

The Burger Court Opinion Writing Database

Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris

463 U.S. 1073 (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

April 2, 1983

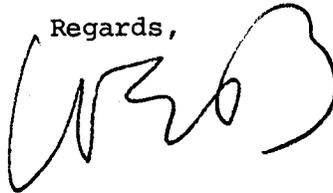
Re: 82-52 - Arizona Governing Committee for Tax Deferred Annuity, Etc.
v. Norris

(River case)

Dear Lewis:

Will you take on a dissent here?

Regards,



Justice Powell

cc: Justice Rehnquist

P.S. (LFP only) With Sandra and Bill Brennan both tentative, a strong
(and early) dissent might shake the case out. *Long shot!*

I agree.

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

CHAMBERS OF
THE CHIEF JUSTICE

April 4, 1983

RE: 82-52 - Arizona Governing Committee for Tax Deferred
Annuity, Etc. v. Norris

*River -
I'm glad
we have this
opportunity.*

Dear Lewis:

Will you take on a dissent here?

Regards,



Justice Powell

cc: Justice Rehnquist

cf v. Norris

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

CHAMBERS OF
THE CHIEF JUSTICE

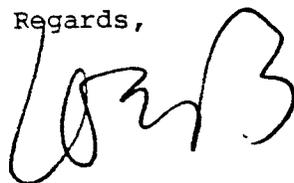
June 27, 1983

Re: 82-52 - Arizona Governing Committee for Tax Deferred Annuity, etc.
v. Norris

Dear Lewis:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'JP', written over the typed word 'Regards,'.

Justice Powell

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 30, 1983

MEMORANDUM TO THE CONFERENCE

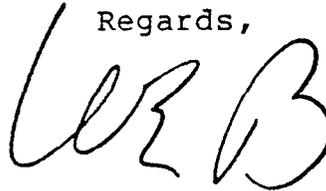
RE: Case No. 82-52 - Arizona Governing Committee for Tax
Deferred Annuity & Deferred
Compensation Plans, etc. et al. v.
Norris, etc.

It is desirable that we confer immediately after we rise
Friday.

Among other things, the treatment of the split holding in
Arizona v. Norris can be discussed. Thurgood has five votes on
the merits of the central issue and Sandra has five votes on non-
retroactivity.

The central issue, of course, is covered by Thurgood.

Regards,



Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

July 5, 1983

Re: No. 82-52: Arizona Governing Committee v. Norris

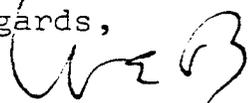
MEMORANDUM TO THE CONFERENCE:

My sense of the Conference was that we agreed that, in order to forestall confusion in the insurance industry, the following statement should be added to the per curiam opinion:

The Clerk is directed to issue the judgment August 1, 1983.

Accordingly, absent dissent, this will be added.

Regards,



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

CHAMBERS OF
THE CHIEF JUSTICE

July 5, 1983

MEMORANDUM TO THE CONFERENCE

RE: 82-52 - Arizona Governing Committee For Tax Deferred
Annuity and Deferred Compensation Plans, etc,
et al. v. Norris, etc.

Dear Thurgood:

Since your opinion is the principal opinion on the merits, I suggest you announce the entire case.

Regards,



Justice Marshall

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[Faint handwritten notes and signatures, including a large diagonal line and the initials 'W']

74
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 31, 1983

Re: No. 82-52 -- Arizona
Governing Committee, etc.
v. Norris

Dear Chief,

Thurgood has agreed to try his hand
at an opinion for the Court in the
above.

Sincerely,

Bul

The Chief Justice
Copies to the Conference

12

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 9, 1983

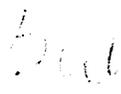
No. 82-52

Arizona Governing Committee
for Tax Deferred Annuity v. Norris

Dear Thurgood,

I agree.

Sincerely,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 3, 1983

Re: 82-52 -

Arizona Governing Committee for Tax
Deferred Annuity and Deferred
Compensation Plans v. Norris

Dear Thurgood,

I agree.

