

The Burger Court Opinion Writing Database

California Bankers Association v. Shultz
416 U.S. 21 (1974)

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



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

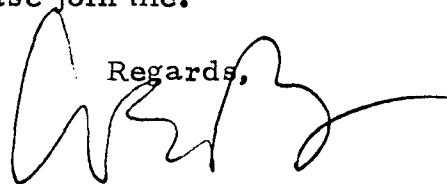
CHAMBERS OF
THE CHIEF JUSTICE

March 7, 1974

Re: 72-985 - Calif. Bankers Assoc. v. Shultz
72-1073 - Shultz v. Calif. Bankers Assoc.
72-1196 - Stark v. Shultz

Dear Bill:

Please join me.


Regards,

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 28, 1974

MEMORANDUM TO THE CONFERENCE:

I'll be writing a dissent in 72-985 et al. California Banker
Association v. Shultz "with all deliberate speed".

W
William O. Douglas

The Conference

To : The Chief Justice
Mr. Justice [redacted]
Mr. Justice [redacted]

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 72-985, 72-1073, AND 72-1196

Recirculated. 3-11

The California Bankers
Association, Appellant,
72-985 v.

George P. Shultz, Secretary of
the Treasury, et al.

George P. Shultz, Secretary of
the Treasury, et al.
Appellants.

72-1073 v.
The California Bankers
Association et al.

Fortney H. Stark, Jr., et al.
Appellants.

72-1196 v.
George P. Shultz et al.

On Appeals from the
United States District
Court for the Northern
District of California.

[March --, 1974]

MR. JUSTICE DOUGLAS, dissenting

The Court expresses a doubt that the California Bankers Association has ~~no~~ standing to litigate the claims it asserts. That doubt, however, should be dissipated by our decisions.

Sierra Club v. Morton, 405 U. S. 727, 739 stated unequivocally that "an organization whose members are injured may represent those members in a proceeding for judicial review."

Appellants in No. 72-1196 are a national bank, a bank customer and depositor, a membership organization which

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 72-985, 72-1073, AND 72-1196

The California Bankers
Association, Appellant,

72-985 v.

George P. Shultz, Secretary of
the Treasury, et al.

George P. Shultz, Secretary of
the Treasury, et al
Appellants,

72-1073 v.

The California Bankers
Association et al.

Fortney H. Stark, Jr., et al.,
Appellants,

72-1196 v.

George P. Shultz et al.

On Appeals from the
United States District
Court for the Northern
District of California.

3-18

(March --, 1974)

MR. JUSTICE DOUGLAS, dissenting.

I

The Court expresses a doubt that the California Bankers Association has standing to litigate the claims it asserts. That doubt, however, should be dissipated by our decisions.

Sierra Club v. Morton, 405 U. S. 727, 739 stated unequivocally that "an organization whose members are injured may represent those members in a proceeding for judicial review."

Appellants in No. 72-1196 are a national bank, a bank customer and depositor, a membership organization which

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

March 20, 1974

MEMO TO THE CONFERENCE:

In 72-985, California Bankers v. Schultz and associated cases I am adding to my dissent the following paragraph:

I agree in substance with my Brother Brennan's view that the grant of authority of Congress to the Secretary of the Treasury is too broad to pass constitutional muster. This legislation is symptomatic of the slow eclipse of Congress by the mounting Executive power. The phenomenon is not brand new. It was the case in Schechter Corp. v. United States, 295 U.S. 495. United States v. Robel, 389 U.S. 258, is a more recent example. National Cable Television Assn. v. United States, ___ U.S. ___, and FPC v. New England Power Co., ___ U.S. ___, are even more recent. These omnibus grants of power allow the Executive branch to make the law as it chooses in violation of the teachings of Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, as well as Schechter, that lawmaking is a Congressional, not an Executive, function.

