MEMORANDUM TO THE CONFERENCE:

The concern expressed briefly at Conference as to the possibility of a "four-four" division, with John not participating, has loomed larger in my mind with further thinking about the issue presented in these cases.

CA5 held (Wisdom, J., dissenting) that petitioners had violated Title VII by an affirmative action program that discriminated against whites. No constitutional issue is presented, either as a basis for respondent's claim or as a defense. Indeed, in the absence of state action the Equal Protection Clause is not implicated. The case thus presents only a question of statutory interpretation, but a question that will have far-reaching consequences however we may resolve it.

The affirmative action program comes to us as having been adopted voluntarily pursuant to collective bargaining, and therefore has the support both of management and the union. There is a finding of fact by the District Court, affirmed by the Court of Appeals, that petitioners had not engaged in any prior conduct that violated Title VII. Thus, unlike cases we have considered before, the affirmative action program has not been adopted to remedy judicially or legislatively found past discrimination. Indeed, I suppose - in cases like this - neither management nor the union would wish to confess past discrimination as this could invite suits for backpay and damages.

The case therefore presents rather starkly the question whether an affirmative action program for the
benefit of minorities constitutes discrimination against whites that is forbidden by Title VII. It is clear beyond doubt, I suppose, that management and the union could not have adopted such a program for the benefit of whites. I recall – as perhaps a not too far fetched example – what the record showed in Beazer where New York Metropolitan Transit Authority employed a substantially disproportionately higher number of Negroes and Puerto Ricans than the population percentages would justify. I doubt if a program designed to correct this "imbalance" could pass muster.

Moreover, in McDonald v. Santa Fe Trails Transportation Co., we held unanimously "that Title VII prohibits racial discrimination against the white petitioners in this case upon the same standards as would be applicable were they Negroes . . . ." 427 U.S., at 280. We were careful in McDonald, however, to reserve the question presented by the present case. See note 8 at pp. 280-281. Although I have not examined the legislative history with this question in mind, it can be argued that an affirmative action program does not constitute the type of discrimination proscribed by Title VII, particularly where the program is the result of collective bargaining. Perhaps support for this argument could be inferred from the government's consistent encouragement of such programs, a policy certainly tolerated by Congress. On the other hand, from the viewpoint of the respondent in this case (or of anyone similarly situated), I suppose it matters little whether the denial of benefits accorded other persons similarly situated except for race, is occasioned by a program characterized as "affirmative action" rather than by isolated acts of discrimination. Nor would it make any practical difference to respondent whether the denial of the benefit resulted from joint action by his employer and union, rather than by government.

I emphasize at this point that although I have done a good deal more reading and thinking since the Conference than before I voted to grant, I am far from being at rest on the issue. At the time of our Conference, I was inclined to believe that CA5 had decided the case erroneously. I am now not at all sure that this would be my ultimate judgment.

But I am now persuaded that it would be unwise to have this case argued before a Court with less than all
nine of us sitting. Affirmance by an evenly divided Court would result in a period of distinct uncertainty as to the status of voluntary affirmative action programs in the absence of past discrimination.

The Court also might fairly be subject to criticism for taking the case with knowledge that a Justice could not participate. I therefore raise the question whether we should reexamine our decision to grant this case.

L.F.P., Jr.
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L.F.P., Jr.
When affirming discriminates

Getting Allan Bakke into medical school was by no means the end of reverse discrimination as a courtroom issue in the United States. There are any number of other categories of economic and social advantage where race or sex or ethnic origin might make a difference and neither law nor policy has caught up with all of them. Furthermore, as rules proliferate, right can collide with right and compliance with one edict lead to violation of another.

The Sears complaint dramatized some of the possibilities. The giant company's suit against the Equal Employment Opportunity Commission alleged that the government hiring and firing strictures of a few years ago prevent compliance with the latest government hiring and firing strictures. Putting yesterday's preferred categories on the payroll — World War II and Korean veterans, almost all of whom are white males — and not being able to force them into early retirement means it's hard to find places for today's favored categories, the minorities and women.