Sincerely yours,



Justice Marshall

cc: The Conference

cpm

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

From: **Justice Marshall**

Circulated: JUN 2 1983

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-52

ARIZONA GOVERNING COMMITTEE FOR TAX DEFERRED ANNUITY AND DEFERRED COMPENSATION PLANS, ETC., ET AL., PETITIONERS
v. NATHALIE NORRIS ETC.

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

[June —, 1983]

JUSTICE MARSHALL delivered the opinion of the Court.

In *Los Angeles Dept. of Water & Power v. Manhart*, 435 U. S. 702 (1978), this Court held that Title VII of the Civil Rights Act of 1964 prohibits an employer from requiring women to make larger contributions in order to obtain the same monthly pension benefits as men. The question presented by this case is whether Title VII also prohibits an employer from offering its employees the option of receiving retirement benefits from one of several companies selected by the employer, all of which pay a woman lower monthly benefits than a man who has made the same contributions.

I

A

Since 1974 the State of Arizona has offered its employees the opportunity to enroll in a deferred compensation plan administered by the Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans (Governing Committee). Ariz. Rev. Stat. Ann. §38-371 et seq.; Ariz. Regs. 2-9-01 et seq. Employees who participate in the plan may thereby postpone the receipt of a portion of their wages until retirement. By doing so, they postpone paying

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7, 11-14, 16-17, 19-20

STYLISTIC CHANGES THROUGHOUT.

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

From: Justice Marshall ✓

Circulated: JUN 25 1983

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-52

ARIZONA GOVERNING COMMITTEE FOR TAX DEFERRED ANNUITY AND DEFERRED COMPENSATION PLANS, ETC., ET AL., PETITIONERS
v. NATHALIE NORRIS ETC.

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

[June —, 1983]

JUSTICE MARSHALL delivered the opinion of the Court.

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pp 2, 6, 8, 11-17, 19

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

From: **Justice Marshall**

Circulated: _____

Recirculated: JUN 27 1983

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-52

ARIZONA GOVERNING COMMITTEE FOR TAX DEFERRED ANNUITY AND DEFERRED COMPENSATION PLANS, ETC., ET AL., PETITIONERS
v. NATHALIE NORRIS ETC.

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

[June —, 1983]

JUSTICE MARSHALL delivered the opinion of the Court.

In *Los Angeles Dept. of Water & Power v. Manhart*, 435 U. S. 702 (1978), this Court held that Title VII of the Civil Rights Act of 1964 prohibits an employer from requiring women to make larger contributions in order to obtain the same monthly pension benefits as men. The question presented by this case is whether Title VII also prohibits an employer from offering its employees the option of receiving retirement benefits from one of several companies selected by the employer, all of which pay a woman lower monthly benefits than a man who has made the same contributions.

I

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 28, 1983

Re: No. 82-52-Arizona Governing Committee v. Norris

MEMORANDUM TO THE CONFERENCE:

In response to the revision in footnote 7 of the dissent to include Arizona Stat. Ann. §20-448, I have revised the second and third paragraphs of footnote 17 on pages 13 and 14 of my opinion to read as follows:

Although petitioners contended in the Court of Appeals that their conduct was exempted from the reach of Title VII by the McCarran-Ferguson Act, 59 Stat. 33, as amended, 15 U.S.C. §1011 *et seq.*, they have made no mention of the Act in either their petition for certiorari or their brief on the merits. "[O]nly in the most exceptional cases will we consider issues not raised in the petition," *Stone v. Powell*, 428 U.S. 465, 481 n. 15 (1976); see *Sup. Ct. R. 21(a)*, and but for the discussion of the question in the dissent we would have seen no reason to address a contention that petitioners deliberately chose to abandon after it was rejected by the Court of Appeals.