(eC)
WILLIAM O. DOUGLAS

The Conference

Not Enclosed

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 72-985, 72-1073, AND 72-1196

The California Bankers Association, Appellant, 72-985 v. George P. Shultz, Secretary of the Treasury, et al.	On Appeals from the United States District Court for the Northern District of California.
George P. Shultz, Secretary of the Treasury, et al. Appellants, 72-1073 v. The California Bankers Association et al.	
Fortney H. Stark, Jr., et al. Appellants, 72-1196 v. George P. Shultz et al.	

[March --, 1974]

MR. JUSTICE BRENNAN, dissenting.

I concur in Parts I and II of MR. JUSTICE DOUGLAS' opinion. As to the Act's foreign and domestic reporting requirements, however, I see no need to address the independent constitutional objections the plaintiffs below are inseparable from--and in some cases considerably broader than--the recordkeeping requirements. Thus, since in my view the recordkeeping provisions unconstitutionally vest impermissibly broad authority in the Secretary of the Treasury, see *United States v. Robel*, 389 U. S. 258, 270 (BRENNAN, J., concurring), the reporting provisions too are invalid.

The symbiotic nature of the recordkeeping and report-

Circulated
3-19-74

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 72-985, 72-1073, AND 72-1196

The California Bankers
Association, Appellant.

72-985 *v.*

George P. Shultz, Secretary of
the Treasury, et al.

George P. Shultz, Secretary of
the Treasury, et al.
Appellants.

72-1073 *v.*

The California Bankers
Association et al.

Fortney H. Stark, Jr., et al.
Appellants.

72-1196 *v.*

George P. Shultz et al.

On Appeals from the
United States District
Court for the Northern
District of California,

[March —, 1974]

MR. JUSTICE BRENNAN, dissenting

I concur in Parts I and II A of MR. JUSTICE DOUGLAS' opinion. As to the Act's foreign and domestic reporting requirements, however, I see no need to address the independent constitutional objections the plaintiffs below attempt to raise. The reporting requirements are inseparable from—and in some cases considerably broader than—the recordkeeping requirements. Thus, since in my view the recordkeeping provisions unconstitutionally vest impermissibly broad authority in the Secretary of the Treasury, see *United States v. Robel*, 389 U. S. 258, 270 (BRENNAN, J., concurring), the reporting provisions too are invalid.

SUPREME COURT OF THE UNITED STATES

Nos. 72-985, 72-1073, AND 72-1196

The California Bankers
Association, Appellant,
72-985 v.
George P. Shultz, Secretary of
the Treasury, et al.

George P. Shultz, Secretary of
the Treasury, et al.
Appellants,
72-1073 v.
The California Bankers
Association et al.

Fortney H. Stark, Jr., et al.,
Appellants,
72-1196 v.
George P. Shultz et al.

On Appeals from the
United States District
Court for the Northern
District of California.

[April 1, 1974]

MR. JUSTICE BRENNAN, dissenting.

I concur in Parts I and IIA of MR. JUSTICE DOUGLAS' opinion. As to the Act's foreign and domestic reporting requirements, however, I see no need to address the independent constitutional objections the plaintiffs below attempt to raise. The reporting requirements are inseparable from—and in some cases considerably broader than—the recordkeeping requirements. Thus, since in my view the recordkeeping provisions unconstitutionally vest impermissibly broad authority in the Secretary of the Treasury, see *United States v. Robel*, 389 U. S. 258, 269 (1967) (BRENNAN, J., concurring), the reporting provisions too are invalid.

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 15, 1974

Nos. 72-985, 72-1073, and 72-1196
California Bankers Assn. v. Shultz

Dear Bill,

I am glad to join your opinion for the
Court in these cases.

Sincerely yours,

?S.

Mr. Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20530

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 18, 1974

Re: Nos. 72-985, 72-1073 & 72-1196 - California
Bankers Association v. Shultz

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: MAR 27

Nos. 72-985, 72-1073, AND 72-1196

Recirculated: _____

The California Bankers
Association, Appellant,

72-985 v.

George P. Shultz, Secretary of
the Treasury, et al.

George P. Shultz, Secretary of
the Treasury, et al.,
Appellants.

72-1073 v.

The California Bankers
Association et al

Fortney H. Stark, Jr., et al.,
Appellants.

