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Unknown

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April 24, 1986

Mr. Justice:

Re: Bazemore v. Friday, Nos. 85-93 and [#]85-428

There may be an easy way to avoid deciding the merits of the difficult 4H club and homemaker club issue. The DC considered the Agriculture Regulation that states:

In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

7 CFR §15.3(b)(6)(i). The DC stated that the regulation was not violated because it required a prerequisite that an action be taken on the ground of race. In the bench memo I indicated that the prerequisite was met.

However, in talking with other clerks I realized the possibility that the regulation requires no prerequisite. The regulation itself contains no prerequisite. It talks only about "previous discrimination," which definitely occurred in this case. Further, the SG and the resps do not base their arguments on the existence of any prerequisite. In rejecting generally petrs' challenge to the clubs, see App to Petn for Cert 424a, CA4 did not explicitly address the applicability of the regulation or whether the extension service has complied with it. Because of this, the Court simply can remand the issue to CA4 for express consideration of the applicability of the regulation. This will enable the Court to avoid deciding the hard question of the scope of affirmative action required.

HM