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Guardians Association v. Civil Service Commission of New York City

463 U.S. 582 (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

November 15, 1982

Re: 81-431 - Guardians Ass'n., et al. v. Civil Service Commission
of City of New York, et al.

MEMORANDUM TO THE CONFERENCE:

During the vote at Conference, I passed on this case. I have since decided to vote to affirm the judgment below, on the view that no implied private cause of action exists in this case. As you are by now aware, I have assigned the opinion to Justice White.

Regards,



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

CHAMBERS OF
THE CHIEF JUSTICE

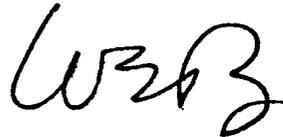
December 27, 1982

Re: No. 81-431, Guardians Assn. v. Civil Service
Commission of New York

Dear Byron:

I join.

Regards,



Justice White

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

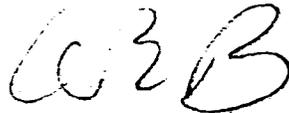
June 21, 1983

Re: No. 81-431 - Guardians Ass'n v. Civil Serv. Comm'n of N.Y.

Dear Lewis:

I join your concurring opinion.

Regards,

Handwritten signature of Justice Powell, consisting of the letters 'W', 'P', and 'B' in a cursive, stylized script.

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 18, 1982

RE: No. 81-431 Guardians Assn. v. Civil Service, etc.

Dear Harry:

Thurgood, John, you and I are in dissent in the above.
Would you be willing to undertake the dissent?

Sincerely,

Bill

Justice Blackmun

Copies to:

Justice Marshall
Justice Stevens

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 18, 1983

Re: Guardians Assn. v. Civil Service Commission, No. 81-431

Dear John:

Please join me.

Sincerely,


WJB, Jr.

Justice Stevens

Copies to the Conference

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

1st Draft

GUARDIANS ASSOCIATION v. CIVIL SERVICE COMMISSION

No. 81-431

From: Justice Brennan

Circulated: JUN 21 1981

Recirculated: _____

JUSTICE BRENNAN, dissenting.

I join JUSTICE STEVENS's dissenting opinion. Unlike JUSTICE POWELL, ante, at 1-2, n. 1 (opinion concurring in the judgment), however, I do not read JUSTICE STEVENS's opinion as foreclosing the possibility that a plaintiff might sue a private recipient of federal funds for violation of regulations under Title VI. That issue, of course, is not presented in this case.

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 22, 1983

Re: Guardians Assn. v. Civil Service Commn.,
No. 81-431

MEMORANDUM TO THE CONFERENCE

In view of footnote 20 in John's latest draft, I
withdraw the separate dissent I circulated yesterday.

Bill

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 17, 1982

MEMORANDUM TO THE CONFERENCE

Re: No. 81-431 - Guardians Association v.
Civil Service Comm'n of the City of New York

My vote at conference was to affirm unless the Title VI intentional discrimination issue is reached, in which event I would reverse. I have avoided the issue in this draft.



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

From: Justice White

Circulated: 17 DEC 1982

Recirculated: _____

BFW
I agree with the present
HM

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-431

GUARDIANS ASSOCIATION, ETC., ET AL., PETITIONERS
v. CIVIL SERVICE COMMISSION OF THE
CITY OF NEW YORK ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[December —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

We address in this case whether a plaintiff is entitled to compensatory relief in a private action alleging violations of Title VI of the Civil Rights Act of 1964, 42 U. S. C. §§ 2000d, *et seq.*¹ We hold that such relief may not be obtained; declaratory and prospective injunctive relief are the only available private remedies for Title VI violations.

I

This class action involves a challenge by black and Hispanic police officers, petitioners here,² to several written examinations administered by New York City between 1968 and 1970 that were used to make entry-level appointments to the city's police department (the "Department") through October 1974.³ The District Court found that the challenged exami-

¹Section 601 of the Act, 42 U. S. C. § 2000d, provides:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

²The class representatives are The Guardians Association of the New York City Police Department, Inc., The Hispanic Society of the New York City Police Department, Inc., and Oswaldo Perez and Felix E. Santos.

³Petitioners also alleged that the Department's 5'7" minimum height re-

WJB, HAB and JPS. (no one else)

I can not go along with Byron's opinion. I agree with the
Tonal Judge Bob [unclear]
HM

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 29, 1982

Re: 81-431 - Guardians Association
v. Civil Service Commission

Dear Harry,

As you can tell, my view is that awarding constructive seniority based on past transgressions is not just a form of prospective relief. Ordering new examinations for those deemed to have constructive seniority is in the same category.

In your words, however, I shall give "very serious consideration" to your suggestion that the issue need not be decided.

Sincerely yours,



Justice Blackmun

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 14, 1983

MEMORANDUM TO THE CHIEF JUSTICE
AND JUSTICES BLACKMUN, POWELL, REHNQUIST, AND O'CONNOR

Re: 81-431 - Guardians Ass'n v. Civil Service Comm'n

It may be well to review the status of this case, in which I shall shortly recirculate. I hope to clarify the basis for affirmance in this case which is this: Unless Congress clearly indicates to the contrary, one way or another, a typical spending-clause statute should be construed as extending to private parties only the right to secure an injunction ordering compliance, from that date forward, with the terms on which federal funds have been furnished. Thus, in a \$1983 suit against state officials, the only remedy is the enforcement of the right to future compliance.

To say that prospective, but not retrospective, relief is available is thus not wholly accurate, and the first draft perhaps was misleading in this respect. What private plaintiffs can get is a declaration of what compliance requires and an order to comply. This includes no individual or class relief, prospective or not, for past conduct by the grantee that was inconsistent with the grant.

The Chief Justice, Lewis and Bill Rehnquist have joined the first draft and thus agree that this approach forecloses any of the relief that must rest on Title VI in this case, including competitive seniority. Harry and Sandra have expressed their doubts about competitive seniority on the ground that it is prospective only. Harry has suggested that it need not be dealt with at all because of impending sergeant's examinations that in the circumstances would solve the competitive seniority issue completely. Unfortunately, I have been unable to verify that this is the case.

