

11-15-1985

11-15-1985 Preliminary Memorandum

Unknown

Law clerk, US Supreme Court

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Grant, limited to
questions 1, 2, 3 and 5
Consolidate with 85-428
DS

PRELIMINARY MEMORANDUM

November 8, 1985 Conference
List 1, Sheet 1

No. 85-93

BAZEMORE, et al (black ag
extension service
employees)

Cert to CA4 (Widener, Kellam [sdj];
diss. by Phillips)

v.

FRIDAY, et al (Ag
Extension Service
officials accused of
discrimination)

Federal/Civil

Timely

This case is curve-lined with No. 85-428, United States v.
Friday. Please refer to the prelim in that case.

No. 85-93, Bazemore v. Friday; No. 85-428, United States v. Friday.

The private petrs have filed a reply brief in response to the SG's petn for cert. They argue: (1) Ten months ago the SG advised this Court the conflicting approaches taken by the CA's in evaluating multiple regression studies in discrimination cases raised a cert-worthy issue. In seeking cert in Smith v. Segar, No. 84-1200, the SG argued that the position taken by the CADC in that case conflicted with the approach taken by the CA4 in this case. Moreover, the SG argued that neither approach was correct. The CA4, according to the SG, had erred by requiring that "plaintiffs' multiple regression analysis must include any qualification that the employer at some point in the litigation asserts as necessary for the position at issue." The SG has evidently since changed his mind, but he was correct ten months ago. (2) Concerning the county chairmen issue: General Building Contractors does not settle the issue whether delegation is a legitimate defense to a Title VII claim. General Building Contractors was a § 1981 action, and its reference to a Title VII case does not in context evince an intent or understanding that the same analysis should apply under Title VII. (3) Concerning the 4-H Clubs: Although the SG is apparently not interested in enforcing the Department of Agriculture's requirement of "affirmative action to overcome the effects of prior discrimination," 7 C.F.R. § 15.3(b)(6)(i), private petrs are, and their right to enforce such Title VI regulations was established by Guardians Assoc. v. Civil Service Commission, 463 U.S. 582 (1983). (4) If the Court

grants cert on questions 2, 3 or 4, it should also grant cert on question 5, concerning class certification. The class certification issue may have been of little importance below, but now that the SG has abandoned all but the claims incorporated in question 1, the availability of certification is crucial to putative class members.

DISCUSSION: For the reasons discussed in my initial markup, I still believe that cert should probably be denied on question 4, involving the county chairmen. I agree with private papers as to the remaining issues, however, and I thus continue to recommend that cert be granted on questions 1, 2, 3 and 5. I think that Scott Nelson will be making the same recommendation to Justice White.

Still grant and consolidate, limited in No. 85-93 to questions 1, 2, 3 and 5. DS 11/15/85