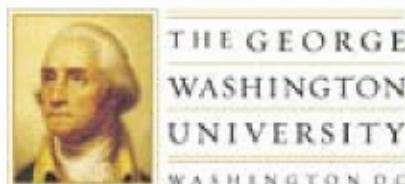


# The Burger Court Opinion Writing Database

*Guam v. Olsen*

431 U.S. 195 (1977)

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

May 6, 1977

Re: 76-439 - Territory of Guam v. Olsen

Dear Bill:

I join.

Regards,

WBH

Mr. Justice Brennan

Copies to the Conference

To: The Chief Justice  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Black  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: 5/27/77

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-439

Territory of Guam, Petitioner, | On Writ of Certiorari to the  
 v. | United States Court of Appeals for the Ninth Circuit.  
 Edmund J. Olsen.

[May —, 1977]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The question for decision in this case is whether the provision of § 22 of the 1950 Organic Act of Guam that the District Court of Guam "shall have such appellate jurisdiction as the [Guam] legislature may determine" authorizes the Legislature of Guam to divest the appellate jurisdiction of the District Court under the Act to hear appeals from local Guam courts, and to transfer that jurisdiction to the Supreme Court of Guam newly created by the Guam Legislature.

Section 22 (a) of the Organic Act, Pub. L. No. 630, c. 512, § 22, 64 Stat. 384, 389-390 (1950), 48 U. S. C. § 1424 (a), before an amendment not relevant here, provided:

"There is hereby created a court of record to be designated the "District Court of Guam," and the judicial authority of Guam shall be vested in the District Court of Guam and in such court or courts as may have been or may hereafter be established by the laws of Guam. The District Court of Guam shall have, in all causes arising under the laws of the United States, the jurisdiction of a district court of the United States as such court is defined in section 451 of title 28, United States Code, and shall have original jurisdiction in all other causes in Guam, jurisdiction over which has not been transferred by the legislature to other court or courts established by it, and shall have such appellate jurisdiction as the legislature

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

From: Mr. Justice Brennan

Circulated:

Recirculated: 3/19/77

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-439

Territory of Guam, Petitioner, ) On Writ of Certiorari to the  
 v. ) United States Court of Ap-  
 Edmund J. Olsen. ) peals for the Ninth Circuit.

[May —, 1977]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

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### I

Section 22 (a) of the Organic Act, Pub. L. No. 630, c. 512, § 22, 64 Stat. 384, 389-390 (1950), 48 U. S. C. § 1424 (a), before an amendment not relevant here, provided:

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 16, 1977

76-439, Territory of Guam v. Olsen

Dear Thurgood,

I would appreciate your adding my name  
to your dissenting opinion in this case.

Sincerely yours,

P.S.  
P.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

*WB*  
*In due course*  
*I will take a*  
*short break*  
*for the moment*  
*Byron*  
April 28, 1977

Re: No. 76-439 - Guam v. Olsen

Dear Bill:

Please join me.

Sincerely,

*Byron*

Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 28, 1977

Re: No. 76-439 -- Guam v. Olsen

Dear Bill:

In due course, I will file a short dissent.

Sincerely,

*JM*  
T. M.

Mr. Justice Brennan

cc: The Conference

MAY 12 1977

No. 76-439, Territory of Guam v. Olsen

MR. JUSTICE MARSHALL, dissenting.

Although this case may at first glance seem unimportant to anyone but the residents of Guam, the result of the Court's decision is perhaps unprecedented in our history. The Court today abolishes the Supreme Court of Guam, a significant part of the system of self-government established by some 85,000 American citizens through their freely-elected Legislature.<sup>1/</sup>

The Court's error, in my view, lies in its misinterpretation of the Organic Act of Guam. I do not doubt that Congress has the authority in the exercise of its plenary power over territories of the United States, Article IV, §3, to reverse Guam's decision to reorganize its local court system. In this case, however, Congress has plainly authorized enactment of the challenged legislation, while there has been no corresponding delegation to this Court of the Congressional power to veto such laws. Because "our judicial function" is limited "to apply[ing] statutes on the basis of what Congress has

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: \_\_\_\_\_

Recirculated: MAY 16 1977

PRINTED  
 1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-439

Territory of Guam, Petitioner, | On Writ of Certiorari to the  
 v. | United States Court of Ap-  
 Edmund J. Olsen. | peals for the Ninth Circuit.

[May —, 1977]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE REHNQUIST and MR. JUSTICE STEVENS join, dissenting.

Although this case may at first glance seem unimportant to anyone but the residents of Guam, the result of the Court's decision is perhaps unprecedented in our history. The Court today abolishes the Supreme Court of Guam, a significant part of the system of self-government established by some 85,000 American citizens through their freely elected legislature.<sup>1</sup>

The Court's error, in my view, lies in its misinterpretation of the Organic Act of Guam. I do not doubt that Congress has the authority in the exercise of its plenary power over territories of the United States, Art. IV, § 3, to reverse Guam's decision to reorganize its local court system. In this case, however, Congress has plainly authorized enactment of the challenged legislation, while there has been no corresponding delegation to this Court of the congressional power to veto such laws. Because "our judicial function" is limited "to apply[ing] statutes on the basis of what Congress has written, not what Congress might have written," *United States v. Great Northern R. Co.*, 343 U. S. 562, 575 (1952), I must respectfully dissent.

In reaching its decision, the Court focuses exclusively on the meaning of the second half of the second sentence of § 22 (a) of the Organic Act of Guam, 48 U. S. C. § 1424 (a).<sup>2</sup>

<sup>1</sup> See Statistical Abstract of the United States (1976) 855, 856; 8 U. S. C. § 1407; Guam Government Code § 2056.

<sup>2</sup> This statute provides in pertinent part:

"There is created a court of record to be designated the 'District Court

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

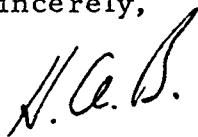
May 2, 1977

Re: No. 76-439 - Guam v. Olsen

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 30, 1977

There is  
another letter  
from LP to WB  
that is dated  
4/30 & on the  
list; this is an  
additional  
letter,

No. 76-439 Territory of Guam v. Olsen

Dear Bill:

I have, in a separate note to the Conference, joined  
your fine opinion for the Court.

My clerk, Dave Martin, has a couple of editing  
suggestions that I think may be worth considering. I am  
asking Dave to bring them to the attention of the appropriate  
clerk in your Chambers.

Sincerely,



Mr. Justice Brennan

lfp/ss

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 30, 1977

No. 76-439 Territory of Guam v. Olsen

Dear Bill:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

(2)

May 13, 1977

Re: No. 76-439 - Territory of Guam v. Olsen

Dear Thurgood:

Please join me in your dissenting opinion in this case.

Sincerely,

*Wm*

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

①

May 13, 1977

Re: 76-439 - Territory of Guam v. Olsen

Dear Thurgood:

Please join me.

Respectfully,



Mr. Justice Marshall

Copies to the Conference