72-1196 v

George P. Shultz et al

On Appeals from the
United States District
Court for the Northern
District of California.

(April 11, 1974)

MR. JUSTICE MARSHALL, dissenting

Although I am in general agreement with the opinions of my Brothers DOUGLAS and BRENNAN, I believe it important to set forth what I view as the essential issue in these cases.

The purposes of the recordkeeping requirements of the Bank Secrecy Act are clear from the language of the legislation itself—to require the maintenance of records which will later be available for examination by the Government in “criminal, tax, or regulatory investigations or proceedings.” See 12 U. S. C. §§ 1829b (a)(2) and 1951 (b). The maintenance of the records is thus but the initial step in a process whereby the Government

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 22, 1974

Dear Bill:

Re: No. 72-985 California Bankers Assn. v. Shultz
No. 72-1073 Shultz v. California Bankers Assn.
No. 72-1196 Stark v. Shultz

By separate letter I am joining your opinion for these cases. I have, however, two comments that I pass on to you for your consideration.

1. Is there something amiss in the last four lines of page 43?

2. As you know, my posture with respect to standing is more flexible than the Court's. I have some difficulty, therefore, in going along very enthusiastically with the first paragraph of Part III on page 20. Perhaps the paragraph is not necessary, for you end up "assuming without deciding" that the CBA has standing. If the paragraph were toned down, I would feel more comfortable. If you do not wish to do this, would you at least consider an additional "see" citation to Doe v. Bolton, 410 U.S. 179, 189 (1973)? There, we concluded that we did not need to pass upon the standing status of certain appellants because other appellants clearly had standing. This has as much, if not more, pertinency for me as the situation in the two cited cases dealing with an organization's representation of their members. If you see fit at least to throw in this additional citation, I shall rest more comfortably.

The standing discussion on page 44-45 does not bother me because the quotation from O'Shea is from that part of Byron's opinion that I joined.

Sincerely,



Mr. Justice Rehnquist

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

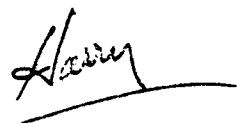
March 22, 1974

Re: No. 72-985 - California Bankers Assn. v. Shultz
No. 72-1073 - Shultz v. California Bankers Assn.
No. 72-1196 - Stark v. Shultz

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 29, 1974

Dear Lewis:

Re: No. 72-985 - The California Bankers Assn. v. Schultz
No. 72-1073 - Schultz v. The California Bankers Assn.
No. 72-1196 - Stark v. Shultz

If you will permit me, I would like to join you in your concurring opinion circulated today. This does not mean that I am receding from my joinder in Bill Rehnquist's opinion.

Sincerely,



Mr. Justice Powell

Copies to the Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Re

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

Nos. 72-985, 72-1073, AND 72-1196

Circulated: MAR 29

Recirculated:

The California Bankers
Association, Appellant,

72-985 v.

George P. Schultz, Secretary of
the Treasury, et al.

George P. Schultz, Secretary of
the Treasury, et al.,
Appellants,

72-1073 v.

The California Bankers
Association et al.

Fortney H. Stark, Jr., et al.,
Appellants,

72-1196 v.

George P. Shultz et al.

On Appeals from the
United States District
Court for the Northern
District of California.

[April —, 1974]

MR. JUSTICE POWELL, concurring.

I join the Court's opinion, but add a word concerning
the Act's domestic reporting requirements.

The Act confers broad authority on the Secretary to
require reports of domestic monetary transactions from
the financial institutions and parties involved. 31
U. S. C. §§ 1081 and 1082. The implementing regulations,
however, require only that the financial institution
"file a report on each deposit, withdrawal, exchange of
currency or other payment or transfer, by, through, or
to such financial institution, which involves a *transaction in currency of more than \$10,000.*" 31 CFR § 103.22
(italics added). As the Court properly recognizes, we

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 72-985, 72-1073, AND 72-1196

2-26-

The California Bankers
Association, Appellant,
72-985 *v.*

George P. Shultz, Secretary of
the Treasury, et al.

