The Burger Court Opinion Writing Database

Steelworkers v. Weber

443 U.S. 193 (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 St
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 30, 1979

(78-432 - United Steelworkers of America v. Weber
(78-435 - Kaiser Aluminum & Chemical Corp. v. Weber
(78-436 - United States v. Weber

MEMORANDUM TO THE CONFERENCE:

Until I can report to Lewis and ascertain his position, which I will canvass today, I will remain in my "Pass" position. Deference to a colleague unavoidably absent from participation in a case so inherently and institutionally important commands no less in my judgment. Obviously Lewis' view cannot be controlling either on the merits or on reargument in light of the vote, but he is due no less so far as I am concerned.

This will enable me to cast a firm vote promptly.

Regards,

WEB

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

CHAMBERS OF
THE CHIEF JUSTICE

April 1, 1979

MEMORANDUM TO THE CONFERENCE:

Re: 78-~~354~~ 432) United Steelworkers of America v. Weber
)
78-435) Kaiser Aluminum & Chem Corp v. Weber
)
78-436) U.S. v. Weber

I have reported to Lewis on the Conference, and I now vote to affirm in the above case.

I would, as I stated at Conference, much prefer to have employers free to initiate their own private programs to give minorities preferential treatment. However, I can find no principled basis to avoid the explicit language of the relevant statutory provisions which foreclose such programs based on race.

Accordingly, I have requested Bill Brennan to take responsibility for the assignment.

Regards,

WEB

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

CHAMBERS OF
THE CHIEF JUSTICE

June 25, 1979

Re: (78-432 - United Steelworkers of America v. Weber
(
(78-435 - Kaiser Aluminum & Chemical Corp. v. Weber
(
(78-436 - United States v. Weber

MEMORANDUM TO THE CONFERENCE:

I contemplate dissenting along the lines of the enclosed draft.

Regards,

WEB/pw

To: Mr. Justice Brennan
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: JUN 25 1979

Recirculated: _____

(78-432 - United Steelworkers of America v. Weber
(
(78-435 - Kaiser Aluminum & Chemical Corporation v. Weber
(
(78-436 - United States v. Weber

MR. CHIEF JUSTICE BURGER, dissenting.

(1)

When Congress enacted Title VII after long study and searching debate it produced a statute of extraordinary clarity on the issue we consider in this case. In § 703(j) it provided:

> "It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training." 43 U.S.C. § 2000e-2(d).

Often we have difficulty interpreting statutes either because of inadequate drafting or because legislative compromises have produced ambiguities. Here there is no lack of clarity, no ambiguity.

Mr. Justice Brennan
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: _____

Second Draft

Recirculated: JUN 25 1979

(78-432 - United Steelworkers of America v. Weber
(
(78-435 - Kaiser Aluminum & Chemical Corporation v. Weber
(
(78-436 - United States v. Weber

MR. CHIEF JUSTICE BURGER, dissenting.

The Court's opinion today reaches a result I would vote for were I a Member of Congress considering a proposed amendment to Title VII. I cannot join the Court's opinion, however, because it is contrary to the explicit language of the statute. Under the guise of statutory "construction," the Court effectively rewrites Title VII to achieve what it regards as a desirable result. It "amends" the statute to do precisely what both its sponsors and its opponents agreed the statute was not intended to do.

When Congress enacted Title VII after long study and searching debate, it produced a statute of extraordinary clarity, which spoke directly to the issue we consider in

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

CHAMBERS OF
THE CHIEF JUSTICE

June 25, 1979

Dear Bill:

Re: (78-432 United Steelworkers of America v. Weber
(
(78-435 Kaiser Aluminum & Chemical Corporation v. We
(78-436 United States v. Weber

Show me joining your dissent.

Regards,

WEB

Mr. Justice Rehnquist

cc: The Conference

CHANGES AS MARKED

p. 2

1st PRINTED DRAFT

To: Mr. Justice Brennan
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

SUPREME COURT OF THE UNITED STATES

Nos. 78–432, 78–435, AND 78–436

Circulated:

Recirculated: JUN 2 5 1979

United Steelworkers of America, AFL–CIO–CLC, Petitioner,
78–432 *v.*
Brian F. Weber et al.

Kaiser Aluminum & Chemical Corporation, Petitioner,
78–435 *v.*
Brian F. Weber et al.

United States et al., Petitioners,
78–436 *v.*
Brian F. Weber et al.