If the approach of the circulating draft does not carry the day with respect to competitive seniority, it will be necessary to confront the issue of whether intentional discrimination must be shown in a Title VI case. In that event, there would be no need to pursue the cause-of-action approach of the current draft. Of course, the intent issue is a recurring question, and it may be well to settle it. As you know, John has now written on the matter, concluding that the judgment of the Court of Appeals should be reversed.

Byron

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

pp. 1, 11, 13-19, §
stylistic changes

From: Justice White

Circulated: _____
MAR 15 1983

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-431

GUARDIANS ASSOCIATION, ETC., ET AL., PETITIONERS
v. CIVIL SERVICE COMMISSION OF THE
CITY OF NEW YORK ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[March —, 1983]

JUSTICE WHITE delivered the opinion of the Court.

We address in this case whether a plaintiff is entitled to compensatory relief in a private action alleging violations of Title VI of the Civil Rights Act of 1964, 42 U. S. C. §§ 2000d, *et seq.*¹ We hold that such relief may not be obtained; declaratory and limited injunctive relief are the only available private remedies for Title VI violations.

I

This class action involves a challenge by black and Hispanic police officers, petitioners here,² to several written examinations administered by New York City between 1968 and 1970 that were used to make entry-level appointments to the city's police department (the "Department") through October 1974.³ The District Court found that the challenged exami-

¹Section 601 of the Act, 42 U. S. C. § 2000d, provides:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

²The class representatives are The Guardians Association of the New York City Police Department, Inc., The Hispanic Society of the New York City Police Department, Inc., and Oswaldo Perez and Felix E. Santos.

³Petitioners also alleged that the Department's 5'7" minimum height re-

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 15, 1983

Re: 81-431 - Guardians Ass'n v.
Civil Service Comm'n

Dear Chief,

In view of the various writings in this case and Sandra's letter of today, perhaps we should chat on Friday about whether the opinion should be reassigned.

Sincerely,



The Chief Justice

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 1, 1983

MEMORANDUM TO THE CONFERENCE

Re: 81-431 - Guardians Association v. Civil Service
Commission of the City of New York

As the votes on the presently circulating opinions stack up, there are five to affirm, four on my opinion because the additional remedy sought by the plaintiffs is not available under Title VI and one, Sandra, on the ground that the Court of Appeals was right in concluding that it is necessary to prove intentional discrimination to recover under Title VI. Of course, there are four to reverse; for them the Court of Appeals was wrong on the intent issue and I am wrong on the remedy issue.

If the judgment is affirmed based on the present opinions, that judgment will rest on two positions, both of which are rejected by a majority of the Court: my view with respect to the limitations on equitable relief is rejected by the four who would reverse and by Sandra who would affirm; Sandra's view is rejected by the four who would reverse and by myself. Of course, my view on the intent issue is not revealed in the present opinions, but it was my position at conference and I adhere to it. Hence, to the extent that affirmance on the present opinions would signal that intent is a necessary element in a Title VI case, that signal would be a false indication of the views of the present Members of the Court.

No doubt this sort of thing has happened before, but I think it undesirable, the false signal in particular. That element is curable by my expressing myself on the intent issue. I shall accordingly recirculate, reaching and deciding the intent question and then going on much as I now do to say that in my opinion the relief sought is unavailable here, at least in the absence of a showing of intentional discrimination.

Of course, I shall circulate as announcing the judgment, and it may work out that someone else will inherit that job.

Cheers
Byron

pp. 1-2, 7-10, 15-16, 18, 20-22, 25
& stylistic changes throughout

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

From: **Justice White**

Circulated: _____

Recirculated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-431

GUARDIANS ASSOCIATION, ETC., ET AL., PETITIONERS
v. CIVIL SERVICE COMMISSION OF THE
CITY OF NEW YORK ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[June —, 1983]

JUSTICE WHITE announced the judgment of the Court and delivered the following opinion.

The threshold issue before the Court is whether the private plaintiffs in this case need to prove discriminatory intent to establish a violation of Title VI of the Civil Rights Act of 1964, 42 U. S. C. § 2000d, *et seq.*¹ and administrative implementing regulations promulgated thereunder. I conclude, as do four other Justices, in separate opinions, that the Court of Appeals erred in requiring proof of discriminatory intent.²

¹Section 601 of the Act, 42 U. S. C. § 2000d, provides:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

²The five of us reach the conclusion that the Court of Appeals erred by different routes. JUSTICE STEVENS, joined by JUSTICE BRENNAN and JUSTICE BLACKMUN, reasons that, although Title VI itself requires proof of discriminatory intent, the administrative regulations incorporating a disparate impact standard are valid. *Post*, at —. JUSTICE MARSHALL would hold that, under Title VI itself, proof of disparate impact discrimination is all that is necessary. *Post*, at —. I agree with JUSTICE MARSHALL that discriminatory animus is not an essential element of a violation of Title VI. I also believe that the regulations are valid, even assuming *arguendo* that Title VI, in and of itself, does not proscribe disparate impact

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

From: **Justice White**

pp. 1, 7-8, 15, 20, 25 &
stylistic changes throughout

Circulated: _____

Recirculated: JUN 24 1983

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-431

GUARDIANS ASSOCIATION, ETC., ET AL., PETITIONERS
v. CIVIL SERVICE COMMISSION OF THE
CITY OF NEW YORK ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[June —, 1983]

JUSTICE WHITE announced the judgment of the Court and delivered the following opinion, in Parts I, III, IV and V of which JUSTICE REHNQUIST joins.

The threshold issue before the Court is whether the private plaintiffs in this case need to prove discriminatory intent to establish a violation of Title VI of the Civil Rights Act of 1964, 42 U. S. C. § 2000d, *et seq.*¹ and administrative implementing regulations promulgated thereunder. I conclude, as do four other Justices, in separate opinions, that the Court of Appeals erred in requiring proof of discriminatory intent.²

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HAB

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 24, 1983

MEMORANDUM TO THE CONFERENCE

Cases held for No. 81-431 -

Guardians Ass'n v. Civil Service Comm'n

No. 81-432 - Civil Service Comm'n v. Guardians Ass'n

This is the cross-petition to the petition we granted in Guardians. The DC in this case granted relief under both Title VI and Title VII. CA2 affirmed the grant of relief under Title VII and reversed with respect to Title VI. In Guardians, we have affirmed the denial of Title VI relief. The cross-petition challenges the grant of Title VII relief and thus presents issues totally unrelated to those in Guardians.