Now the Supreme Court has a variation on the theme to deal with: the case of a man who lost out on a Kaiser Aluminum & Chemical Company training program because of an affirmative action quota reserving 50 per cent of the places in it for blacks.

Two lower courts have already ruled in favor of Brian Weber, the white Kaiser employee whose seniority would have put him in the program except for his race. Between that and the Bakke precedent, there is reason to expect that the high court would either do the same or leave it to Congress to clarify the ambiguities in the Civil Rights law that might justify a contradictory decision this time around.

It's a drama involving more actors than Mr. Weber and the nine justices, however. The EEOC is very much in the picture. The EEOC has a record of encouraging companies such as Kaiser to institute voluntary programs to increase the numbers of certain target categories of people on their employment rosters, whether or not there is any question of discrimination against them in the past. How forceful the encouragement was for Kaiser is not known; all that can be said for sure is that the company had not been accused of discrimination in any of its personnel policies before setting up its quotas.

And now EEOC lawyers have filed a brief with the Supreme Court urging a decision that would, in effect, remove all such "voluntary" programs from the threat of reverse discrimination suits. They want the latest EEOC guidelines to be recognized at the highest legal level as "the proper standard" for all hiring, training and promoting. The guidelines suggest legal immunity for sex and race quotas set up voluntarily by employers who have "reasonable" fears of being charged with bias.

There would be comfort in such a decision for employers eager to head off trouble over the composition of their work forces. It would, however, do nothing about the grievances of the Brian Webers. Nor would it dispose of the practical anomalies that go with trying to set up a perfect — and long-range — distribution of employees by way of imperfect — and changing — statistics.

Furthermore, should the Court be swayed by the EEOC arguments, it is easy to see what would happen next. It's a short step from making quotas legitimate to making them compulsory. A government guideline, as everybody knows, has about as much genuine option in it as a top sergeant's call for volunteers at the front.

Meanwhile, the wrongness of quotas is as glaring as ever. They discourage merit initiatives, artificially categorize people, usurp private authority and perpetrate contemporary unfairnesses to redress historic wrongs.

The Bakke decision was no white-supremacy edict. It took sympathetic note of past race discrimination, leaving wide latitude for compensatory action on a case-by-case basis. But it rightly rejected the rigidity of the quota approach. We hope its spirit influences the court in Mr. Weber's case, and in whatever others come up because public policy places legitimate individual claims in competition.
March 30, 1979

(78-432 - United Steelworkers of America v. Weber
(78-435 - Kaiser Aluminum & Chemical Corp. v. Weber
(78-436 - United States v. Weber

MEMORANDUM TO THE CONFERENCE:

Until I can report to Lewis and ascertain his position, which I will canvass today, I will remain in my "Pass" position. Deference to a colleague unavoidably absent from participation in a case so inherently and institutionally important commands no less in my judgment. Obviously Lewis' view cannot be controlling either on the merits or on reargument in light of the vote, but he is due no less so far as I am concerned.

This will enable me to cast a firm vote promptly.

Regards,
April 1, 1979

MEMORANDUM TO THE CONFERENCE:

Re: 78-354) United Steelworkers of America v. Weber
     78-436) U.S. v. Weber

I have reported to Lewis on the Conference, and
I now vote to affirm in the above case.

I would, as I stated at Conference, much prefer
to have employers free to initiate their own private programs
to give minorities preferential treatment. However, I
can find no principled basis to avoid the explicit language
of the relevant statutory provisions which foreclose such
programs based on race.

Accordingly, I have requested Bill Brennan to
take responsibility for the assignment.

Regards,

[Signature]
May 7, 1979

Re: 78-432, United Steelworkers v. Weber

Dear Bill,

If there are three others who join your proposed opinion, I shall also join in order to make it an opinion of the Court. Considering the diversity of our views, I think you have done an admirable job. It may be that I shall have a few very minor suggestions.

Sincerely yours,

Mr. Justice Brennan

Copies to the Conference
May 7, 1979

Re: 78-432 - United Steelworkers of America v. Weber, etc.

Dear Bill:

Please join me.