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June —, 1979]

MR. CHIEF JUSTICE BURGER, dissenting.

The Court's opinion today reaches a result I would vote for were I a Member of Congress considering a proposed amendment to Title VII. I cannot join the Court's opinion, however, because it is contrary to the explicit language of the statute. Under the guise of statutory "construction," the Court effectively rewrites Title VII to achieve what it regards as a desirable result. It "amends" the statute to do precisely what both its sponsors and its opponents agreed the statute was *not* intended to do.

When Congress enacted Title VII after long study and searching debate, it produced a statute of extraordinary clarity, which spoke directly to the issue we consider in this case. In § 703 (d) Congress provided:

> "It shall be an *unlawful* employment practice for *any employer, labor organization, or joint labor-management*

CHANGES AS MARKED:

pp. 1-4

2nd DRAFT

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

SUPREME COURT OF THE UNITED STATES

Nos. 78-432, 78-435, AND 78-436

Circulated:

Recirculated: JUN 28 1979

United Steelworkers of America, AFL-CIO-CLC, Petitioner,
78-432 *v.*
Brian F. Weber et al.

Kaiser Aluminum & Chemical Corporation, Petitioner,
78-435 *v.*
Brian F. Weber et al.

United States et al., Petitioners,
78-436 *v.*
Brian F. Weber et al.

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June —, 1979]

MR. CHIEF JUSTICE BURGER, dissenting.

The Court reaches a result I would be inclined to vote for were I a Member of Congress considering a proposed amendment of Title VII. I cannot join the Court's judgment, however, because it is contrary to the explicit language of the statute and arrived at by means wholly incompatible with long-established principles of separation of powers. Under the guise of statutory "construction," the Court effectively rewrites Title VII to achieve what it regards as a desirable result. It "amends" the statute to do precisely what both its sponsors and its opponents agreed the statute was *not* intended to do.

When Congress enacted Title VII after long study and searching debate, it produced a statute of extraordinary clarity, which ~~spoke~~ speaks directly to the issue we consider in this case. In § 703 (d) Congress provided:

"It shall be an unlawful employment practice for any

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 30, 1979

78-432

MR. JUSTICE STEWART
MR. JUSTICE WHITE
MR. JUSTICE MARSHALL
MR. JUSTICE BLACKMUN

May I have at your convenience your reaction to the enclosed proposed effort at an opinion. I thought it preferable not to have a print or general circulation until then.

Bill

W.J.B. Jr.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 2, 1979

To: Mr. Justice Stewart, Mr. Justice White, Mr. Justice Marshall and Mr. Justice Blackmun.

Re: United Steelworkers v. Weber, No. 78-432, 78-435, 78-436

It has occurred to me that footnote 7 might be strengthened by reference to the 1972 amendments. I have in mind a possible expansion of footnote 7 along the following lines.

7. Respondent argues that this reading of Section 703(j) conflicts with remarks in the legislative record that might be read to intimate that race conscious affirmative action measures might violate Title VII. See e.g. 110 Cong. Rec. 7213 (Sens. Clark and Case); id. at 6549 (Sen. Humphrey); id. at 2560 (Rep. Goodell); id. at 2560 (Remarks of Rep. Alger). But

WJB - I am in complete agreement with your proposed expansion and your suggested footnote 7.

cc PS, BRW, HAB

SUPREME COURT OF THE UNITED STATES

Mr. Justice R
Mr. Justice Stevens

From: Mr. Justice Brenn

Circulated: 7 MAY 197

Recirculated: _____

United Steelworkers of America, AFL-CIO-CLC
Petitioner
v.
Brian F. Weber, et al
Respondent
78-432
Kaiser Aluminum & Chemical Corporation, Petitioner
v.
Brian F. Weber, et al,
Respondent
78-435
United States of America and Equal Employment Opportunity Commission, Petitioners
v.
Brian F. Weber, et al
Respondent

On Writ of Certiorari to The Court of Appeals For the Fifth Circuit

(Decided May ____, 1979)

MR. JUSTICE BRENNAN delivered the opinion of the Court:

Challenged here is the legality of an affirmative action plan - collectively bargained by an employer and a union - that reserves for black employees 50% of the openings in an in-plant craft training program until the percentage of black craft workers in the plant is commensurate with the percentage of blacks in the local labor force. The question for decision is whether Congress, in Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. §2000e, left employers and unions in the private sector free to take such race-conscious steps to

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 78–432, 78–435, AND 78–436

United Steelworkers of America, AFL–CIO–CLC, Petitioner,
78–432 *v.*
Brian F. Weber et al.

