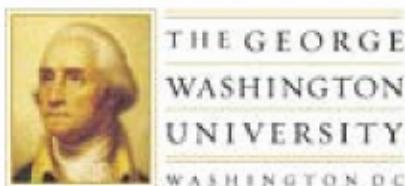


# The Burger Court Opinion Writing Database

*New York City Transit Authority v. Beazer*  
440 U.S. 568 (1979)

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

March 13, 1979

Re: 77-1427 - N.Y. City Transit Authority v. Beazer

Dear John:

I join.

Regards,

WB B

Mr. Justice Stevens

Copies to the Conference

SUPREME COURT OF THE UNITED STATES

No. 77-1427

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: 22 FEB 1979

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

New York City Transit Authority  
et al., Petitioners,

v.

Carl A. Beazer, et al.

)  
On Writ of Certiorari to the  
United States Court of  
Appeals for the Second Cir-  
cuit.

February    1979

MR. JUSTICE BRENNAN, dissenting.

I would affirm for the reasons stated in Part I of Mr.  
Justice White's dissenting opinion.

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: 23 FEB 1979

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 77-1427

New York City Transit Authority  
et al., Petitioners, } On Writ of Certiorari to  
v. } the United States Court  
Carl A. Beazer et al. } of Appeals for the Sec-  
ond Circuit.

[February —, 1979]

MR. JUSTICE BRENNAN, dissenting.

I would affirm for the reasons stated in Part I of MR. JUSTICE WHITE's dissenting opinion.

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 26, 1979

Re: 77-1427 - New York City Transit Authority  
v. Beazer

Dear John:

I am glad to join your opinion for  
the Court.

Sincerely yours,

C.S.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 12, 1979

Re: 77-1427 - New York City Transit  
v. Beazer

Dear John:

Your proposed changes are fine with  
me.

Sincerely yours,

PS.

/

Mr. Justice Stevens

cc - Mr. Justice Blackmun  
Mr. Justice Rehnquist

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 30, 1979

~~Yes~~  
~~I accept it, but~~  
~~not~~

Re: No. 77-1427 - New York City Transit  
Authority v. Beazer

Dear John,

In due course, I shall circulate a  
dissent in this case.

Sincerely yours,



Mr. Justice Stevens  
Copies to the Conference  
cmc

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 FEB 1979

1st DRAFT

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

**SUPREME COURT OF THE UNITED STATES**

No. 77-1427

New York City Transit Authority  
 et al., Petitioners,  
 v.  
 Carl A. Beazer et al. } On Writ of Certiorari to  
 } the United States Court  
 } of Appeals for the Sec-  
 } ond Circuit.

[February —, 1979]

MR. JUSTICE WHITE, dissenting.

Although the Court purports to apply settled principles to unique facts, the result reached does not square with either Title VII or the Equal Protection Clause. Accordingly, but respectfully, I dissent.

I

As an initial matter, the Court is unwise in failing to remand the statutory claims to the Court of Appeals. The District Court decided the Title VII issue only because it provided a basis for allowing attorney's fees. 414 F. Supp. 277, 278 (SDNY 1976). The Court of Appeals did not deal with Title VII, relying instead on the intervening passage of the Civil Rights Attorney's Fees Award Act of 1976,<sup>1</sup> which authorized the award of fees for success on the equal protection claim today held infirm by the Court. 558 F. 2d 97, 99-100 (CA2 1977). In such circumstances, and finding that we disagree with the judgment of the Court of Appeals on the constitutional question, we would usually remand the unexplored alternative basis for relief. *E. g., Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U. S. 519, 549 (1978). That course would obviate the need for us to deal with what the Court considers to be a factual issue or at least would provide assistance in analyzing the issue.

<sup>1</sup> 42 U. S. C. § 1988.

*ap 2. 5. 7. 10*

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

2nd DRAFT

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

Recirculated: 2-15-79

**SUPREME COURT OF THE UNITED STATES**

No. 77-1427

New York City Transit Authority et al., Petitioners, v. Carl A. Beazer et al. } On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[February —, 1979]

MR. JUSTICE WHITE, with whom MR. JUSTICE MARSHALL joins, dissenting.

Although the Court purports to apply settled principles to unique facts, the result reached does not square with either Title VII or the Equal Protection Clause. Accordingly, but respectfully, I dissent.

I

As an initial matter, the Court is unwise in failing to remand the statutory claims to the Court of Appeals. The District Court decided the Title VII issue only because it provided a basis for allowing attorney's fees. 414 F. Supp. 277, 278 (SDNY 1976). The Court of Appeals did not deal with Title VII, relying instead on the intervening passage of the Civil Rights Attorney's Fees Award Act of 1976,<sup>1</sup> which authorized the award of fees for success on the equal protection claim today held infirm by the Court. 558 F. 2d 97, 99-100 (CA2 1977). In such circumstances, on finding that we disagree with the judgment of the Court of Appeals as to the constitutional question, we would usually remand the unexplored alternative basis for relief. *E. g., Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U. S. 519, 549 (1978). That course would obviate the need for us to deal with what the Court considers to be a factual issue or at least would provide assistance in analyzing the issue.

