

# The Burger Court Opinion Writing Database

## *Newport News Shipbuilding & Dry Dock Co. v. EEOC*

462 U.S. 669 (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

June 13, 1983

Re: 82-411, Newport News Shipbuilding & Dry Dock Co.  
v. EEOC

Dear John:

I join.

Regards,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 1, 1983

No. 82-411

Newport News Shipbuilding  
and Dry Dock Co. v. EEOC

Dear John,

I agree.

Sincerely,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 3, 1983

Re: 82-411 -

Newport News Shipbuilding and  
Dry Dock Co. v. EEOC

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Dear John,

I agree.

Sincerely yours,



Justice Stevens

cc: The Conference

cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 3, 1983

Re: No. 82-411-Newport News v. EEOC

Dear John:

I do not favor making our holding in this case prospective only. I believe that any unfairness that may result from awarding retroactive relief in particular cases should be addressed by the district courts in applying the general principles governing the award of such relief in Title VII cases, rather than by our taking the unusual step of making our holding prospective only.

In my view, there are no exceptional circumstances warranting a departure from the general rule that decisions declaring what the law is have retroactive effect. Once the Pregnancy Discrimination Act went into effect, an employer would not have been justified in relying on Gilbert as authority for implementing this plan. In my opinion, it would not have been particularly difficult for competent counsel to determine that Title VII, as amended by the PDA, requires employers to treat pregnancy like any other medical condition, whether an employee or an employee's spouse is involved. I think it would have been reasonably clear that the PDA rejected the basic idea underlying Gilbert--that discrimination on the basis of pregnancy is not discrimination on the basis of sex--and that therefore the only question presented by a plan such as this is whether an employer may provide lower fringe benefits to male employees than to female employees.

But even if I am wrong that competent counsel could have predicted the outcome of this case, counsel certainly would not have been justified in assuming, after the passage of the PDA, that a plan such as this was legal. Whatever else may be said of the PDA, there is plainly nothing in that statute that affirmatively suggests approval of such a

plan, and at the very least the statute called into question all prior statements by this Court that discrimination on the basis of pregnancy is not discrimination on the basis of sex. At worst employers faced a situation of uncertainty. Our decision will not constitute "a sharp break in the line of earlier authority or on avulsive change which cause[s] the current of the law thereafter to flow between new banks." Hanover Shoe v. United Shoe Machinery Corp., 392 U.S. 481, 499. There is nothing unusual about having to face uncertainty following the passage of a new statute, and so far as I know such uncertainty has not generally been thought to be a sufficient basis for making a decision prospective only. Although it might well have been preferable for Congress to anticipate the question that has arisen in this case, for better or worse Congress frequently establishes general principles and leaves it to the courts to apply them to particular situations.

It may be that in some cases certain forms of retroactive relief will be unwarranted. In my view, this problem can be dealt with by the district courts in the exercise of their equitable discretion to fashion such remedies "as may be appropriate." 42 U.S.C. §2000e-5(g). We recognized in Albemarle Paper Co. v. Moody, 422 U.S. 405, that special circumstances may overcome the presumption in favor of making individuals whole for injuries suffered as a result of past discrimination. The district courts can be trusted to prevent any unfairness to employers by deciding on a case-by-case basis whether there are special circumstances that justify the denial of retroactive relief.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 1, 1983

Re: No. 82-411-Newport News Shipbuilding & Dry  
Dock Company v. EEOC

Dear John:

Please join me.

Sincerely,

*J.M.*

T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 4, 1983

Re: No. 82-411 - Newport News v. EEOC

Dear John:

I would leave to the equitable discretion of the district courts the fairness of applying our construction of the statute retroactively, rather than following the approach you proposed in your May 2 letter to the Chief. Our decision here is not surprising. The PDA is at worst ambiguous on the point, and the EEOC's published interpretation of that Act clearly prohibited the kind of plan employed by petitioner. In these circumstances, I would apply the general rule that a decision declaring the meaning of a statute has retroactive effect, except in unusual circumstances where such relief would not be "appropriate" under Title VII.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 3, 1983

Re: No. 82-411 - Newport News Shipbuilding and Dry Dock Co.  
v. Equal Employment Opportunity Commission

Dear John:

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

May 31, 1983

82-411 Newport News v. EEOC

Dear Bill:

You and I are the only dissenters in this case. Would you do me the favor of preparing a brief dissent?

