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Rosengart v. Laird

405 U.S. 908 (1972)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University





*Supreme Court of the United States
Washington, D. C. 20543*

CHAMBERS OF
THE CHIEF JUSTICE

February 18, 1972

Re: No. 71-298 - Rosengart v. Laird

Dear Byron:

Please join me in your dissent.

Regards,

WBS

Mr. Justice White

cc: The Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

OLIVER A. ROSENGART v. MELVIN R. LAIRD,
SECRETARY OF DEFENSE, ET AL.

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

No. 71-298. Decided January —, 1972

MR. JUSTICE WHITE, dissenting.

The Court vacates the judgment of the Court of Appeals and directs that the Court of Appeals consider the views of the United States presented in this case. Finding the suggestions of the United States unacceptable, I dissent from today's judgment.

In its memorandum filed October 13, 1971, in response to the petition for certiorari, the United States asserted that in passing on petitioner's conscientious objector's claim the Army considered petitioner's opposition to war to be sincere and rejected the claim solely because petitioner's views did not qualify as religious under the standards of *Welsh v. United States*, 398 U. S. 333 (1970). It was therefore error, the United States urged, for the Court of Appeals to have put aside the *Welsh* issue and to have affirmed the denial of habeas corpus on insincerity grounds after making an "independent search of the administrative record" to discover a basis in fact for such a judgment.

These assertions were incredible. The Army Review Board, in its final order entered on September 10, 1970, denying the conscientious objector claim, unanimously found that "1LT Rosengart's purported conscientious objector beliefs are not truly held; and that any objection to war in any form he might sincerely hold is based solely on philosophical and sociological experiences." The plain meaning of this order is that the Board both found that petitioner was not sincere and determined

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Sanford, California 94305-6010



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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

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OLIVER A. ROSENGART v. MELVIN R. LAIRD
SECRETARY OF DEFENSE, ET AL.

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

No. 71-298. Decided January —, 1972

MR. JUSTICE WHITE, with whom MR. JUSTICE REHN-
QUIST concurs, dissenting.

The Court vacates the judgment of the Court of Ap-
peals and directs that the Court of Appeals consider the
views of the United States presented in this case. Find-
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dissent from today's judgment.

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ards of *Welsh v. United States*, 398 U. S. 333 (1970). It
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to have affirmed the denial of habeas corpus on insincerity
grounds after making an "independent search of the
administrative record" to discover a basis in fact for such
a judgment.

These assertions were incredible. The Army Review
Board, in its final order entered on September 10, 1970,
denying the conscientious objector claim, unanimously
found that "1LT Rosengart's purported conscientious
objector beliefs are not truly held; and that any objec-
tion to war in any form he might sincerely hold is based
solely on philosophical and sociological experiences."
The plain meaning of this order is that the Board both
found that petitioner was not sincere and determined

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Filed

To: The Chief Justice
Mr. Justice Burger
Mr. Justice Brennan
Mr. Justice Douglas
Mr. Justice Marshall
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Rehnquist

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

OLIVER A. ROSENGART *v.* MELVIN R. LAIRD,
SECRETARY OF DEFENSE, ET AL.

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

No. 71-298. Decided January —, 1972

MR. JUSTICE WHITE, with whom THE CHIEF JUSTICE
and MR. JUSTICE REHNQUIST concur, dissenting.

The Court vacates the judgment of the Court of Appeals and directs that the Court of Appeals consider the views of the United States presented in this case. Finding the suggestions of the United States unacceptable, I dissent from today's judgment.

In its memorandum filed October 13, 1971, in response to the petition for certiorari, the United States asserted that in passing on petitioner's conscientious objector's claim the Army considered petitioner's opposition to war to be sincere and rejected the claim solely because petitioner's views did not qualify as religious under the standards of *Welsh v. United States*, 398 U. S. 333 (1970). It was therefore error, the United States urged, for the Court of Appeals to have put aside the *Welsh* issue and to have affirmed the denial of habeas corpus on insincerity grounds after making an "independent search of the administrative record" to discover a basis in fact for such a judgment.

These assertions were incredible. The Army Review Board, in its final order entered on September 10, 1970, denying the conscientious objector claim, unanimously found that "1LT Rosengart's purported conscientious objector beliefs are not truly held; and that any objection to war in any form he might sincerely hold is based solely on philosophical and sociological experiences." The plain meaning of this order is that the Board both found that petitioner was not sincere and determined

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 28, 1972

Re: No. 71-298 - Rosengart v. Laird

Dear Byron:

Please join me in your proposed
dissent in this case.

Sincerely,

Bin

Mr. Justice White

Copies to the Conference

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zation of the Hoover Institution Archives.

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