

# The Burger Court Opinion Writing Database

## *Firefighters v. Stotts*

467 U.S. 561 (1984)

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

January 31, 1984

Re: (82-206 - Firefighters Union No. 1784 v. Stotts, et al.  
(  
(82-229 - Memphis Fire Department v. Stotts, et al.

Dear Byron:

I join.

Regards,



Justice White

Copies to the Conference

M

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

December 13, 1983

No. 82-206

Firefighters Local Union No. 1784  
v. Stotts

No. 82-229

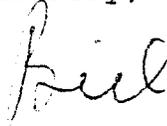
Memphis Fire Department  
v. Stotts

---

Dear Thurgood and Harry,

We three are in dissent in the  
above. Harry, would you undertake the  
dissent?

Sincerely,



Justice Marshall

Justice Blackmun

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

March 7, 1984

Re: Firefighters Local No. 1784 v. Stotts, Nos. 82-206 & 82-  
229

Dear Byron:

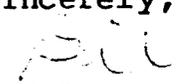
As you know, I voted to affirm in this case. Nevertheless, after reviewing Harry's dissent, I must admit in all candor that I am somewhat puzzled by his suggestion that you have advanced a position that may be read to cast doubt on the propriety of awarding class-wide, race-conscious affirmative relief in Title VII cases. Harry appears to be concerned about the following statements at pp. 12-13 of your opinion: "[Section] 706(g) of Title VII ... prohibits a court from ordering the reinstatement or promotion of an individual who has not shown that he has been the victim of illegal discrimination. Thus, while a court in a Title VII action is empowered to 'effect restitution, making whole insofar as possible the victims of racial discrimination in hiring,' ... Congress made clear that '[n]o court order can require hiring, reinstatement, admission to membership, or payment of back pay for anyone who was not discriminated against in violation of Title VII.'"

If Harry's perception is correct, this would seem to differ from the views you and I expressed in University of California Regents v. Bakke, 438 U.S. 265, 353 and n. 28 (1978), favoring the use of race-conscious affirmative relief to remedy employment discrimination. And it would cast considerable doubt on the race-conscious affirmative remedies incorporated into virtually all Title VII consent decrees.

Of course, it may well be that Harry has simply misread your opinion in this regard, and that you mean only to say that when a court awards "make whole" relief under Title VII to a particular individual (in the form of specific back pay, reinstatement, or retroactive seniority remedies), the court must first find, as required by Teamsters, that the individual has actually been the victim of illegal discrimination. If that is your meaning, then would not Title VII permit class-wide, race-conscious affirmative relief as to hiring and promotions absent a bona fide seniority system, even when there has been no showing that all the potential beneficiaries of the relief are actual victims of illegal discrimination?

Confusion daily attends my state of mind these days and I would appreciate your help clearing up this one.

Sincerely,

  
W.J.B., Jr.

Justice White

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

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

84 JUN -4 A1 30

June 4, 1984

No. 82-206) Firefighters Local  
          ) Union No. 1784  
          )  
          ) Memphis Fire  
          ) Dept., et al.  
          ) v. Stotts,  
No. 82-229) etc., et al.

Dear Harry,

Please join me.

Sincerely,

*But*

Justice Blackmun

Copies to the Conference

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

From: Justice White

Circulated: JAN 4 1984

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 82-206 AND 82-229

FIREFIGHTERS LOCAL UNION NO. 1784,  
PETITIONER

82-206

v.

CARL W. STOTTS ET AL.

MEMPHIS FIRE DEPARTMENT, ET AL.,  
PETITIONERS

82-229

v.

CARL W. STOTTS, ETC., ET AL.

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

[January —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

Petitioners challenge the Court of Appeals' approval of an order enjoining the City of Memphis from following its seniority system in determining who must be laid off as a result of a budgetary shortfall. Respondents contend that the injunction was necessary to effectuate the terms of a Title VII consent decree in which the City agreed to undertake certain obligations in order to remedy past hiring and promotional practices. Because we conclude that the order cannot be justified, either as an effort to enforce the consent decree or as a valid modification, we reverse.

I

In 1977 respondent Carl Stotts, a black holding the position of fire-fighting captain in the Memphis, Tennessee, Fire Department, filed a class action complaint in the United States District Court for the Western District of Tennessee. The complaint charged that the Memphis Fire Department and

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 7, 1984

Re: 82-206 and 82-229 -  
Firefighters Local No. 1784 v. Stotts  
Memphis Fire Dept. v. Stotts

---

Dear Bill,

I am working through Harry's dissent and in due course will make some responsive changes and respond to your letter, which I appreciate.

