

The Burger Court Opinion Writing Database

Johnson v. Mayor and City Council of Baltimore

472 U.S. 353 (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

June 11, 1985

Re: No. 84-518 - Johnson v. Mayor and City Council of
Baltimore
No. 84-710 - EEOC v. Mayor and City Council of
Baltimore

Dear Thurgood:

I join.

Regards,

Justice Marshall

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 21, 1985

No. 84-518)	<u>Johnson, et al. v. Mayor and</u>
)	<u>City Council of Baltimore,</u>
)	<u>et al.</u>
)	
)	<u>EEOC v. Mayor and City</u>
No. 84-710)	<u>Council of Baltimore, et al.</u>

Dear Thurgood,
I agree.

Sincerely,

Justice Marshall
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.84 W. S. 6:14

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 29, 1985

84-518 - Johnson v. Mayor and City Council of Baltimore

84-710 - EEOC v. Mayor and City Council of Baltimore

Dear Thurgood,

Please join me.

Sincerely,



Justice Marshall

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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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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 84-518 AND 84-710

ROBERT W. JOHNSON, ET AL., PETITIONERS
84-518
v.
MAYOR AND CITY COUNCIL OF BALTIMORE ET AL.

EQUAL EMPLOYMENT OPPORTUNITY COMMIS-
SION, PETITIONER
84-710
v.
MAYOR AND CITY COUNCIL OF BALTIMORE ET AL.

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

[May —, 1985]

JUSTICE MARSHALL delivered the opinion of the Court.

The issue is whether a federal statute generally requiring federal firefighters to retire at age 55 establishes, as a matter of law, that age 55 is a bona fide occupational qualification (BFOQ) for non-federal firefighters within the meaning of the Age Discrimination in Employment Act of 1967, 81 Stat. 602, as amended, 29 U. S. C. § 621 *et seq.* (1982) (ADEA or Act).

I

Congress enacted the ADEA "to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; [and] to help employers and workers find ways of meeting problems arising from the impact of age on employment." 29 U. S. C. § 621(b). To this end, the Act today prohibits virtually all employers from discriminating on the basis of age against employees or applicants for employment who are between the ages of 40 and 70, for example, by discharging them or requiring them to retire involuntarily. §§ 623(a), 631(a).

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 23, 1985

Re: No. 84-518 - Johnson v. Mayor and City
Council of Baltimore

Dear Sandra:

I have carefully considered your letter and Rehnquist's assist. I cannot agree to delete footnote 10.

Sincerely,



T.M.

Justice O'Connor

cc: The Conference

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STYLISTIC CHANGES THROUGHOUT

P.12-13

Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Marshall

Circulated: _____

Recirculated: JUN 6 1985

2d DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 84-518 AND 84-710

ROBERT W. JOHNSON, ET AL., PETITIONERS
84-518
v.
MAYOR AND CITY COUNCIL OF BALTIMORE ET AL.

EQUAL EMPLOYMENT OPPORTUNITY COMMIS-
SION, PETITIONER
84-710
v.
MAYOR AND CITY COUNCIL OF BALTIMORE ET AL.

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1

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 17, 1985

MEMORANDUM TO THE CONFERENCE

Re: No. 84-948, Crawford County v. Heiar

This case was held for Johnson v. Mayor & City of Baltimore, No. 84-518. In Johnson, the Court held that the federal rule generally requiring federal law enforcement officers to retire at age 55 is not relevant to a determination whether age is a bona fide occupational qualification for nonfederal employees. In this case, the Court of Appeals for the Seventh Circuit rejected the petitioner's argument that the same federal retirement provision creates a presumption that age 55 is a BFOQ for nonfederal law enforcement personnel. The holding of the Court of Appeals is therefore consistent with our decision in Johnson. The petition presents other issues as well, but I do not find them certworthy. I shall therefore vote to deny the petition.

Sincerely,



T.M.

