

9-20-1983

## 09-20-1983 Clerk Memo

Unknown

*Law clerk, US Supreme Court*

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Costs were agreed

September 26, 1983 Conference  
List 25, Sheet 5

No. 82-52

Motion of Respondent to Retax Costs

ARIZONA GOVERN. COMM. FOR TAX  
DEFERRED ANN., etc., et al.

v.

NORRIS, etc.

SUMMARY: Resps move to have the costs retaxed against petrs. Petrs have filed opposition.

FACTS AND CONTENTIONS: In Arizona Governing Committee v. Norris, \_\_\_ U.S. \_\_\_, 51 U.S.L.W. 5243 (July 6, 1982) this Court affirmed the lower courts ruling that it is unlawful under Title VII for an employer to pay lower monthly benefits to women than men upon retirement. The Court, however reversed and remanded as to the relief granted by the lower court. The court disagreed with the "retroactive" application of the lower court's decision and held that future benefits derived from past contributions could be calculated as they had been.

The Clerk determined that each side had prevailed on one issue and assessed one-half of the costs against resps. ✓

Resps argue that the holding of liability is of national significance and that the fact that the Court disagreed with the lower court's remedy should not mitigate the fact that resps prevailed.

Petrs oppose the motion arguing that the retroactive effect of the lower court's decision was as important to them as the issue of liability. Petrs point to statements in Justice Powell's opinion and Justices Marshall's and O'Connor's concurrences that retroactive relief imposed a substantial burden on pension plans and might bankrupt some pensions funds.

DISCUSSION: The Clerk appears to have been correct in interpreting the Court's disposition as a split decision. Resps prevailed on the issue that was most important to them—liability. Petrs, however, prevailed on retroactivity, which may well have been their critical issue. A pension plan can easily adjust its future contributions and benefits. They faced serious problems if they were forced to pay different and possibly greater benefits on the basis of past contributions. The Clerk's decision to split costs more closely reflects the Court's disposition than taxing all costs against either side.

The motion should be denied.

9/20/83

Schickele

Op. filed

RJC

*I agree*

*Dell*

X  
AD 9-20-83