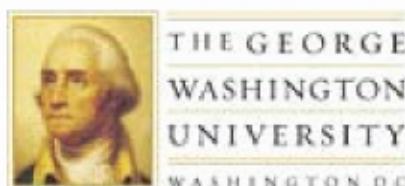


The Burger Court Opinion Writing Database

*General Telephone Co. of Northwest v.
EEOC*

446 U.S. 318 (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

April 1, 1980

PERSONAL

Re: 79-488 - General Telephone Co., et al.
v. EEOC

Dear Lewis:

Would you undertake the dissent in this case?

Regards,
WBN

Mr. Justice Powell

Holmes
556 F.2d 787

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

CHAMBERS OF
THE CHIEF JUSTICE

✓

April 7, 1980

Re: 79-488 - General Telephone Co. v. EEOC

Dear Lewis,

I agree with you that Judge Kunzig's thoughtful opinion in EEOC v. D.H. Holmes Co., Ltd., 556 F. 2d. 787 (CA 5, 1977), seems to cover all the bases. Unless the majority opinion says something unexpected, I am inclined, now, to agree that there is no need to write anything more in dissent.

Regards,



Mr. Justice Powell

cc: Mr. Justice Rehnquist
Mr. Justice Stevens

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

CHAMBERS OF
THE CHIEF JUSTICE

April 24, 1980

PERSONAL

~~~~~

Re: 79-488 - General Telephone Company of Northwest,  
Inc. v. EEOC

Dear Lewis:

If you proceed as per your memorandum of April 23,  
please show me as joining you by reference to EEOC v.  
D.H. Holmes.

Regards,

URB

Mr. Justice Powell

cc: Mr. Justice Rehnquist  
Mr. Justice Stevens

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 23, 1980

RE: No. 79-488 General Telephone Co., etc. v. EEOC

Dear Byron:

I agree.

Sincerely,

*Bill*

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 30, 1980

Re: No. 79-488, General Telephone Co. v. EEOC

Dear Byron,

I am glad to join your opinion for the  
Court.

Sincerely yours,

C. S.

Mr. Justice White

Copies to the Conference

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: 22 APR 1980

1st DRAFT

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

## SUPREME COURT OF THE UNITED STATES

No. 79-488

General Telephone Company of  
 the Northwest, Inc., et al.,  
 Petitioners,  
 v.  
 Equal Employment Opportunity  
 Commission et al. } On Writ of Certiorari to  
 {} the United States Court  
 of Appeals for the Ninth  
 Circuit.

[April —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is whether the Equal Employment Opportunity Commission (EEOC) may seek class-wide relief under § 706 (f)(1) of Title VII of the Civil Rights Act of 1964 (Title VII) without being certified as the class representative under Rule 23 of the Federal Rules of Civil Procedure. The Court of Appeals for the Ninth Circuit held that certification was not required. 599 F. 2d 322 (1979). Because this is a recurring issue on which the federal courts are divided,<sup>1</sup> we granted certiorari, — U. S. — (1979). We affirm the judgment.

### I

Four employees of General Telephone Company of the Northwest, Inc. (General Telephone), filed charges with the EEOC complaining of sex discrimination in employment. After investigation, the EEOC found reasonable cause to suspect discrimination against women and in April 1977 brought suit in the United States District Court for the

<sup>1</sup> The Fifth Circuit previously addressed this same issue and held that certification was required. *EEOC v. D. H. Holmes*, 556 F. 2d 787 (1977), cert. denied, 436 U. S. 962 (1978). The District Courts have decided the issue both ways.

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

STYLISTIC CHANGES THROUGHOUT.  
 SEE PAGES: 15

From: Mr. Justice White

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

8 MAY 1980

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

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 79-488

General Telephone Company of  
 the Northwest, Inc., et al.,  
 Petitioners,  
 v.  
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I

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 23, 1980

Re: No. 79-488 - General Telephone Co., etc. v. EEOC

Dear Byron:

Please join me.

Sincerely,

*T.M.*

T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 23, 1980

Re: No. 79-488 - General Telephone Company of  
Northwest, Inc. v. EEOC

Dear Byron:

Please join me.

Sincerely,

*HLB.*

Mr. Justice White  
cc: The Conference

April 4, 1980

79-488 General Telephone Co. v. EEOC

Dear Chief:

This is a reply to your note of April 1, asking if I would undertake the dissent in this case.

Of course, I will be glad to do this if those who dissented think it desirable. I had intended, for myself, simply to say that I would reverse the decision in this case for the reasons stated by the Fifth Circuit Court of Appeals in EEOC v. D. H. Holmes Co., Ltd., 556 F.2d 787 (1977), cert. den., 436 U.S. 961 (1978).