Kaiser Aluminum & Chemical Corporation, Petitioner,
78–435 *v.*
Brian F. Weber et al.

United States et al., Petitioners,
78–436 *v.*
Brian F. Weber et al.

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[May —, 1979]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Challenged here is the legality of an affirmative action plan—collectively bargained by an employer and a union—that reserves for black employees 50% of the openings in an in-plant craft training program until the percentage of black craft workers in the plant is commensurate with the percentage of blacks in the local labor force. The question for decision is whether Congress, in Title VII of the Civil Rights Act of 1964 as amended, 42 U. S. C. § 2000e, left employers and unions in the private sector free to take such race-conscious steps to eliminate manifest racial imbalances in traditionally segregated job categories. We hold that Title VII does not prohibit such race-conscious affirmative action plans.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 15, 1979

MEMORANDUM TO THE CONFERENCE

RE: Nos. 78-432, 435 & 436 United Steelworkers & Kaiser Aluminum v. Weber

My present view is that Bill Rehnquist's dissent requires no changes in my circulated opinion.

W.J.B. Jr.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 18, 1979

To: Conference

Re: Cases Held for Steelworkers v. Weber, No. 78-432

Only one case was held for Steelworkers v. Weber, No. 78-432, Banta v. Firefighters Institute For Racial Equality, No. 78-1441. The issue in Banta, however, is quite different from that presented in Weber. The question in Banta is whether the Eighth Circuit's order requiring the promotion of twelve qualified black firefighters to the position of fire captain in the St. Louis Fire Department was an appropriate remedy in the peculiar circumstances of that Title VII case. I recommend denial because, in my view, the order was appropriate, because there is a danger of mootness, because the case is very fact specific and because there is no split in the Circuits.

The procedural history of Banta is complex. The St. Louis Fire Department is highly segregated. Currently there are 130 fire captains of whom only one is black. In 1974 the Fire Department administered a promotion examination to its firefighters with five years seniority. The examination had a disparate adverse impact on minority applicants. Respondent, respresenting black firefighters seeking promotion, brought suit against the City under Title VII. A few months later the United States also filed suit. Both charged that the fire captain examination was invalid because of its disparate adverse impact on minorities and because it had not been properly validated. (Other acts of discrimination, not relevant here, were also charged) The two suits were consolidated. Petitioners, representing whites seeking fire captain positions, intervened. The District Court found for the City and petitioners, United States, v. City of St. Louis, 418 F. Supp. 383 (E.D. Mo. 1976), the Eighth Circuit reversed, Firefighters Institute for Racial Equality v. City of St.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 25, 1979

MEMORANDUM TO THE CONFERENCE

RE: Nos. 78-423, 435, & 436 United Steelworkers & Kaiser Aluminun v. Weber

The Chief's dissent does not in my view require any response in the proposed Court opinion.

Bill

W.J.B.Jr.

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 3, 1979

Re: United Steelworkers v. Weber
78-432, etc.

Dear Bill:

Your proposed opinion strikes me as a fine piece of work considering the varying views of our colleagues. You can count on me joining it. I have asked my law clerk, Ginny Kerr, to convey a few relatively minor suggestions to Dan Harris, including my thoughts as to the possible expansion of footnote 7 suggested in your note of May 2.

Sincerely yours,

P.S.

Mr. Justice Brennan

cc to Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 7, 1979

Re: 78-432, United Steelworkers v. Weber

Dear Bill,

If there are three others who join your proposed opinion, I shall also join in order to make it an opinion of the Court. Considering the diversity of our views, I think you have done an admirable job. It may be that I shall have a few very minor suggestions.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 7, 1979

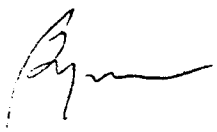
Re: 78-432, 78-435, & 78-436 -

United Steelworkers of America
v. Weber, etc.

Dear Bill,

There is surely more than one approach to this case, and I am not as taken as are Potter and Thurgood with your present draft. I do not say that I shall not join it in the end, for I, too, prefer that there be a Court opinion. This being the important case that it is, however, I would much prefer to see what is written on the other side before settling down. Unless you have other views, I suggest that you circulate this draft in its present form.

Sincerely yours,



Mr. Justice Brennan

cc: Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun

cmc

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 8, 1979

Re: 78-432, 78-435 & 78-436 - United Steelworkers of America v. Weber, etc.

