

# The Burger Court Opinion Writing Database

## *California Brewers Association v. Bryant*

444 U.S. 598 (1980)

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

February 1, 1980

RE: No. 78-1548 - California Brewers Association  
v. Bryant

Dear Potter:

I join.

Regards,

*VS B*

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

February 12, 1980

RE: No. 78-1548 California Brewers Assn. v. Bryant

Dear Thurgood:

Please join me.

Sincerely,

*Bill*

Mr. Justice Marshall

cc: 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

Circulation 64 JAN 1980

1st DRAFT

Revised: \_\_\_\_\_

## SUPREME COURT OF THE UNITED STATES

No. 78-1548

California Brewers Association  
et al., Petitioners,  
v.  
Abram Bryant.

On Writ of Certiorari to the  
United States Court of Ap-  
peals for the Ninth Circuit.

[January —, 1980]

MR. JUSTICE STEWART delivered the opinion of the Court.

Title VII of the Civil Rights Act of 1964<sup>1</sup> makes unlawful practices, procedures, or tests that "operate to 'freeze' the status quo of prior discriminatory employment practices." *Griggs v. Duke Power Co.*, 401 U. S. 424, 430. To this rule, § 703 (h) of the Act, 42 U. S. C. § 2000e-2 (h) provides an exception:

"[I]t shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority . . . system, . . . provided that such differences are not the result of an intention to discriminate because of race. . . ."

In *Teamsters v. United States*, 431 U. S. 324, 352, the Court held that "the unmistakable purpose of § 703 (h) was to make clear that the routine application of a bona fide seniority system would not be unlawful under Title VII . . . even where the employer's pre-Act discrimination resulted in whites having greater existing seniority rights than Negroes."<sup>2</sup>

<sup>1</sup> 78 Stat. 253, as amended, 42 U. S. C. § 2000e et seq.

<sup>2</sup> *United Air Lines, Inc. v. Evans*, 431 U. S. 553, extended this holding to preclude Title VII challenges to seniority systems that perpetuated the effects of discriminatory post-Act practices that had not been the

SEE PAGES: 12

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

From: Mr. Justice Stewart

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

Recirculated: 9 JAN 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1548

California Brewers Association et al., Petitioners, v. Abram Bryant.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Ninth Circuit.
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[January —, 1980]

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<sup>1</sup> 78 Stat. 253, as amended, 42 U. S. C. § 2000e *et seq.*

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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

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Recirculated: 14 FEB 1980

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1548

California Brewers Association et al., Petitioners, v. Abram Bryant et al.	On Writ of Certiorari to the United States Court of Ap- peals for the Ninth Circuit.
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[January —, 1980]

MR. JUSTICE STEWART delivered the opinion of the Court.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 7, 1980

Re: No. 78-1548 - California Brewers  
Assn. v. Abram Bryant

Dear Potter,

Please join me.

Sincerely yours,



Mr. Justice Stewart

Copies to the Conference

cmc

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 4, 1980

Re: No. 78-1548 - California Brewers Asso. v.  
Bryant

Dear Potter:

In due course I will circulate a dissent.

Sincerely,

*T.M.*

T.M.

Mr. Justice Stewart

cc: The Conference



No. 78-1548

California Brewers Association et al. v. Bryant

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

MR. JUSTICE MARSHALL, dissenting.

From: Mr. Justice Marshall

Circulated: 12 FEB 1980

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

In the California brewing industry, an employee's rights and benefits are largely dependent on whether he is a "permanent" employee within the meaning of the collective bargaining agreement. Permanent employees are laid off after all other employees. If laid off at one facility, a permanent employee is permitted to replace the least senior nonpermanent employee at any other covered facility within the local area. Permanent employees are selected before temporary employees to fill vacancies. They have exclusive rights to supplemental unemployment benefits upon layoff and receive higher wages and vacation pay for the same work performed by other employees. Permanent employees have first choice of vacation times, less rigorous requirements for qualifying for holiday pay, exclusive access to veterans' reinstatement and seniority rights, and priority in assignment of overtime work among bottlers.

