

The Burger Court Opinion Writing Database

Los Angeles Department of Water and Power v. Manhart

435 U.S. 702 (1978)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: APR 13 1978

Recirculated: _____

Re: 76-1810 - City of Los Angeles, et al. v. Manhart, et al.

MR. CHIEF JUSTICE BURGER, with whom Mr. Justice Rehnquist joins, concurring in part and dissenting in part.

I join Part IV of the Court's opinion; as to Parts I, II, and III, I dissent.

Gender based actuarial tables have been in use since at least 1843,^{1/} and their statistical validity has been repeatedly verified.^{2/} The vast life insurance, annuity and pension plan industry is based on these tables. As the Court recognizes, ante, at 4, it is a fact that "women, as a class, do live longer than men." It is equally true that employers cannot know in advance when individual members of the classes will die. Ante, at 5. Yet, if they are to operate economically workable group pension programs, it is only rational to permit them to rely on statistically sound and proven disparities in longevity between men and women. Indeed, it seems to me irrational to assume Congress intended to outlaw

1/ See H. Moir, Sources and Characteristics of the Principle Mortality Tables 10, 14 (1919).

2/ See, e.g., 1970 Demographic Yearbook, United Nations, 710-729 (1971).

✓
STYLISTIC CHANGES AS MARKED:

Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: The Chief Justice

Circulated:

Recirculated: APR 14 1978

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1810

City of Los Angeles, Department
 of Water and Power, et al.,
 Petitioners,
 v.
 Marie Manhart et al.

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

[April —, 1978]

MR. CHIEF JUSTICE BURGER, with whom MR. JUSTICE REHNQUIST joins, concurring in part and dissenting in part.

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The Court's conclusion that the language of the civil rights statute is clear, admitting of no advertence to the legislative

¹ See H. Moir, Sources and Characteristics of the Principle Mortality Tables 10, 14 (1919).

² See, e. g., 1970 Demographic Yearbook, United Nations, 710-729 (1971).

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

From: The Chief Justice

2nd DRAFT

Circulated

SUPREME COURT OF THE UNITED STATES

APR 7 1976

No. 76-1810

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 of Water and Power, et al.,
 Petitioners,
 v.
 Marie Manhart et al.

} On Writ of Certiorari to
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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

March 24, 1978

RE: No. 76-1810 City of Los Angeles, etc. v. Marie
Manhart, et al.

Dear John:

Please note at the foot of your opinion in the
above that I took no part in the consideration or de-
cision of the case.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 24, 1978

Re: No. 76-1810, Los Angeles, Dept. of
Water & Power v. Manhart

Dear John,

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

Sincerely yours,

?S.
1/

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 24, 1978

Re: #76-1810 - City of Los Angeles
v. Manhart

Dear John:

Please join me.

Sincerely yours,



Mr. Justice Stevens
Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 23, 1978

MEMORANDUM TO THE CONFERENCE

Re: No. 76-1810, City of Los Angeles v. Manhart

I vote to affirm the judgment of the Court of Appeals. There is no question that Los Angeles distinguishes among its employees based on their gender; the take-home pay of women employees is lower than that of men employees solely because the women are women. The argument that women are required to contribute more because they live longer does not make sense as applied to any individual woman, since there is no way to know how long she will live. We might have a different case if gender were just one of several factors affecting longevity that the City considered in fixing pension plan contributions, but when it is virtually the only factor considered we have a classic case of sex discrimination.

I will reserve judgment for the moment on the issue of the validity of the "refund" ordered by the District Court with regard to excess contributions since 1972. While I understand the concern about disrupting ongoing pension planning, the case seems difficult to distinguish from ones in which we have upheld back pay awards. Indeed, the case is in some ways a stronger one for retroactive relief than the back pay cases, since respondents had actually earned the money that they now seek and since the City was theoretically holding the money in trust for their retirement.

T.M.
T.M.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 3, 1978

Re: No. 76-1810 - City of Los Angeles v. Manhart

Dear John:

As of now, I join all but Part IV of your opinion.
I might circulate a dissent to Part IV.

Sincerely,

JM.

T. M.

Mr. Justice Stevens

cc: The Conference

Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: Mr. Justice Marshall
 Circulated: ** 7 APR 1978*

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 76-1810

City of Los Angeles, Department
 of Water and Power, et al.,
 Petitioners,
 v.
 Marie Manhart et al. } On Writ of Certiorari to
 } the United States Court
 } of Appeals for the Ninth
 } Circuit.

[April —, 1978]

MR. JUSTICE MARSHALL, concurring in part and dissenting
 in part.

I agree that Title VII of the Civil Rights Act of 1964, as
 amended, forbids petitioners' practice of requiring female
 employees to make larger contributions to a pension fund than
 do male employees. I therefore join all of the Court's opinion
 except Part IV.

