7-6-1983

07-06-1983 Justice Powell, Dissenting and Concurring

Lewis F. Powell
US Supreme Court Justice

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

[July 6, 1983]

JUSTICE POWELL, with whom THE CHIEF JUSTICE, JUSTICE BLACKMUN, and JUSTICE REHNQUIST join as to Parts I and II, dissenting in part and with whom THE CHIEF JUSTICE, JUSTICE BLACKMUN, JUSTICE REHNQUIST, and JUSTICE O'CONNOR join as to Part III, concurring in part.

The Court today holds that an employer may not offer its employees life annuities from a private insurance company that uses actuarially sound, 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

[1] The 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. If employers are required to "top up" benefits—*i. e.*, calculate women's benefits at the rate applicable to men rather than apply a