Cross-petitioners' argument is that no discrimination occurred after Title VII became applicable to municipalities in 1972. They insist that their only discriminatory acts occurred between 1968 and 1970, when the examinations were given. Although persons were hired as late as 1974 on the basis of an eligibility roster reflecting the results of the exams, cross-petitioners assert that the post-1972 discriminatory effects of these hirings resulted from the application of a bona fide neutral merit system and thus were lawful under §703(h) of Title VII. CA2, however, agreed with the DC, which held that the post-1972 hirings based on the results of discriminatory exams constituted a program of unjustified refusals to hire minorities. Cross-petitioners contend that this holding is contrary to Delaware State College v. Ricks, 449 U.S. 250 (1980), and United Air Lines v. Evans, 431 U.S. 553 (1977), and that it conflicts with Bronze Shields, Inc. v. New Jersey Dept. of Civil Service, 667 F. 2d 1074 (CA3 1981).

In Bronze Shields, CA3 held that the use of an exam-based eligibility roster did not constitute a continuing Title VII violation. In footnotes, CA3 suggested that, in light of Ricks, CA2's decision in the present case was incorrect, but that, in any event, it was factually distinguishable, because the CA3 plaintiffs had filed EEOC charges before anyone had been hired

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HAB

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 24, 1983

MEMORANDUM TO THE CONFERENCE

Cases held for No. 81-431 -

Guardians Ass'n v. Civil Service Comm'n

No. 82-201 - Reading Hospital and Medical Center v. Chowdhury

Respondent, a non-Caucasian physician, filed a Title VI action after being denied courtesy staff privileges at petitioner hospital. The DC dismissed the suit for failure to exhaust administrative remedies, but a divided CA3 panel reversed and held that exhaustion is not required.

The CA3 majority (Van Dusen, Garth) relied on its previous decision in NAACP v. Medical Center, Inc., 599 F. 2d 1247 (CA3 1979), and on this Court's statements in Cannon v. University of Chicago, 441 U.S. 677, 706, n. 41 (1979), that Title IX, which was patterned after Title VI, does not require exhaustion. CA3 also noted that, although an aggrieved individual may file an administrative complaint, he has no role in the investigation or adjudication, if any, of the complaint, and that he would not be able to obtain injunctive relief or damages from the agency, since the only sanction the agency can impose is a cutoff of funds.

Judge Aldisert's dissent observed that the statements on this issue in Cannon and Medical Center were dicta. Relying on DC decisions from within CA3, he concluded that the majority's rule conflicted with public policy as expressed by Congress and with sound principles of judicial administration. He also believed the DC's judgment should be affirmed because respondent had not alleged that the primary purpose of the funding was to provide employment, which is an essential element of a Title VI action for employment discrimination. The majority left this issue open for the DC to decide on remand.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 28, 1983

MEMORANDUM TO THE CONFERENCE

Re: 81-431 -

Guardians Association v. Civil Service
Commission of the City of New York

After chatting with Sandra, I am deleting the second and third sentences of footnote 27. I shall not recirculate.



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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 28, 1983

There is another
BW letter dated 6/28
addressed to CJ that is on
the list; this is a different
letter addressed to
conference

MEMO TO THE CONFERENCE

81-431 -

Guardians Association v. Civil Service
Commission of the City of New York

The necessary changes in response to Thurgood's circulation of yesterday are at the printer. I should be able to recirculate by late afternoon, and if the printer can make it, the case could be announced tomorrow after all.

BW

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 28, 1983

Re: 81-431 -

Guardians Association v. Civil Service
Commission of the City of New York

Dear Chief,

Thurgood's office now informs me that he is making substantial revisions in his separate opinion in this case. These changes will require me in turn to make changes in my opinion. Hence, it appears that Guardians cannot come down on Thursday.

Sincerely,



The Chief Justice

Copies to the Conference

cpm

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

From: Justice White

Circulated: _____

Recirculated: JUN 29 1983

pp. 6, 18, 25 &
stylistic changes throughout

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-431

GUARDIANS ASSOCIATION, ETC., ET AL., PETITIONERS
v. CIVIL SERVICE COMMISSION OF
THE CITY OF NEW YORK ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[June —, 1983]

JUSTICE WHITE announced the judgment of the Court and delivered the following opinion, in Parts I, III, IV and V of which JUSTICE REHNQUIST joins.

The threshold issue before the Court is whether the private plaintiffs in this case need to prove discriminatory intent to establish a violation of Title VI of the Civil Rights Act of 1964, 42 U. S. C. § 2000d, *et seq.*,¹ and administrative implementing regulations promulgated thereunder. I conclude, as do four other Justices, in separate opinions, that the Court of Appeals erred in requiring proof of discriminatory intent.²

¹Section 601 of the Act, 42 U. S. C. § 2000d, provides:

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

²The five of us reach the conclusion that the Court of Appeals erred by different routes. JUSTICE STEVENS, joined by JUSTICE BRENNAN and JUSTICE BLACKMUN, reasons that, although Title VI itself requires proof of discriminatory intent, the administrative regulations incorporating a disparate impact standard are valid. *Post*, at —. JUSTICE MARSHALL would hold that, under Title VI itself, proof of disparate impact discrimination is all that is necessary. *Post*, at —. I agree with JUSTICE MARSHALL that discriminatory animus is not an essential element of a violation of Title VI. I also believe that the regulations are valid, even assuming

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 27, 1982

Re: No. 81-431 - Guardians Association v. Civil
Service Commission of the City of New York

Dear Bill, Harry and John:

I cannot go along with Byron's opinion. I
agree with the Trial Judge Bob Carter.

Sincerely,

T.M.
T.M.

Justice Brennan
Justice Blackmun
Justice Stevens

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

From: **Justice Marshall**

Circulated: **MAR 14 1983**

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-431

GUARDIANS ASSOCIATION, ETC., ET AL., PETITIONERS
v. CIVIL SERVICE COMMISSION OF THE
CITY OF NEW YORK ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[March —, 1983]

JUSTICE MARSHALL, dissenting.

