

# The Burger Court Opinion Writing Database

## *Adamo Wrecking Co. v. United States*

434 U.S. 275 (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

October 31, 1977

Dear Bill:

Re: 76-911 Adamo Wrecking Co. v. United States

I like the number one alternative. The case  
may well fade out on a remand.

Regards,

LEB

Mr. Justice Rehnquist

cc: Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell

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

CHAMBERS OF  
THE CHIEF JUSTICE

December 22, 1977

Dear Bill:

Re: 76-911 Adamo Wrecking v. U.S.

As one of the final acts of calendar 1977, I join.

Regards, *to Merry Christmas*

Mr. Justice Rehnquist

cc: The Conference

*WJB*

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

October 17, 1977

RE: No. 76-911 Adamo Wrecking Co. v. United States

Dear John:

The vote in the above is 5 to 4 with Potter, Harry, you and I to Affirm. Would you be interested in taking on the dissent after Bill Rehnquist circulates for the Court?

Sincerely,



Mr. Justice Stevens

cc: Mr. Justice Stewart  
Mr. Justice Blackmun

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 9, 1977

RE: No. 76-911 Adamo Wrecking Co. v. United States

Dear Potter:

Please join me in the dissent you have prepared  
in the above.

Sincerely,

*Bill*

Mr. Justice Stewart

cc: The Conference

No. 76-911, ADAMO WRECKING CO. v. UNITED STATES

MR. JUSTICE STEWART, dissenting.

Section 307(b)(1) of the Clean Air Act provides that.

a "petition for review of action of the Administrator in promulgating . . . any emission standard under section 112" may be filed only in the United States Court of Appeals for the District of Columbia within 30 days of promulgation. Section 307(b)(2) of the Act provides that an "[a]ction of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement." Despite these unambiguous provisions, the Court holds in this case that such an action of the Administrator shall be subject to judicial review in a criminal proceeding for enforcement of the Act, at least sometimes. Because this tampering with the

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: DEC 9 1977

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: DEC 9 1978

1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 76-911

Adamo Wrecking Co.,  
 Petitioner,  
 v.  
 United States. } On Writ of Certiorari to the United  
 States Court of Appeals for the Sixth  
 Circuit.

[January —, 1978]

MR. JUSTICE STEWART, dissenting.

Section 307 (b)(1) of the Clean Air Act provides that a "petition for review of action of the Administrator in promulgating . . . any emission standard under section 112" may be filed only in the United States Court of Appeals for the District of Columbia within 30 days of promulgation. Section 307 (b) (2) of the Act provides that an "[a]ction of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement." Despite these unambiguous provisions, the Court holds in this case that such an action of the Administrator *shall* be subject to judicial review in a criminal proceeding for enforcement of the Act, at least sometimes. Because this tampering with the plain statutory language threatens to destroy the effectiveness of the unified and expedited judicial review procedure established by Congress in the Clean Air Act, I respectfully dissent.

The inquiry that the Court today allows a trial court to make—whether the asbestos regulation at issue is an emission standard of the type envisioned by Congress—is nothing more than an inquiry into whether the Administrator has acted beyond his statutory authority. But such an inquiry is a normal part of judicial review of agency action. 5 U. S. C. § 706 (2)(C); see *Citizens to Preserve Overton Park v. Volpe*, 401 U. S. 402, 415. And it is precisely such "judicial review"

From: Mr. Justice Stewart

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

Re-circulated: DEC 14 1977

**2nd DRAFT**

**SUPREME COURT OF THE UNITED STATES**

**No. 76-911**

Adamo Wrecking Co.,  
Petitioner,  
v.  
United States.

} On Writ of Certiorari to the United  
States Court of Appeals for the Sixth  
Circuit.

[January —, 1978]

MR. JUSTICE STEWART, with whom MR. JUSTICE BRENNAN and MR. JUSTICE BLACKMUN join, dissenting.

Section 307 (b)(1) of the Clean Air Act provides that a "petition for review of action of the Administrator in promulgating . . . any emission standard under section 112" may be filed only in the United States Court of Appeals for the District of Columbia within 30 days of promulgation. Section 307 (b) (2) of the Act provides that an "[a]ction of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement." Despite these unambiguous provisions, the Court holds in this case that such an action of the Administrator *shall* be subject to judicial review in a criminal proceeding for enforcement of the Act, at least sometimes. Because this tampering with the plain statutory language threatens to destroy the effectiveness of the unified and expedited judicial review procedure established by Congress in the Clean Air Act, I respectfully dissent.

The inquiry that the Court today allows a trial court to make—whether the asbestos regulation at issue is an emission standard of the type envisioned by Congress—is nothing more than an inquiry into whether the Administrator has acted beyond his statutory authority. But such an inquiry is a normal part of judicial review of agency action. 5 U. S. C. § 706 (2)(C); see *Citizens to Preserve Overton Park v. Volpe*, 401 U. S. 402, 415. And it is precisely such “judicial review”



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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

October 31, 1977

Re: No. 76-911 - Adamo Wrecking Co. v. U. S.

Dear Bill:

I would prefer to remand for the "emission standard" determination but could go along with the other alternative.

Sincerely,



Mr. Justice Rehnquist

Copies to The Chief Justice  
Mr. Justice Marshall  
Mr. Justice Powell

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 8, 1977

Re: No. 76-911 - Adamo Wrecking Co. v. U. S.

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 1, 1977

Re: No. 76-911, Adamo Wrecking Co. v. United States

Dear Bill:

I would prefer to decide the "emission standard"  
here without remand.

Sincerely,

*J.M.*  
T.M.