In Holmes the government advanced the same reasons urged in this case for holding that Rule 23 does not apply to a civil suit filed by EEOC under §706(f)(1) of Title VII. It seems to me that the Fifth Circuit met and satisfactorily answered the government's arguments. I doubt that we could add a great deal to what was said in its opinion.

In any event, this case involves no ongoing principles. This Court, by its 5 to 4 decision, has resolved the conflict and settled the Rule 23 issue. The case will have no other precedential effect.

The one argument in favor of a dissent in this Court is that possibly it would encourage the revisers of Rule 23 (if and when this is undertaken) to accept what we think is a sounder approach. In view of the probable "politics" of the situation, I think it extremely unlikely that any such change will be adopted.



April 23, 1980

79-488 General Telephone v. EEOC

Dear Chief:

Now that Byron has circulated his opinion for the Court in the above case, perhaps we should make a decision whether a dissenting opinion is desirable or whether we can - as I suggested - simply say we would reverse on the basis of the Fifth Circuit Holmes' decision.

We might request Byron to add at the end of his opinion something along the following lines:

/ "The Chief Justice, Mr. Justice Powell, Mr. Justice Rehnquist and Mr. Justice Stevens, for the reasons that are well stated by the Court of Appeals for the Fifth Circuit in EEOC v. D. H. Holmes, Co., Ltd., 556 F.2d 787 (1977), cert. den., 436 U.S. 962 (1978), would reverse the judgment in this case." //

I continue to think that a dissent could add little to what was said in Holmes. But I would be happy to draft one if you, Bill or John prefer it.

Sincerely,

The Chief Justice

lfp/ss

cc: Mr. Justice Rehnquist  
Mr. Justice Stevens

April 30, 1980

No. 79-488 General Telephone v. EEOC

Dear Chief, Bill and John:

As each of you has agreed with my suggestion of April 23, I propose to send Byron the attached letter.

I will hold my letter to Byron until Monday in the event that any one of you should have any further thoughts.

Sincerely,

The Chief Justice  
Mr. Justice Rehnquist  
Mr. Justice Stevens

LFP/lab

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 5, 1980

No. 79-488 General Telephone v. EEOC

Dear Byron:

The four of us in dissent would appreciate your adding at the end of your opinion the following:

"The Chief Justice, Mr. Justice Powell, Mr. Justice Rehnquist and Mr. Justice Stevens, for the reasons that are well stated by the Court of Appeals for the Fifth Circuit in EEOC v. D. H. Holmes, Co., Ltd., 556 F.2d 787 (1977), cert. denied, 436 U.S. 962 (1978), would reverse the judgment in this case."

Sincerely,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

✓

April 24, 1980

Re: No. 79-488 - General Telephone v. EEOC

Dear Lewis:

I am perfectly content to leave the decision as to what we do in this case in your hands.

Sincerely,

W ~

Mr. Justice Powell

Copies to The Chief Justice  
and Mr. Justice Stevens

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

✓

April 4, 1980

Re: 79-488 - General Telephone v. EEOC

Dear Lewis:

It will be hard to improve on the Fifth Circuit's opinion in Holmes; perhaps we should await the majority opinion before deciding whether anything more need be said.

Respectfully,



Mr. Justice Powell

cc: The Chief Justice  
Mr. Justice Rehnquist

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

✓

April 24, 1980

Re: 79-488 - General Telephone v. EEOC

Dear Lewis:

Like you, I think Judge Kunzig covered all the bases in his opinion for the Fifth Circuit and I would be content to adopt the form of dissent you propose. However, if Bill Rehnquist wants to emphasize the point he made in his separate opinion in Occidental Life, 432 U.S., at 381, that the EEOC really stands in the shoes of the individual charging parties, I would not object to some additional writing. What it comes down to, I guess, is that I am prepared to go along with your suggestion unless Bill thinks something more should be written.

Respectfully,



Mr. Justice Powell

cc: The Chief Justice  
Mr. Justice Rehnquist

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

✓

May 2, 1980

Re: 79-488 - General Telephone v. EEOC

Dear Lewis:

Your proposed letter is fine with me.

Respectfully,

  
J.P.

Mr. Justice Powell

cc: The Chief Justice  
Mr. Justice Rehnquist