Since the dissent relies on the McCarran-Ferguson Act, however, post, at 5-7, we think it is appropriate to lay the matter to rest. The McCarran-Ferguson Act provides that "[n]o Act of Congress shall be construed to invalidate, impair, or supercede any law enacted by any State for the purpose of regulating the business of insurance, . . . unless such Act specifically relates to the business of insurance." 15 U.S.C. §1012(b). The application of Title VII in this case does not supercede the application of any state law regulating "the business of insurance." As the Court of Appeals explained, 671 F.2d, at 333, the plaintiffs in this case have not challenged the conduct of the business of insurance. No insurance company has been joined as a defendant, and our judgment will in no way preclude any insurance company from offering annuity benefits that are calculated on the basis of sex-segregated

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actuarial tables. All that is at issue in this case is an employment practice: the practice of offering a male employee the opportunity to obtain greater monthly annuity benefits than could be obtained by a similarly situated female employee. It is this conduct of the employer that is prohibited by Title VII. By its own terms, the McCarran-Ferguson Act applies only to the business of insurance and has no application to employment practices. Arizona plainly is not itself involved in the business of insurance, since it has not underwritten any risks. See Union Labor Life Ins. Co. v. Pireno, ___ U.S. ___, ___ (1982) (McCarran-Ferguson Act was "intended primarily to protect 'intra-industry cooperation' in the underwriting or risks") (emphasis in original), quoting Group Life & Health Ins. Co. v. Royal Drug Co., 440 U.S. 205, 221 (1979); SEC v. Variable Annuity Life Ins. Co., 359 U.S. 65, 69 (1959) ("the concept of 'insurance' [for purposes of the McCarran-Ferguson Act] involves some investment risk-taking on the part of the company"). Because the application of Title VII in this case does not supercede any state law governing the business of insurance, see Spirit v. Teachers Ins. & Annuity Ass'n., 691 F.2d, at 1064; EEOC v. Wooster Brush Co., 523 F. Supp. 1256, 1266 (N.D. Ohio 1981), we need not decide whether Title VII "specifically relates to the business of insurance" within the meaning of the McCarran-Ferguson Act. Cf. Women in City Gov't United v. City of New York, 515 F. Supp., at 302-306.

I have sent this change to the printer.

Sincerely,

T.M.

T.M.

pp. 13-14

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

From: **Justice Marshall**

Circulated: _____

Recirculated: JUN 29 1983

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-52

ARIZONA GOVERNING COMMITTEE FOR TAX DEFERRED ANNUITY AND DEFERRED COMPENSATION PLANS, ETC., ET AL., PETITIONERS
v. NATHALIE NORRIS ETC.

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

[June —, 1983]

JUSTICE MARSHALL delivered the opinion of the Court.

In *Los Angeles Dept. of Water & Power v. Manhart*, 435 U. S. 702 (1978), this Court held that Title VII of the Civil Rights Act of 1964 prohibits an employer from requiring women to make larger contributions in order to obtain the same monthly pension benefits as men. The question presented by this case is whether Title VII also prohibits an employer from offering its employees the option of receiving retirement benefits from one of several companies selected by the employer, all of which pay a woman lower monthly benefits than a man who has made the same contributions.

I

A

Since 1974 the State of Arizona has offered its employees the opportunity to enroll in a deferred compensation plan administered by the Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans (Governing Committee). Ariz. Rev. Stat. Ann. §38-371 et seq.; Ariz. Regs. 2-9-01 et seq. Employees who participate in the plan may thereby postpone the receipt of a portion of their wages until retirement. By doing so, they postpone paying

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 29, 1983

Re: No. 82-52-Arizona v. Norris

MEMORANDUM TO THE CONFERENCE

I have just received Sandra's opinion, "concurring in part" which does not concur in the judgment. That means that I now have only three votes to join me in the judgment. At this late date, I do not have a court and do not know what to do at this stage. Any suggestions will be welcomed by me.

JM

T.M.