I reject the majority's conclusion that a private plaintiff can recover only "prospective, non-compensatory relief" for a defendant's violations of Title VI of the Civil Rights Act of 1964, 42 U. S. C. §§ 2000d, *et seq.* See *ante*, at 19. In my view, federal courts have broad equitable discretion to remedy violations of Title VI. The relief ordered by the District Court in this case was therefore available to petitioners under Title VI. Accordingly, I would reach the question originally presented for our review: whether proof of discriminatory intent is required to establish a Title VI violation. Because I believe that proof of disparate racial impact suffices, I would reverse the judgment of the Court of Appeals.

I

Title VI was designed to end racial discrimination. See 110 Cong. Rec. 5090, 6544 (1964) (Sen. Humphrey); *id.*, at 6049, 7060-7061 (Sen. Pastore); *id.*, at 7064 (Sen. Ribicoff). Congress attempted to accomplish this goal by providing in § 601 a "statement of substantive right." *Id.*, at 5255. See *id.*, at 5254 (colloquy between Sens. Humphrey and Talmadge); *id.*, at 1519 (Rep. Cellar). Section 601 declares that

STYLISTIC CHANGES THROUGHOUT.

PP. 13, 19, 20,

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

From: **Justice Marshall**

Circulated: _____

Recirculated: **APR 28 1983**

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-431

GUARDIANS ASSOCIATION, ETC., ET AL., PETITIONERS
v. CIVIL SERVICE COMMISSION OF THE
CITY OF NEW YORK ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[May —, 1983]

JUSTICE MARSHALL, dissenting.

I reject the plurality's conclusion that a private plaintiff can recover only "injunctive, non-compensatory relief" for a defendant's violations of Title VI of the Civil Rights Act of 1964, 42 U. S. C. §§2000d, *et seq.* See *ante*, at 18. In my view, federal courts have broad equitable discretion to remedy violations of Title VI. The relief ordered by the District Court in this case was therefore available to petitioners under Title VI. Accordingly, I would reach the question originally presented for our review: whether proof of discriminatory intent is required to establish a Title VI violation. Because I believe that proof of disparate racial impact suffices, I would reverse the judgment of the Court of Appeals.

I

Title VI was designed to end racial discrimination. See 110 Cong. Rec. 5090, 6544 (1964) (Sen. Humphrey); *id.*, at 6049, 7060-7061 (Sen. Pastore); *id.*, at 7064 (Sen. Ribicoff). Congress attempted to accomplish this goal by providing in § 601 a "statement of substantive right." *Id.*, at 5255. See *id.*, at 5254 (colloquy between Sens. Humphrey and Talmadge); *id.*, at 1519 (Rep. Cellar). Section 601 declares that "[n]o person" shall be denied the benefits of federal finan-

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

From: **Justice Marshall**

Circulated: _____

Recirculated: _____

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-431

GUARDIANS ASSOCIATION, ETC., ET AL., PETITIONERS
v. CIVIL SERVICE COMMISSION OF THE
CITY OF NEW YORK ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[June —, 1983]

JUSTICE MARSHALL, dissenting.

We granted certiorari in this case to consider whether proof of discriminatory intent is required to establish a violation of Title VI of the Civil Rights Act of 1964, 42 U. S. C. §§ 2000d, *et seq.* For the reasons outlined below, I agree with JUSTICE WHITE that proof of discriminatory animus should not be required. Unlike JUSTICE WHITE, however, I believe that compensatory relief may be awarded to private Title VI plaintiffs in the absence of proof of discriminatory animus. I would therefore reverse the judgment of the Court of Appeals.

I

The question presented by the petition for certiorari is whether a Title VI plaintiff can obtain relief upon proof that a non-job-related employment requirement has a discriminatory effect on minority applicants, or must also prove discriminatory intent. Pet. for Cert. i. This issue has divided the Courts of Appeals.¹ To resolve it we must decide

¹ Compare *Castaneda v. Richard*, 648 F. 2d 989, 1000 (CA5 1981) (intent standard); *Cannon v. University of Chicago*, 648 F. 2d 1104, 1108 (CA7 1981) (same); *Lora v. Board of Educ.*, 623 F. 2d 248, 250 (CA2 1980) (same), with *NAACP v. Medical Center, Inc.*, 657 F. 2d 1322, 1328 (CA3

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 22, 1982

Re: No. 81-431 - Guardians Ass'n v. Civil Service, etc.

Dear Bill:

I shall be willing to undertake the dissent in this case.

Sincerely,



Justice Brennan

cc: Justice Marshall
Justice Stevens

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 20, 1982

Re: No. 81-431 - Guardians Ass'n v. Civil Service Comm'n

Dear Bill:

There were four of us (you, Thurgood, John, and I) who voted, or were inclined to vote, to reverse or remand in this case. After the assignment was made to Byron, you asked me to undertake the dissent.

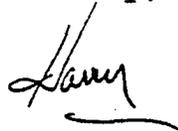
Byron, in what I feel is a well-constructed opinion circulated December 17, has avoided the divisive issue whether Title VI requires proof of discriminatory intent. Instead, he bases his affirmance of the judgment of the Second Circuit on remedial considerations, holding that compensatory relief is not available under Title VI, and that private cause of action relief under that Title is limited to declaratory and prospective injunctive remedies.

Over the weekend, I spent a good bit of time on this case and Byron's proposed opinion. I am now just about persuaded to join it. It would be somewhat awkward for me to disagree with his conclusions as to remedy and then to go on to reach the issue of intent.

My one remaining concern is whether "competitive status" constructive seniority -- here, the right to take the special sergeant's exam -- is, as Byron would hold, not prospective. He concedes that such relief does not increase the employer's costs. Judge Meskill took the position below that competitive status seniority is available to private litigants suing under Title VI, and that the order that a new sergeant's examination be given was non-compensatory. App. 49, n. 43. I do not feel too strongly about this detail. I could go along with Byron, or I could write a brief dissent to the opposite effect. As I have indicated above, at the moment, I am inclined to join Byron's opinion and let this detail go, but if the three of you feel strongly about it, I shall join you.

I shall be interested in your, Thurgood's, and John's respective reactions.

Sincerely,



Justice Brennan

cc: Justice Marshall
Justice Stevens

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 28, 1982

Re: No. 81-431, Guardians Association v. Civil Service Comm'n

Dear Byron:

You have written a persuasive opinion in this case, and I have given it very serious consideration. Because you have avoided the issue that primarily divided us at conference, namely, whether Title VI requires proof of discriminatory intent, and now have based your affirmance of the judgment of the Second Circuit on remedial considerations, holding that compensatory relief is not available under Title VI, and that private cause of action relief under that Title is limited to declaratory and prospective injunction remedies, the opinion is almost entirely palatable to me.