According to respondent's complaint, no Negro has ever attained permanent employee status in the California brewing industry.<sup>1</sup>

The provision of the collective bargaining agreement at issue here defines a permanent employee as one "who . . . has completed forty-five weeks of employment . . . in one classification in one calendar year as an employee of the brewing industry in this State." An employee who works 44 weeks

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P. 1, 2, 5, 6, 7

*Printed*  
1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 78-1548

California Brewers Association et al., Petitioners, v. Abram Bryant et al.	} On Writ of Certiorari to the United States Court of Ap- peals for the Ninth Circuit.
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[February —, 1980]

*with whom Mr. Justice Brennan & Mr. Justice Black*

MR. JUSTICE MARSHALL *X* dissenting.

In the California brewing industry, an employee's rights and benefits are largely dependent on whether he is a "permanent" employee within the meaning of the collective-bargaining agreement. Permanent employees are laid off after all other employees. If laid off at one facility, a permanent employee is permitted to replace the least senior nonpermanent employee at any other covered facility within the local area. Permanent employees are selected before temporary employees to fill vacancies. They have exclusive rights to supplemental unemployment benefits upon layoff and receive higher wages and vacation pay for the same work performed by other employees. Permanent employees have first choice of vacation times, less rigorous requirements for qualifying for holiday pay, exclusive access to veterans' reinstatement and seniority rights, and priority in assignment of overtime work among bottlers.

According to respondent's complaint, no Negro has ever attained permanent employee status in the California brewing industry.<sup>1</sup>

The provision of the collective-bargaining agreement at issue here defines a permanent employee as one "who . . . has completed forty-five weeks of employment . . . in one classifica-

<sup>1</sup> In the present procedural posture of the case, of course, the allegations of the complaint must be accepted as true.

Citation corrections  
pp. 2, 3, 4, 6

15 FEB 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1548

California Brewers Association	} On Writ of Certiorari to the	
et al., Petitioners,		United States Court of Ap-
v.		peals for the Ninth Circuit.
Abram Bryant et al.		

[February —, 1980]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN and MR. JUSTICE BLACKMUN join, dissenting.

In the California brewing industry, an employee's rights and benefits are largely dependent on whether he is a "permanent" employee within the meaning of the collective-bargaining agreement. Permanent employees are laid off after all other employees. If laid off at one facility, a permanent employee is permitted to replace the least senior nonpermanent employee at any other covered facility within the local area. Permanent employees are selected before temporary employees to fill vacancies. They have exclusive rights to supplemental unemployment benefits upon layoff and receive higher wages and vacation pay for the same work performed by other employees. Permanent employees have first choice of vacation times, less rigorous requirements for qualifying for holiday pay, exclusive access to veterans' reinstatement and seniority rights, and priority in assignment of overtime work among bottlers.

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The provision of the collective-bargaining agreement at issue here defines a permanent employee as one "who . . . has completed forty-five weeks of employment . . . in one classifica-

<sup>1</sup> In the present procedural posture of the case, of course, the allegations of the complaint must be accepted as true.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 14, 1980

Re: 78-1548 - California Brewers Association v. Bryant

Dear Potter:

I shall await the dissent.

Sincerely,

*HAB*

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 13, 1980

Re: No. 78-1548 - California Brewers Ass'n v. Bryant

Dear Thurgood:

Please join me in your dissenting opinion.

Sincerely,

*Larry*

*A good dissent!*  
*H.*

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

November 20, 1979

78-1548-Calif: Brewers v. Bryant

Dear Chief:

It has just come to my attention that I am "out" of  
the above case.

Sincerely,

*Lewis*

The Chief Justice

lfp/ss

cc: The Conference  
Mr. Michael Rodak, Jr.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 7, 1980

78-1548-California-Brewers-v.-Bryant

Dear Potter:

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 Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 9, 1980

Re: No. 78-1548 - California Brewers Assoc. v. Bryant

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

November 19, 1979

Re: 78-1548 - California Brewers Assn. v.  
Bryant

Dear Chief:

As you may recall, I am disqualified in this case.

Respectfully,



The Chief Justice

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

January 7, 1980

Re: 78-1548 - California Brewers Association  
v. Bryant

Dear Potter:

Please show that I took no part in the consideration  
or decision of this case.

Respectfully,



Mr. Justice Stewart

Copies to the Conference