Sincerely yours,



Justice Brennan

cpm

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 4, 5-11, 13-20

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

From: Justice White

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

Recirculated: MAR 29 1984

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 82-206 AND 82-229

FIREFIGHTERS LOCAL UNION NO. 1784,  
PETITIONER

82-206

v.

CARL W. STOTTS ET AL.

MEMPHIS FIRE DEPARTMENT, ET AL.,  
PETITIONERS

82-229

v.

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

[March —, 1984]

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Stylistic changes and pp.  
5, 8, 11, 13, 14, 19

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

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

'84 JUN -5 A1:14 From: Justice White

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

Recirculated: 6/5/84

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 82-206 AND 82-229

FIREFIGHTERS LOCAL UNION NO. 1784,  
PETITIONER

82-206

v.

CARL W. STOTTS ET AL.

MEMPHIS FIRE DEPARTMENT ET AL.,  
PETITIONERS

82-229

v.

CARL W. STOTTS, ETC., ET AL.

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

[June —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

Petitioners challenge the Court of Appeals' approval of an order enjoining the City of Memphis from following its seniority system in determining who must be laid off as a result of a budgetary shortfall. Respondents contend that the injunction was necessary to effectuate the terms of a Title VII consent decree in which the City agreed to undertake certain obligations in order to remedy past hiring and promotional practices. Because we conclude that the order cannot be justified, either as an effort to enforce the consent decree or as a valid modification, we reverse.

### I

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

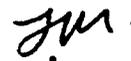
January 5, 1984

Re: Nos. 82-206 and 229-Firefighters Local Union  
No. 1784 v. Stotts and Memphis Fire Dept. v.  
Stotts

Dear Byron:

I await the dissent.

Sincerely,



T.M.

Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 4, 1984

Re: Nos. 82-206 and 229-Firefighters Local Union  
No. 1784 and Memphis Fire Department v. Stotts

Dear Harry:

Please join me in your dissent.

Sincerely,

*J.M.*  
T.M.

Justice Blackmun

cc: The Conference

M

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 13, 1983

Re: No. 82-206) Firefighters Local Union 1784 v. Stotts  
No. 82-229) Memphis Fire Department v. Stotts

Dear Bill: .

I shall be glad to undertake the dissent in these cases.

Sincerely,



Justice Brennan

cc: Justice Marshall

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 4, 1984

Re: No. 82-206 - Firefighters Local Union 1784 v. Stotts  
No. 82-229 - Memphis Fire Department v. Stotts

Dear Byron:

I shall be circulating a dissent in this case in due course.

Sincerely,



Justice White

cc: The Conference

February 16, 1984

Re: No. 82-206) Firefighters Local Union 1784 v. Stotts  
No. 82-229) Memphis Fire Department v. Stotts

Dear Byron:

I apologize for holding you up with my dissent in this case. I do hope to have it around before the next conference.

Sincerely,

HAB

Justice White

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

From: **Justice Blackmun**

Circulated: MAR 2 1984

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JUN 1 1984

82-206-5-10000

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 82-206 AND 82-229

FIREFIGHTERS LOCAL UNION NO. 1784,  
PETITIONER

82-206

*v.*

CARL W. STOTTS ET AL.

MEMPHIS FIRE DEPARTMENT, ET AL.,  
PETITIONERS

82-229

*v.*

CARL W. STOTTS, ETC., ET AL.

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

[March —, 1984]

JUSTICE BLACKMUN, dissenting.

Today's opinion is troubling less for the law it creates than for the law it ignores. The Court rejects respondents' claim that these cases are moot because the Court concludes there is a live dispute between the city and the union over backpay and seniority for union members laid off by the city. The Court appears to be oblivious, however, to respondents' lack of adversarial interest in that issue, and to the Article III restriction that limits the jurisdiction of this Court to cases involving adverse parties. Having improperly asserted jurisdiction, the Court then ignores the proper standard of review. The District Court's action was a preliminary injunction reviewable only on an abuse of discretion standard; the Court treats the action as a permanent injunction and decides the merits, even though the District Court has not yet had an opportunity to do so. On the merits, the Court ignores the prior decisions of this Court that make inapplicable the very provisions of Title VII on which the Court relies.

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SUPREME COURT, U.S.  
JUSTICE MARSHALL

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

'84 ABR -5 A10:14  
April 5, 1984

Re: No. 82-206) Firefighters Local Union 1784 v. Stotts  
No. 82-229) Memphis Fire Department v. Stotts

Dear Byron:

The substantial revisions effected by your recirculation of March 29 of course will prompt a revision of my dissent. In view of the fact that Sandra has now indicated that she will write in concurrence, I shall defer my revision until her concurrence is circulated.

This means that Bill Rehnquist will be held up in his dissent in No. 83-665 (and in No. 83-625?) because he twice has cited Stotts in that dissent.