My remaining concern is the holding, p. 18, that "competitive status" constructive seniority is not prospective. Judge Meskill, however, took the position below that the order that a new sergeant's examination be given was prospective.

I question only whether it is necessary now to take a position on competitive status constructive seniority. I say this because my "spies" tell me that the last time a sergeant's examination was given was in 1978; that the next is scheduled for January 1983; that at the time of the District Court's decision in February 1979 the New York Police Department asserted that all officers previously laid off had been rehired, App. 115; and that all these officers are thus eligible to take the examination scheduled for next month.

I therefore wonder whether competitive status constructive seniority is necessary at all as a matter of relief. If you would be willing to eliminate the holding that the competitive status seniority remedy is not prospective and replace it with a statement that that remedial feature now is not important to this case and need not be analyzed further, I could join your opinion and would be glad to do so.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 24, 1983

Re: No. 81-431, Guardians Association v.
Civil Service Commission of New York

Dear John:

Because I joined Byron's dissent in Cannon, I have some difficulty with the next to the last sentence of the full paragraph on page 2 of your dissenting opinion. If you would consider changing the words "as I do" in that sentence to "as did the Cannon Court," I would be glad to join your opinion.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 25, 1983

Re: No. 81-431 - Guardians Ass'n v. Civil Service Comm'n

Dear John:

Please join me in today's recirculation of your dissenting opinion.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath it.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 20, 1982

81-431 Guardians Ass'n v. Civil Service Commission

Dear Byron:

Please join me.

Sincerely,



Justice White

lfp/ss

cc: The Conference

March 16, 1983

81-431 Guardian Association v. Civil Service Comm.

Dear Byron:

I note your letter of March 15 suggesting that possibly this case should be reassigned.

There has indeed been a variety of views expressed but this was the situation at Conference. My understanding, in light of Sandra's letter of the 14th, is that although she will not join you on the implying of a cause of action issue she will join your judgment to affirm.

This, at least, would give you a judgment.

Sincerely,

Justice White

lfp/ss

cc: The Conference

March 31, 1983

81-431 Guardian Association v. Civil Service Comm'n

Dear Sandra:

Although I am with Byron in his plurality opinion, I have read with interest and admiration your opinion concurring in the judgment.

One of the serious problems with the way our government operates is that departments and agencies, when authorized to adopt rules and regulations, almost invariably use this authority to expand their jurisdiction. We have an example of it in the recent case involving 10b-5 of the Securities Exchange Act of 1934. The SEC is one of our better agencies, and yet it has expanded vastly its jurisdiction over the intervening years - accomplished in major part by anonymous staff personnel who write and then construe the regulations.

John's view would substantially enhance the power of this largely "invisible" government. But quite apart from broader concerns, you answer his legal argument in one sentence: "Reasonably related to" simply cannot mean "inconsistent with".

I hope that your opinion will serve to deter future efforts to vest such unprecedented authority in the agencies.

Sincerely,

Justice O'Connor

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 4, 1983

81-431 Guardians Association v. Civil Service Commission

Dear Byron:

In view of the additions to your opinion, I am considering writing separately and will try to get to it promptly.

I remain in agreement with the judgment.

Sincerely,



Justice White

lfp/ss

cc: The Conference

JUN 17 1983

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

From: Justice Powell

Circulated: JUN 17 1983

Recirculated: _____

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-431

GUARDIANS ASSOCIATION, ETC., ET AL., PETITIONERS
v. CIVIL SERVICE COMMISSION OF THE
CITY OF NEW YORK ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[June —, 1983]

JUSTICE POWELL, concurring in the judgment.

With reluctance, I write separately. The many opinions filed in this case draw lines that are not required by, and indeed in some instances seem incompatible with, our prior decisions. Our opinions today will further confuse rather than guide.¹

¹ In particular, the Court is divided as to the standard of proof required to prove violations of rights in cases involving Title VI. A majority of the Court agrees that a violation of the statute itself requires proof of discriminatory intent. See *infra*, at 3-4; *post*, at 1-2 (O'CONNOR, J., concurring in the judgment); *post*, at 9 (STEVENS, J., dissenting, joined by BRENNAN and BLACKMUN, JJ.) ("Today, proof of invidious purpose is a necessary component of a valid Title VI claim"). Only JUSTICES WHITE and MARSHALL believe that a violation of Title VI may be established by proof of discriminatory effect, and JUSTICE WHITE would recognize only non-compensatory, prospective relief for such a violation. See *ante*, at 21. JUSTICES BRENNAN, BLACKMUN, and STEVENS, however, believe that a violation of the *regulations* adopted pursuant to Title VI may be established by proof of discriminatory impact. See *post*, at 12.

Thus, a majority of the Court would hold that proof of discriminatory effect suffices to establish liability only when the suit is brought to enforce the regulations rather than the statute itself. And it would seem that the regulations may be enforced only in a suit pursuant to 42 U. S. C. § 1983; anyone invoking the implied right of action under Title VI would be limited by the discriminatory-intent standard required to prove violations of Title

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

pp 1, 3

JUN 23 1983

From: Justice Powell

Circulated: _____

Recirculated: JUN 23 1983

2nd DRAFT |

SUPREME COURT OF THE UNITED STATES

No. 81-431

GUARDIANS ASSOCIATION, ETC., ET AL., PETITIONERS v. CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June —, 1983]

JUSTICE POWELL, with whom THE CHIEF JUSTICE joins, concurring in the judgment.

With reluctance, I write separately. The many opinions filed in this case draw lines that are not required by, and indeed in some instances seem incompatible with, our prior decisions. Our opinions today will further confuse rather than guide.¹

¹ In particular, the Court is divided as to the standard of proof required to prove violations of rights in cases involving Title VI. Seven members of the Court agree that a violation of the statute itself requires proof of discriminatory intent. See *infra*, at 3-4; *post*, at 1 (REHNQUIST, J., concurring in the judgment); *post*, at 1-2 (O'CONNOR, J., concurring in the judgment); *post*, at 9 (STEVENS, J., dissenting, joined by BRENNAN and BLACKMUN, JJ.) ("Today, proof of invidious purpose is a necessary component of a valid Title VI claim"). Only JUSTICES WHITE and MARSHALL believe that a violation of Title VI may be established by proof of discriminatory effect, and JUSTICE WHITE would recognize only noncompensatory, prospective relief for such a violation. See *ante*, at 21. JUSTICES BRENNAN, BLACKMUN, and STEVENS, however, believe that a violation of the regulations adopted pursuant to Title VI may be established by proof of discriminatory impact. See *post*, at 12 (STEVENS, J., dissenting).