Sincerely,

T.M.
T.M.

Mr. Justice Brennan
cc: The Conference
May 7, 1979


Dear Bill:

In due course I will circulate a dissent from your opinion in this case.

Sincerely,

Mr. Justice Brennan

Copies to the Conference
Re: No. 78-432, 435, and 436 ~ Steel Workers v. Weber, etc

Dear Bill:

My posture is essentially the same as Byron's. It is likely that I shall join your draft, but I, too, prefer to see what is written on the other side.

Sincerely,

[Signature]

Mr. Justice Brennan
cc: The Conference
May 8, 1979

78-432 United Steelworkers v. Weber

Dear Bill:

Please show on the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

Mr. Justice Brennan

1fp/ss

cc: The Conference
May 8, 1979

Re: 78-432, 78-435 & 78-436 - United Steelworkers of America v. Weber, etc.

Dear Bill,

It is likely that I shall sign up on your present draft, but I shall wait to see what is written on the other side before deciding whether I have suggestions of substance to submit.

Sincerely yours,

[Signature]

Mr. Justice Brennan

Copies to the Conference

cmc
Mr. Justice Brennan delivered the opinion of the Court.

Challenged here is the legality of an affirmative action plan—collectively bargained by an employer and a union—that reserves for black employees 50% of the openings in an in-plant craft training program until the percentage of black craft workers in the plant is commensurate with the percentage of blacks in the local labor force. The question for decision is whether Congress, in Title VII of the Civil Rights Act of 1964 as amended, 42 U. S. C. § 2000e, left employers and unions in the private sector free to take such race-conscious steps to eliminate manifest racial imbalances in traditionally segregated job categories. We hold that Title VII does not prohibit such race-conscious affirmative action plans.
In 1974 petitioner United Steelworkers of America (USWA) and petitioner Kaiser Aluminum & Chemical Corporation (Kaiser) entered into a master collective-bargaining agreement covering terms and conditions of employment at 15 Kaiser plants. The agreement contained, inter alia, an affirmative action plan designed to eliminate conspicuous racial imbalances in Kaiser's then almost exclusively white craft work forces. Black craft hiring goals were set for each Kaiser plant equal to the percentage of blacks in the respective local labor forces. To enable plants to meet these goals, on-the-job training programs were established to teach unskilled production workers—black and white—the skills necessary to become craft workers. The plan reserved for black employees 50% of the openings in these newly created in-plant training programs.

This case arose from the operation of the plan at Kaiser's plant in Gramercy, La. Until 1974 Kaiser hired as craft workers for that plant only persons who had had prior craft experience. Because blacks had long been excluded from craft unions, few were able to present such credentials. As

Judicial findings of exclusion from crafts on racial grounds are so numerous as to make such exclusion a proper subject for judicial notice. See, e.g., United States v. International Union of Elevator Constructors, 538 F. 2d 1012 (CA3 1976); Associated General Contractors of Massachusetts v. Althuler, 490 F. 2d 9 (CA1 1973); United States v. Wood, Wire and Metal Lathers, 471 F. 2d 408 (CA2 1973); Southern Illinois Builders Association v. Ogilve, 471 F. 2d 680 (CA7 1972); Contractors Association of Eastern Pennsylvania v. Secretary of Labor, 442 F. 2d 159 (CA3 1971); Local 53 of International Association of Heat & Frost, etc. v. Vogler, 407 F. 2d 1047 (CA8 1969); Buckner v. Goodyear, 539 F. Supp. 1195 (ND Ala. 1972), aff'd without opinion, 478 F. 2d 1267 (CA5 1973). See also United States Commission on Civil Rights, The Challenge Ahead (1976), pp. 88-94 (summarizing judicial findings of discrimination by
a consequence, prior to 1974 only 1.83% (five out of 273) of the skilled craft workers at the Gramercy plant were black, even though the work force in the Gramercy area was approximately 39% black.

