

The Burger Court Opinion Writing Database

General Building Contractors Association, Inc. v. Pennsylvania

458 U.S. 375 (1982)

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

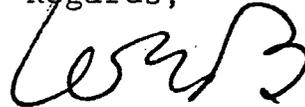
April 13, 1982

Re: No. 81-280, 81-330, 81-331, 81-332, 81-333 -
General Bldg. Contractors Assn.; United
Engineers & Constructors; Contractors Assn.
of E. PA; Glasgow Inc.; Bechtel Power Corp.
v. Pennsylvania

Dear Bill:

I join.

Regards,



Justice Rehnquist

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

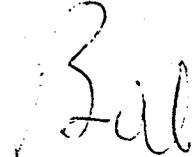
May 10, 1982

RE: Nos. 81-280, etc. General Building Contractors
v. Pennsylvania, et al.

Dear Sandra:

Your proposed concurrence in the above relieves me of any necessity to write if you can accept one minor suggestion: In the very last paragraph of your concurrence in line 3, could you change the word "minor" to "incidental"? It seems to me "incidental" reflects more accurately the nature of the relief ordered, for example, in Zipes and Franks v. Bowman.

Sincerely,



Justice O'Connor

cc: Justice Marshall
Justice Blackmun

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 10, 1982

RE: Nos. 81-280, etc. General Building Contractors v.
Pennsylvania, et al.

Dear Sandra:

The substitution of "incidental or ancillary" for
"minor" is satisfactory to me. Please, therefore, join
me.

Sincerely,



Justice O'Connor

cc: The Conference

85 MAY 10 1982

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

June 15, 1982

RE: 19 21 82

RE: Nos. 81-280, etc. General Building Contractors
v. Pennsylvania

Dear Sandra:

After reading Thurgood's dissent, I'm sorry that
I must withdraw my agreement to your concurrence and
join him.

Sincerely,

Bill

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 15, 1982

81-280 21 18

RE: Nos. 81-280, etc. General Building Contractors Assn.
v. Pennsylvania

Dear Thurgood:

I am withdrawing my joinder with Sandra's concurrence because I'd like to join your dissent.

But don't you think it would be helpful if you added somewhere in your dissent (perhaps as a new footnote at the end of the second full sentence on page 13) something along the following lines:

"As Justice O'Connor points out, nothing in the Court's opinion prevents the District Court on remand from holding petitioners liable for the discriminatory conduct of the JATC under traditional respondeat superior analysis, or from subjecting petitioners to incidental or ancillary provisions of the court's injunctive order."

Sincerely,



Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 22, 1982

Re: 81-280, 81-330, 81-331, 81-332, 81-333
General Building Contractors Ass'n, Inc.
v. Pennsylvania, et al

Dear Bill,

Please join me.

Sincerely yours,



Justice Rehnquist

Copies to the Conference

cpm

P. 7410

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Marshall

Circulated: 6-14-82

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-280, 81-330, 81-331, 81-332 AND 81-333

GENERAL BUILDING CONTRACTORS ASSOCIATION, INC., PETITIONER

81-280 v.
PENNSYLVANIA, ET AL.

UNITED ENGINEERS & CONSTRUCTORS, INC., PETITIONER

81-330 v.
PENNSYLVANIA, ET AL.

CONTRACTORS ASSOCIATION OF EASTERN PENNSYLVANIA AND UNITED CONTRACTORS ASSOCIATION, PETITIONERS

81-331 v.
PENNSYLVANIA, ET AL.

GLASGOW, INC., PETITIONER

81-332 v.
PENNSYLVANIA, ET AL.

BECHTEL POWER CORPORATION, PETITIONER

81-333 v.
PENNSYLVANIA, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[June —, 1982]

JUSTICE MARSHALL, dissenting.

PP. 1, 5, 11, 13

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Marshall**

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Recirculated: **JUN 16 1982**

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-280, 81-330, 81-331, 81-332 AND 81-333

81-280 GENERAL BUILDING CONTRACTORS ASSOCIATION, INC., PETITIONER
v.
PENNSYLVANIA, ET AL.