Thus, a majority of the Court would hold that proof of discriminatory effect suffices to establish liability only when the suit is brought to enforce the regulations rather than the statute itself. And it would seem that the

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Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 20, 1982

Re: No. 81-431 Guardians Association v. Civil Service
Commission of the City of New York

Dear Byron:

Please join me.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 16, 1983

Re: No. 81-431 Guardians Ass'n v. Civil Service Comm'n.

Dear Byron:

I agree with your most recent circulation in this case.

Sincerely,



Justice White

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. 81-431

GUARDIANS ASSOCIATION, ETC., ET AL., PETITION-
ERS *v.* CIVIL SERVICE COMMISSION OF THE
CITY OF NEW YORK ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[June —, 1983]

JUSTICE REHNQUIST, concurring in the judgment.

I join in Parts I, III, IV, and V of JUSTICE WHITE's opinion and join in Part II of JUSTICE POWELL's opinion. I therefore would affirm the judgment of the Court of Appeals.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 4, 1982

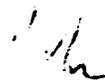
MEMORANDUM TO THE CONFERENCE

Re: 81-431 - Guardians Assn. v. Civil
Service Comm. of New York

Although I still have not finally come to rest in this case, I have made a discovery that bears on the question whether stare decisis requires adherence to the view expressed by Bill Brennan and Lewis Powell in their separate writing in Bakke to the effect that the Title VI standard is coextensive with the constitutional standard. One reason that I had thought the combination of five votes for those two opinions might not have precedential effect is that there was no single Court opinion for the proposition. I have since found, however, that in the Weber case, 443 U.S. 193, 206 note 6, the Court did expressly hold that Title VII, unlike Title VI was not intended to incorporate the constitutional standard. That footnote seems to espouse the theory that Title VI deals with governmental activity and therefore appropriately adopts the same standard as the Fifth and Fourteenth Amendments. The footnote then states: "Title VII, by contrast, was enacted pursuant to the commerce power to regulate purely private decisionmaking and was not intended to incorporate and particularize the commands of the Fifth and Fourteenth Amendments. Title VII and Title VI, therefore, cannot be read in pari materia." This seems to me to be an adoption by the Court of the rationale expounded by the Brennan-Powell opinions.

Although, as I have indicated, I still am somewhat uncertain about how to deal with this case, it does seem to me that this footnote in an opinion by the Court lends substantial support to the view that Title VI incorporates an intent standard and must be read more narrowly than Title VII.

Respectfully,



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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 13, 1983

Re: 81-431 - Guardians Ass'n v. Civil
Service Comm'n

Dear Byron:

With apologies for not responding to your circulation more promptly, I can now state that I intend to write separately and will probably come to the conclusion that there is a remedy, either in accord with the analysis in Cannon, or under §1983, that the statute as construed by the majority in Bakke requires proof of intent, but that the regulation is nevertheless valid. Some of this may change in the writing, but I am sure that I will not be joining your opinion.

Respectfully,



Justice White

Copies to the Conference

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

From: **Justice Stevens**

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7p. 1, 2, 5, 7, 8, 11

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-431

GUARDIANS ASSOCIATION, ETC., ET AL., PETITIONERS
v. CIVIL SERVICE COMMISSION OF THE
CITY OF NEW YORK ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[March —, 1983]

JUSTICE STEVENS, with whom JUSTICE BRENNAN joins,
dissenting.

It is not an easy task to harmonize the Court's cases under Title VI of the Civil Rights Act of 1964 (Title VI), 78 Stat. 252, 42 U. S. C. § 2000d *et seq.* Unless the Court is to repudiate what it has already written, however, I believe the judgment of the Court of Appeals must be reversed. I reach this conclusion by answering three separate questions: (1) whether federal law authorizes private individuals to recover damages for injuries caused by violations of Title VI and the regulations promulgated thereunder; (2) if so, whether Title VI requires recipients of federal funds to do any more than refrain from engaging in conduct that would, if performed by a state, violate the Fourteenth Amendment; and (3) if not, whether an administrative agency may validly impose additional requirements on recipients of funds from that agency. I shall discuss each question in turn.

I

As the Court notes, *ante*, at 8, in the last five years at least eight Members of this Court have endorsed the view that Title VI, as well as the comparable provisions of Title IX of the Education Amendments of 1972, may be enforced in a pri-

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

10/17/83

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 24, 1983

Re: 81-431 - Guardians Ass'n v. Civil
Service Comm'n

Dear Harry:

Thanks for your note. I will recirculate with
the sentence at the bottom of page 2 changed to read:
"It is one thing to conclude, as the Court did in
Cannon,"

Respectfully,



Justice Blackmun

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

From: Justice Stevens

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Pr. 1-5

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-431

GUARDIANS ASSOCIATION, ETC., ET AL., PETITIONERS
v. CIVIL SERVICE COMMISSION OF THE
CITY OF NEW YORK ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[March —, 1983]

JUSTICE STEVENS, with whom JUSTICE BRENNAN joins,
dissenting.

It is not an easy task to harmonize the Court's cases under Title VI of the Civil Rights Act of 1964 (Title VI), 78 Stat. 252, 42 U. S. C. § 2000d *et seq.* Unless the Court is to repudiate what it has already written, however, I believe the judgment of the Court of Appeals must be reversed. I reach this conclusion by answering three separate questions: (1) whether federal law authorizes private individuals to recover damages for injuries caused by violations of Title VI and the regulations promulgated thereunder; (2) if so, whether Title VI requires recipients of federal funds to do any more than refrain from engaging in conduct that would, if performed by a state, violate the Fourteenth Amendment; and (3) if not, whether an administrative agency may validly impose additional requirements on recipients of funds from that agency. I shall discuss each question in turn.