Pursuant to the national agreement Kaiser altered its craft hiring practice in the Gramercy plant. Rather than hiring already trained outsiders, Kaiser established a training program to train its production workers to fill craft openings. Selection of craft trainees was made on the basis of seniority, with the proviso that at least 50% of the new trainees were to be black until the percentage of black skilled craft workers in the Gramercy plant approximated the percentage of blacks in the local labor force. See 415 F. Supp. 761, 764.

During 1974, the first year of the operation of the Kaiser-USWA affirmative action plan, 13 craft trainees were selected from Gramercy’s production work force. Of these, 7 were black and 6 white. The most junior black selected into the program had less seniority than several white production workers whose bids for admission were rejected. Thereafter one of those white production workers, respondent Brian Weber, instituted this class action in the United States District Court for the Eastern District of Louisiana.

The complaint alleged that the filling of craft trainee positions at the Gramercy plant pursuant to the affirmative action program had resulted in junior black employees receiving training in preference to more senior white employees, thus discriminating against respondent and other similarly situated
STEELWORKERS v. WEBER

white employees in violation of §§ 703(a) \(^2\) and (d) \(^3\) of Title VII. The District Court held that the plan violated Title VII, entered a judgment in favor of the plaintiff class, and granted a permanent injunction prohibiting Kaiser and the USWA "from denying plaintiffs, Brian F. Weber and all other members of the class, access to on-the-job training programs on the basis of race." 415 F. Supp. 761 (1976). A divided panel of the Court of Appeals for the Fifth Circuit affirmed, holding that all employment preferences based upon race, including those preferences incidental to bona fide affirmative action plans, violated Title VII's prohibition against racial discrimination in employment. 563 F. 2d 216 (1978).

We granted certiorari. — U. S. — (1979). We reverse.

II

We emphasize at the outset the narrowness of our inquiry. Since the Kaiser-USWA plan does not involve state action, this case does not present an alleged violation of the Equal Protection Clause of the Constitution. Further, since the Kaiser-USWA plan was adopted voluntarily, we are not con-

\(^2\) Section 703 (a), 42 U. S. C. § 2000e-2 (a), provides:
"(a) It shall be an unlawful employment practice for an employer—
"(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
"(2) to limit or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

\(^3\) Section 703 (d), 42 U. S. C. § 2000e-2 (d), provides:
"It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training."
cerned with what Title VII requires or with what a court might order to remedy a past proven violation of the Act. The only question before us is the narrow statutory issue of whether Title VII forbids private employers and unions from voluntarily agreeing upon bona fide affirmative action plans that accord racial preferences in the manner and for the purpose provided in the Kaiser-USWA plan. That question was expressly left open in *McDonald v. Santa Fe Trail Trans. Co.*, 427 U. S. 273, 281 n. 8 (1976) which held, in a case not involving affirmative action, that Title VII protects whites as well as blacks from certain forms of racial discrimination.

Respondent argues that Congress intended in Title VII to prohibit all race-conscious affirmative action plans. Respondent's argument rests upon a literal interpretation of §§ 703 (a) and (d) of the Act. Those sections make it unlawful to "discriminate . . . because of . . . race" in hiring and in the selection of apprentices for training programs. Since, the argument runs, *McDonald v. Santa Fe Trans. Co.*, supra, settled that Title VII forbids discrimination against whites as well as blacks, and since the Kaiser-USWA affirmative action plan operates to discriminate against white employees solely because they are white, it follows that the Kaiser-USWA plan violates Title VII.

Respondent's argument is not without force. But it overlooks the significance of the fact that the Kaiser-USWA plan is an affirmative action plan voluntarily adopted by private parties to eliminate traditional patterns of racial segregation. In this context respondent's reliance upon a literal construction of § 703 (a) and (d) and upon *McDonald* is misplaced. See *McDonald v. Santa Fe Trail Trans. Co.*, supra, at 281 n. 8.

