

# The Burger Court Opinion Writing Database

## *Cornelius v. Nutt*

472 U.S. 648 (1985)

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

May 24, 1985

Re: No. 83-1673 - Devine, Dir. v. Nutt

Dear Harry:

I join.

Regards,

Justice Blackmun

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MA

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 22, 1985

No. 83-1673

Devine v. Nutt

Dear Thurgood,

Would you take on the dissent in  
the above?

Sincerely,

Justice Marshall

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 15, 1985

No. 83-1673

Devine v. Nutt

Dear Harry,

I will await the dissent in the  
above case.

Sincerely,

Justice Blackmun

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 20, 1985

No. 83-1673

Cornelius, Acting Director v. Nutt

Dear Thurgood,

Please join me in your dissent.

Sincerely,

*Bill*

Justice Marshall

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 8, 1985

83-1673 - Devine v. Nutt

Dear Harry,

Please join me.

Sincerely yours,



Justice Blackmun

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 8, 1985

Re: No. 83-1673-Devine v. Nutt

Dear Harry:

"In due course" I expect to circulate a  
dissent.

Sincerely,



T.M.

Justice Blackmun

cc: The Conference

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

From: **Justice Marshall**

Circulated: JUN 19 1985

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83-1673

LORETTA CORNELIUS, ACTING DIRECTOR, OFFICE  
OF PERSONNEL MANAGEMENT, PETITIONER *v.*  
ALLISON E. NUTT ET AL.

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

[June —, 1985]

JUSTICE MARSHALL, dissenting.

Today the Court holds that the Civil Service Reform Act of 1978 requires that an arbitrator, when reviewing an agency disciplinary action taken in violation of collectively-bargained procedures, must ignore the possibility that sustaining the adverse action would be injurious to the legitimate interests of the union and to the integrity of the collective bargaining process. Following Congress' finding that healthy collective bargaining serves the effective conduct of government business, I agree with the Court of Appeals that an arbitrator may properly take into account in reviewing an adverse action a procedural error that substantially injures the union's collective bargaining role. Accordingly, I dissent.

I

In passing the Civil Service Reform Act of 1978 (Act), Pub. L. 95-454, 92 Stat. 1111, Congress declared that "labor organizations and collective bargaining in the civil service are in the public interest." 5 U. S. C. § 7101(a). This finding was based on Congress' study of "experience in both public and private employment," *ibid.*, and on its conclusion that employees' right to "bargain collectively, and participate through labor organizations . . . in decisions which affect them . . . contributes to the effective conduct of public busi-

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

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Recirculated: JUN 20 1985

## SUPREME COURT OF THE UNITED STATES

No. 83-1673

LORETTA CORNELIUS, ACTING DIRECTOR, OFFICE  
OF PERSONNEL MANAGEMENT, PETITIONER *v.*  
ALLISON E. NUTT ET AL.

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

[June 24, 1985]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins,  
dissenting.

Today the Court holds that the Civil Service Reform Act of 1978 requires that an arbitrator, when reviewing an agency disciplinary action taken in violation of collectively-bargained procedures, must ignore the possibility that sustaining the adverse action would be injurious to the legitimate interests of the union and to the integrity of the collective bargaining process. Following Congress' finding that healthy collective bargaining serves the effective conduct of government business, I agree with the Court of Appeals that an arbitrator may properly take into account in reviewing an adverse action a procedural error that substantially injures the union's collective bargaining role. Accordingly, I dissent.

### I

In passing the Civil Service Reform Act of 1978 (Act), Pub. L. 95-454, 92 Stat. 1111, Congress declared that "labor organizations and collective bargaining in the civil service are in the public interest." 5 U. S. C. §7101(a). This finding was based on Congress' study of "experience in both public and private employment," *ibid.*, and on its conclusion that employees' right to "bargain collectively, and participate through labor organizations . . . in decisions which affect

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

From: **Justice Blackmun**

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83-1673

DONALD J. DEVINE, DIRECTOR, OFFICE OF  
PERSONNEL MANAGEMENT, PETITIONER  
v. ALLISON E. NUTT ET AL.

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

[April —, 1985]

JUSTICE BLACKMUN delivered the opinion of the Court.

Under the Civil Service Reform Act of 1978 (Act), Pub. L. 95-454, 92 Stat. 1111, a federal employee may challenge agency disciplinary action by appealing the agency's decision to the Merit Systems Protection Board (Board). If, however, the employee is a member of a collective-bargaining unit of federal employees, he, in the alternative, may challenge the disciplinary action by pursuing any grievance and arbitration procedure provided by the collective-bargaining agreement. Neither the Board nor the arbitrator may sustain the agency's decision if the employee "shows harmful error in the application of the agency's procedures in arriving at such decision." 5 U. S. C. § 7701(c)(2)(A). The Board has interpreted this statute to require the employee to show error that causes substantial prejudice to his individual rights by possibly affecting the agency's decision. This case presents the issue whether a different "harmful-error" interpretation should apply in an arbitration, or, to phrase it another way, whether the arbitrator may overturn agency disciplinary action on the basis of a significant violation of the collective-bargaining agreement that is harmful only to the *union*.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 20, 1985

Re: No. 83-1673, Cornelius v. Nutt

Dear Thurgood:

I contemplate no further writing in this case. So far as I am concerned, therefore, it may come down next week.

Sincerely,



Justice Marshall

cc: The Conference

STYLISTIC CHANGES

4 p. 17

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Powell  
Justice O'Connor  
Justice Souter  
Justice Ginsburg  
Justice Breyer

From: Justice Blackmun

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

Circ. \_\_\_\_\_  
Recirculated: JUN 21 1985

**SUPREME COURT OF THE UNITED STATES**

No. 83-1673

LORETTA CORNELIUS, ACTING DIRECTOR, OFFICE  
OF PERSONNEL MANAGEMENT, PETITIONER  
v. ALLISON E. NUTT ET AL.

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

[June 24, 1985]

JUSTICE BLACKMUN delivered the opinion of the Court.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 11, 1985

Re: No. 83-1673 Devine v. Nutt

Dear Harry,

Please join me.

Sincerely,

WR

Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 5, 1985

Re: 83-1673 - Devine v. Nutt

Dear Harry:

Please join me.

Respectfully,



Justice Blackmun

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

April 8, 1985

No. 83-1673 Devine v. Nutt

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

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