

# The Burger Court Opinion Writing Database

## *Alexander v. Choate*

469 U.S. 287 (1985)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



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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SUPREME COURT  
JULY

'84 JAN 31 A9:56

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

LAMAR ALEXANDER, GOVERNOR OF THE STATE  
OF TENNESSEE, ET AL. *v.* ROSIER JENNINGS ET AL.

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

No. 83-727. Decided January —, 1984

JUSTICE REHNQUIST, dissenting from denial of certiorari.

The State of Tennessee, represented in this lawsuit by petitioner, restructured portions of its Medicaid Plan in response to budgetary constraints. One change made by the state was to reduce the number of hospital days covered by Medicaid from 20 to 14 in any one year. The Court of Appeals for the Sixth Circuit held that such an action was a prima facie violation of §504 of the Rehabilitation Act, 29 U. S. C. § 794, because statistical evidence introduced in the District Court by respondents showed that a larger percentage of handicapped patients than of nonhandicapped patients would be affected by the change in the number of hospital days covered by the Plan.

More than one aspect of the decision of the Court of Appeals seems to me quite debatable. Last term in *Guardians Association v. Civil Service Commission of New York*, — U. S. —, 103 S. Ct. 3221 (1983), the Court attempted to settle the question of whether a disparate adverse impact theory is ever appropriate to establish a violation of Title VI, 42 U. S. C. § 2000d, *et seq.*, the statutory provision which prohibits discrimination on account of race or national origin in federally funded programs.<sup>1</sup> I continue to adhere to my

<sup>1</sup> In *Guardians Association* seven members of the Court concluded that a violation of Title VI itself requires proof of discriminatory intent. 103 S. Ct. 3221, 3236 (POWELL, J., concurring, joined by the CHIEF JUSTICE); *id.*, at 3237 (REHNQUIST, J., concurring); *id.*, at 3237-3239 (O'CONNOR, J., concurring); *id.*, at 3249, 3253 (STEVENS, J., dissenting, joined by JUSTICES BRENNAN and BLACKMUN). Two members of the Court concluded

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Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
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Justice Stevens  
Justice O'Connor

From: Justice Rehnquist

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2nd DRAFT

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JUSTICE REHNQUIST, with whom JUSTICE O'CONNOR  
joins, dissenting from denial of certiorari.

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

February 6, 1984

Re: No. 83-727 Alexander v. Jennings

Dear Bill,

Please join me in your dissent from denial of certiorari in this case.

Sincerely,



Justice Rehnquist

Copies to the Conference