It is a "familiar rule, that a thing may be within 'the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers.'" *Holy Trinity Church v. United States*, 143 U. S. 457, 459 (1892). The prohibition against racial discrimination in §§ 703 (a) and

Congress' primary concern in enacting the prohibition against racial discrimination in Title VII of the Civil Rights Act of 1964 was with "the plight of the Negro in our economy." 110 Cong. Rec. 6548 (remarks of Sen. Humphrey). Before 1964, blacks were largely relegated to "unskilled and semi-skilled jobs." id., at 6548 (remarks of Sen. Humphrey); id., at 7204 (remarks of Sen. Clark); 2 Schwartz, Statutory History of the United States: Civil Rights at 1296 (remarks of Sen. Kennedy). Because of automation the number of such jobs was rapidly decreasing. See 110 Cong. Rec., at 6548 (remarks of Sen. Humphrey); id., at 7204 (remarks of Sen. Clark). As a consequence "the relative position of the Negro worker [was] steadily worsening. In 1947 the non-white unemployment rate was only 64 percent higher than the white rate; in 1962 it was 124 percent higher." Id., at 6548 (remarks of Sen. Humphrey). See also id., at 7204 (remarks of Sen. Clark). Congress considered this a serious social problem. As Senator Clark told the Senate:

"The rate of Negro unemployment has gone up con-
sistently as compared with white unemployment for the past 15 years. This is a social malaise and a social situation which we should not tolerate. That is one of the principal reasons why this bill should pass." 110 Cong. Rec. 7220.

Congress feared that the goals of the Civil Rights Act—the integration of blacks into the mainstream of American society—could not be achieved unless this trend were reversed. And Congress recognized that that would not be possible unless blacks were able to secure jobs "which have a future." Id., at 7204 (remarks of Sen. Clark). See also Schwartz, supra, at 1206 (remarks of Sen. Kennedy). As Senator Humphrey explained to the Senate:

"What good does it do a Negro to be able to eat in a fine restaurant if he cannot afford to pay the bill? What good does it do him to be accepted in a hotel that is too expensive for his modest income? How can a Negro child be motivated to take full advantage of integrated educational facilities if he has no hope of getting a job where he can use that education?" 110 Cong. Rec., at 6547.

"Without a job, one cannot afford public convenience and accommodations. Income from employment may be necessary to further a man's education, or that of his children. If his children have no hope of getting a good job, what will motivate them to take advantage of educational opportunities." Schwartz, supra, at 1234. These remarks echoed President Kennedy's original message to Congress upon the introduction of the Civil Rights Act in 1963.

"There is little value in a Negro's obtaining the right to be admitted to hotels and restaurants if he has no cash in his pocket and no job." Id., at 1059.
Accordingly, it was clear to Congress that "the crux of the problem [was] to open employment opportunities for Negroes in occupations which have been traditionally closed to them," id., at 6548 (remarks of Sen. Humphrey), and it was to this problem that Title VII's prohibition against racial discrimination in employment was primarily addressed.

It plainly appears from the House Report accompanying the Civil Rights Act that Congress did not intend wholly to prohibit private and voluntary affirmative action efforts as one method of solving this problem. The Report provides:

"No bill can or should lay claim to eliminating all of the causes and consequences of racial and other types of discrimination against minorities. There is reason to believe, however, that national leadership provided by the enactment of Federal legislation dealing with the most troublesome problems will create an atmosphere conducive to voluntary or local resolution of other forms of discrimination." H. R. Rep. No. 914, 88th Cong., 1st Sess. (1963), at 18. (Emphasis supplied.)

Given this legislative history, we cannot agree with respondent that Congress intended to prohibit the private sector from taking effective steps to accomplish the goal that Congress designed Title VII to achieve. The very statutory words intended as a spur or catalyst to cause "employers and unions to self-examine and to self-evaluate their employment practices and to endeavor to eliminate, so far as possible, the last vestiges of an unfortunate and ignominious page in this country's history," Albemarle v. Moody, 422 U. S. 405, 418 (1975), cannot be interpreted as an absolute prohibition against all private, voluntary, race-conscious affirmative action efforts to hasten the elimination of such vestiges. 4 It would

4 The problem that Congress addressed in 1964 remains with us. In 1962 the nonwhite unemployment rate was 124% higher than the white rate. See Schwartz, supra, at 1224 (remarks of Sen. Humphrey). In 1978 the black unemployment rate was 129% higher. See Monthly
be ironic indeed if a law triggered by a Nation’s concern over centuries of racial injustice and intended to improve the lot of those who had “been excluded from the American dream for so long.” Schwartz, supra, at 1234 (remarks of Sen. Humphrey), constituted the first legislative prohibition of all voluntary, private, race-conscious efforts to abolish traditional patterns of racial segregation and hierarchy.