<sup>1</sup> 42 U. S. C. § 1988.

✓  
OPR 1-15

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:

3rd DRAFT

23 FEB 1979

Recirculated:

## SUPREME COURT OF THE UNITED STATES

No. 77-1427

New York City Transit Authority  
et al., Petitioners, } On Writ of Certiorari to  
v. } the United States Court  
Carl A. Beazer et al. } of Appeals for the Sec-  
ond Circuit.

[February —, 1979]

MR. JUSTICE WHITE, with whom MR. JUSTICE MARSHALL joins, dissenting.

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<sup>1</sup> 42 U. S. C. § 1988.

<sup>2</sup> The Court finds it inappropriate to remand because the Title VII question "was fully aired before the District Court, . . . involves the application of settled legal principles to uncontroversial facts, and . . . has been carefully briefed in this Court without any of the parties even

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: \_\_\_\_\_

4th DRAFT

Recirculated: 15 MAR 1979

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## SUPREME COURT OF THE UNITED STATES

No. 77-1427

New York City Transit Authority | On Writ of Certiorari to  
et al., Petitioners, | the United States Court  
v. | of Appeals for the Sec-  
Carl A. Beazer et al. | ond Circuit.

[February —, 1979]

MR. JUSTICE WHITE, with whom MR. JUSTICE MARSHALL joins, dissenting.

Although the Court purports to apply settled principles to unique facts, the result reached does not square with either Title VII or the Equal Protection Clause. Accordingly, but respectfully, I dissent.

### I

As an initial matter, the Court is unwise in failing to remand the statutory claims to the Court of Appeals. The District Court decided the Title VII issue only because it provided a basis for allowing attorney's fees. 414 F. Supp. 277, 278 (SDNY 1976). The Court of Appeals did not deal with Title VII, relying instead on the intervening passage of the Civil Rights Attorney's Fees Award Act of 1976,<sup>1</sup> which authorized the award of fees for success on the equal protection claim today held infirm by the Court. 558 F. 2d 97, 99-100 (CA2 1977). In such circumstances, on finding that we disagree with the judgment of the Court of Appeals as to the constitutional question, we would usually remand the unexplored alternative basis for relief.<sup>2</sup> *E. g., Vermont Yankee*

<sup>1</sup> 42 U. S. C. § 1988.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 30, 1979

Re: No. 77-1427 - New York City Transit  
Authority v. Beazer

Dear John:

I await the dissent.

Sincerely,

*T.M.*  
T.M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 6, 1979

Re: No. 77-1427 - New York City Transit Authority  
v. Beazer

Dear Byron:

Please join me in your dissent.

Sincerely,

*J.M.*

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 30, 1979

Re: No. 77-1427 - New York City Transit Authority  
v. Beazer

Dear John:

Please join me.

Sincerely,

*Harry*

Mr. Justice Stevens

cc: The Conference

February 13, 1979

**Re: No. 77-1427 - New York City Transit Authority  
v. Beazer**

Dear John:

Your proposed changes are all right with me.

Sincerely,

HAB

**Mr. Justice Stevens**

**cc: Mr. Justice Stewart  
Mr. Justice Rehnquist**

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 6, 1979

77-1427 New York City Transit v. Beazer

Dear John:

I am not yet at rest in this case, and may write something.

Sincerely,



Mr. Justice Stevens

lfp/ss

cc: The Conference

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: 8 MAR 1979

1st DRAFT

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## SUPREME COURT OF THE UNITED STATES

No. 77-1427

New York City Transit Authority et al., Petitioners, v. Carl A. Beazer et al. On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[March —, 1979]

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

The opinion of the Court addresses, and sustains, the policy of the Transit Authority under its Rule 11 (b) only insofar as it applies to employees and applicants for employment who "are receiving methadone treatments" (emphasis supplied). *Ante*, at 3 n. 3, and 24. I concur in the opinion of the Court holding that there is no violation of the Equal Protection Clause or Title VII when the Authority's policy is applied to employees or applicants who are currently on methadone.

But in my view the question presented by the record and opinions of the courts below is not limited to the effect of the rule on present methadone users. Indeed, I have thought it conceded by all concerned that the Transit Authority's policy of exclusion extended beyond the literal language of Rule 11 (b) to persons currently free of methadone use but who had been on the drug within the previous five years. The District Court was unsure whether all past users were excluded but indicated that the policy of exclusion covered at least persons who had been free of methadone use for less than five years. 399 F. Supp. 1032, 1036 (1975).<sup>1</sup> The Court of

<sup>1</sup> The District Court also noted that the Authority "contends that it cannot afford to take what it considers the risks of employing *present or past* methadone maintained persons, except possibly those who have been

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

23

From: Mr. Justice Powell

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13 MA. 1979

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

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-1427

New York City Transit Authority  
et al., Petitioners,  
v.  
Carl A. Beazer et al.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Sec-  
ond Circuit.