I did some legal work for Newport News Ship on a case-by-case basis before it was acquired about a dozen years ago by Tenneco. I do not think that my firm has any ongoing relationship, but I would feel a little more comfortable not writing myself.

Sincerely,

Justice Rehnquist

lfp/ss

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 31, 1983

82-411 Newport News Shipbuilding v. EEOC

Dear John:

I will await the dissent.

Sincerely,



Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 9, 1983

82-411 Newport News Shipbuilding v. Equal Employment

Dear Bill:

Please join me in your dissenting opinion.

Sincerely,

*Lewis*

Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

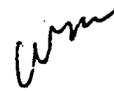
June 1, 1983

Re: No. 82-411 Newport News Shipbuilding v. EEOC

Dear John:

I will prepare a dissent in this case.

Sincerely,



Justice Stevens

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. 82-411

NEWPORT NEWS SHIPBUILDING AND DRY DOCK  
COMPANY, PETITIONER *v.* EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

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

[June —, 1983]

JUSTICE REHNQUIST, dissenting.

In *General Electric Co. v. Gilbert*, 429 U. S. 125 (1976), we held that an exclusion of pregnancy from a disability-benefits plan is not discrimination "because of [an] individual's . . . sex" within the meaning of Title VII of the Civil Rights Act of 1964, § 703(a)(1), 78 Stat. 255, 42 U. S. C. § 2000e-2(a)(1).<sup>1</sup> In our view, therefore, Title VII was not violated by an employer's disability plan that provided all employees with non-occupational sickness and accident benefits, but excluded from the plan's coverage disabilities arising from pregnancy. Under our decision in *Gilbert*, petitioner's otherwise inclusive benefits plan that excludes pregnancy benefits for a male employee's spouse clearly would not violate Title VII. For a different result to obtain, *Gilbert* would have to be judicially overruled by this Court or Congress would have to legislatively overrule our decision in its entirety by amending Title VII.

<sup>1</sup>In *Gilbert* the Court did leave open the possibility of a violation where there is a showing "that distinctions involving pregnancy are mere pretexts designed to effect an invidious discrimination against members of one sex or the other." 429 U. S. 125, 135 (1976) (quoting *Geduldig v. Aiello*, 417 U. S. 484, 496-497 n. 20 (1974)).

stylistic changes  
and pp. 1, 3-4, 8-9

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: JUN 13 1983

2nd DBAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-411

**NEWPORT NEWS SHIPBUILDING AND DRY DOCK  
COMPANY, PETITIONER v. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION**

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

[June —, 1983]

JUSTICE REHNQUIST, with whom JUSTICE POWELL joins,  
dissenting.

In *General Electric Co. v. Gilbert*, 429 U. S. 125 (1976), we held that an exclusion of pregnancy from a disability-benefits plan is not discrimination "because of [an] individual's . . . sex" within the meaning of Title VII of the Civil Rights Act of 1964, § 703(a)(1), 78 Stat. 255, 42 U. S. C. § 2000e-2(a)(1).<sup>1</sup> In our view, therefore, Title VII was not violated by an employer's disability plan that provided all employees with non-occupational sickness and accident benefits, but excluded from the plan's coverage disabilities arising from pregnancy. Under our decision in *Gilbert*, petitioner's otherwise inclusive benefits plan that excludes pregnancy benefits for a male employee's spouse clearly would not violate Title VII. For a different result to obtain, *Gilbert* would have to be judicially overruled by this Court or Congress would have to legislatively overrule our decision in its entirety by amending Title

<sup>1</sup> In *Gilbert* the Court did leave open the possibility of a violation where there is a showing "that distinctions involving pregnancy are mere pretexts designed to effect an invidious discrimination against members of one sex or the other." 429 U. S. 125, 135 (1976) (quoting *Geduldig v. Aiello*, 417 U. S. 484, 496-497 n. 20 (1974)).

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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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JUN 15 1983

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3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-411

NEWPORT NEWS SHIPBUILDING AND DRY DOCK  
COMPANY, PETITIONER *v.* EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

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

[June —, 1983]

JUSTICE REHNQUIST, with whom JUSTICE POWELL joins,  
dissenting.