81-330 UNITED ENGINEERS & CONSTRUCTORS, INC., PETITIONER
v.
PENNSYLVANIA, ET AL.

81-331 CONTRACTORS ASSOCIATION OF EASTERN PENNSYLVANIA AND UNITED CONTRACTORS ASSOCIATION, PETITIONERS
v.
PENNSYLVANIA, ET AL.

81-332 GLASGOW, INC., PETITIONER
v.
PENNSYLVANIA, ET AL.

81-333 BECHTEL POWER CORPORATION, PETITIONER
v.
PENNSYLVANIA, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[June —, 1982]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins,)

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SUPREME COURT OF THE UNITED STATES

Nos. 81-280, 81-330, 81-331, 81-332 AND 81-333

GENERAL BUILDING CONTRACTORS ASSOCIATION, INC., PETITIONER

81-280 *v.*
PENNSYLVANIA ET AL.

UNITED ENGINEERS & CONSTRUCTORS, INC., PETITIONER

81-330 *v.*
PENNSYLVANIA ET AL.

CONTRACTORS ASSOCIATION OF EASTERN PENNSYLVANIA AND UNITED CONTRACTORS ASSOCIATION, PETITIONERS

81-331 *v.*
PENNSYLVANIA ET AL.

GLASGOW, INC., PETITIONER

81-332 *v.*
PENNSYLVANIA ET AL.

BECHTEL POWER CORPORATION, PETITIONER

81-333 *v.*
PENNSYLVANIA ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[June 29, 1982]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

Today the Court reaches out and decides that 42 U. S. C.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 10, 1982

Re: No. 81-280 - General Building Contractors Assn v. Penn.
No. 81-330 - United Engineers & Contractors, Inc. v. Penn.
No. 81-331 - Contractors Assn of E. Penn. v. Pennsylvania
No. 81-332 - Glasgow, Inc. v. Pennsylvania
No. 81-333 - Bechtel Power Corp. v. Pennsylvania

Dear Sandra:

I would be pleased if you would add my name to your concurring opinion with the little change you and Bill Brennan have worked out.

Sincerely,



Justice O'Connor

cc: The Conference

.85 MAY 10 6 35 51

7/16

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 15, 1982

Re: No. 81-280) General Building Contractors Ass'n v. Pa.
No. 81-330) United Engineers & Contractors, Inc. v. Pa.
No. 81-331) Contractors Ass'n of E. Pa. v. Pennsylvania
No. 81-332) Glasgow, Inc. v. Pennsylvania
No. 81-333) Bechtel Power Corporation v. Pennsylvania

Dear Sandra:

I am still with you.

Sincerely,



Justice O'Connor

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 16, 1982

81-280 General Building Contractors v. Pennsylvania

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

p. 2

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

From: **Justice Rehnquist**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-280, 81-330, 81-331, 81-332 AND 81-333

GENERAL BUILDING CONTRACTORS, ASSOCIATION, INC., PETITIONER

81-280 *v.*
PENNSYLVANIA, ET AL.

UNITED ENGINEERS AND CONSTRUCTORS, INC., PETITIONER

81-330 *v.*
PENNSYLVANIA, ET AL.

CONTRACTORS ASSOCIATION OF EASTERN PENNSYLVANIA AND UNITED CONTRACTORS ASSOCIATION, PETITIONERS

81-331 *v.*
PENNSYLVANIA, ET AL.

GLASGOW, INC., PETITIONER

81-332 *v.*
PENNSYLVANIA, ET AL.

