

SCHMIDT ET AL., DBA SCHMIDT & POLLARD *v.* OAKLAND UNIFIED SCHOOL DISTRICT ET AL.

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

No. 81-1444. Decided June 21, 1982

Held: In affirming the District Court's judgment upholding the constitutionality of the Oakland School District's affirmative-action plan requiring that in order to be considered "responsible" bidders, eligible to be awarded certain School District contracts, general contractors must use minority-owned businesses for at least 25 percent of the total bid, the Court of Appeals abused its discretion in declining to resolve a pendent state-law claim that the affirmative-action plan was invalid under California law. If the plan was invalid under state law, the Court of Appeals need not have reached the federal constitutional claim.

Certiorari granted; 662 F. 2d 550, vacated and remanded.

PER CURIAM.

California Educ. Code Ann. § 39640 (West Supp. 1982) requires school districts to award any contracts for work involving more than \$12,000 to the "lowest responsible bidder." For projects over \$100,000, the Oakland School District requires that to be considered responsible, general contractors must use minority-owned businesses for at least 25 percent of the dollar amount of the total bid. Petitioners submitted the low bid for an advertised project but were disqualified under the School District plan as not being responsible. They brought this action claiming damages and asserting that the affirmative-action plan violated not only the Federal Constitution but also state law. The Court of Appeals affirmed a judgment of the District Court upholding the plan on constitutional grounds. 662 F. 2d 550 (1981). Although the Court of Appeals acknowledged that under one of its prior decisions, the plan at issue might be invalid under state law, it declined to decide the state-law question since it was a sen-

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Per Curiam

sitive matter and petitioners could present it to the state courts.

If the affirmative-action plan is invalid under state law, the Court of Appeals need not have reached the federal constitutional issue. Nevertheless, the Court of Appeals declined to resolve the pendent state-law claim. Under *Hagans v. Lavine*, 415 U. S. 528, 546 (1974), and *Mine Workers v. Gibbs*, 383 U. S. 715 (1966), this was an abuse of discretion in the circumstances of this case.

We accordingly grant the petition for certiorari, vacate the judgment of the Court of Appeals, and remand the case for further proceedings consistent with this opinion.

So ordered.