Sincerely,



Justice White

cc: The Conference

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ially rewritten  
of revisions of  
ling opinions

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

'84 MAY 29 12:34

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

From: Justice Blackmun

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

Recirculated: MAY 29 1984

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 82-206 AND 82-229

FIREFIGHTERS LOCAL UNION NO. 1784,  
PETITIONER

82-206

v.

CARL W. STOTTS ET AL.

MEMPHIS FIRE DEPARTMENT, ET AL.,  
PETITIONERS

82-229

v.

CARL W. STOTTS, ETC., ET AL.

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

[March —, 1984]

JUSTICE BLACKMUN, dissenting.

Today's opinion is troubling less for the law it creates than for the law it ignores. The issues in these cases arose out of a preliminary injunction that prevented the city of Memphis from conducting a particular layoff in a particular manner. Because that layoff has ended, the preliminary injunction no longer restrains any action that the city wishes to take. The Court nevertheless rejects respondents' claim that these cases are moot because the Court concludes that there are continuing effects from the preliminary injunction and that these create a continuing controversy. The Court appears oblivious, however, to the fact that any continuing legal consequences of the preliminary injunction would be erased by simply vacating the Court of Appeals' judgment, which is this Court's longstanding practice with cases that become moot.

Having improperly asserted jurisdiction, the Court then ignores the proper standard of review. The District Court's action was a preliminary injunction reviewable only on an

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Pages 1, 8, and  
page references changed

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JUSTICE MARSHALL

'84 JUN -7 A9:30

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

From: Justice Blackmun

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

Recirculated: JUN 6 '84

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 82-206 AND 82-229

FIREFIGHTERS LOCAL UNION NO. 1784,  
PETITIONER

82-206

v.

CARL W. STOTTS ET AL.

MEMPHIS FIRE DEPARTMENT, ET AL.,  
PETITIONERS

82-229

v.

CARL W. STOTTS, ETC., ET AL.

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

[June —, 1984]

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

Today's opinion is troubling less for the law it creates than for the law it ignores. The issues in these cases arose out of a preliminary injunction that prevented the city of Memphis from conducting a particular layoff in a particular manner. Because that layoff has ended, the preliminary injunction no longer restrains any action that the city wishes to take. The Court nevertheless rejects respondents' claim that these cases are moot because the Court concludes that there are continuing effects from the preliminary injunction and that these create a continuing controversy. The Court appears oblivious, however, to the fact that any continuing legal consequences of the preliminary injunction would be erased by simply vacating the Court of Appeals' judgment, which is this Court's longstanding practice with cases that become moot.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 5, 1984

82-206 Firefighters Local v. Stotts

Dear Byron:

Please join me.

Sincerely,

*Lewis*

Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 5, 1984

Re: No. 82-206) Firefighters Local Union No. 1784. v.  
                  ) Stotts  
                  82-229) Memphis Fire Department v. Stotts

Dear Byron:

Please join me.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

January 5, 1984

Re: 82-206; 82-229 - Firefighters Local  
v. Stotts

Dear Byron:

Although I expect to join the judgment, I will probably write separately and may wait to see what Harry has to say.

Respectfully,



Justice White

Copies to the Conference

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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: MAR 15 1984

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 82-206 AND 82-229

FIREFIGHTERS LOCAL UNION NO. 1784,  
PETITIONER

82-206

*v.*

CARL W. STOTTS ET AL.

MEMPHIS FIRE DEPARTMENT, ET AL.,  
PETITIONERS

82-229

*v.*

CARL W. STOTTS, ETC., ET AL.

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

[March —, 1984]

JUSTICE STEVENS, concurring in the judgment.

As JUSTICE BLACKMUN persuasively demonstrates, *post*, at 2-16, respondents have no interest in the potential dispute between the city and the union over a few weeks of backpay for three white firemen sufficient to constitute a "case or controversy" within the meaning of Article III. Nevertheless, I am persuaded that the District Court's preliminary injunction remains reviewable because of its continuing effect on the city's personnel policies. That injunction, which is still in effect, states that the city may "not apply the seniority policy proposed insofar as it will decrease the percentage of black [persons] in the Memphis Fire Department."<sup>1</sup> Thus, if the city faces a need to lay off Fire Department employees in the future, it may not apply its seniority system. I cannot

<sup>1</sup>There were actually three injunctive orders entered by the District Court, each applying to different positions in the Memphis Fire Department. All use substantially the same language.

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RECEIVED  
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JUSTICE MARSHALL

'84 MAY 30 P 3:20

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 1, 2

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

From: Justice Stevens

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

Recirculated: MAY 30 1984

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 82-206 AND 82-229

FIREFIGHTERS LOCAL UNION NO. 1784,  
PETITIONER

82-206

v.

