

# The Burger Court Opinion Writing Database

## *White v. Massachusetts Council of Construction Employers, Inc.*

460 U.S. 204 (1983)

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

December 28, 1982

Re: 81-1003 - White v. Massachusetts Council of Construction  
Employers, Inc.

Dear Bill:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'WRB', written in a cursive style.

Justice Rehnquist

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.

December 27, 1982

RE: No. 81-1003 White v. Massachusetts Council of Construction  
Employers, Inc.

Dear Bill:

I agree.

Sincerely,

*Bill*

Justice Rehnquist

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

There is another  
letter from WB to WR that  
is on the list; this is  
a 2nd one

February 15, 1983

Re: White v. Massachusetts Council, No. 81-1003

Dear Bill:

Thank you for your quick response. Your revision of my suggestion is quite agreeable.

Sincerely,

  
WJB, Jr.

Justice Rehnquist

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

February 15, 1983

Re: White v. Massachusetts Council, No. 81-1003

Dear Bill:

I'm still with you. Nevertheless, I confess that Harry's dissent has drawn my attention to a problem that may need to be addressed more fully.

As you know, I dissented in Alexandria Scrap and Reeves. I still think those cases were wrongly decided, but I accept them as authority, and I agree that they require a reversal here. Nevertheless, I am concerned that the market participation exception be kept within prudent limits. In particular, Harry correctly points out that the rationale of the exception comes into question when the state seeks to impose restrictions that reach beyond the immediate parties with which it does business--as, for example, when it seeks to dictate the residence of employees of its direct contractors. Unlike Harry, I would not set the boundary of the exception at the line of strict privity of contract. But it is clear that at some point along the continuum, the state's measures cease to be simple terms of dealing (as in Alexandria Scrap) and instead become an effort to capture the ripple effect (as in Hicklin v. Orbeck).

I don't understand your opinion to disagree with this view; it is obliquely addressed in your full paragraph on page 7. Nor

do I think it necessary to decide in this case precisely where the boundary lies. But I fear that without something more direct in the majority opinion, we may be read as rejecting altogether Harry's fundamental premise--that the state may not, under the cover of market participation, range too far afield from its immediate proprietary affairs.

Perhaps my concern can be remedied by including some language along the following lines, perhaps as a footnote on page 7:

JUSTICE BLACKMUN's opinion dissenting in part, post, argues that the mayor's order goes beyond market participation because it regulates employment contracts between public contractors and their employees. We agree with JUSTICE BLACKMUN that there are some limits on a state or local government's ability to impose restrictions that reach beyond the immediate parties with which the government transacts business. Cf. Hicklin v. Orbeck, 437 U.S. 518, 529-531 (1978). We find it unnecessary in this case to define those limits with precision, except to say that (at least in the present context) we think the city is not required to stop at the boundary of formal privity of contract. In this case, the mayor's executive order covers a discrete, identifiable class of economic activity in which the city is a major participant. Everyone affected by the order is, in a substantial if informal sense, "working for the city." See also McCarthy v. Philadelphia Civil Service Comm'n, 424 U.S. 645 (1976); Atkin v. Kansas, 191 U.S. 207 (1903). Wherever the limits of the market participation exception may lie, we conclude that the executive order in this case falls well within the scope of Alexandria Scrap and Reeves.

I do not insist on this particular language or format, but I don't want to write separately and hope you can see your way clear to including something along these lines.

Sincerely,

  
WJB, Jr.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 9, 1983

Re: 81-1003 -

White v. Massachusetts Council  
of Construction Employers, Inc.

Dear Harry,

Please join me.

Sincerely yours,



Justice Blackmun

Copies to the Conference

cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 1, 1982

Re: No. 81-1003 - White v. Massachusetts Council  
of Construction Employers, Inc.

Dear Bill:

I await further writings.

Sincerely,

*T.M.*  
T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 4, 1983

Re: No. 81-1003 - White v. Massachusetts Council  
of Construction Employers, Inc.

Dear Bill:

Please join me.

Sincerely,

*T.M.*  
T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 1, 1981

Re: No. 81-1003 - White v. Massachusetts Council  
of Construction Employers, Inc.

