

The Burger Court Opinion Writing Database

*Federal Energy Administration v.
Algonquin SNG, Inc.*

426 U.S. 548 (1976)

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

June 14, 1976

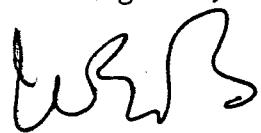
(8)

Re: 75-382 - Federal Energy Administration
v. Algonquin SNG

Dear Thurgood:

I join your proposed June 9 opinion.

Regards,



Mr. Justice Marshall

Copies to the Conference

✓
✓
Supreme Court of the United States
Washington, D. C. 20543
3

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 10, 1976

RE: No. 75-382 Federal Energy Administration v. Algonquin
SNG, et al.

Dear Thurgood:

I agree.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

2
4
v

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 10, 1976

No. 75-382 - FEA v. Algonquin SNG

Dear Thurgood,

I am glad to join your opinion for
the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 10, 1976

Re: No. 75-382 - Federal Energy Administration
v. Algonquin SNG

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Marshall

Circulated: JUN 9 1976

Recirculated: _____

No. 75-382 - Federal Energy Administration, et al. v. Algonquin
SNG, et al.

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Section 232(b) of the Trade Expansion Act of 1962, Pub. L.

No. 87-794, 76 Stat. 877, as amended by § 127(d) of the Trade Act
of 1974, Pub. L. No. 93-618, 88 Stat. 1993, 19 U.S.C. 1862(b)
(Supp. IV), provides that if the Secretary of the Treasury finds that
an "article is being imported into the United States in such quantities
or under such circumstances as to threaten to impair the national
security," the President is authorized to

"take such action, and for such time, as he deems
necessary to adjust the imports of [the] article and
its derivatives so that . . . imports [of the article]
will not threaten to impair the national security." 1/

All parties to this case agree that § 232(b) authorizes the President
to adjust the imports of petroleum and petroleum products by imposing
quotas on such imports. What we must decide is whether § 232(b) also

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

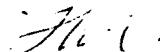
June 14, 1976

Re: No. 75-382 -- Federal Energy Admin., et al. v.
Algonquin SNG, et al.

Dear John:

Thank you for your memorandum of June 10. With respect to your suggestion, I would prefer that the opinion not discuss the question of the per se deference that should be paid to the President's interpretation of §232(b). We of course normally pay a high degree of deference to an agency's interpretation of a statute which it is charged with enforcing and indeed accept the agency interpretation as long as it is "sufficiently reasonable." Train v. NRDC, 421 U.S. 60, 87 (1975). This broad rule of deference is founded largely on our respect for agency expertise and our assumption that Congress intended the agency in question to fill in the gaps in the relevant statute. While ultimately we may have to deal in detail with the problem whether and/or how the rule should apply to the President's interpretation of the type of statute at issue here, I don't think we need do so in this case. The opinion as it stands now relies on the Executive Branch's interpretation of §232(b) only insofar as Congressional acquiescence in that interpretation is demonstrated by post-interpretation enactment and re-enactment of the statute. See pages 15, 16 and 18 of my proposed opinion. Putting any more weight on the mere fact that the President interpreted the statute to authorize license fees could create the impression that even a much broader interpretation of the statute by the President would also be upheld by this Court. I prefer not to risk creating such an impression. See page 20 of my proposed opinion.

Sincerely,



Mr. Justice Stevens

cc: The Conference

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: Mr. Justice Marshall
 Circulated: JUN 15 1976

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SUPREME COURT OF THE UNITED STATES

No. 75-382

Federal Energy Admin-
 istration et al.,
 Petitioners,
 v.
 Algonquin SNG, Inc.,
 et al. } On Writ of Certiorari to the
 } United States Court of Ap-
 } peals for the District Colum-
 } bia Circuit.

[June —, 1976]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Section 232 (b) of the Trade Expansion Act of 1962, Pub. L. No. 87-794, 76 Stat. 877, as amended by § 127 (d) of the Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1993, 19 U. S. C. § 1862 (b) (Supp. IV), provides that if the Secretary of the Treasury finds that an "article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security," the President is authorized to

"take such action, and for such time, as he deems necessary to adjust the imports of [the] article and its derivatives so that . . . imports [of the article] will not threaten to impair the national security."¹

¹ Section 232 (b) provides in full:

"Upon request of the head of any department or agency, upon application of an interested party, or upon his own motion, the Secretary of the Treasury (hereinafter referred to as the 'Secretary') shall immediately make an appropriate investigation, in the course of which he shall seek information and advice from, and shall con-

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 14, 1976

Re: No. 75-382 - FEA v. Algonquin

Dear Thurgood:

Please join me. I would prefer not to add the short paragraph John has suggested.

Sincerely,

H. A. B./ws

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 11, 1976

No. 75-382 Federal Energy Administration
v. Algonquin

Dear Thurgood:

Please join me.

Sincerely,

Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

(6)

June 11, 1976

Re: No. 75- 382 - Federal Energy Administration v.
Algonquin

Dear Thurgood:

Please join me.

Sincerely,

Wm

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20542

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 10, 1976

Re: 75-382 - Federal Energy Admin., et al. v.
Algonquin SNG, et al.

Dear Thurgood:

You have written a fine opinion which I am happy to join.

This thought occurred to me while reading it. We regularly accord special deference to an interpretation of a statute by the agency charged with responsibility for administering it. It seems to me that that rule should be applied to a statute giving specific authority to the President, particularly when it concerns foreign affairs and national security. I wonder if you might add a short paragraph acknowledging that the President's construction of a statute of this kind is entitled to a presumption of validity, or special respect from a coordinate branch of government, or something to that effect. I make the suggestion because my instincts tell me that this opinion has more importance for the future than most of our cases this Term.

In all events, I join without reservation.

Respectfully,



Mr. Justice Marshall

Copies to the Conference