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William J. Brennan
US Supreme Court Justice

(Slip Opinion)

FILE COPY

SUPREME COURT OF THE UNITED STATES

Nos. 85–93 AND 85–428

85–93 P. E. BAZEMORE, ET AL., PETITIONERS
v.
WILLIAM C. FRIDAY ET AL.

85–428 UNITED STATES, ET AL., PETITIONERS
v.
WILLIAM C. FRIDAY ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[July 1, 1986]

PER CURIAM.

These cases present several issues arising out of petitioners' action against respondents for alleged racial discrimination in employment and provision of services by the North Carolina Agricultural Extension Service (Extension Service). The District Court declined to certify various proposed classes and, after a lengthy trial, entered judgment for respondents in all respects, finding that petitioners had not carried their burden of demonstrating that respondents had engaged in a pattern or practice of racial discrimination. The District Court also ruled against each of the individual plaintiff's discrimination claims. The Court of Appeals affirmed. 751 F. 2d 662 (CA4 1984). We hold, for the reasons stated in the opinion of JUSTICE BRENNAN, that the Court of Appeals erred in holding that under Title VII of the Civil Rights Act of 1964, as amended, the Extension Service had no duty to eradicate salary disparities between white and black workers that had their origin prior to the date Title VII was made

applicable to public employers;[1] that the Court of Appeals erred in disregarding petitioners' statistical analysis because it reflected pre-Title VII salary disparities, and in holding that petitioners' regressions were unacceptable as evidence of discrimination; that the Court of Appeals erred in ignoring evidence presented by petitioners in addition to their multiple regression analyses; that, on remand, the Court of Appeals should examine all of the evidence in the record relating to salary disparities under the clearly erroneous standard; that the reasons given by the Court of Appeals for refusing to certify a class of black employees of the Extension Service do not support a decision not to certify such a class; and that the Court of Appeals was correct in refusing to certify a class of defendant counties.[2] We further hold, for the reasons stated in the opinion of JUSTICE WHITE, that neither the Constitution nor the applicable Department of Agriculture regulations require more than what the District Court and the Court of Appeals found the Extension Service has done in

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[1] Private petitioners contend that the salary disparities that occurred even prior to the date Title VII was made applicable to public employers, March 24, 1972, violate their rights under the Fourteenth Amendment, and that we should reach this issue because doing so would enable them to recover for such constitutional violations as occurred prior to that date. The Court of Appeals did not address petitioners' constitutional claim. Although there are statements in the Court of Appeals' opinion to the effect that salary disparities have lingered up to the present, the District Court made no finding as to precisely when, if ever, any disparities were eliminated. It noted simply that the "unification and integration of the Extension Service did not result immediately in the elimination of some disparities which had existed between the salaries of white personnel and black personnel . . . ." App. to Pet. for Cert. 31a. See also *id.*, at 122a–123a; 201a. If, on remand, it is finally determined that pre-1965 salary disparities did continue past the date of the merger to a time for which recovery is not barred by the applicable statute of limitations, the courts below will have to decide private petitioners' constitutional claim.

[2] The issue of the certification of a class of 4–H and Extension Homemaker Club members is now moot in light of the Court's resolution of the underlying claim.

this case to disestablish segregation in its 4–H and Extension Homemaker Clubs. Accordingly, the judgment of the Court of Appeals is affirmed in part, vacated in part and remanded for further proceedings consistent with this opinion.[3]

It is so ordered.

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[3] Private petitioners also invite this Court to consider whether an employer may immunize itself from liability for employment discrimination by delegating its employment decisions to a third party that acts in a discriminatory manner. We agree with the United States, however, that that question is not properly presented on this record. Although the Court of Appeals stated that the Extension Service is not "separately responsible" for the selection of county chairmen, 751 F. 2d, at 677, it did note that "the agreement of the Extension Service and the County Commissioners is required in order to fill the vacancy [for County Chairman]." *Id.*, at 675. Similarly, the District Court expressly found that "in the memorandum of understanding between the Extension Service and the boards of county commissioners all appointments are worked out jointly between the Extension Service and the commissioners and no official action can be taken unilaterally by either party with respect to filling a vacancy." App. to Pet. for Cert. 77a. This finding is supported by the record, App. 163.

Respondents do not contend that the Extension Service would not be liable for any pattern or practice of discrimination with respect to the hiring of County Extension Chairmen. Thus it was error for the Court of Appeals to consider solely the recommendations made by the Extension Service rather than the final hiring decisions in which the Extension Service and county acted together.