Dear Bill,

It is likely that I shall sign up on your present draft, but I shall wait to see what is written on the other side before deciding whether I have suggestions of substance to submit.

Sincerely yours,

Mr. Justice Brennan

Copies to the Conference

cmc

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 18, 1979

Re: Nos. 78-432, 78-435, and 78-436 - United Steelworkers of America, AFL-CIO-CLC, v. Weber, etc.

Dear Bill,

Please join me.

Sincerely yours,

Mr. Justice Brennan

Copies to the Conference

cmc

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 4, 1979

Re: 78-432 - United Steelworkers of America v. Weber, etc.

Dear Bill:

I am in complete agreement with your proposed opinion and your suggested footnote 7.

Sincerely,

T. M.

T.M.

Mr. Justice Brennan

cc: Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 7, 1979

Re: 78-432 - United Steelworkers of America v. Weber, etc.

Dear Bill:

Please join me.

Sincerely,

T.M.

T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 8, 1979

Re: No. 78-432, 435, and 436 - Steel Workers v. Weber, etc

Dear Bill:

My posture is essentially the same as Byron's. It is likely that I shall join your draft, but I, too, prefer to see what is written on the other side.

Sincerely,

Harry

Mr. Justice Brennan

cc: The Conference

To: The Chief Justice
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: 18 JUN 1979

Recirculated: _____

No. 78-432 - United Steel Workers of America v. Weber
No. 78-435 - Kaiser Aluminum & Chemical Corp. v. Weber
No. 78-436 - United States v. Weber

MR. JUSTICE BLACKMUN, concurring.

While I share some of the misgivings expressed in MR. JUSTICE REHNQUIST's dissent, post, concerning the extent to which the legislative history of Title VII clearly supports the result the Court reaches today, I believe that additional considerations, practical and equitable, only partially perceived, if perceived at all, by the 88th Congress, support the conclusion reached by the Court today, and I therefore join its opinion as well as its judgment.

Printed

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 78–432, 78–435, AND 78–436

United Steelworkers of America, AFL–CIO–CLC, Petitioner,
78–432 *v.*
Brain F. Weber et al.

Kaiser Aluminum & Chemical Corporation, Petitioner,
78–435 *v.*
Brian F. Weber et al.

United States et al., Petitioners,
78–436 *v.*
Brian F. Weber et al.

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June —, 1979]

MR. JUSTICE BLACKMUN, concurring.

While I share some of the misgivings expressed in MR. JUSTICE REHNQUIST's dissent, *post*, concerning the extent to which the legislative history of Title VII clearly supports the result the Court reaches today, I believe that additional considerations, practical and equitable, only partially perceived, if perceived at all, by the 88th Congress, support the conclusion reached by the Court today, and I therefore join its opinion as well as its judgment.

I

In his dissent from the decision of the United States Court of Appeals for the Fifth Circuit, Judge Wisdom pointed out that this case arises from a practical problem in the administration of Title VII. The broad prohibition against discrimination places the employer and the union on what he accurately described as a "high tightrope without a net beneath

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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PLEASE RETURN
TO FILE

January 2, 1979

No. 78-432 United Steelworkers v. Weber
No. 78-435 Kaiser Aluminum v. Weber
No. 78-436 United States v. Weber

MEMORANDUM TO THE CONFERENCE:

The concern expressed briefly at Conference as to the possibility of a "four-four" division, with John not participating, has loomed larger in my mind with further thinking about the issue presented in these cases.

CA5 held (Wisdom, J., dissenting) that petitioners had violated Title VII by an affirmative action program that discriminated against whites. No constitutional issue is presented, either as a basis for respondent's claim or as a defense. Indeed, in the absence of state action the Equal Protection Clause is not implicated. The case thus presents only a question of statutory interpretation, but a question that will have far-reaching consequences however we may resolve it.

The affirmative action program comes to us as having been adopted voluntarily pursuant to collective bargaining, and therefore has the support both of management and the union. There is a finding of fact by the District Court, affirmed by the Court of Appeals, that petitioners had not engaged in any prior conduct that violated Title VII. Thus, unlike cases we have considered before, the affirmative action program has not been adopted to remedy judicially or legislatively found past discrimination. Indeed, I suppose - in cases like this - neither management nor the union would wish to confess past discrimination as this could invite suits for backpay and damages.