1

THMS

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 30, 1983

Re: No. 82-52-Arizona Governing Committee v. Norris

MEMORANDUM TO THE CONFERENCE:

Perhaps the attached can serve as a basis for discussion tomorrow.

Sincerely,

JM.

T.M.

From TJ

No. 82-52, Arizona Governing Committee v. Norris.

PER CURIAM.

Petitioners in this case administer a deferred compensation plan for employees of the State of Arizona. The respondent class consists of all female employees who are enrolled in the plan or will enroll in the plan in the future. Certiorari was granted to decide whether Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq., prohibits an employer from offering its employees the option of receiving retirement benefits from one of several companies selected by the employer, all of which pay a woman lower monthly retirement benefits than a man who has made the same contributions; and whether, if so, the relief awarded by the District Court was proper. The Court holds that this practice does constitute discrimination on the basis of sex in violation of Title VII, and that all retirement benefits derived from contributions made after the decision today must be calculated without regard to the sex of the beneficiary. This position is expressed in Parts I, II, III, and IV-A of the opinion of JUSTICE MARSHALL, post, p. _____, which ^{are} is joined by JUSTICE BRENNAN, JUSTICE WHITE, JUSTICE STEVENS, and JUSTICE O'CONNOR. The Court further holds that benefits derived from contributions made prior to this decision may be calculated as provided by the existing terms of the Arizona plan. This position is expressed in Part III of the opinion of JUSTICE POWELL, post, p. _____, which is joined by THE CHIEF JUSTICE, JUSTICE BLACKMUN, JUSTICE REHNQUIST, and JUSTICE O'CONNOR.

It is so ordered.

TMB

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

July 1, 1983

Re: No. 82-52 - Arizona Governing Committee
v. Norris

MEMORANDUM TO THE CONFERENCE

Once more -- I apologize to each of you.
On the ninth line from the bottom of the proposed
Per Curiam, there appears "and IV-A". This is not
correct and should be deleted. There is no "IV-A"
in the first draft of my opinion.

Sincerely,

JM
T.M.

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No. 82-52, Arizona Governing Committee v. Norris.

PER CURIAM.

Petitioners in this case administer a deferred compensation plan for employees of the State of Arizona. The respondent class consists of all female employees who are enrolled in the plan or will enroll in the plan in the future. Certiorari was granted to decide whether Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq., prohibits an employer from offering its employees the option of receiving retirement benefits from one of several companies selected by the employer, all of which pay a woman lower monthly retirement benefits than a man who has made the same contributions; and whether, if so, the relief awarded by the District Court was proper. The Court holds that this practice does constitute discrimination on the basis of sex in violation of Title VII, and that all retirement benefits derived from contributions made after the decision today must be calculated without regard to the sex of the beneficiary. This position is expressed in Parts I, II, and III of the opinion of JUSTICE MARSHALL, post, p. ____, which are joined by JUSTICE BRENNAN, JUSTICE WHITE, JUSTICE STEVENS, and JUSTICE O'CONNOR. The Court further holds that benefits derived from contributions made prior to this decision may be calculated as provided by the existing terms of the Arizona plan. This position is expressed in Part III of the opinion of JUSTICE POWELL, post, p. ____, which is joined by THE CHIEF JUSTICE, JUSTICE BLACKMUN, JUSTICE REHNQUIST, and JUSTICE O'CONNOR.

It is so ordered.

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

From: **Justice Marshall**

Circulated: _____

Recirculated: _____ 1983

Printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-52

ARIZONA GOVERNING COMMITTEE FOR TAX DEFERRED ANNUITY AND DEFERRED COMPENSATION PLANS, ETC., ET AL., PETITIONERS
v. NATHALIE NORRIS ETC.

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

[July —, 1983]

PER CURIAM.