Our conclusion is further reinforced by examination of the language and legislative history of § 703(j) of Title VII. Opponents of Title VII raised two related arguments against the bill. First, they argued that the Act would be interpreted to require employers with racially imbalanced work forces to grant preferential treatment to racial minorities in order to integrate. Second, they argued that employers with racially imbalanced work forces would grant preferential treatment to racial minorities, even if not required to do so by the Act. See 110 Cong. Rec. 8618–8619 (remarks of Sen. Spark-


Section 703(j) of Title VII, 42 U. S. C. § 2000e–2(j), provides:

“Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area.”

Section 703(j) speaks to substantive liability under Title VII, but it does not preclude courts from considering racial imbalance as evidence of a Title VII violation. See Teamsters v. United States, 431 U. S. 324, 339–340, n. 20 (1977). Remedies for substantive violations are governed by § 700(g), 42 U. S. C. § 2000e–5(g).
man). Had Congress meant to prohibit all race-conscious affirmative action, as respondent urges, it easily could have answered both objections by providing that Title VII would not require or permit racially preferential integration efforts. But Congress did not choose such a course. Rather Congress added § 703 (j) which addresses only the first objection. The section provides that nothing contained in Title VII "shall be interpreted to require any employer . . . to grant preferential treatment . . . to any group because of the race . . . of such . . . group on account of" a defacto racial imbalance in the employer's work force. The section does not state that "nothing in Title VII shall be interpreted to permit" voluntary affirmative efforts to correct racial imbalances. The natural inference is that Congress chose not to forbid all voluntary race-conscious affirmative action.

The reasons for this choice are evident from the legislative record. Title VII could not have been enacted into law without substantial support from legislators in both Houses who traditionally resisted federal regulation of private business. Those legislators demanded as a price for their support that "management prerogatives and union freedoms . . . be left undisturbed to the greatest extent possible." H. R. Rep. No. 914, 88th Cong., 1st Sess., 64, 150 (1963). Section 703 (j) was proposed by Senator Dirksen to allay any fears that the Act might be interpreted in such a way as to upset this compromise. The section was designed to prevent § 703 of Title VII from being interpreted in such a way as to lead to undue "Federal Government interference with private businesses because of some Federal employee's ideas about racial balance or imbalance." Id., at 14814 (remarks of Sen. Miller). See also 110 Cong. Rec. 9881 (remarks of Sen. Allott);

*Title VI of the Civil Rights Act of 1964, considered in University of California Regents v. Bakke, 438 U. S. 265 (1978), contains no provision comparable to § 703 (j). This is because Title VI was an exercise of federal power over a matter in which the Federal Government was already
Clearly, a prohibition against all voluntary, race-conscious, affirmative action efforts would disserve these ends. Such a prohibition would augment the powers of the Federal Government and diminish traditional management prerogatives while at the same time impeding attainment of the ultimate statutory goals. In view of this legislative history and in view of Congress' desire to avoid undue federal regulation of private businesses, use of the word "require" rather than the phrase "require or permit" in § 703 (j) fortifies the conclusion that Congress did not intend to limit traditional business freedom to such a degree as to prohibit all voluntary, race-conscious affirmative action.7

directly involved: the prohibitions against race-based conduct contained in Title VI governed "program[s] or activit[ies] receiving Federal financial assistance." 42 U. S. C. § 2000d. Congress was legislating to assure federal funds would not be used in an improper manner. Title VII, by contrast, was enacted pursuant to the Commerce power to regulate purely private decisionmaking and was not intended to incorporate and particularize the commands of the Fifth and Fourteenth Amendments. Title VII and Title VI, therefore, cannot be read in pari materia. See 110 Cong. Rec. 8114 (1964) (remarks of Sen. Cooper). See also id., at 11616 (remarks of Sen. Cooper).

