

# The Burger Court Opinion Writing Database

*Pfizer Inc. v. Government of India*  
434 U.S. 308 (1978)

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

November 14, 1977

Re: 76-749 Pfizer v. India

Dear Lewis & Bill:

I will send around a dissent in due course.

Regards,

(WSB)

Mr. Justice Powell

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

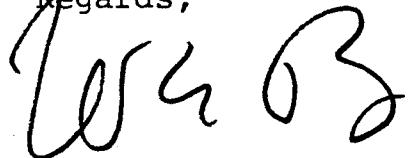
November 30, 1977

Dear Potter:

Re: 76-749 Pfizer, Inc., et al v. Government of India

I expect to have my dissent around in this case  
tomorrow.

Regards,



Mr. Justice Stewart

cc: The Conference

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

From: The Chief Justice

Circulated: DEC 1 1977

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

Re: 76-749 - Pfizer, Inc., et al. v. Government of India,  
et al.

MR. CHIEF JUSTICE BURGER, dissenting:

The Court today holds that foreign sovereigns, specifically the Governments of India, Iran and the Philippines, are entitled to bring treble damage actions in American courts against American corporations and others for alleged violations of the anti-trust laws; the Court reaches this result by holding that for purposes of §4 of the Clayton Act, foreign sovereigns are "persons". I dissent from this undisguised exercise of legislative power since I find the result is not only plainly at odds with the language of the statute but also with its legislative history and prior precedents of this Court. The resolution of this delicate and important policy issue should be left to the Congress and the Executive. Congressional silence on the question almost a century

See pp 1, 2, 6

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

From: The Chief Justice

Circulated:

DEC 5 1977

Recirculated:

1st DRAFT

Printed

## SUPREME COURT OF THE UNITED STATES

No. 76-749

Pfizer, Inc., et al., Petitioners, | On Writ of Certiorari to the  
 v. | United States Court of Ap-  
 Government of India et al. | peals for the Eighth Circuit.

[December —, 1977]

MR. CHIEF JUSTICE BURGER, dissenting.

The Court today holds that foreign sovereigns, specifically the Governments of India, Iran, and the Philippines, are entitled to bring treble-damage actions in American courts against American corporations and others for alleged violations of the antitrust laws; the Court reaches this result by holding that for purposes of § 4 of the Clayton Act, foreign sovereigns are "persons." I dissent from this undisguised exercise of legislative power since I find the result is not only plainly at odds with the language of the statute but also with its legislative history and precedents of this Court. The resolution of this delicate and important policy issue should be left to the Congress and the Executive. Congressional silence on the question almost a century ago provides no license for the Court to make this sensitive political decision.

### A

"The starting point in every case involving construction of a statute is the language itself." *Blue Chip Stamps v. Manor Drug Stores*, 421 U. S. 723, 730. The relevant provisions here are § 1 of the Clayton Act in which the word "person" is defined, and § 4 in which the treble-damage remedy is conferred on those falling within the precisely enumerated categories. Section 1 provides, in relevant part:

"The word 'person' or 'persons' wherever used in this Act shall be deemed to include corporations and associa-

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

From: The Chief Justice

Circulated: \_\_\_\_\_

Recirculated: JAN 5 1978

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-749

Pfizer, Inc., et al., Petitioners, | On Writ of Certiorari to the  
v. | United States Court of Ap-  
Government of India et al. | peals for the Eighth Circuit.

[December —, 1977]

MR. CHIEF JUSTICE BURGER, with whom MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST join, dissenting.

The Court today holds that foreign nations are entitled to bring treble-damage actions in American courts against American suppliers for alleged violations of the antitrust laws; the Court reaches this extraordinary result by holding that for purposes of § 4 of the Clayton Act, foreign sovereigns are "persons," while conceding paradoxically that the question "was never considered at the time the Sherman and Clayton Acts were enacted." *Ante*, at 4.

I dissent from this undisguised exercise of legislative power since I find the result not only plainly at odds with the language of the statute but also with its legislative history and precedents of this Court. The resolution of the delicate and important policy issue of giving more than 150 foreign countries the benefits and remedies enacted to protect American consumers should be left to the Congress and the Executive. Congressional silence over a period of almost a century provides no license for the Court to make this sensitive political decision vastly expanding the scope of the statute Congress enacted.

### A

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

From: The Chief Justice

Circulated: \_\_\_\_\_

3rd DRAFT

Recirculated: JAN 9 1978

**SUPREME COURT OF THE UNITED STATES**

No. 76-749

Pfizer, Inc., et al., Petitioners, | On Writ of Certiorari to the  
 v. | United States Court of Ap-  
 Government of India et al. | peals for the Eighth Circuit.

[January —, 1978]

MR. CHIEF JUSTICE BURGER, with whom MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST join, dissenting.