Dear Bill:

In due course, I shall try my hand in at least a partial dissent in this case.

Sincerely,



Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 2, 1982

Re: No. 81-1003 - White v. Massachusetts Council  
of Construction Employers, Inc.

Dear Bill:

In view of your note of December 2, I shall defer my writing until after your second draft is circulated.

Sincerely,



Justice Rehnquist

cc: The Conference

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 3, 1983

Re: No. 81-1003 - White v. Massachusetts Council  
of Construction Employers, Inc.

Dear Bill:

Despite the substantial revision of your opinion from its first draft, I shall still prepare a partial dissent. This should be brief, but I may not get it around until the January Session is behind us.

Sincerely,



Justice Rehnquist

cc: The Conference

COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

From: **Justice Blackmun**

Circulated: FEB 9 1983

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-1003

KEVIN H. WHITE, ETC., ET AL., PETITIONERS *v.*  
MASSACHUSETTS COUNCIL OF CONSTRUCTION EMPLOYERS, INC., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT  
OF MASSACHUSETTS

[February —, 1983]

JUSTICE BLACKMUN, concurring in part and dissenting in part.

I agree with the Court that this case presents two issues: (1) the validity of the mayor's executive order as applied to projects funded entirely by the city of Boston with its own revenues, and (2) the validity of the order as applied to projects funded in part with federal revenues pursuant to certain congressionally created grant programs.

### I

Respecting the second issue, I am in agreement with the Court's conclusion that Congress, in creating the grant programs in question, specifically authorized "the type of parochial favoritism expressed in the order." *Ante*, at 9. As the Court holds, Congress unquestionably has the power to authorize state or local discrimination against interstate commerce that otherwise would violate the dormant aspect of the Commerce Clause. *Prudential Ins. Co. v. Benjamin*, 328 U. S. 408, 418-427 (1946).<sup>1</sup>

<sup>1</sup> Because the Court does not pass on the possible invalidity of the executive order under the Privileges and Immunities Clause, U. S. Const., Art. IV, § 2, cl. 1, it has no occasion to determine whether Congress may authorize, through affirmative legislation, what otherwise would be a violation of that Clause. This question may present considerations different from those presented by the dormant Commerce Clause. See L. Tribe, *American Constitutional Law* § 6-31, at 403, n. 18 (1978). For the reasons

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ANGES

5-6, 7, 8, 9

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

From: **Justice Blackmun**

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

Recirculated: \_\_\_\_\_ FEB 24 1983

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-1003

KEVIN H. WHITE, ETC., ET AL., PETITIONERS *v.*  
MASSACHUSETTS COUNCIL OF CONSTRUCTION EMPLOYERS, INC., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT  
OF MASSACHUSETTS

[February —, 1983]

JUSTICE BLACKMUN, with whom JUSTICE WHITE joins,  
concurring in part and dissenting in part.

I agree with the Court that this case presents two issues:  
(1) the validity of the mayor's executive order as applied to  
projects funded entirely by the city of Boston with its own  
revenues, and (2) the validity of the order as applied to  
projects funded in part with federal revenues pursuant to  
certain congressionally created grant programs.

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grams in question, specifically authorized "the type of paro-  
chial favoritism expressed in the order." *Ante*, at 9. As the  
Court holds, Congress unquestionably has the power to au-  
thorize state or local discrimination against interstate com-  
merce that otherwise would violate the dormant aspect of the  
Commerce Clause. *Prudential Ins. Co. v. Benjamin*, 328  
U. S. 408, 418-427 (1946).<sup>1</sup>

<sup>1</sup> Because the Court does not pass on the possible invalidity of the execu-  
tive order under the Privileges and Immunities Clause, U. S. Const., Art.  
IV, § 2, cl. 1, it has no occasion to determine whether Congress may au-  
thorize, through affirmative legislation, what otherwise would be a viola-  
tion of that Clause. This question may present considerations different  
from those presented by the dormant Commerce Clause. See L. Tribe,  
*American Constitutional Law* § 6-31, at 403, n. 18 (1978). For the reasons

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 25, 1983

MEMORANDUM TO THE CONFERENCE

Re: No. 81-1003 - White v. Massachusetts Council

After some "negotiations" with Bill Rehnquist's chambers, I shall try to accommodate him with two changes in the first sentence of the paragraph beginning on page 8 of my opinion concurring in part and dissenting in part. The first change is to insert the word "evidently" immediately after the semicolon, so the language reads "evidently, the Court acknowledges ...". The second change is in the sixth line of that paragraph; I shall replace "does the sort of" with the word "did."

