

The Burger Court Opinion Writing Database

Minnick v. California Department of Corrections

452 U.S. 105 (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

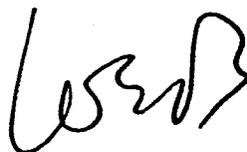
May 20, 1981

RE: 79-1213 - Minnick v. California Dept. of Corrections

Dear John:

I join in dismissing for want of a final judgment.

Regards,



Justice Stevens

Copies to the Conference

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THE MANUSCRIPT DIVIS

SSSNCNOU BU AVADDD L AN

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 8, 1981

RE: No. 79-1213 Minnick v. California Department
of Corrections

Dear John:

I shall await Potter's dissent in the above.

Sincerely,

Bill

Justice Stevens

cc: The Conference

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THE MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT

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: MAY 12 1981

Recirculated: _____

Minnick et al. v. California Department of Corrections et al.

No. 79-1213

JUSTICE BRENNAN, concurring in the judgment.

"In view of the ambiguities in the record as to the issues sought to be tendered," I would dismiss the writ of certiorari as improvidently granted. Mitchell v. Oregon Frozen Foods Co., 361 U.S. 231 (1960); see Doe v. Delaware, No. 79-5932, slip op. at 5, n. 10 (Brennan, J., dissenting); Cowgill v. California, 396 U.S. 371, 371-372 (1970) (Harlan, J., concurring).

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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

1st DRAFT

Circulated: MAY 13 1981

SUPREME COURT OF THE UNITED STATES

No. 79-1213

| | |
|---|---|
| Wayne Minnick et al., Petitioners, v. California Department of Corrections et al. | On Writ of Certiorari to the Court of Appeal of Cali- fornia for the First Appellate District. |
|---|---|

[May —, 1981]

JUSTICE BRENNAN, concurring in the judgment.

"In view of the ambiguities in the record as to the issues sought to be tendered," I would dismiss the writ of certiorari as improvidently granted. *Mitchell v. Oregon Frozen Foods Co.*, 361 U. S. 231 (1960); see *Doe v. Delaware*, No. 79-5932, slip op., at 5, n. 10 (BRENNAN, J., dissenting); *Cowgill v. California*, 396 U. S. 371, 371-372 (1970) (Harlan, J., concurring).

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MANUSCRIPT DIVISION

LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 7, 1981

Re: 79-1213 - Minnick v. California Dept. of
Corrections

Dear John:

In due course I shall circulate a dissenting
opinion.

Sincerely yours,

P.S.
/

Justice Stevens

Copies to the Conference

REPRODUCED FROM THE COLLECTED MANUSCRIPT DIVISION OF THE LIBRARY OF CONGRESS

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

1st DRAFT

Circulated: 11 MAY 1981

Supreme Court of the United States
~~Appropriated~~

No. 79-1213

Wayne Minnick et al.,
Petitioners
v.
California Department of
Corrections et al.

On Writ of Certiorari to the
Court of Appeal of Cali-
fornia for the First Appellate
District.

[May —, 1981]

JUSTICE STEWART, dissenting.

I would not dismiss the writ of certiorari. I would, to the contrary, reverse the judgment before us because the California Court of Appeal has wrongly held that the State may consider a person's race in making promotion decisions.¹

So far as the Constitution goes, a private person may engage in any racial discrimination he wants, cf. *Steelworkers v. Weber*, 443 U. S. 193, but under the Equal Protection Clause of the Fourteenth Amendment a sovereign State may never do so.² And it is wholly irrelevant whether the State gives a "plus" or "minus" value to a person's race, whether the discrimination occurs in a decision to hire or fire or promote, or whether the discrimination is called "affirmative action" or by some less euphemistic term.³

A year ago I stated my understanding of the Constitution in this respect, and I repeat now a little of what I said then:

"The equal protection standard of the Constitution

¹ This ruling is "final" for purpose of the jurisdiction of this Court. See *Cox Broadcasting Corp. v. Cohn*, 420 U. S. 460, 482-483.

² It is self-evident folly to suppose that a person's race may constitutionally be taken into account, but that it must not be controlling.

³ California's policy of racial discrimination was sought to be justified as an antidote for previous discrimination in favor of white people. But, at least in this context, two wrongs do not make a right. Two wrongs simply make two wrongs.

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P.1

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Circulated: _____
Recirculated: 18 MAY 1981

No. 79-1213

Wayne Minnick et al.,
Petitioners
v.
California Department of
Corrections et al. } On Writ of Certiorari to the
Court of Appeal of Cali-
fornia for the First Appellate
District.

[May —, 1981]

JUSTICE STEWART, dissenting.

I would not dismiss the writ of certiorari. I would, to the contrary, reverse the judgment before us because the California Court of Appeal has wrongly held that the State may consider a person's race in making promotion decisions.¹

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A year ago I stated my understanding of the Constitution in this respect, and I repeat now a little of what I said then:

"The equal protection standard of the Constitution

¹ This ruling is "final" for purpose of the jurisdiction of this Court. See *Cox Broadcasting Corp. v. Cohn*, 420 U. S. 460, 482-483.

² It is self-evident folly to suppose that a person's race may constitutionally be taken into account, but that it must not be controlling.

³ California's policy of racial discrimination was sought to be justified as an antidote for previous discrimination in favor of white people. But, even in this context, two wrongs do not make a right. Two wrongs simply make two wrongs.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 7, 1981

Re: 79-1213 - Minnick v.
California Dept. of Corrections

Dear John,

Please join me.

Sincerely yours,



Justice Stevens

Copies to the Conference

cpm

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MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 28, 1981

Re: No. 79-1213 - Minnick v. California
Department of Corrections

Dear John:

Please join me.