Petitioners in this case administer a deferred compensation plan for employees of the State of Arizona. The respondent class consists of all female employees who are enrolled in the plan or will enroll in the plan in the future. Certiorari was granted to decide whether Title VII of the Civil Rights Act of 1964, as amended, 42 U. S. C. §2000e *et seq.*, prohibits an employer from offering its employees the option of receiving retirement benefits from one of several companies selected by the employer, all of which pay a woman lower monthly retirement benefits than a man who has made the same contributions; and whether, if so, the relief awarded by the District Court was proper. The Court holds that this practice does constitute discrimination on the basis of sex in violation of Title VII, and that all retirement benefits derived from contributions made after the decision today must be calculated without regard to the sex of the beneficiary. This position is expressed in Parts I, II, and III of the opinion of JUSTICE MARSHALL, *post*, p. —, which are joined by JUSTICE BRENNAN, JUSTICE WHITE, JUSTICE STEVENS, and JUSTICE O'CONNOR. The Court further holds that benefits derived from contributions made prior to this decision may be calcu-

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HAB

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

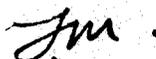
July 5, 1983

Re: No. 82-52 - Arizona Governing Committee
v. Norris

Dear Chief:

This is a Per Curiam and following custom should be announced by you. I see no reason to change this procedure.

Sincerely,



T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

July 5, 1983

Re: No. 82-52 - Arizona Governing Committee
v. Norris

Dear Chief:

I have your memorandum concerning the latest suggested addition to the Per Curiam opinion.

I do not agree to the addition as now stated. I have no objection to adding that "The Clerk has directed to issue the judgment no later than August 1, 1983". I see no reason to make it mandatory to postpone it until August 1.

Sincerely,



T.M.

The Chief Justice

cc: The Conference

P. 2

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

From: Justice Marshall

Circulated: _____

Recirculated: JUL 5 1983

SUPREME COURT OF THE UNITED STATES

No. 82-52

ARIZONA GOVERNING COMMITTEE FOR TAX DEFERRED ANNUITY AND DEFERRED COMPENSATION PLANS, ETC., ET AL., PETITIONERS
v. NATHALIE NORRIS ETC.

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

[July 6, 1983]

PER CURIAM.

Petitioners in this case administer a deferred compensation plan for employees of the State of Arizona. The respondent class consists of all female employees who are enrolled in the plan or will enroll in the plan in the future. Certiorari was granted to decide whether Title VII of the Civil Rights Act of 1964, as amended, 42 U. S. C. §2000e *et seq.*, prohibits an employer from offering its employees the option of receiving retirement benefits from one of several companies selected by the employer, all of which pay a woman lower monthly retirement benefits than a man who has made the same contributions; and whether, if so, the relief awarded by the District Court was proper. The Court holds that this practice does constitute discrimination on the basis of sex in violation of Title VII, and that all retirement benefits derived from contributions made after the decision today must be calculated without regard to the sex of the beneficiary. This position is expressed in Parts I, II, and III of the opinion of JUSTICE MARSHALL, *post*, p. —, which are joined by JUSTICE BRENNAN, JUSTICE WHITE, JUSTICE STEVENS, and JUSTICE O'CONNOR. The Court further holds that benefits derived from contributions made prior to this decision may be calcu-

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



CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 27, 1983

Re: No. 82-52 - Arizona Governing Committee for Tax
Deferred Annuity, etc. v. Norris

Dear Lewis:

Please add my name to your dissenting opinion.

Sincerely,

Justice Powell

cc: The Conference

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April 4, 1983

82-52 Arizona Governing Committee v. Norris

Dear Chief:

I will be glad to undertake the dissent.

Sincerely,

The Chief Justice

lfp/ss

cc: Justice Rehnquist

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 6, 1983

82-52 Arizona Governing Committee v. Norris

Dear Thurgood:

I am working on a dissent, and hope to get it out before too much longer.

Sincerely,



Justice Marshall

lfp/ss

cc: The Conference

JUN 21 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 21 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-52

ARIZONA GOVERNING COMMITTEE FOR TAX DEFERRED ANNUITY AND DEFERRED COMPENSATION PLANS, ETC., ET AL., PETITIONERS
v. NATHALIE NORRIS ETC.