I must assume there will be no objection to these changes.

*H. A. B.*  
—

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 2, 1982

81-1003 White v. Massachusetts Council

Dear Bill:

I note that you plan to make some changes in your first draft.

In this connection, I have seen the comments of John and Sandra.

In view of my dissent in Reeves, I would prefer not to expand the "proprietary" concept. I have thought that the facts in this case do not require any expansion.

In any event, I will await your second draft.

Sincerely,

Justice Rehnquist

lfp/ss

cc: The Conference

December 20, 1982

81-1003 White v. Massachusetts Council

Dear Bill:

Given your conclusion that nothing in the record supports respondent's contention that "private funds" were used in addition to city funds in some of the construction projects, I find your opinion totally convincing.

You addressed the more difficult question in your earlier circulation: whether the city would be a "market participant" where both public and private funds were used on the project. I am inclined to think that it would remain a market participant - rather than a "regulator" - so long as the funds were limited to paying contractors and subcontractors. I would have a different view if the city sought to extend its restrictive order to manufacturers or suppliers of goods and materials, insurance companies, and the like. The city then would be acting as a regulator rather than an employer.

I believe the first sentence on page 5 of your opinion leaves these more difficult questions for another day.

Sincerely,

Justice Rehnquist

lfp/ss

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 20, 1982

81-1003 White v. Massachusetts Council

Dear Bill:

Please join me.

Sincerely,

A handwritten signature in cursive script that reads "Lewis".

Justice Rehnquist

lfp/ss

cc: The Conference

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**

No. 81-1003

**KEVIN H. WHITE, ETC., ET AL., PETITIONERS v.  
MASSACHUSETTS COUNCIL OF CONSTRUCTION  
EMPLOYERS, INC., ET AL.**

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT  
OF MASSACHUSETTS

[December —, 1982]

JUSTICE REHNQUIST delivered the opinion of the Court.

Since our decision in *Hughes v. Alexandria Scrap Corp.*, 426 U. S. 794 (1976), it has been settled that state and local governments are not restrained by the Commerce Clause, U. S. Const., Art. I, § 8, cl. 3, when they enter the marketplace as "market participants." We now must decide whether the City of Boston is a "market participant" when it provides public funds, from local and federal sources, for building construction within the City that also is financed by private funds. If it is a market participant, then an executive order issued by the mayor of Boston mandating a City resident preference for 50% of the jobs on construction projects receiving public funds need not be independently justified under the Commerce Clause.

I

The mayor's executive order provided as follows:

"On any construction project funded in whole or in part by City funds, or funds which, in accordance with a federal grant or otherwise, the City expends or administers, and to which the City is a signatory to the construction contract, the worker hours on a craft-by-craft basis

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 2, 1982

Re: No. 1003 White v. Mass. Council of Construction  
Employers, Inc.

MEMORANDUM TO THE CONFERENCE

I have received several suggestions which I shall try to incorporate to a greater or lesser degree in a second draft. The second draft will probably be ready in about a week or ten days.

Sincerely,



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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Recirculated: DEC 17 1982

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-1003

KEVIN H. WHITE, ETC., ET AL., PETITIONERS *v.*  
MASSACHUSETTS COUNCIL OF CONSTRUCTION EMPLOYERS, INC., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT  
OF MASSACHUSETTS

[December —, 1982]

JUSTICE REHNQUIST delivered the opinion of the Court.

In 1979 the mayor of Boston, Massachusetts, issued an executive order<sup>1</sup> which required that all construction projects funded in whole or in part by city funds, or funds which the city had the authority to administer, should be performed by a work force consisting of at least half *bona fide* residents of Boston.<sup>2</sup> The Supreme Judicial Court of Massachusetts decided that the order was unconstitutional, observing that

<sup>1</sup>The executive order provides:

"On any construction project funded in whole or in part by City funds, or funds which, in accordance with a federal grant or otherwise, the City expends or administers, and to which the City is a signatory to the construction contract, the worker hours on a craft-by-craft basis shall be performed, in accordance with the contract documents established herewith, as follows:

- a. at least 50% by bona fide Boston residents;
- b. at least 25% by minorities;
- c. at least 10% by women."