Sincerely,

J.M.

T.M.

Justice Stevens

cc: The Conference

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LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 11, 1981

Re: No. 79-1213 - Minnick v. California Department
of Corrections

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

cc: The Conference

REPRODUCED FROM THE COLLECTION

IN THE MANUSCRIPT DIVISION

OF THE SUPREME COURT OF THE UNITED STATES

May 11, 1981

79-1213 Minnick v. California Dept. of Corrections

Dear John:

I am in accord with almost all of your careful opinion. You conclude, in accord with the Conference vote, that there is no final judgment for us to review.

The case, therefore, will go back to the trial court for further proceedings, as contemplated by the California Court of Appeals.

There is some language, however, in Part IV of the opinion that seems to anticipate what the trial court will or should do. For example, on page 15, the fifth sentence states that the trial court "will probably read the opinion of the Court of Appeals as requiring the entry of judgment against petitioners on their federal claim". While this probably is likely, I would prefer not to say it.

Also, in note 38 it is said:

"If additional evidence challenging the plan were introduced on retrial, respondents might need to introduce evidence showing past discrimination by the department as a justification for a preference on the basis of race or sex."

I would prefer to be entirely neutral, and say little about what the parties might present or what the trial court might consider relevant on the remand.

Sincerely,

Mr. Justice Stevens

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 11, 1981

79-1213 Minnick v. California Dept. of Corrections

Dear John:

Please join me.

Sincerely,

Lewis

Mr. Justice Stevens

lfp/ss

cc: The Conference

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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: MAY 12 1981

Recirculated: _____

Re: No. 79-1213 Minnick v. California Dept. of Corrections

JUSTICE REHNQUIST, concurring.

If I viewed this judgment of the California Court of Appeals as "final" under 28 U.S.C. § 1257, I would join the dissenting opinion of Justice STEWART. Since I do not so view it, however, I join the opinion of the Court dismissing the writ of certiorari for want of jurisdiction.

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MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

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

1st PRINTED DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES

Circulated: MAY 14 1981

No. 79-1213

| | | |
|---|---|---|
| Wayne Minnick et al., Petitioners, v. California Department of Corrections et al. | } | On Writ of Certiorari to the Court of Appeal of Cali- fornia for the First Appellate District. |
|---|---|---|

[May —, 1981]

JUSTICE REHNQUIST, concurring.

If I viewed this judgment of the California Court of Appeal as "final" under 28 U. S. C. § 1257, I would join the dissenting opinion of JUSTICE STEWART. Since I do not so view it, however, I join the opinion of the Court dismissing the writ of certiorari for want of jurisdiction.

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION OF THE LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 11, 1981

Re: 79-1213 - Minnick v. California Dept.
of Corrections

Dear Lewis:

Thank you for your letter. I think there is merit in both of your criticisms and therefore I will simply delete the sentence on page 15 to which you refer and also delete note 38 entirely.

Respectfully,



Justice Powell

pp. 2-3, 8, 15, 21-22

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: MAY 13 '81

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1213

| | | |
|---|---|---|
| Wayne Minnick et al., Petitioners <i>v.</i> California Department of Corrections et al. | } | On Writ of Certiorari to the Court of Appeal of Cali- fornia for the First Appellate District. |
|---|---|---|

[May —, 1981]

JUSTICE STEVENS delivered the opinion of the Court.

Petitioners contend that an affirmative action plan adopted by the California Department of Corrections in 1974 is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. The trial court agreed and entered judgment in petitioners' favor. The California Court of Appeal reversed, 95 Cal. App. 3d 506, 157 Cal. Rptr. 260, modified, 96 Cal. App. 3d 626a, holding that the trial court's rationale was no longer tenable in light of this Court's intervening decision in *Regents of the University of California v. Bakke*, 438 U. S. 265. The Court of Appeal's opinion, however, also identified certain problems that "require examination if the case is to be retried." Thus although we granted certiorari to review the merits of the Court of Appeal's decision, we first must confront the question whether the writ should be dismissed because the judgment did not finally determine the legal status of the challenged plan.

I

The 1974 "Affirmative Action Program," as revised in 1975, is a lengthy and somewhat ambiguous document. Much of the plan relates to the Department's commitment to the eradication of discrimination on the basis of race and sex.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 5, 1981

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for No. 79-1213, Minnick
v. California Department of Corrections

Four cases have been held for Minnick.

1. The first case is Detroit Police Association v. Young, 79-1080, which was originally held for Fullilove. This is an action brought by the petitioner police union and several white patrolmen challenging the city's voluntary affirmative action plan which requires that approximately 50 percent of the patrolmen promoted to sergeant each year be black. Petr alleged that the affirmative action plan violated Title VII, Title VI, § 1981 and the Fourteenth Amendment. The DC ruled in favor of petitioner and CA6 reversed, dismissing the Title VI and VII and § 1981 claims and remanding the Fourteenth Amendment claims, along with instructions to determine whether a 50 percent quota was an appropriate remedy. The DC had found no evidence to support the city's claim that the police department had in the past practiced systematic racial discrimination in its hiring and promotion practices. ✓ CA6 reversed these findings of fact, holding that, when properly reviewed, the facts amply demonstrated racial discrimination.

With respect to the Title VII claim, petitioner argues that CA6 erred in finding post-Title VII discrimination on the part of the police department that would justify the quota under Title VII, that it erred in applying Weber to a public employer, and that it erred in declining to find the city's quota to be an unreasonable remedy for whatever Title VII discrimination existed. On the Title VI issue, petitioner argues that the issue is basically the same as the issue under the Fourteenth Amendment and that