[March —, 1979]

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

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 30, 1979

Re: No. 77-1427 - New York City Transit Authority v.  
Beazer

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 13, 1979

Re: No. 77-1427 - New York City Transit v. Beazer

Dear John:

I think the author of a Court opinion should have a fair amount of latitude in responding to a dissent, and your proposed changes are entirely agreeable to me.

Sincerely,



Mr. Justice Stevens

Copies to Mr. Justice Stewart  
and 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

Circulated: 1/26/79

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

**No. 77-1427**

New York City Transit Authority et al., Petitioners, v. Carl A. Beazer et al. } On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[February —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

The New York Transit Authority refuses to employ persons who use methadone. The District Court found that this policy violates the Equal Protection Clause of the Fourteenth Amendment. In a subsequent opinion, the court also held that the policy violates Title VII of the Civil Rights Act of 1964. The Court of Appeals affirmed without reaching the statutory question. The departure by those courts from the procedure normally followed in addressing statutory and constitutional questions in the same case, as well as concern that the merits of these important questions had been decided erroneously, led us to grant certiorari.<sup>1</sup> — U. S. —. We now reverse.

<sup>1</sup> Rule 19 of the Rules of the Supreme Court provides:

"CONSIDERATIONS GOVERNING REVIEW ON CERTIORARI

"1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

"(b) Where a court of appeals . . . has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so

p.14-17, 19-21

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: JAN 30 79

**2nd DRAFT**

**SUPREME COURT OF THE UNITED STATES**

No. 77-1427

New York City Transit Authority et al., Petitioners, v. Carl A. Beazer et al. On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[February —, 1979]

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

February 12, 1979

Re: 77-1427 - New York City Transit  
v. Beazer

Dear Potter, Harry, and Bill:

Because you have already joined, I would be grateful to have your reaction to the changes I propose in response to Byron's dissent before I circulate the revised draft to the entire Court. The most important changes are in the discussion of Title VII (pages 14-17) and the addition in n. 33 on pages 20-21.

Respectfully,



Mr. Justice Stewart  
Mr. Justice Blackmun  
Mr. Justice Rehnquist

pp. 3, 7, 14-17, 19-21, 23  
 footnotes remembered

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

From: Mr. Justice Stevens

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

Recirculated: ~~Feb 13 79~~

4th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-1427

New York City Transit Authority | On Writ of Certiorari to  
 et al., Petitioners. | the United States Court  
 v. | of Appeals for the Sec-  
 Carl A. Beazer et al. | ond Circuit.

[February —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

The New York Transit Authority refuses to employ persons who use methadone. The District Court found that this policy violates the Equal Protection Clause of the Fourteenth Amendment. In a subsequent opinion, the court also held that the policy violates Title VII of the Civil Rights Act of 1964. The Court of Appeals affirmed without reaching the statutory question. The departure by those courts from the procedure normally followed in addressing statutory and constitutional questions in the same case, as well as concern that the merits of these important questions had been decided erroneously, led us to grant certiorari.<sup>1</sup> — U. S. —. We now reverse.

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“(b) Where a court of appeals has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so

RP. 14, 16-18

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: \_\_\_\_\_

Feb 16 79

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

5th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 77-1427

New York City Transit Authority et al., Petitioners, v. Carl A. Beazer et al. On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[February —, 1979]

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"(b) Where a court of appeals . . . has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so

— p.14

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: 2/2/79

6th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 77-1427

New York City Transit Authority  
et al., Petitioners,  
v.  
Carl A. Beazer et al.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Sec-  
ond Circuit.

[February —, 1979]

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83

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: MAR 8 1979

7th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-1427

New York City Transit Authority  
et al., Petitioners,  
v.  
Carl A. Beazer et al.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Sec-  
ond Circuit.

[March —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

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Pp.4-5

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: MAR 14 1979

8th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-1427

New York City Transit Authority et al., Petitioners, v. Carl A. Beazer et al. On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[March —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

The New York Transit Authority refuses to employ persons who use methadone. The District Court found that this policy violates the Equal Protection Clause of the Fourteenth Amendment. In a subsequent opinion, the court also held that the policy violates Title VII of the Civil Rights Act of 1964. The Court of Appeals affirmed without reaching the statutory question. The departure by those courts from the procedure normally followed in addressing statutory and constitutional questions in the same case, as well as concern that the merits of these important questions had been decided erroneously, led us to grant certiorari.<sup>1</sup> — U. S. —. We now reverse.

<sup>1</sup> Rule 19 of the Rules of the Supreme Court provides:

“CONSIDERATIONS GOVERNING REVIEW ON CERTIORARI  
 “1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court’s discretion, indicate the character of reasons which will be considered:

“(b) Where a court of appeals . . . has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so