CARL W. STOTTS ET AL.

MEMPHIS FIRE DEPARTMENT, ET AL.,  
PETITIONERS

82-229

v.

CARL W. STOTTS, ETC., ET AL.

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

[June —, 1984]

JUSTICE STEVENS, concurring in the judgment.

The District Court's preliminary injunction remains reviewable because of its continuing effect on the city's personnel policies. That injunction states that the city may "not apply the seniority policy proposed insofar as it will decrease the percentage of black [persons] in the Memphis Fire Department."<sup>1</sup> Thus, if the city faces a need to lay off Fire Department employees in the future, it may not apply its seniority system. I cannot say that the likelihood that the city will once again face the need to lay off Fire Department employees is so remote that the city has no stake in the outcome of this litigation.<sup>2</sup>

*10/11/84*

<sup>1</sup>There were actually three injunctive orders entered by the District Court, each applying to different positions in the Memphis Fire Department. All use substantially the same language.

<sup>2</sup>In this respect, this litigation is similar to *City of Los Angeles v. Lyons*, 461 U. S. —, — (1983). There, an injunction against the use of choke holds by the city's police department was held not to be moot despite

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

January 4, 1984

No. 82-206 Firefighters Local Union No. 1784  
v. Stotts  
No. 82-229 Memphis Fire Department v. Stotts

Dear Byron,

Please join me.

Sincerely,



Justice White

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

RECEIVED  
SUPREME COURT U.S.  
JUSTICE SANDRA DAY O'CONNOR

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

'84 MAR 30 A9:54

March 30, 1984

Re: No. 82-206) Firefighters Local Union No. 1784 v. Stotts  
No. 82-229) Memphis Fire Department v. Stotts

Dear Byron,

I plan to write a brief concurring opinion in this case and will try not to detain you too long.

Sincerely,



Justice White

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

From: Justice O'Connor

Circulated: APR 27

Recirculated:

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 82-206 AND 82-229

FIREFIGHTERS LOCAL UNION NO. 1784,  
PETITIONER

82-206

*v.*

CARL W. STOTTS ET AL.

MEMPHIS FIRE DEPARTMENT, ET AL.,  
PETITIONERS

82-229

*v.*

CARL W. STOTTS, ETC., ET AL.

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

[April —, 1984]

JUSTICE O'CONNOR, concurring.

The various views presented in the opinions in this case reflect the unusual procedural posture of the case and the difficulties inherent in allocating the burdens of recession and fiscal austerity. I concur in the Court's treatment of these difficult issues, and write separately to reflect my understanding of what the Court holds today.

I

To appreciate the Court's disposition of the mootness issue, it is necessary to place this case in its complete procedural perspective. The parties agree that the District Court and the Court of Appeals were presented with a "case or controversy" in every sense contemplated by Art. III of the Constitution. Respondents, as trial-plaintiffs, initiated the dispute, asking the District Court preliminarily to enjoin the City from reducing the percentage of minority employees in various job classifications within the Fire Department. Pe-

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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Recirculated: APR 30 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-206 AND 82-229

FIREFIGHTERS LOCAL UNION NO. 1784,  
PETITIONER

82-206

*v.*

CARL W. STOTTS ET AL.

MEMPHIS FIRE DEPARTMENT, ET AL.,  
PETITIONERS

82-229

*v.*

CARL W. STOTTS, ETC., ET AL.

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

[May —, 1984]

JUSTICE O'CONNOR, concurring.

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6.7

Stylistic Changes Throughout

PP. 2, 3, 5

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

'84 MAY 30 P1:53

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

From: Justice O'Connor

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

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3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 82-206 AND 82-229

**FIREFIGHTERS LOCAL UNION NO. 1784,  
PETITIONER**

82-206

*v.*

**CARL W. STOTTS ET AL.**

**MEMPHIS FIRE DEPARTMENT, ET AL.,  
PETITIONERS**

82-229

*v.*

**CARL W. STOTTS, ETC., ET AL.**

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

[June —, 1984]

JUSTICE O'CONNOR, concurring.

The various views presented in the opinions in this case reflect the unusual procedural posture of the case and the difficulties inherent in allocating the burdens of recession and fiscal austerity. I concur in the Court's treatment of these difficult issues, and write separately to reflect my understanding of what the Court holds today.

I

To appreciate the Court's disposition of the mootness issue, it is necessary to place this case in its complete procedural perspective. The parties agree that the District Court and the Court of Appeals were presented with a "case or controversy" in every sense contemplated by Art. III of the Constitution. Respondents, as trial-plaintiffs, initiated the dispute, asking the District Court preliminarily to enjoin the City from reducing the percentage of minority employees in various job classifications within the Fire Department. Pe-

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