In *General Electric Co. v. Gilbert*, 429 U. S. 125 (1976), we held that an exclusion of pregnancy from a disability-benefits plan is not discrimination "because of [an] individual's . . . sex" within the meaning of Title VII of the Civil Rights Act of 1964, § 703(a)(1), 78 Stat. 255, 42 U. S. C. § 2000e-2(a)(1).<sup>1</sup> In our view, therefore, Title VII was not violated by an employer's disability plan that provided all employees with non-occupational sickness and accident benefits, but excluded from the plan's coverage disabilities arising from pregnancy. Under our decision in *Gilbert*, petitioner's otherwise inclusive benefits plan that excludes pregnancy benefits for a male employee's spouse clearly would not violate Title VII. For a different result to obtain, *Gilbert* would have to be judicially overruled by this Court or Congress would have to legislatively overrule our decision in its entirety by amending Title

<sup>1</sup> In *Gilbert* the Court did leave open the possibility of a violation where there is a showing "that distinctions involving pregnancy are mere pretexts designed to effect an invidious discrimination against members of one sex or the other." 429 U. S. 125, 135 (1976) (quoting *Geduldig v. Aiello*, 417 U. S. 484, 496-497 n. 20 (1974)).

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 2, 1983

Re: 82-411 - Newport News Shipbuilding & Dry  
Dock Co. v. EEOC

Dear Chief:

*Decided*

After further reflection, I have decided that I will vote to affirm. I am still troubled by the way the legislative process worked during the enactment of this statute, but I have concluded that the proper standard for identifying discriminatory employment practices requires a finding of discrimination in this case. The terms and conditions of employment for a male employee would be improved if he traded places with an otherwise similarly situated female employee. For she has complete insurance coverage for her spouse but he does not.

Although we did not discuss the point at conference, given the ambiguity in the legislative history together with the magnitude of the potential liability, I wonder if we should at least consider the possibility of making our holding nonretroactive. It seems to me that this action might be justified on the theory that Congress in effect delegated to us the lawmaking task.

Respectfully,



The Chief Justice

Copies to the Conference .

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 31, 1983

MEMORANDUM TO THE CONFERENCE

Re: 82-411 - Newport News v. EEOC

Although I suggested that we give consideration to making this decision nonretroactive, after studying the case further, and specifically noting that the amendment to the plan in this case was not put into effect until several months after the EEOC regulations were promulgated, I have concluded that I simply would say nothing about the subject (you will recall that this point was not argued). I hope that is satisfactory.

Respectfully,



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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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-411

### NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY, PETITIONER *v.* EEOC

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

[June —, 1983]

JUSTICE STEVENS delivered the opinion of the Court.

In 1978 Congress decided to overrule our decision in *General Electric Co. v. Gilbert*, 429 U. S. 125 (1976), by amending Title VII of the Civil Rights Act of 1964 “to prohibit sex discrimination on the basis of pregnancy.”<sup>1</sup> On the effective date of the act, petitioner amended its health insurance plan to provide its female employees with hospitalization benefits for pregnancy-related conditions to the same extent as for other medical conditions.<sup>2</sup> The plan continued, however, to

<sup>1</sup> Pub. L. 95-555, 92 Stat. 2076 (quoting title of 1978 Act). The new statute (the Pregnancy Discrimination Act) amended the “Definitions” section of Title VII, 42 U. S. C. § 2000e (1976), to add a new subsection (k) reading in pertinent part as follows:

“The terms ‘because of sex’ or ‘on the basis of sex’ include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise. . . .”

<sup>2</sup> The amendment to Title VII became effective on the date of its enactment, October 31, 1978, but its requirements did not apply to any then-existing fringe benefit program until 180 days after enactment—April 29, 1979. 92 Stat. 2076. The amendment to petitioner’s plan became effec-

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7,14

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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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-411

NEWPORT NEWS SHIPBUILDING AND DRY DOCK  
COMPANY, PETITIONER *v.* EEOC

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

[June —, 1983]

JUSTICE STEVENS delivered the opinion of the Court.