BECHTEL POWER CORPORATION, PETITIONER

81-333 *v.*
PENNSYLVANIA, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[April —, 1982]

HAR

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 28, 1982

MEMORANDUM TO THE CONFERENCE

Cases held for No. 81-280, General Building Contractors
Assn. v. Pennsylvania

1. No. 81-1548, Vasquez v. McAllen Bag & Supply Co.

Petitioner, who speaks only Spanish, was seasonally employed by respondent as a truck driver. In 1977 the company instituted a policy of hiring only drivers who could speak English. Petitioner brought this suit, alleging that respondent had discriminated on the basis of national origin in violation of Title VII and 42 U.S.C. §1981. The district court dismissed petitioner's Title VII claim for failure to satisfy jurisdictional prerequisites. Following a bench trial on the §1981 claim, the court found that although respondent's policy had a discriminatory impact, petitioner had failed to prove discriminatory intent, as required by §1981. The employer had presented evidence that its policy was supported by a legitimate non-discriminatory reason, i.e., the business advantage and convenience of having drivers able to communicate with both English- and Spanish-speaking customers and able to understand instructions delivered by the owners, who speak only English.

The Court of Appeals for the Fifth Circuit affirmed. The court assumed that petitioner's claim of discrimination on the basis of national origin was cognizable under §1981, but upheld the district court's finding that petitioner had failed to prove discriminatory intent as not clearly erroneous. The Court of Appeals had previously held that a §1981 claim required such proof. See Crawford v. Western Electric Co., 614 F.2d 1300 (CA5 1980). In his petition for certiorari, petitioner argues that §1981 prohibits discrimination on the basis of national origin and that a showing of discriminatory intent is not required by §1981, at least in suits against private employers. The opinion of the Court of Appeals is consistent with GBCA, and therefore I will vote to deny the petition.

2. No. 81-1895, Bronze Shields, Inc. v. New Jersey Dept. of
Civil Service

This petition concerns two separate civil actions alleging discrimination in the hiring and promotion of police officers in the Newark Police Department. In the first suit petitioner Bronze Shields, several individual applicants, and several police offi-

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-280, 81-330, 81-331, 81-332 AND 81-333

81-280 GENERAL BUILDING CONTRACTORS, ASSOCIATION, INC., PETITIONER
v.
PENNSYLVANIA, ET AL.

81-330 UNITED ENGINEERS AND CONSTRUCTORS, INC., PETITIONER
v.
PENNSYLVANIA, ET AL.

81-331 CONTRACTORS ASSOCIATION OF EASTERN PENNSYLVANIA AND UNITED CONTRACTORS ASSOCIATION, PETITIONERS
v.
PENNSYLVANIA, ET AL.

81-332 GLASGOW, INC., PETITIONER
v.
PENNSYLVANIA, ET AL.

81-333 BECHTEL POWER CORPORATION, PETITIONER
v.
PENNSYLVANIA, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[May —, 1982]

WKS
Jan 1982

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 10, 1982

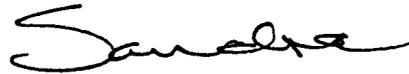
Nos. 81-280, etc. General Building Contractors
v. Pennsylvania, et al.

Dear Bill,

I would suggest that the last paragraph be changed to substitute the words "incidental or ancillary" for the word "minor".

Please advise me if that is satisfactory as far as you are concerned.

Sincerely,



Justice Brennan

cc: Justice Marshall
Justice Blackmun

35 MAY 10 1982

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1 pp. 2, 4

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-280, 81-330, 81-331, 81-332 AND 81-333

81-280 GENERAL BUILDING CONTRACTORS, ASSOCIATION, INC., PETITIONER
v.
PENNSYLVANIA, ET AL.

81-330 UNITED ENGINEERS AND CONSTRUCTORS, INC., PETITIONER
v.
PENNSYLVANIA, ET AL.

81-331 CONTRACTORS ASSOCIATION OF EASTERN PENNSYLVANIA AND UNITED CONTRACTORS ASSOCIATION, PETITIONERS
v.
PENNSYLVANIA, ET AL.

81-332 GLASGOW, INC., PETITIONER
v.
PENNSYLVANIA, ET AL.

81-333 BECHTEL POWER CORPORATION, PETITIONER
v.
PENNSYLVANIA, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[May —, 1982]