

The Burger Court Opinion Writing Database

Whirlpool Corp. v. Marshall

445 U.S. 1 (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

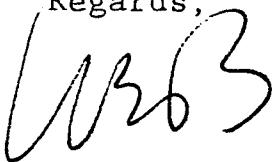
February 22, 1980

Re: 78-1870 - Whirlpool Corp. v. Marshall

Dear Potter:

This will confirm my "join" in your February 14 proposed opinion.

Regards,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

February 21, 1980

RE: No. 78-1870 Whirlpool Corporation v. Marshall

Dear Potter:

I agree.

Sincerely,



Mr. Justice Stewart

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

Circulated: 11 Feb 1980

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 78-1870

Whirlpool Corporation, Petitioner, } On Writ of Certiorari to
 v. } the United States Court
 Ray Marshall, Secretary of Labor. } of Appeals for the Sixth
 Circuit.

[February —, 1980]

MR. JUSTICE STEWART delivered the opinion of the Court.

The Occupational Safety and Health Act of 1970 (Act)¹ prohibits an employer from discharging or discriminating against any employee who exercises "any right afforded by" the Act.² The Secretary of Labor (Secretary) has promulgated a regulation providing that, among the rights that the Act so protects, is the right of an employee to choose not to perform his assigned task because of a reasonable apprehension of death or serious injury coupled with a reasonable belief that no less drastic alternative is available.³ The ques-

¹ Pub. L. 91-596, 84 Stat. 1590 (1970), as amended by Pub. L. 95-251, 92 Stat. 183 (1978), 29 U. S. C. §§ 651 *et seq.*

² Section 11 (e)(1) of the Act, 29 U. S. C. § 660 (e)(1), provides in full:

"No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or other of any right afforded by this chapter."

³ The regulation, 29 CFR § 1977.12, 38 Fed. Reg. 2681, 2683 (1973), as corrected 38 Fed. Reg. 4577 (1973), provides in full:

"(a) In addition to protecting employees who file complaints, institute proceedings, or testify in proceedings under or related to the Act, section 11 (e) also protects employees from discrimination occurring because of the exercise 'of any right afforded by this Act.' Certain rights are explicitly

SEE PAGES: 9
Ftns renumbered

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice O'Connor
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: _____

Recirculated: 21 FEB 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1870

Whirlpool Corporation, Petitioner,
v.
Ray Marshall, Secretary of Labor.

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

[February —, 1980]

Mr. JUSTICE STEWART delivered the opinion of the Court.

The Occupational Safety and Health Act of 1970 (Act)¹ prohibits an employer from discharging or discriminating against any employee who exercises "any right afforded by" the Act.² The Secretary of Labor (Secretary) has promulgated a regulation providing that, among the rights that the Act so protects, is the right of an employee to choose not to perform his assigned task because of a reasonable apprehension of death or serious injury coupled with a reasonable belief that no less drastic alternative is available.³ The ques-

¹ Pub. L. 91-596, 84 Stat. 1590 (1970), as amended by Pub. L. 95-251, 92 Stat. 183 (1978), 29 U. S. C. §§ 651 *et seq.*

² Section 11 (c)(1) of the Act, 29 U. S. C. § 660 (c)(1), provides in full: "No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or other of any right afforded by this chapter."

³ The regulation, 29 CFR § 1977.12, 38 Fed. Reg. 2681, 2683 (1973), as corrected 38 Fed. Reg. 4577 (1973), provides in full:

"(a) In addition to protecting employees who file complaints, institute proceedings, or testify in proceedings under or related to the Act, section 11 (c) also protects employees from discrimination occurring because of the exercise of any right afforded by this Act.¹ Certain rights are explicitly

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 19, 1980

No. 78-1870 - Whirlpool Corporation v.
Marshall, Secretary of Labor

Dear Potter,

Please join me.

Sincerely yours,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 21, 1980

Re: No. 78-1870 - Whirlpool Corp. v. Marshall

Dear Potter:

Please join me.

Sincerely,

JM

T.M.

Mr. Justice Stewart

cc: The Conference

✓
Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 21, 1980

Re: No. 78-1870 - Whirlpool Corporation v. Marshall

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 20, 1980

78-1870 Whirlpool Corp. v. Marshall

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 19, 1980

Re: No. 78-1870 Whirlpool Corporation v. Marshall,
Secretary of Labor

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 15, 1980

Re: 78-1870 - Whirlpool v. Marshall

Dear Potter:

Please join me.

Respectfully,



Mr. Justice Stewart

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