7 Respondent argues that our construction of § 703 conflicts with various remarks in the legislative record. See, e. g., 110 Cong. Rec. 7218 (Sens. Clark and Case); id., at 7218 (Sens. Clark and Case); id., at 6549 (Sen. Humphrey); id., at 8651 (Sen. Williams). We do not agree. In Senator Humphrey's words, these comments were intended as assurances that Title VII would not allow establishment of systems "to maintain racial balance in employment." Id., at 11850. They were not addressed to temporary, voluntary, affirmative action measures undertaken to eliminate manifest racial imbalance in traditionally segregated job categories. Moreover, the comments referred to by respondent all preceded the adoption of § 703 (j), 42 U. S. C. § 2000e–2 (j). After § 703 (j) was adopted congressional comments were all to the effect that employers would not be required to institute preferential quotas to avoid Title VII liability, see, e. g., id., at 12817 (remarks of Sen. Dirksen); id., at 13079–
We therefore hold that Title VII's prohibition in §§ 703 (a) and (d) against racial discrimination does not condemn all private, voluntary, race-conscious affirmative action plans.

III

We need not today define in detail the line of demarcation between permissible and impermissible affirmative action plans. It suffices to hold that the challenged Kaiser-USWA affirmative action plan falls on the permissible side of the line. The purposes of the plan mirror those of the statute. Both were designed to break down old patterns of racial segregation and hierarchy. Both were structured to "open employment opportunities for Negroes in occupations which have been traditionally closed to them." 110 Cong. Rec. 6548 (remarks of Sen. Humphrey).

At the same time the plan does not unnecessarily trammel the interests of the white employees. The plan does not require the discharge of white workers and their replacement with new black hires. Cf. McDonald v. Santa Fe Trail Trans., 13080 (remarks of Sen. Clark); id., at 15876 (remarks of Rep. Lindsay). There was no suggestion after the adoption of § 703 (j) that wholly voluntary, race-conscious, affirmative action efforts would in themselves constitute a violation of Title VII. On the contrary, as Representative MacGregor told the House shortly before the final vote on Title VII: "Important as the scope and extent of this bill is, it is also vitally important that all Americans understand what this bill does not cover. "Your mail and mine, your contacts and mine with our constituents, indicates a great degree of misunderstanding about this bill. People complain about ... preferential treatment or quotas in employment. There is a mistaken belief that Congress is legislating in these areas in this bill. When we drafted this bill we excluded these issues largely because the problems raised by these controversial questions are more properly handled at a governmental level closer to the American people and by communities and individuals themselves." 110 Cong. Rec. 15893 (remarks of Rep. MacGregor).

*See n. 1, supra. This is not to suggest that the freedom of an employer to undertake race-conscious affirmative action efforts depends on whether or not his effort is motivated by fear of liability under Title VII.
Co., supra. Nor does the plan create an absolute bar to the advancement of white employees; half of those trained in the program will be white. Moreover, the plan is a temporary measure; it is not intended to maintain racial balance, but simply to eliminate a manifest racial imbalance. Preferential selection of craft trainees at the Gramercy plant will end as soon as the percentage of black skilled craft workers in the Gramercy plant approximates the percentage of blacks in the local labor force. See 415 F. Supp. 761, 763.

We conclude, therefore, that the adoption of the Kaiser-USWA plan for the Gramercy plant falls within the area of discretion left by Title VII to the private sector voluntarily to adopt affirmative action plans designed to eliminate conspicuous racial imbalance in traditionally segregated job categories. Accordingly, the judgment of the Court of Appeals for the Fifth Circuit is

Reversed.

Mr. Justice Powell and Mr. Justice Stevens took no part in the consideration or decision of this case.

*Our disposition makes unnecessary consideration of petitioners' argument that their plan was justified because they feared that black employees would bring suit under Title VII if they did not adopt an affirmative action plan. Nor need we consider petitioners' contention that their affirmative action plan represented an attempt to comply with Executive Order 11246.