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Justice Brennan
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Justice Marshall
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Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

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P. 2

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-431

**GUARDIANS ASSOCIATION, ETC., ET AL., PETITIONERS
v. CIVIL SERVICE COMMISSION OF THE
CITY OF NEW YORK ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT**

[March —, 1983]

JUSTICE STEVENS, with whom JUSTICE BRENNAN joins,
dissenting.

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

From: **Justice Stevens**

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MAR 28 '83

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7-1

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-431

**GUARDIANS ASSOCIATION, ETC., ET AL., PETITIONERS
v. CIVIL SERVICE COMMISSION OF THE
CITY OF NEW YORK ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT**

[March —, 1983]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and
JUSTICE BLACKMUN join, dissenting.

It is not an easy task to harmonize the Court's cases under Title VI of the Civil Rights Act of 1964 (Title VI), 78 Stat. 252, 42 U. S. C. § 2000d *et seq.* Unless the Court is to repudiate what it has already written, however, I believe the judgment of the Court of Appeals must be reversed. I reach this conclusion by answering three separate questions: (1) whether federal law authorizes private individuals to recover damages for injuries caused by violations of Title VI and the regulations promulgated thereunder; (2) if so, whether Title VI requires recipients of federal funds to do any more than refrain from engaging in conduct that would, if performed by a state, violate the Fourteenth Amendment; and (3) if not, whether an administrative agency may validly impose additional requirements on recipients of funds from that agency. I shall discuss each question in turn.

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Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

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7p. 10-12

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-431

GUARDIANS ASSOCIATION, ETC., ET AL., PETITIONERS
v. CIVIL SERVICE COMMISSION OF THE
CITY OF NEW YORK ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[April —, 1983]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and
JUSTICE BLACKMUN join, dissenting.

It is not an easy task to harmonize the Court's cases under Title VI of the Civil Rights Act of 1964 (Title VI), 78 Stat. 252, 42 U. S. C. § 2000d *et seq.* Unless the Court is to repudiate what it has already written, however, I believe the judgment of the Court of Appeals must be reversed. I reach this conclusion by answering three separate questions: (1) whether federal law authorizes private individuals to recover damages for injuries caused by violations of Title VI and the regulations promulgated thereunder; (2) if so, whether Title VI requires recipients of federal funds to do any more than refrain from engaging in conduct that would, if performed by a state, violate the Fourteenth Amendment; and (3) if not, whether an administrative agency may validly impose additional requirements on recipients of funds from that agency. I shall discuss each question in turn.

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Justice Marshall
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Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

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7p. 2,5

7th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-431

GUARDIANS ASSOCIATION, ETC., ET AL., PETITIONERS
v. CIVIL SERVICE COMMISSION OF THE
CITY OF NEW YORK ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[April —, 1983]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and
JUSTICE BLACKMUN join, dissenting.

It is not an easy task to harmonize the Court's cases under Title VI of the Civil Rights Act of 1964 (Title VI), 78 Stat. 252, 42 U. S. C. §2000d *et seq.* Unless the Court is to repudiate what it has already written, however, I believe the judgment of the Court of Appeals must be reversed. I reach this conclusion by answering three separate questions: (1) whether federal law authorizes private individuals to recover damages for injuries caused by violations of Title VI and the regulations promulgated thereunder; (2) if so, whether Title VI requires recipients of federal funds to do any more than refrain from engaging in conduct that would, if performed by a state, violate the Fourteenth Amendment; and (3) if not, whether an administrative agency may validly impose additional requirements on recipients of funds from that agency. I shall discuss each question in turn.

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Justice Brennan
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Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

8. 1-5, 11-13

From: Justice Stevens

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8th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-431

GUARDIANS ASSOCIATION, ETC., ET AL., PETITIONERS
v. CIVIL SERVICE COMMISSION OF THE
CITY OF NEW YORK ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[June —, 1983]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and
JUSTICE BLACKMUN join, dissenting.

It is not an easy task to harmonize the Court's cases under Title VI of the Civil Rights Act of 1964 (Title VI), 78 Stat. 252, 42 U. S. C. § 2000d *et seq.* Unless the Court is to repudiate what it has already written, however, I believe the judgment of the Court of Appeals must be reversed. I reach this conclusion by answering three separate questions: (1) whether federal law authorizes private individuals to recover damages for injuries caused by violations of Title VI and the regulations promulgated thereunder; (2) if so, whether Title VI requires recipients of federal funds to do any more than refrain from engaging in conduct that would, if performed by a state, violate the Fourteenth Amendment; and (3) if not, whether an administrative agency may validly impose additional requirements on recipients of funds from that agency. I shall discuss each question in turn.

I

In the last five years at least eight Members of this Court have endorsed the view that Title VI, as well as the comparable provisions of Title IX of the Education Amendments of 1972, may be enforced in a private action against recipients of

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

From: Justice Stevens

Circulated: _____

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D. 12

9th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-431

GUARDIANS ASSOCIATION, ETC., ET AL., PETITIONERS
v. CIVIL SERVICE COMMISSION OF THE
CITY OF NEW YORK ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[June —, 1983]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and
JUSTICE BLACKMUN join, dissenting.

It is not an easy task to harmonize the Court's cases under Title VI of the Civil Rights Act of 1964 (Title VI), 78 Stat. 252, 42 U. S. C. § 2000d *et seq.* Unless the Court is to repudiate what it has already written, however, I believe the judgment of the Court of Appeals must be reversed. I reach this conclusion by answering three separate questions: (1) whether federal law authorizes private individuals to recover damages for injuries caused by violations of Title VI and the regulations promulgated thereunder; (2) if so, whether Title VI requires recipients of federal funds to do any more than refrain from engaging in conduct that would, if performed by a state, violate the Fourteenth Amendment; and (3) if not, whether an administrative agency may validly impose additional requirements on recipients of funds from that agency. I shall discuss each question in turn.

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

From: Justice Stevens

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7.12

10th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-431

GUARDIANS ASSOCIATION, ETC., ET AL., PETITIONERS
v. CIVIL SERVICE COMMISSION OF THE
CITY OF NEW YORK ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[June —, 1983]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and
JUSTICE BLACKMUN join, dissenting.