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

[June —, 1983]

JUSTICE POWELL, dissenting.

The Court today holds that an employer may not offer its employees life annuities from a private insurance company that uses sex-based mortality tables. This holding will have a far-reaching effect on the operation of insurance and pension plans. Employers may be forced to discontinue offering life annuities, or potentially disruptive changes may be required in long-established methods of calculating insurance and pensions.¹ Either course will work a major change in

¹The cost of continuing to provide annuities may become prohibitive. The *minimum* additional cost necessary to equalize benefits prospectively would range from \$85 to \$93 million each year for at least the next 15 years. United States Department of Labor, Cost Study of the Impact of an Equal Benefits Rule on Pension Benefits 4 (1983) (hereinafter Department of Labor Cost Study). This minimum cost assumes that employers will be free to use the least costly method of adjusting benefits. This assumption may be unfounded. Employers may be required to "top up" benefits—*i. e.*, calculate women's benefits at the rate applicable to men rather than apply a unisex rate to both men and women. See n. 10, *infra*. If so, the cost of providing purely prospective benefits would range from \$428 to \$676 million each year for at least the next 15 years. Department of Labor Cost Study 31. No one seriously suggests that these costs will not be passed on—in large part—to the annuity beneficiaries or, in the case of

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 27, 1983

82-52 Arizona Governing Committee v. Norris

MEMORANDUM TO THE CONFERENCE:

In response to changes in Thurgood's third draft circulated today, I have made some additions to footnote 7, p. 6-7.

As our days are running out, I enclose a typewritten copy of footnote 7 with these changes. Of course, I also have sent it to the print shop.

L. F. P.
L.F.P., Jr.

SS

1
20
CHANGES 1, 5, 6-8, 10 + 12
footnotes RENUMBERED

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

From: Justice Powell

Circulated: _____

Recirculated: JUN 27 1983

JUN 26 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-52

ARIZONA GOVERNING COMMITTEE FOR TAX DEFERRED ANNUITY AND DEFERRED COMPENSATION PLANS, ETC., ET AL., PETITIONERS
v. NATHALIE NORRIS ETC.

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

[June —, 1983]

JUSTICE POWELL, dissenting.

The Court today holds that an employer may not offer its employees life annuities from a private insurance company that uses sex-based mortality tables. This holding will have a far-reaching effect on the operation of insurance and pension plans. Employers may be forced to discontinue offering life annuities, or potentially disruptive changes may be required in long-established methods of calculating insurance and pensions.¹ Either course will work a major change in

¹The cost of continuing to provide annuities may become prohibitive. The *minimum* additional cost necessary to equalize benefits prospectively would range from \$85 to \$93 million each year for at least the next 15 years. United States Department of Labor, Cost Study of the Impact of an Equal Benefits Rule on Pension Benefits 4 (1983) (hereinafter Department of Labor Cost Study). This minimum cost assumes that employers will be free to use the least costly method of adjusting benefits. This assumption may be unfounded. Employers may be required to "top up" benefits—*i. e.*, calculate women's benefits at the rate applicable to men rather than apply a unisex rate to both men and women. See n. 11, *infra*. If so, the cost of providing purely prospective benefits would range from \$428 to \$676 million each year for at least the next 15 years. Department of Labor Cost Study 31. No one seriously suggests that these costs will not be passed on—in large part—to the annuity beneficiaries or, in the case of

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

There are 2 LP memos
dated 6/28 ; there is only one
on the list

June 28, 1983

82-52 Arizona Governing Committee v. Norris

MEMORANDUM TO THE CONFERENCE:

I will circulate - probably this afternoon - a
response to Thurgood's revision of footnote 7.