Only the residency requirement is being challenged.

<sup>2</sup>In 1980, of approximately \$482 million expended on construction in the City of Boston, some \$54 million, or 11%, was spent on projects to which the executive order applied. Of this latter amount, approximately \$34 million represented projects being funded in part through federal Urban Development Action Grants (UDAGs).

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P.8  
Revised

John

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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3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-1003

KEVIN H. WHITE, ETC., ET AL., PETITIONERS *v.*  
MASSACHUSETTS COUNCIL OF CONSTRUCTION EMPLOYERS, INC., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT  
OF MASSCHUSETTS

[December —, 1982]

JUSTICE REHNQUIST delivered the opinion of the Court.

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pp. 548

10/1/82

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

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JUSTICE REHNQUIST

'82 DEC 35 P1:33

From: **Justice Rehnquist**

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4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-1003

KEVIN H. WHITE, ETC., ET AL., PETITIONERS *v.*  
MASSACHUSETTS COUNCIL OF CONSTRUCTION EMPLOYERS, INC., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT  
OF MASSACHUSETTS

[December —, 1982]

JUSTICE REHNQUIST delivered the opinion of the Court.

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Only the residency requirement is being challenged.

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1 2 STYLISTIC CHANGES THROUGHOUT

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

From: Justice Rehnquist

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

Recirculated: FEB 17 1983

5th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-1003

KEVIN H. WHITE, ETC., ET AL., PETITIONERS *v.*  
MASSACHUSETTS COUNCIL OF CONSTRUCTION EMPLOYERS, INC., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT  
OF MASSCHUSETTS

[December —, 1982]

\* JUSTICE REHNQUIST delivered the opinion of the Court.

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Only the residency requirement is being challenged.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 1, 1983

Decision  
WHR recommends  
D FWS FQ.  
I think there is  
quite reasonable  
prospect that may  
go along unless  
other also  
are concerned

MEMORANDUM TO THE CONFERENCE

Re: Case Held for No. 81-1003, White v. Massachusetts Council

No. 81-2110, Union Building & Construction Trades v. Mayor of Camden

In this case, the New Jersey Supreme Court upheld a city ordinance which requires that public works contractors "make every effort to employ persons residing within the City of Camden but in no event shall less than 40% of the entire labor force be residents of the City of Camden." The state court rejected a Commerce Clause challenge to the ordinance, finding that because the city was acting as a market participant rather than a regulator, its activities were allowable under Alexandria Scrap Corp. This is consistent with our decision in White.

The jurisdictional statement presents two additional issues. First, it is argued that the resident preference in the ordinance violates the Privileges and Immunities Clause. The state court agreed with the dicta of the Massachusetts court in White, and held that a Privileges and Immunities Clause violation does not occur where out-of-state residents are treated no differently than a majority of in-state residents. I believe this reasoning is consistent with our decision in Hicklin v. Orbeck, 437 U.S. 518, 523-524 (1978), though other members of the Court may feel differently.

Finally, the appellants argue that the residency requirement offends the Equal Protection Clause by impermissibly infringing upon the fundamental right to travel. While the state court's decision on this point is not clear, it may be fairly read as saying that the possibility of employment in 100% of the jobs created by public works projects is not within the scope of rights

As I noted in my bench memo, it is not clear that the Court has harmonized the commerce clause and the p.i. clause. In Heim v. McCall, 239 U.S. 175, 191-192 (1915), the Court upheld a state statute guaranteeing preferences to state citizens on state or city construction projects against a p.i. challenge. In American Yearbook G. v. Orbeck, 339 F.

protected by the fundamental right to travel. If, however, the right to travel is involved in this case, an issue is presented that the Court left open in McCarthy v. Philadelphia Civil Service Commission, 424 U.S. 645 (1976) (Per Curiam). In that case, the Court concluded that a continuing residency requirement did not infringe on the right to travel; the Court intimated that a durational residency requirement would present a more difficult question; this case involves a durational residency requirement. The New Jersey Supreme Court did not indicate whether there were actually people who would travel interstate to reach Camden; having seen the place, I am inclined to believe whatever interstate travel was involved would be away from Camden rather than towards it (apologies to WJB).

