a countervailing consideration was the impact of such discrimination on disadvantaged non-minorities. Two cases illustrate the latter point. In *Wygant v. Jackson Board of Education*,[1745] the Court invalidated a provision of a collective bargaining agreement giving minority teachers a preferential protection from layoffs. In *United States v. Paradise*,[1746] the Court upheld as a remedy for past discrimination a court-ordered racial quota in promotions. Justice White, concurring in *Wygant*, emphasized the harsh, direct effect of layoffs on affected non-minority employees.[1747] By contrast, a plurality of Justices in *Paradise* viewed the remedy in that case as affecting non-minorities less harshly than did the layoffs in *Wygant*, because the promotion quota would merely delay promotions of those affected, rather than cause the loss of their jobs.[1748]

A clear distinction was then drawn between federal and state power to apply racial classifications. In *City of Richmond v. J.A. Croson Co.*,[1749] the Court invalidated a minority set-aside requirement that holders of construction contracts with the city subcontract at least 30% of the dollar amount to minority business enterprises. Applying strict scrutiny, the Court found Richmond's program to be deficient because it was not tied to evidence of past discrimination in the city's construction industry. By contrast, the Court in *Metro Broadcasting, Inc. v. FCC*[1750] applied a more lenient standard of review in upholding two racial preference policies used by the FCC in the award of radio and television broadcast licenses. The FCC policies, the Court explained, are "benign, race-conscious

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[1745] 476 U.S. 267 (1986).

[1746] 480 U.S. 149 (1987).

[1747] 476 U.S. at 294. A plurality of Justices in *Wygant* thought that past societal discrimination alone is insufficient to justify racial classifications; they would require some convincing evidence of past discrimination by the governmental unit involved. 476 U.S. at 274–76 (opinion of Justice Powell, joined by Chief Justice Burger and by Justices Rehnquist and O'Connor).

[1748] 480 U.S. at 182–83 (opinion of Justice Brennan, joined by Justices Marshall, Blackmun, and Powell). A majority of Justices emphasized that the egregious nature of the past discrimination by the governmental unit justified the ordered relief. 480 U.S. at 153 (opinion of Justice Brennan), id. at 189 (Justice Stevens).

[1749] 488 U.S. 469 (1989). *Croson* was decided by a 6–3 vote. The portions of Justice O'Connor's opinion adopted as the opinion of the Court were joined by Chief Justice Rehnquist and by Justices White, Stevens, and Kennedy. The latter two Justices joined only part of Justice O'Connor's opinion; each added a separate concurring opinion. Justice Scalia concurred separately; Justices Marshall, Brennan, and Blackmun dissented.

[1750] 497 U.S. 547 (1990). This was a 5–4 decision, Justice Brennan's opinion of the Court being joined by Justices White, Marshall, Blackmun, and Stevens. Justice O'Connor wrote a dissenting opinion joined by the Chief Justice and by Justices Scalia and Kennedy, and Justice Kennedy added a separate dissenting opinion joined by Justice Scalia.