The Court today holds that foreign nations are entitled to bring treble-damage actions in American courts against American suppliers for alleged violations of the antitrust laws; the Court reaches this extraordinary result by holding that for purposes of § 4 of the Clayton Act, foreign sovereigns are "persons," while conceding paradoxically that the question "was never considered at the time the Sherman and Clayton Acts were enacted." *Ante*, at 4.

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**A**

"The starting point in every case involving construction of a statute is the language itself." *Blue Chip Stamps v. Manor Drug Stores*, 421 U. S. 723, 756 (POWELL, J., concurring). The relevant provisions here are § 1 of the Clayton Act in which the word "person" is defined, and § 4 in which the

See 1519

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

CHAMBERS OF  
JUSTICE WM.J. BRENNAN, JR.

November 7, 1977

MEMORANDUM TO THE CONFERENCE

RE: No. 76-749 Pfizer, Inc. v. Government of India

This will confirm that Potter has undertaken to try  
the Court opinion in the above.

W.J.B. Jr.

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

CHAMBERS OF  
JUSTICE WM.J. BRENNAN, JR.

November 30, 1977

RE: No. 76-749 Pfizer, Inc. v. Government of India

Dear Potter:

I agree.

Sincerely,

*Biel*

Mr. Justice Stewart  
cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 1, 1977

RE: No. 76-749 Pfizer, Inc. v. Government of India

Dear Potter:

I wonder if it would not be better to delete the citation of Monroe v. Pape, in footnote 14. I suggest it because of the pendency of Monell where we are going to canvass the whole question of public bodies as "persons".

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

From: Mr. Justice Stewart

Circulated: NOV 29 1977

2nd DRAFT

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

## SUPREME COURT OF THE UNITED STATES

No. 76-749

Pfizer, Inc., et al., Petitioners, | On Writ of Certiorari to the  
 v. | United States Court of Appeals  
 Government of India, et al. | for the Eighth Circuit.

[November —, 1977]

MR. JUSTICE STEWART delivered the opinion of the Court.

In this case we are asked to decide whether a foreign nation is entitled to sue in our courts for treble damages under the antitrust laws. The respondents are the Government of India, the Imperial Government of Iran, and the Republic of the Philippines. They brought separate actions in federal district courts against the petitioners, six pharmaceutical manufacturing companies. The actions were later consolidated for pretrial purposes in the United States District Court for the District of Minnesota.<sup>1</sup> The complaints alleged that the petitioners had conspired to restrain and monopolize interstate and foreign trade in the manufacture, distribution and sale of broad spectrum antibiotics, in violation of §§ 1 and 2 of the Sherman Act, ch. 647, 26 Stat. 209, as amended, 15 U. S. C. §§ 1, 2. Among the practices the petitioners allegedly engaged in were price fixing, market division and fraud upon the United

<sup>1</sup> Similar actions were also brought by Spain, South Korea, West Germany, Colombia, Kuwait and the Republic of Vietnam. Vietnam was a party in this case in the Court of Appeals and was named as a respondent in the petition for certiorari. Subsequent to the filing of the petition Vietnam's complaint was dismissed by the District Court on the ground that the United States no longer recognized the government of Vietnam; the dismissal was affirmed by the Court of Appeals. *Republic of Vietnam v. Pfizer, Inc.*, 556 F. 2d 892 (CA8). Vietnam has not participated as a party in this Court. Some of the other suits have been settled and the rest are pending.

PS  
Please return me  
next wk  
pp. 1, 6, 7

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

From: Mr. Justice Stewart

Circulated: \_\_\_\_\_

Recirculated: **NOV 30 1977**

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-749

Pfizer, Inc., et al., Petitioners, | On Writ of Certiorari to the  
v. | United States Court of Appeals  
Government of India, et al. | for the Eighth Circuit.

[November —, 1977]

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

CHAMBERS OF  
JUSTICE POTTER STEWART

December 1, 1977

Re: No. 76-749, Pfizer v. Government of India

Dear Bill,

I think your suggestion is a good one. The  
footnote reference to Monroe v. Pape will be deleted.

Sincerely yours,

P.S.  
P.

Mr. Justice Brennan

Copies to the Conference

SEE PAGES: 5, 7, 9

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

From: Mr. Justice Stewart

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4th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-749

Pfizer, Inc., et al., Petitioners, | On Writ of Certiorari to the  
 v. | United States Court of Appeals for the Eighth Circuit.  
 Government of India, et al.

[November —, 1977]

MR. JUSTICE STEWART delivered the opinion of the Court.

