter; she was not allowed to draw on sick pay while on leave. Baum filed a charge with the EEOC alleging that respondent violated Title VII in denying her the use of accumulated sick leave during pregnancy-related disability. During Baum's

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: **NOV 22 1977**

Recirculated: \_\_\_\_\_

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-536

Nashville Gas Company, Petitioner, v. Nora D. Satty.	} On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.
---	--

[November —, 1977]

MR. JUSTICE STEVENS, concurring.

Petitioner enforces two policies that treat pregnant employees less favorably than other employees who incur a temporary disability. First, they are denied seniority benefits during their absence from work and thereafter; second, they are denied sick pay during their absence. The Court holds that the former policy is unlawful whereas the latter is lawful. I concur in the Court's judgment, but because I believe that its explanation of the legal distinction between the two policies may engender some confusion among those who must make compliance decisions on a day-to-day basis, I advance a separate, and rather pragmatic, basis for reconciling the two parts of the decision with each other and with *General Electric Co. v. Gilbert*, 429 U. S. 125.

The general problem is to decide when a company policy which attaches a special burden to the risk of absenteeism caused by pregnancy is a *prima facie* violation of the statutory prohibition against sex discrimination. The answer "always," which I had thought quite plainly correct,<sup>1</sup> is foreclosed by the

<sup>1</sup> "An analysis of the effect of a company's rules relating to absenteeism would be appropriate if those rules referred only to neutral criteria, such as whether an absence was voluntary or involuntary, or perhaps particularly costly. This case, however, does not involve rules of that kind.

"Rather, the rule at issue places the risk of absence caused by pregnancy in a class by itself. By definition, such a rule discriminates on account of sex; for it is the capacity to become pregnant which primarily differentiates