L. F. P.
L.F.P., Jr.

SS

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 28, 1983

82-52 Arizona Governing Committee v. Norris

MEMORANDUM TO THE CONFERENCE:

In response to the revisions in the Court's opinion circulated today, I am making some changes in footnotes 6 and 7 of my dissent.

I enclose copies of these two footnotes as I propose to revise them, indicating in the margin where the principal changes are made.

If time should become available in the print shop, I may move some parts of these notes up into the text.


L.F.P., Jr.

SS

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CHANGES PAGES 1, 6, 7
STYLISTIC CHANGES THROUGHOUT

JUN 28 1983

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

From: Justice Powell

Circulated: _____

Recirculated: JUN 28 1983

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-52

ARIZONA GOVERNING COMMITTEE FOR TAX DEFERRED ANNUITY AND DEFERRED COMPENSATION PLANS, ETC., ET AL., PETITIONERS
v. NATHALIE NORRIS ETC.

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

[June —, 1983]

JUSTICE POWELL, with whom THE CHIEF JUSTICE, JUSTICE BLACKMUN, and JUSTICE REHNQUIST join, dissenting.

The Court today holds that an employer may not offer its employees life annuities from a private insurance company that uses sex-based mortality tables. This holding will have a far-reaching effect on the operation of insurance and pension plans. Employers may be forced to discontinue offering life annuities, or potentially disruptive changes may be required in long-established methods of calculating insurance and pensions.¹ Either course will work a major change in

¹The cost of continuing to provide annuities may become prohibitive. The *minimum* additional cost necessary to equalize benefits prospectively would range from \$85 to \$93 million each year for at least the next 15 years. United States Department of Labor, Cost Study of the Impact of an Equal Benefits Rule on Pension Benefits 4 (1983) (hereinafter Department of Labor Cost Study). This minimum cost assumes that employers will be free to use the least costly method of adjusting benefits. This assumption may be unfounded. Employers may be required to "top up" benefits—*i. e.*, calculate women's benefits at the rate applicable to men rather than apply a unisex rate to both men and women. See n. 11, *infra*. If so, the cost of providing purely prospective benefits would range from \$428 to \$676 million each year for at least the next 15 years. Department of Labor Cost Study 31. No one seriously suggests that these costs will not be

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

July 1, 1983

82-52 Arizona Governing Committee v. Norris

Dear Sandra:

I agree with your suggestion that the mandate
issue on August 1.

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

CHANGES 1-13
FOOTNOTES RENUMBERED

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

From: Justice Powell

Circulated: JUL 5 1983

SUPREME COURT OF THE UNITED STATES

No. 82-52

ARIZONA GOVERNING COMMITTEE FOR TAX DEFERRED ANNUITY AND DEFERRED COMPENSATION PLANS, ETC., ET AL., PETITIONERS
v. NATHALIE NORRIS ETC.

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

[July 6, 1983]

JUSTICE POWELL, with whom THE CHIEF JUSTICE, JUSTICE BLACKMUN, and JUSTICE REHNQUIST join as to Parts I and II, dissenting in part and with whom THE CHIEF JUSTICE, JUSTICE BLACKMUN, JUSTICE REHNQUIST, and JUSTICE O'CONNOR join as to Part III, concurring in part.

The Court today holds that an employer may not offer its employees life annuities from a private insurance company that uses actuarially sound, sex-based mortality tables. This holding will have a far-reaching effect on the operation of insurance and pension plans. Employers may be forced to discontinue offering life annuities, or potentially disruptive changes may be required in long-established methods of calculating insurance and pensions.¹ Either course will work a

¹The cost of continuing to provide annuities may become prohibitive. The *minimum* additional cost necessary to equalize benefits prospectively would range from \$85 to \$93 million each year for at least the next 15 years. United States Department of Labor, Cost Study of the Impact of an Equal Benefits Rule on Pension Benefits 4 (1983) (hereinafter Department of Labor Cost Study). This minimum cost assumes that employers will be free to use the least costly method of adjusting benefits. This assumption may be unfounded. If employers are required to "top up" benefits—i. e., calculate women's benefits at the rate applicable to men rather than apply a

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 27, 1983

Re: No. 82-52 Arizona Governing Committee, etc.
v. Norris

Dear Lewis:

Please join me in your dissenting opinion.