I also agree with the Court's statement in Part IV that, once
 a Title VII violation is found, *Albemarle Paper Co. v. Moody*,
 422 U. S. 405 (1975), establishes a "presumption in favor of
 retroactive liability" and that this presumption "can seldom be
 overcome." *Ante*, at 16. But I do not agree that the presump-
 tion should be deemed overcome in this case, especially since
 the relief was granted by the District Court in the exercise of
 its discretion and was upheld by the Court of Appeals. I
 would affirm the decision below and therefore cannot join
 Part IV of the Court's opinion or the Court's judgment.

In *Albemarle Paper Co. v. Moody, supra*, this Court made
 clear that, subject to the presumption in favor of retroactive
 relief, the District Court retains its "traditional" equitable
 discretion "to locate 'a just result,'" with appellate review
 limited to determining "whether the District Court was 'clearly
 erroneous' in its factual findings and whether it 'abused' its . . .
 discretion." *Id.*, at 424. See also Fed. Rule Civ. Proc. 52 (a)

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 14, 1978

Re: No. 76-1810 - City of Los Angeles v. Manhart

Dear John:

If nothing else is circulated in this case, I have no objection to it coming down either Tuesday or Wednesday.

Sincerely,

J.M.

T.M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 17, 1978

Re: No. 76-1810 - City of Los Angeles v. Manhart

MEMORANDUM TO THE CONFERENCE

In view of the major changes in John's opinion in this case which reached my Chambers around 5 p.m. on Friday, I will have to make some changes in my opinion. So, it cannot come down this week.

Sincerely,

JM .

T.M.

PP. 3-5

19 APR 1978

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1810

City of Los Angeles, Department
of Water and Power, et al.,
Petitioners,
v.
Marie Manhart et al. } On Writ of Certiorari to
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of Appeals for the Ninth
Circuit.

[April —, 1978]

MR. JUSTICE MARSHALL, concurring in part and dissenting
in part.

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amended, forbids petitioners' practice of requiring female
employees to make larger contributions to a pension fund than
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a Title VII violation is found, *Albemarle Paper Co. v. Moody*,
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would affirm the decision below and therefore cannot join
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clear that, subject to the presumption in favor of retroactive
relief, the District Court retains its "traditional" equitable
discretion "to locate 'a just result,'" with appellate review
limited to determining "whether the District Court was 'clearly
erroneous' in its factual findings and whether it 'abused' its . . .
discretion." *Id.*, at 424. See also Fed. Rule Civ. Proc. 52 (a)

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 31, 1978

MEMORANDUM TO THE CONFERENCE

Re: No. 76-1810 - City of Los Angeles, Department of
Water and Power v. Manhart

My circulation, distributed herewith, is premature in the sense that Thurgood has not yet voted. I am assuming that he will join John, but, if he does not, I shall change my first page accordingly.

Harb

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: 3/31/78

1st DRAFT

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 76-1810

City of Los Angeles, Department
of Water and Power, et al.,
Petitioners,
v.
Marie Manhart et al. } On Writ of Certiorari to
the United States Court
of Appeals for the Ninth
Circuit.

[April —, 1978]

MR. JUSTICE BLACKMUN, concurring in part and concurring in the judgment.

MR. JUSTICE STEWART wrote the opinion for the Court in *Geduldig v. Aiello*, 417 U. S. 484 (1974), and joined the Court's opinion in *General Electric Co. v. Gilbert*, 429 U. S. 125 (1976). MR. JUSTICE WHITE and MR. JUSTICE POWELL joined both *Geduldig* and *General Electric*. MR. JUSTICE STEVENS, who writes the opinion for the Court in the present case, dissented in *General Electric*. 429 U. S., at 160. MR. JUSTICE MARSHALL, who joins the Court's opinion here, dissented in both *Geduldig* and *General Electric*. 417 U. S., ~~429~~ U. S., at 146. My own discomfort with the latter case was apparent, I believe, from my separate concurrence there. 429 U. S., at 146.

These "line-ups" surely are not without significance. The participation of my Brothers STEWART, WHITE, and POWELL in today's majority opinion should be a sign that the decision in this case is not in tension with *Geduldig* and *General Electric* and, indeed, is wholly consistent with them. I am not at all sure that this is so; the votes of MR. JUSTICE MARSHALL and MR. JUSTICE STEVENS would indicate quite the contrary.

Given the decisions in *Geduldig* and *General Electric*—the one constitutional, the other statutory—the present case just cannot be an easy one for the Court. I might have thought that those decisions would have required the Court to conclude

P. The other Justice

Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

P. From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 4/4/78

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1810

City of Los Angeles, Department
 of Water and Power, et al.,
 Petitioners,
 v.
 Marie Manhart et al.

On Writ of Certiorari to
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[April —, 1978]

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 in the judgment.