The case therefore presents rather starkly the question whether an affirmative action program for the

benefit of minorities constitutes discrimination against whites that is forbidden by Title VII. It is clear beyond doubt, I suppose, that management and the union could not have adopted such a program for the benefit of whites. I recall - as perhaps a not too far fetched example - what the record showed in Beazer where New York Metropolitan Transit Authority employed a substantially disproportionately higher number of Negroes and Puerto Ricans than the population percentages would justify. I doubt if a program designed to correct this "imbalance" could pass muster.

Moreover, in McDonald v. Santa Fe Trails Transporation Co., we held unanimously "that Title VII prohibits racial discrimination against the white petitioners in this case upon the same standards as would be applicable were they Negroes . . . ." 427 U.S., at 280. We were careful in McDonald, however, to reserve the question presented by the present case. See note 8 at pp. 280-281. Although I have not examined the legislative history with this question in mind, it can be argued that an affirmative action program does not constitute the type of discrimination proscribed by Title VII, particularly where the program is the result of collective bargaining. Perhaps support for this argument could be inferred from the government's consistent encouragement of such programs, a policy certainly tolerated by Congress. On the other hand, from the viewpoint of the respondent in this case (or of anyone similarly situated), I suppose it matters little whether the denial of benefits accorded other persons similarly situated except for race, is occasioned by a program characterized as "affirmative action" rather than by isolated acts of discrimination. Nor would it make any practical difference to respondent whether the denial of the benefit resulted from joint action by his employer and union, rather than by government.

I emphasize at this point that although I have done a good deal more reading and thinking since the Conference than before I voted to grant, I am far from being at rest on the issue. At the time of our Conference, I was inclined to believe that CA5 had decided the case erroneously. I am now not at all sure that this would be my ultimate judgment.

But I am now persuaded that it would be unwise to have this case argued before a Court with less than all

nine of us sitting. Affirmance by an evenly divided Court would result in a period of distinct uncertainty as to the status of voluntary affirmative action programs in the absence of past discrimination.

The Court also might fairly be subject to criticism for taking the case with knowledge that a Justice could not participate. I therefore raise the question whether we should reexamine our decision to grant this case.

L.F.P.

L.F.P., Jr.

ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 8, 1979

78-432 United Steelworkers v. Weber

Dear Bill:

Please show on the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

Lewis

Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 7, 1979

Re: Nos. 78-432, 78-435 & 78-436 - United Steelworkers v. Weber

Dear Bill:

In due course I will circulate a dissent from your opinion in this case.

Sincerely,

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 5, 1979

Re: Nos. 78-432, 78-435, and 78-436 - United Steelworkers v. Weber

Dear Bill:

I feel I owe you an apology for the length of time it has taken me to prepare the dissent which the Chief asked me to write in this case. As you know, the legislative history for H.R. 7152, which ultimately became the Civil Rights Act of 1964, spans twelve bound volumes of the Congressional Record which encompass more than 15,000 pages. The debate in the Senate was the longest in that body's history -- 83 days. Since your opinion deals almost exclusively with the interpretation of § 703(j), and its legislative history, I have naturally had to trace the same ground which you trace in your present opinion. All of this to one side, I have every intention of circulating a dissent at least on the issue with which your opinion deals by early next week.

Sincerely,

Mr. Justice Brennan

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 Stevens

From: Mr. Justice Rehnquist

Circulated: 14 JUN 1979

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 78–432, 78–435, AND 78–436

United Steelworkers of America, AFL–CIO–CLC, Petitioner,
78–432 *v.*
Brian F. Weber et al.

Kaiser Aluminum & Chemical Corporation, Petitioner,
78–435 *v.*
Brian F. Weber et al.

United States et al., Petitioners,
78–436 *v.*
Brian F. Weber et al.

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June —, 1979]

MR. JUSTICE REHNQUIST, dissenting.

In a very real sense, the Court's opinion is ahead of its time: it could more appropriately have been handed down five years from now, in 1984, a year coinciding with the title of a book from which the Court's opinion borrows, perhaps subconsciously, at least one idea. Orwell describes in his book a governmental official of Oceania, one of the three great world powers, denouncing the current enemy, Eurasia, to an assembled crowd:

> "It was almost impossible to listen to him without being first convinced and then maddened. . . . The speech had been proceeding for perhaps twenty minutes when a messenger hurried onto the platform and a scrap of paper was slipped into the speaker's hand. He unrolled and read it without pausing in his speech. Nothing altered in his voice or manner, or in the content of what he was saying,