In 1978 Congress decided to overrule our decision in *General Electric Co. v. Gilbert*, 429 U. S. 125 (1976), by amending Title VII of the Civil Rights Act of 1964 "to prohibit sex discrimination on the basis of pregnancy."<sup>1</sup> On the effective date of the act, petitioner amended its health insurance plan to provide its female employees with hospitalization benefits for pregnancy-related conditions to the same extent as for other medical conditions.<sup>2</sup> The plan continued, however, to

<sup>1</sup> Pub. L. 95-555, 92 Stat. 2076 (quoting title of 1978 Act). The new statute (the Pregnancy Discrimination Act) amended the "Definitions" section of Title VII, 42 U. S. C. § 2000e (1976), to add a new subsection (k) reading in pertinent part as follows:

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<sup>2</sup> The amendment to Title VII became effective on the date of its enactment, October 31, 1978, but its requirements did not apply to any then-existing fringe benefit program until 180 days after enactment—April 29, 1979. 92 Stat. 2076. The amendment to petitioner's plan became effec-

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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6/9/83  
Footnote remembered

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-411

**NEWPORT NEWS SHIPBUILDING AND DRY DOCK  
COMPANY, PETITIONER v. EEOC**

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

[June —, 1983]

JUSTICE STEVENS delivered the opinion of the Court.

In 1978 Congress decided to overrule our decision in *General Electric Co. v. Gilbert*, 429 U. S. 125 (1976), by amending Title VII of the Civil Rights Act of 1964 “to prohibit sex discrimination on the basis of pregnancy.”<sup>1</sup> On the effective date of the act, petitioner amended its health insurance plan to provide its female employees with hospitalization benefits for pregnancy-related conditions to the same extent as for other medical conditions.<sup>2</sup> The plan continued, however, to

<sup>1</sup>Pub. L. 95-555, 92 Stat. 2076 (quoting title of 1978 Act). The new statute (the Pregnancy Discrimination Act) amended the “Definitions” section of Title VII, 42 U. S. C. § 2000e (1976), to add a new subsection (k) reading in pertinent part as follows:

“The terms ‘because of sex’ or ‘on the basis of sex’ include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise. . . .”

<sup>2</sup>The amendment to Title VII became effective on the date of its enactment, October 31, 1978, but its requirements did not apply to any then-existing fringe benefit program until 180 days after enactment—April 29, 1979. 92 Stat. 2076. The amendment to petitioner’s plan became effec-

pp. 6, 11-12

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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4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-411

**NEWPORT NEWS SHIPBUILDING AND DRY DOCK  
COMPANY, PETITIONER v. EEOC**

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

[June —, 1983]

JUSTICE STEVENS delivered the opinion of the Court.

In 1978 Congress decided to overrule our decision in *General Electric Co. v. Gilbert*, 429 U. S. 125 (1976), by amending Title VII of the Civil Rights Act of 1964 "to prohibit sex discrimination on the basis of pregnancy."<sup>1</sup> On the effective date of the act, petitioner amended its health insurance plan to provide its female employees with hospitalization benefits for pregnancy-related conditions to the same extent as for other medical conditions.<sup>2</sup> The plan continued, however, to

<sup>1</sup>Pub. L. 95-555, 92 Stat. 2076 (quoting title of 1978 Act). The new statute (the Pregnancy Discrimination Act) amended the "Definitions" section of Title VII, 42 U. S. C. § 2000e (1976), to add a new subsection (k) reading in pertinent part as follows:

"The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise. . . ."

<sup>2</sup>The amendment to Title VII became effective on the date of its enactment, October 31, 1978, but its requirements did not apply to any then-existing fringe benefit program until 180 days after enactment—April 29, 1979. 92 Stat. 2076. The amendment to petitioner's plan became effec-

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 22, 1983

MEMORANDUM TO THE CONFERENCE

411

Re: Case held for No. 82-1006, Newport News  
Shipbuilding & Dry Dock Company v. EEOC

No. 82-1006, EEOC v. Lockheed Missiles &  
Space Company, Inc.

Petitioner EEOC charged respondent with violating Title VII, as amended by the Pregnancy Discrimination Act of 1978, by offering its employees a medical benefit plan that excluded pregnancy-related conditions from the otherwise comprehensive coverage provided to employees' dependents. The Court of Appeals for the Ninth Circuit affirmed the District Court's determination that the plan did not violate the statute. This conclusion is squarely inconsistent with our holding in Newport News. I will vote to GVR.

Respectfully,

*JPH*

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 2, 1983

No. 82-411 Newport News Shipbuilding &  
Dry Dock Co. v. EEOC

Dear Chief,

John has suggested that we consider the possibility of making our holding in this case nonretroactive. I agree that such action should be considered and I would be inclined to agree with the suggestion.

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 10, 1983

Re: No. 82-411 Newport News Shipbuilding and Dry  
Dock Company v. EEOC

Dear John,

Please join me.

Sincerely,



Justice Stevens

Copies to the Conference