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

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CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 23, 1985

Re: No. 84-518) Johnson v. Mayor and City Council of Baltimore
No. 84-710) EEOC v. Mayor and City Council of Baltimore

Dear Thurgood:

Please join me, footnote 10 and all.

Sincerely,

Harry

Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 23, 1985

Re: No. 84-518 Johnson v. Mayor & City Council of Balti-
more
No. 84-710 EEOC v. Mayor & City Council of Baltimore

Dear Thurgood:

I agree with Part I of your opinion holding that EEOC v. Wyoming controls and that the "reasonable federal standard" to which we referred in that case was the standard supplied by the ADEA--whether the age limit is a bona fide occupational qualification. I think that this is all we need say, and I am hesitant to join your Part II because I think it contains much unnecessary dicta. Therefore, please join me in Parts I and III of your opinion in these cases.

Sincerely,

Lewis

Justice Marshall

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 28, 1985

84-518 and 84-710 City Council of Baltimore Cases

Dear Thurgood:

In my letter of May 23, I joined Parts I and III of your opinion, but had reservations about Part II as being unnecessary.

I have taken a further look and now understand why you included Part II. Accordingly - subject to the comment below - I join your entire opinion.

Questions have been raised about footnote 10. The extent of the power of Congress generally is not an issue in this case, and therefore it seems to me that this footnote could well be omitted in its entirety. I would be content, however, if you would simply omit the the first and final sentences that in effect would hold "there is no limit" to congressional power other than mere rationality. This may be true, but there is no reason in this case to make such a holding. The extent of the power of Congress is not an issue, and has not been addressed by the courts below or the parties.

Sincerely,

Lewis

Justice Marshall

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 6, 1985

84-518 Johnson v. Mayor and City Council

Dear Thurgood:

Please join me.

I appreciate your making the substance of the changes that I requested.

Sincerely,

Lewis

Justice Marshall

lfp/ss

cc: The Conference

.82 17-1 10 25

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 22, 1985

Re: 84-518 - Johnson v. Mayor and City Council of
Baltimore

Dear Thurgood:

Like Sandra, I will be happy to join your proposed opinion if you would be willing to delete footnote 10.

Sincerely,

Wm

Justice Marshall

cc: The Conference

84 MAY 22 1985

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1
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 7, 1985

Re: 84-518 - Johnson v. Mayor and City Council of
Baltimore
84-710 - EEOC v. Mayor and City Council of Baltimore

Dear Thurgood:

Please join me.

Sincerely,

WHR/US

Justice Marshall

cc: The Conference

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CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

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

May 22, 1985

Re: 84-518 - Johnson v. Mayor and City
of Baltimore
84-710 - EEOC v. Mayor and City
of Baltimore

Dear Thurgood:

Please join me.

Respectfully,

Justice Marshall

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54 MAY 22 1985

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

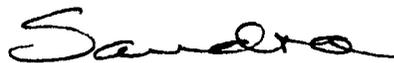
May 22, 1985

No. 84-518 Johnson v. Mayor and City Council of Baltimore

Dear Thurgood,

If you would be willing to delete footnote 10 of your opinion in this case, I would be pleased to join it. I do not think it is necessary to the decision to identify the circumstances in which the federal government may treat federal employees differently than state and local employees. As is probably obvious from my dissenting opinion in Garcia v. San Antonio Metropolitan Transit Authority, I do not necessarily agree that "there is no limit, other than mere rationality, to Congress' power to distinguish between federal and non-federal employees." Draft op. at 12, n. 10.

Sincerely,



Justice Marshall

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 7, 1985

Re: 84-518 Robert Johnson, et al. v. Mayor
City Council of Baltimore, et al.
84-710 EEO Commission v. Mayor and
City Council of Baltimore, et al.

Dear Thurgood,

Please join me. The changes you made in note 10 will alleviate my concerns and I will not be writing separately.

Sincerely,

Sandra

Justice Marshall

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