Although there are arguments for noting probable jurisdiction, I will vote to DFWSFQ.

Sincerely,

*WJB*  
upheld a state requirement that private businesses receiving public funds must prefer residents over nonresidents. Nicklin, however, specifically questioned the validity of Heim, as did the Court's decision in Sugarman v. Dougall, 413 U.S. 634, 642-645 (1973). As Rives points out in his memo, a city's existence is purely derivative, as are the powers by which it governs. It would seem that the p; i clause is no less implicated here where the discrimination is accomplished against nonresidents of the state by means of a city ordinance as when the State passes a statute doing the same thing. Thus, it is difficult for me to say that there is an insubstantial federal question here.

Having said that, I am convinced that the N.J.S.Ct. is correct, although its analysis is inconsistent with the commerce clause ~~test~~ analysis in Dean Milk Co. (see Rives's memo). Nevertheless, I do not think the ordinance implicates a "fundamental right" under the p; i clause. See Citkin v. Kansas, 191 U.S. 207, 222-223 (1903) ("[I]t belongs to the State... to prescribe the conditions upon which it will permit public work to be done on its behalf...."). But see C.D.R. Enterprises, Ltd. v. Board of Education, 412 F. Supp. 1164 (EDNY 1976) (finding public projects employment preference unconstitutional in that it preferred citizens over lawfully admitted aliens), summarily aff'd sub nom. Lefkowitz v. C.D.R. Enterprises, Ltd., 429 U.S. 1081 (1977).

This case presents substantial issues that probably need resolution. Although I think the N.J.S.Ct. answered the questions correctly, I am inclined to recommend  
① Noting Probable Jurisdiction. - JOB

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

December 30, 1982

Re: 81-1003 - White v. Massachusetts Council  
of Construction Employers

Dear Bill:

The first full sentence at the top of page 6 seems somewhat broader than necessary. I wonder if you could either eliminate it entirely, or perhaps revise it to limit its application to the specific conditions involved in this case.

What I am concerned about is a case in which the city might admittedly be a market participant, but then impose market regulations as a condition of a contract. For example, I would be reluctant to conclude that there could never be any Commerce Clause objection to a city's regulation of its customers' use of products made with city-produced electricity. Perhaps my concern is unrealistic, but on the other hand I'm not sure you need to make the sentence as broad as it presently reads.

Also, in the following sentence on the same page should you not refer to the "former case" rather than the "latter case?"

Apart from the first concern, I expect to join your opinion, but in view of the novelty of the case I think I will await other writings.

Respectfully,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

February 22, 1983

Re: 81-1003 - White v. Massachusetts Council  
of Construction Employers

Dear Bill:

Please join me.

Respectfully,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

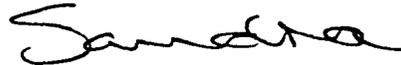
December 1, 1982

No. 81-1003 White v. Mass. Council of Construction  
Employers, Inc.

Dear Bill,

While I agree that the judgment should be reversed in this case, I am reluctant to do so on the basis of the broad expansion of the market participation exemption outlined in your opinion. I am inclined to resolve this case on the basis of Congress' express authorization of the hiring of local residents. I will attempt to circulate a separate concurrence in the judgment in due course.

Sincerely,



Justice Rehnquist

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

December 20, 1982

No. 81-1003 White v. Mass. Council of Constr. Workers

Dear Bill,

Please join me in your revised opinion.

Sincerely,



Justice Rehnquist

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

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JUSTICE SANDRA DAY O'CONNOR

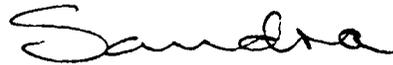
February 15, 1983

Re: No. 81-1003 White v. Massachusetts Council

Dear Bill,

I think Bill Brennan's suggestion dated February 15  
is a good one and would be an appropriate addition.

Sincerely,



Justice Rehnquist

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