Sincerely,



Justice Powell

cc: The Conference



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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 3, 1983

Re: 82-52 - Arizona Governing Committee
for Tax Deferred Annuity and Deferred
Compensation Plans v. Norris

Dear Thurgood:

Please join me.

Respectfully,

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 29, 1983

Re: 82-52 - Arizona Governing Committee v.
Norris

Dear Thurgood:

My suggestion is that we apply for group membership in "Alcoholics Affirmative."

On a more serious vein, you have my proxy.

Respectfully,



Justice Marshall

Copies to the Conference

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

Atex Draft

No. 82-52 Arizona Governing
Comm. v. Norris

From: Justice O'Connor

Circulated: JUN 29 1983

Circulated: _____

JUSTICE O'CONNOR, concurring in part, and ~~dissenting~~
~~in part~~

This case requires us to determine whether Title VII prohibits an employer from offering an annuity plan in which the participating insurance company uses sex-based tables for calculating monthly benefit payments. It is important to stress that our judicial role is simply to discern the intent of the 88th Congress in enacting Title VII of the Civil Rights Act of 1964,¹ a statute covering only discrimination in employment. What we, if sitting as legislators, might consider wise legislative policy is irrelevant to our task. Nor, as the majority notes, ante, at 4, n. 4, do we have before us any constitutional challenge. Finally, our decision must ignore (and our holding has no necessary effect on) the larger issue of whether considerations of sex should be barred from all insurance plans, including individual purchases of insurance, an issue that Congress is currently debating. See S. 372,

¹The 92nd Congress made important amendments to Title VII, including extending its coverage to state employers such as the State of Arizona. The 1972 Amendments did not change the substantive requirements of Title VII, however. Thus, it is the intent of the 88th Congress that is controlling here.

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

July 1, 1983

No. 82-52 Arizona Governing Comm. v. Norris

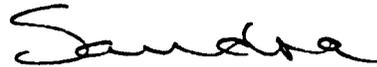
MEMORANDUM TO THE CONFERENCE

With reference to the effective date of the judgment, Frank Lorson suggested the following language could be added as the last sentence of the per curiam if the Conference so desires:

The Clerk is directed to issue the judgment August 1, 1983.

I think the addition would probably be appropriate in view of all of the accounting work which the judgment will require.

Sincerely,



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1-3,5

circulated 7/11

SUPREME COURT OF THE UNITED STATES

No. 82-52

ARIZONA GOVERNING COMMITTEE FOR TAX DEFERRED ANNUITY AND DEFERRED COMPENSATION PLANS, ETC., ET AL., PETITIONERS
v. NATHALIE NORRIS ETC.

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

[July 5, 1983]

JUSTICE O'CONNOR, concurring.

This case requires us to determine whether Title VII prohibits an employer from offering an annuity plan in which the participating insurance company uses sex-based tables for calculating monthly benefit payments. It is important to stress that our judicial role is simply to discern the intent of the 88th Congress in enacting Title VII of the Civil Rights Act of 1964,¹ a statute covering only discrimination in employment. What we, if sitting as legislators, might consider wise legislative policy is irrelevant to our task. Nor, as JUSTICE MARSHALL notes, *ante*, at 4, n. 4, do we have before us any constitutional challenge. Finally, our decision must ignore (and our holding has no necessary effect on) the larger issue of whether considerations of sex should be barred from all insurance plans, including individual purchases of insurance, an issue that Congress is currently debating. See S.

¹The 92nd Congress made important amendments to Title VII, including extending its coverage to state employers such as the State of Arizona. The 1972 Amendments did not change the substantive requirements of Title VII, however. Thus, it is the intent of the 88th Congress that is controlling here.

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