In this case we are asked to decide whether a foreign nation is entitled to sue in our courts for treble damages under the antitrust laws. The respondents are the Government of India, the Imperial Government of Iran, and the Republic of the Philippines. They brought separate actions in federal district courts against the petitioners, six pharmaceutical manufacturing companies. The actions were later consolidated for pretrial purposes in the United States District Court for the District of Minnesota.<sup>1</sup> The complaints alleged that the petitioners had conspired to restrain and monopolize interstate and foreign trade in the manufacture, distribution and sale of broad spectrum antibiotics, in violation of §§ 1 and 2 of the Sherman Act, ch. 647, 26 Stat. 209, as amended, 15 U. S. C. §§ 1, 2. Among the practices the petitioners allegedly engaged in were price fixing, market division and fraud upon the United

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SEE PAGES: 7, 11

✓ Mr. Chief Justice  
✓ Mr. Justice Burger  
✓ Mr. Justice Powell  
✓ Mr. Justice Rehnquist  
✓ Mr. Justice Black  
✓ Mr. Justice Marshall  
✓ Mr. Justice Powell  
✓ Mr. Justice Rehnquist  
✓ Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: \_\_\_\_\_

Recirculated: DEC 13 1977

5th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-749

Pfizer, Inc., et al., Petitioners, | On Writ of Certiorari to the  
v. | United States Court of Ap-  
Government of India et al. | peals for the Eighth Circuit.

[November —, 1977]

MR. JUSTICE STEWART delivered the opinion of the Court.

In this case we are asked to decide whether a foreign nation is entitled to sue in our courts for treble damages under the antitrust laws. The respondents are the Government of India, the Imperial Government of Iran, and the Republic of the Philippines. They brought separate actions in federal district courts against the petitioners, six pharmaceutical manufacturing companies. The actions were later consolidated for pretrial purposes in the United States District Court for the District of Minnesota.<sup>1</sup> The complaints alleged that the petitioners had conspired to restrain and monopolize interstate and foreign trade in the manufacture, distribution and sale of broad spectrum antibiotics, in violation of §§ 1 and 2 of the Sherman Act, ch. 647, 26 Stat. 209, as amended, 15 U. S. C. §§ 1, 2. Among the practices the petitioners allegedly engaged in were price fixing, market division and fraud upon the United

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 9, 1977

Re: No. 76-749 - Pfizer, Inc. v. Government of  
India

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Dear Potter:

I agree.

Sincerely,



Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

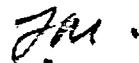
December 1, 1977

Re: No. 76-749, Pfizer, Inc. v. Government of India

Dear Potter:

Please join me.

Sincerely,



T. M..

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 2, 1977

No. 76-749 Pfizer v. India

Dear Potter:

I voted with the Chief Justice in this case, and expect to adhere to that position.

I have not had an opportunity to review the Chief's dissent, and write merely to let you know that I remain in dissent.

Sincerely,

*Lewis*

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

From: Mr. Justice Powell

Circulated: DEC 15 1977

1st DRAFT

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

## SUPREME COURT OF THE UNITED STATES

No. 76-749

Pfizer, Inc., et al., Petitioners, | On Writ of Certiorari to the  
 v. | United States Court of Appeals for the Eighth Circuit.  
 Government of India et al.

[January —, 1978]

MR. JUSTICE POWELL, dissenting.

I join THE CHIEF JUSTICE in his dissent, and add a word to emphasize my difficulty with the Court's decision.

The issue is whether the antitrust laws of this country are to be made available for treble-damage suits against American businesses by the governments of other countries. The Court resolves this issue in favor of such governments by construing the word "persons" in § 4 of the Clayton Act to include "foreign governments." No one argues seriously that this was the intent of Congress in 1890 when the term "persons" was included in the Act. Indeed, the Court acknowledges that this "question was never considered at the time the Sherman and Clayton Acts were enacted." *Ante*, at 4.

Despite this conclusion as to the absence of any congressional consideration, the inviting possibility of treble damages is today extended by judicial action to the sovereign nations of the world.<sup>1</sup> With minor exceptions, the United States recognizes the governments of all of these nations. We may assume that most of them have no equivalent of our antitrust laws and would be unlikely to afford reciprocal opportunities to the United States to sue and recover damages in their courts.

The Court has resolved a major policy question. As the

<sup>1</sup> At present there are 162 sovereign nations in the world.

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

From: Mr. Justice Powell

Circulated: \_\_\_\_\_

2nd DRAFT

Recirculated: DEC 21 1977

## SUPREME COURT OF THE UNITED STATES

No. 76-749

Pfizer, Inc., et al., Petitioners, | On Writ of Certiorari to the  
 v. | United States Court of Ap-  
 Government of India et al. | peals for the Eighth Circuit.

[January —, 1978]

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<sup>1</sup> At present there are 162 sovereign nations in the world.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

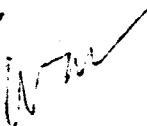
December 7, 1977

Re: No. 76-749 - Pfizer v. Government of India

Dear Chief:

Please join me in your dissenting opinion.

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

November 29, 1977

RE: 76-749 - Pfizer, Inc., et al. v. Government of India, et al

Dear Potter:

Please join me.

Respectfully,



Mr. Justice Stewart

Copies to the Conference