

611 F.2d 132
United States Court of Appeals,
Fifth Circuit.

Brian F. WEBER, Individually and on Behalf of All
Other Persons Similarly Situated,
Plaintiffs-Appellees,

v.

KAISER ALUMINUM & CHEMICAL
CORPORATION and United Steelworkers of
America, AFL-CIO, Defendants-Appellants.

No. 76-3266.

|
Feb. 1, 1980.

Appeals from the United States District Court for the
Eastern District of Louisiana, 415 F.Supp. 761.

Attorneys and Law Firms

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for Great Plains Legal Foundation.

*133 ON REMAND FROM THE SUPREME COURT
OF THE UNITED STATES, --U.S. --, 99 S.C.T. 2721, 61
L.ED.2D 480

Before WISDOM, GEE, and FAY, Circuit Judges.

GEE, Circuit Judge:

I.

Obedient to the mandate of the Supreme Court, we vacate
the trial court's judgment, as well as ours affirming it, 563
F.2d 216, and remand the cause to that court for further
proceedings in conformity with the opinion above.

II.

For myself only, and with all respect and deference, I here
note my personal conviction that the decision of the
Supreme Court in this case is profoundly wrong.

That it is wrong as a matter of statutory construction
seems to me sufficiently demonstrated by the dissenting
opinions of the Chief Justice and of Mr. Justice
Rehnquist. To these I can add nothing. They make plain
beyond peradventure that the Civil Rights Act of 1964
passed the Congress on the express representation of its
sponsors that it would not and could not be construed as
the Court has now construed it. What could be plainer
than the words of the late Senator Humphrey defending
the bill against the charge that it adumbrated quotas and
preferential treatment that "the title would Prohibit
preferential treatment for any particular group" The

Court now tells us that this is not so. That it feels it may properly do so seems to me a grievous thing.

But sadder still tragic, in my own view is the Court's departure from the long road that we have travelled from *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896), toward making good Mr. Justice Harlan's anguished cry in dissent that "(o)ur Constitution is color-blind, and neither knows nor tolerates classes among citizens." *Id.* at 559, 16 S.Ct. at 1146. I voice my profound belief that this present action, like *Plessy*, is a wrong and dangerous turning, and my confident hope that we will soon return to the high, bright road on which we disdain to classify a citizen, Any citizen, to any degree or for any purpose by the color of his skin.

Though for the above reasons I think it gravely mistaken, I do not say that the Court's decision is immoral or unjust indeed, in some basic sense it may well represent true justice. But there are many actions roughly just that our laws do not authorize and our Constitution forbids, actions such as preventing a Nazi Party march through a town where reside former inmates of concentration camps or inflicting summary punishment on one caught redhanded in a crime.

Subordinate magistrates such as I must either obey the

orders of higher authority or yield up their posts to those who will. I obey, since in my view the action required of me by the Court's mandate is only to follow a mistaken course and not an evil one.

VACATED and REMANDED.

WISDOM, Circuit Judge, specially concurring:

With deference to the views expressed by the majority of this Court, I express the view that the decision of the Supreme Court in this case is profoundly right for the reasons stated in my dissenting opinion. *Weber v. Kaiser Aluminum & Chemical Corporation and United Steelworkers of America, AFL-CIO*, 5 Cir. 1977, 563 F.2d 216, 227.

All Citations

611 F.2d 132 (Mem), 21 Fair Empl.Prac.Cas. (BNA) 1643, 22 Empl. Prac. Dec. P 30,590

Footnotes

¹ 110 Cong.Rec. 11848 (1964) (emphasis added).