It is not an easy task to harmonize the Court's cases under Title VI of the Civil Rights Act of 1964 (Title VI), 78 Stat. 252, 42 U. S. C. § 2000d *et seq.* Unless the Court is to repudiate what it has already written, however, I believe the judgment of the Court of Appeals must be reversed. I reach this conclusion by answering three separate questions: (1) whether federal law authorizes private individuals to recover damages for injuries caused by violations of Title VI and the regulations promulgated thereunder; (2) if so, whether Title VI requires recipients of federal funds to do any more than refrain from engaging in conduct that would, if performed by a state, violate the Fourteenth Amendment; and (3) if not, whether an administrative agency may validly impose additional requirements on recipients of funds from that agency. I shall discuss each question in turn.

I

In the last five years at least eight Members of this Court have endorsed the view that Title VI, as well as the comparable provisions of Title IX of the Education Amendments of 1972, may be enforced in a private action against recipients of

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 4, 1983

No. 81-431 Guardians Assoc. v. Civil Service Comm'n.

Dear Byron,

I like your approach to this case, but I agree with Harry that there are concerns with the holding that competitive status constructive seniority is not prospective relief. Harry has suggested that we need not take a position on the sergeants' examination and thereby avoid the problem altogether.

I think it is a good suggestion, however, there were other elements of the competitive status constructive seniority relief which cannot be so easily resolved, for example, the order placing the police officers who were victims of the discrimination in the position on the seniority roster that they would have occupied but for the discriminatory examinations. That form of relief may well be characterized as altering their employment status for the future.

For the present I will wait to see what changes you decide to make or what other writing emerges.

Sincerely,



Justice White

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

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SUPREME COURT U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

'83 MAR 15 P3:01

March 14, 1983

Re: No. 81-431, Guardians Ass'n v. Civil Service Comm'n

Dear Byron,

I have reviewed all the circulating opinions in this case, including the proposed dissent circulated by Thurgood today, and have reluctantly come to the conclusion that I cannot agree with any of them entirely.

In an earlier letter, I indicated that I was troubled by your treatment of the issue of the kinds of relief available to enforce spending clause legislation in a private cause of action. I share John Stevens' view, as expressed in Part I of his proposed dissent, that Pennhurst does not compel a conclusion that only prospective relief is available. Therefore, I cannot join your proposed opinion as it now stands.

As I expressed at conference, I would recognize a private cause of action under Title VI. On the merits issue, however, I feel constrained, because of stare decisis concerns, to conclude that Bakke is controlling and that proof of intentional discrimination is required to make out a case under Title VI. Given this statutory standard, I am unable to say that regulations that impose an impact standard can be upheld as reasonably related to the statute. Therefore, although I could concur in a judgment to affirm the decision below, I cannot otherwise join your opinion. Therefore, as things now stand, I would write separately to express my own views on the case.

Sincerely,



Justice White

Copies to the Conference

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

No. 81-431

GUARDIANS ASSOCIATION, ETC., ET AL., PETITIONERS
v. CIVIL SERVICE COMMISSION OF THE
CITY OF NEW YORK ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[March —, 1983]

JUSTICE O'CONNOR, concurring in the judgment.

For the reasons given in Part I of the dissent by JUSTICE STEVENS, *post*, at 1-4, I cannot agree with the limitations that the plurality opinion would place on the scope of equitable relief available to private litigants suing under Title VI. Therefore, like the dissent, I would address two further questions: (1) whether proof of purposeful discrimination is a necessary element of a valid Title VI claim, and (2) if so, whether administrative regulations incorporating an impact standard may be upheld as within the agency's statutory authority. My affirmative answer to the first question leads me to conclude that regulations imposing an impact standard are not valid. On that basis, I would affirm the judgment below.

Were we construing Title VI without the benefit of any prior interpretation from this Court, one might well conclude that the statute was designed to redress more than purposeful discrimination. Cf. *Regents of the University of California v. Bakke*, 438 U. S. 265, 412-418 (1978) (opinion of STEVENS, J.). In *Bakke*, however, a majority of the Court concluded otherwise. *Id.*, at 287 (opinion of POWELL, J.); *id.*, at 328 (opinion of BRENNAN, J., joined by WHITE, MARSHALL, and BLACKMUN, JJ.). Like JUSTICE STEVENS, *post*,

pp. 3, 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

No. 81-431

GUARDIANS ASSOCIATION, ETC., ET AL., PETITIONERS
v. CIVIL SERVICE COMMISSION OF THE
CITY OF NEW YORK ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[April —, 1983]

JUSTICE O'CONNOR, concurring in the judgment.

For the reasons given in Part I of the dissent by JUSTICE STEVENS, *post*, at 1-4, I cannot agree with the limitations that the plurality opinion would place on the scope of equitable relief available to private litigants suing under Title VI. Therefore, like the dissent, I would address two further questions: (1) whether proof of purposeful discrimination is a necessary element of a valid Title VI claim, and (2) if so, whether administrative regulations incorporating an impact standard may be upheld as within the agency's statutory authority. My affirmative answer to the first question leads me to conclude that regulations imposing an impact standard are not valid. On that basis, I would affirm the judgment below.

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PP. 1

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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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-431

GUARDIANS ASSOCIATION, ETC., ET AL., PETITIONERS
v. CIVIL SERVICE COMMISSION OF THE
CITY OF NEW YORK ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[June —, 1983]

JUSTICE O'CONNOR, concurring in the judgment.

For reasons given in Part I of the dissent by JUSTICE STEVENS, *post*, at 2-4, I cannot agree with the limitations that JUSTICE WHITE'S opinion would place on the scope of equitable relief available to private litigants suing under Title VI.¹ Therefore, like the dissent, I would address two further questions: (1) whether proof of purposeful discrimination is a necessary element of a valid Title VI claim, and (2) if so, whether administrative regulations incorporating an impact standard may be upheld as within the agency's statutory authority. My affirmative answer to the first question leads me to conclude that regulations imposing an impact standard are not valid. On that basis, I would affirm the judgment below.

Were we construing Title VI without the benefit of any prior interpretation from this Court, one might well conclude that the statute was designed to redress more than purposeful discrimination. Cf. *Regents of the University of Califor-*

¹ Because I conclude that the decision below should be affirmed on the ground that petitioners have failed to prove intentional discrimination, I have no occasion to address the question whether there is a private cause of action under Title VI for damages relief.

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