George P. Shultz, Secretary of
the Treasury, et al.,
Appellants,

72-1073 *v.*

The California Bankers
Association et al.

Fortney H. Stark, Jr., et al.,
Appellants,

72-1196 *v.*

George P. Shultz et al.

On Appeals from the
United States District
Court for the Northern
District of California.

[February -- 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the
Court.

These appeals present questions concerning the constitutionality of the so-called Bank Secrecy Act of 1970, and the implementing regulations promulgated thereunder by the Secretary of the Treasury. The Act, Pub. L. No. 508, 84 Stat. 1114 (1970), 12 U. S. C. §§ 1829b, 1730d, 1951-1959, and 31 U. S. C. §§ 1051-1122, was enacted by Congress in 1970 following extensive hearings concerning the unavailability of foreign and domestic bank records of customers thought to be engaged in activities



March 14, 1974

Re: Nos. 72-985, 72-~~1~~1073 and 72-1196 - California
Bankers v. Shultz, et al.

Dear Byron:

In the light of our conversation about this case yesterday, I am wondering if the following text of a footnote, inserted just before the quotation on page 44, would fill the bill:

"We hold here and in other parts of this opinion that certain of the plaintiffs did not make the requisite allegations in the District Court to give them standing to challenge the Act and the regulations issued pursuant to it. In so holding, we do not, of course, mean to imply that such claims would be meritorious if presented by a litigant who had standing."

Sincerely,

WHR

Mr. Justice White

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 22, 1974

Re: No. 72-985, et al. - California Bankers Assn. v.
Shultz, et al.

Dear Harry:

I hate to be as dependent upon you as I apparently am for catching mistakes in my opinions; I am obviously grateful to you for catching the one on page 43 of this draft. Since three others had joined the opinion as it was, I am taking the less drastic of your two alternative suggestions for the paragraph on page 20 dealing with standing, and inserting the citation to Doe v. Bolton, 410 U.S. 179, as you suggest.

Thanks.

Sincerely,



Mr. Justice Blackmun

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47
3-25

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 72-985, 72-1073, AND 72-1196

3-25

The California Bankers
Association, Appellant,
72-985 *v.*
George P. Shultz, Secretary of
the Treasury, et al.
George P. Shultz, Secretary of
the Treasury, et al.,
Appellants,
72-1073 *v.*
The California Bankers
Association et al.
Fortney H. Stark, Jr., et al.,
Appellants,
72-1196 *v.*
George P. Shultz et al.

On Appeals from the
United States District
Court for the Northern
District of California.

[March —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the
Court.

These appeals present questions concerning the constitutionality of the so-called Bank Secrecy Act of 1970, and the implementing regulations promulgated thereunder by the Secretary of the Treasury. The Act, Pub. L. No. 508, 84 Stat. 1114 (1970), 12 U. S. C. §§ 1829b, 1730d, 1951-1959, and 31 U. S. C. §§ 1051-1122, was enacted by Congress in 1970 following extensive hearings concerning the unavailability of foreign and domestic bank records of customers thought to be engaged in activities

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 72-985, 72-1073, AND 72-1196

3-29-7

The California Bankers
Association, Appellant,

72-985 *v.*

George P. Shultz, Secretary of
the Treasury, et al.

George P. Shultz, Secretary of
the Treasury, et al.,
Appellants,

72-1073 *v.*

The California Bankers
Association et al.

Fortney H. Stark, Jr., et al.,
Appellants,

72-1196 *v.*

George P. Shultz et al.

On Appeals from the
United States District
Court for the Northern
District of California.

[March --, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the
Court.

These appeals present questions concerning the constitutionality of the so-called Bank Secrecy Act of 1970, and the implementing regulations promulgated thereunder by the Secretary of the Treasury. The Act, Pub. L. No. 508, 84 Stat. 1114 (1970), 12 U. S. C. §§ 1829b, 1730d, 1951-1959, and 31 U. S. C. §§ 1051-1122, was enacted by Congress in 1970 following extensive hearings concerning the unavailability of foreign and domestic bank records of customers thought to be engaged in activities