MR. JUSTICE STEWART wrote the opinion for the Court in *Geduldig v. Aiello*, 417 U. S. 484 (1974), and joined the Court's opinion in *General Electric Co. v. Gilbert*, 429 U. S. 125 (1976). MR. JUSTICE WHITE and MR. JUSTICE POWELL joined both *Geduldig* and *General Electric*. MR. JUSTICE STEVENS, who writes the opinion for the Court in the present case, dissented in *General Electric*. 429 U. S., at 160. MR. JUSTICE MARSHALL, who joins the Court's opinion in large part here, dissented in both *Geduldig* and *General Electric*. 417 U. S., at 497; 429 U. S., at 146. My own discomfort with the latter case was apparent, I believe, from my separate concurrence there. 429 U. S., at 146.

These "line-ups" surely are not without significance. The participation of my Brothers STEWART, WHITE, and POWELL in today's majority opinion *should* be a sign that the decision in this case is not in tension with *Geduldig* and *General Electric* and, indeed, is wholly consistent with them. I am not at all sure that this is so; the votes of MR. JUSTICE MARSHALL and MR. JUSTICE STEVENS would indicate quite the contrary.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 30, 1978

No. 76-1810 City of Los Angeles v. Manhart

Dear John:

Please join me.

Sincerely,

L Lewis

Mr. Justice Stevens

lfp/ss

cc: The Conference

April 11, 1978

76-1810 Los Angles Department of Water v.
Manhart

Dear John:

According to the "clerk grapevine", there is some sort of a movement to persuade you to change much of Part IV that resolves the retroactive issue, and remand the case for a determination by the District Court as to whether in fact serious consequences would result from retroactivity.

I write to say, as I stated at Conference, that my willingness to decide the case as we did depends upon our also holding that our decision applies prospectively. There are thousands of these plans in effect in both profit and nonprofit organizations across the country. In my view, it is essential to avoid - or at least to minimize to the extent we can - the extensive confusion and uncertainty that would result if each of these plans had to be reexamined to determine whether the consequences of retroactive application of our decision would be unduly adverse.

Sincerely,

Mr. Justice Stevens

lfp/ss

cc: The Conference

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: 3/24/78

2nd DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 76-1810

City of Los Angeles, Department
of Water and Power, et al.,
Petitioners,
v.
Marie Manhart et al. } On Writ of Certiorari to
the United States Court
of Appeals for the Ninth
Circuit.

[March —, 1978]

MR. JUSTICE STEVENS delivered the opinion of the Court.

As a class, women live longer than men. For this reason, the Los Angeles Department of Water and Power required its female employees to make larger contributions to its pension fund than its male employees. We granted certiorari to decide whether this practice discriminated against individual female employees because of their sex in violation of § 703 (a)(1) of the Civil Rights Act of 1964, as amended.¹ We agree with the District Court and the Court of Appeals that the statute forbids the practice; we disagree, however, with the relief ordered by those courts.

For many years the Department² has administered retirement, disability, and death benefit programs for its employees.

¹ The section provides:

"It shall be an unlawful employment practice for an employer—
“(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin” 42 U. S. C. 2000e-2 (a)(1).

² In addition to the Department itself, the petitioners include members of the Board of Commissioners of the Department and members of the plan's Board of Administration.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

JPS

March 27, 1978

Re: 76-1810 - City of Los Angeles, etc.
v. Manhart et al.

Dear Lewis:

Do you think these changes are sufficient?
I should point out that I would very much like to
retain footnote 17 and the text reference at the
top of the page.

Respectfully,

JPS

Mr. Justice Powell

Attachment

pp. 7, 9, 15, 20

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:

4th DRAFT

Recirculated: MAR 30 1978

SUPREME COURT OF THE UNITED STATES

No. 76-1810

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 of Water and Power, et al.,
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² In addition to the Department itself, the petitioners include members of the Board of Commissioners of the Department and members of the plan's Board of Administration.

JPS
 As of now I have all but Part IV of
 your opinion. I suggest creating a draft to
 Part IV

JH

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

Personal

March 31, 1978

Re: 76-1810 - City of Los Angeles, Department
of Water and Power v. Manhart

Dear Harry:

My law clerks have told me that Thurgood will probably dissent from Part IV. I am therefore particularly grateful to you for joining that part of the opinion because I do think it important that there be a Court for the holding.

Respectfully,



Mr. Justice Blackmun

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

5th DRAFT

Circulated:

APR 4 1978

SUPREME COURT OF THE UNITED STATES

Circulated:

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 Marie Manhart et al.

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² In addition to the Department itself, the petitioners include members of the Board of Commissioners of the Department and members of the plan's Board of Administration.

✓
pp. 16, 19-20

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: 4/14/78

6th DRAFT

SUPREME COURT OF THE UNITED STATES

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