

6-21-1983

06-21-1983 Justice Powell, Dissenting

Lewis F. Powell
US Supreme Court Justice

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JUN 21 1983

7/16
To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: JUN 21 1983

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-52

ARIZONA GOVERNING COMMITTEE FOR TAX DEFERRED ANNUITY AND DEFERRED COMPENSATION PLANS, ETC., ET AL., PETITIONERS
v. NATHALIE NORRIS ETC.

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

[June —, 1983]

JUSTICE POWELL, dissenting.

The Court today holds that an employer may not offer its employees life annuities from a private insurance company that uses sex-based mortality tables. This holding will have a far-reaching effect on the operation of insurance and pension plans. Employers may be forced to discontinue offering life annuities, or potentially disruptive changes may be required in long-established methods of calculating insurance and pensions.¹ Either course will work a major change in

¹The cost of continuing to provide annuities may become prohibitive. The *minimum* additional cost necessary to equalize benefits prospectively would range from \$85 to \$93 million each year for at least the next 15 years. United States Department of Labor, Cost Study of the Impact of an Equal Benefits Rule on Pension Benefits 4 (1983) (hereinafter Department of Labor Cost Study). This minimum cost assumes that employers will be free to use the least costly method of adjusting benefits. This assumption may be unfounded. Employers may be required to "top up" benefits—*i. e.*, calculate women's benefits at the rate applicable to men rather than apply a unisex rate to both men and women. See n. 10, *infra*. If so, the cost of providing purely prospective benefits would range from \$428 to \$676 million each year for at least the next 15 years. Department of Labor Cost Study 31. No one seriously suggests that these costs will not be passed on—in large part—to the annuity beneficiaries or, in the case of