Mr. Justice Rehnquist

cc: The Chief Justice  
Mr. Justice White  
Mr. Justice Powell

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 28, 1977

Re: No. 76-911, Adamo Wrecking Co. v. United States

Dear Bill:

Please join me.

Sincerely,

*J.M.*

T. M.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 7, 1977

Re: No. 76-911 - Adamo Wrecking Co. v. U. S.

Dear Bill:

I shall await the dissent in this case.

Sincerely,

*HAB.*

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

Rochester, Minnesota  
December 13, 1977

Re: No. 76-911 - Adamo Wrecking Co. v. U.S.

Dear Potter:

Please join me in your dissenting opinion.

Sincerely,

H. A. B.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

October 31, 1977

No. 76-911 Adamo Wrecking Co. v. U.S.

Dear Bill:

You inquire whether we should remand this case for review by the CA of the DC's conclusion that this regulation is not an "emission standard", or decide the question ourselves.

I am prepared to join an opinion deciding the question ourselves. The recent amendment to §112 expressly draws a distinction between emission standards and "a design, equipment, work practice, or operational standard. . . ." While this subsequent enactment by the Congress is not controlling, it fortifies what I think is the most rational interpretation of the term "emission standard" in the original statute.

Although I have a preference for disposing of the case here, I am content - if others have a contrary preference - to join an opinion that would remand the case with this determination to be made below.

My notes indicate that John Stevens' first vote was to affirm but that he could remand for a determination of whether the regulation in question is an "emission standard". My notes quote John as saying that the petitioner "is entitled to have a court decide whether this is an emission standard".

The possibility of John making a sixth vote - assuming my notes correctly reflect his position - is perhaps a reason supporting your first alternative.

Sincerely,

*Lewis*

Mr. Justice Rehnquist

lfp/ss

cc: The Chief Justice  
Mr. Justice White  
Mr. Justice Marshall

November 16, 1977

No. 76-911 Adamo Wrecking Co. v. U.S

Dear Bill:

I am still with you, but do have some suggestions.

My primary one is that your draft does not seem to address forthrightly the government's principal argument that petitioner could and should have challenged the regulation in the DC Circuit under §307(b)(1) on the ground that it was not an "emission standard". The government then argued that petitioner, having failed to make this challenge within the 30-day period, was precluded by §307(b)(2) from thereafter making it. I would prefer to meet this argument head on. I think it is immaterial whether this challenge could have been made earlier. In the context of a criminal prosecution, a defendant should be able to assert as a defense that the crime with which he is charged was not one created by the statute.

The first full paragraph on page 3 troubles me. The petitioner in this case makes no constitutional challenge to the preclusion statute here. It does rely on language in Yakus for its argument that Chief Justice Stone's opinion explicitly refrained from holding that the preclusion provision would bar a defense that the regulation was invalid on its face. But, as your draft points out in the 6th line of the full paragraph on page 3, "we do not think that [Yakus] decides this one." I therefore see no reason to volunteer that we "adhere" to the holding in Yakus.

I think Yakus was influenced so significantly by the War Powers provisions, that it would not necessarily be a binding precedent in a case involving a constitutional attack on a statute that was so preclusory as arguably to deny due process. In short, why reaffirm Yakus when it is quite unnecessary?



In any event, if you think it necessary to characterize Yakus, I would suggest some modification of the first sentence on page 3. I would at least make clear that any congressional attempt to foreclose challenges to a criminal statute is subject to the due process clause. In my view, a 30-day statute of limitations, precluding defenses in a criminal prosecution should be viewed as a denial of due process. I think Thurgood shares this view in his concern for the "ma and pa" constructors - of whom there are thousands. Few of those have access to or have even heard of the Federal Register, much less read it regularly.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

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

1st DRAFT

Circulated: NOV 29 1977

SUPREME COURT OF THE UNITED STATES

Revised: \_\_\_\_\_

No. 76-911

Adamo Wrecking Co., Petitioner, v. United States.	}	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.
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[November —, 1977]

MR. JUSTICE POWELL concurring.

If the constitutional validity of § 307 (b) of the Clean Air Act had been raised by petitioner, I think it would have merited serious consideration. This section limits judicial review to the filing of a petition in the United States Court of Appeals for the District of Columbia within 30 days from the date of the promulgation by the Administrator of an emission standard. No notice is afforded a party who may be subject to criminal prosecution other than publication of the Administrator's action in the Federal Register.<sup>1</sup> The Act in this respect is similar to the preclusion provisions of the Emergency Price Control Act before the Court in *Yakus v. United States*, 321 U. S. 414 (1944), and petitioner may have thought the decision in that case effectively foreclosed a due process challenge in the present case.

Although I express no considered judgment, I think *Yakus* is at least arguably distinguishable. The statute there came before the Court during World War II, and it can be viewed as

<sup>1</sup> Section 112 (b) (B) of the Act requires the Administrator to publish proposed emission standards and to hold a public hearing before standards are promulgated. But there is no more assurance that notice of proposed standards will come to the attention of the thousands of persons and entities affected than that notice of their actual promulgation will. Neither is it realistic to assume that more than a fraction of these persons and entities could afford to follow or participate in the Administrator's hearing.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

October 31, 1977

Re: No. 76-911 - Adamo Wrecking Co. v. United States

Dear Chief, Byron, Thurgood, and Lewis:

I am now far enough along in the process of drafting this opinion so that, having determined that the contention that a particular regulation is not an "emission standard" may be raised as a defense to a criminal prosecution under the Clean Air Act, we must also decide whether to remand the case to the Sixth Circuit for review of the District Court's conclusion that this regulation is not an "emission standard", or instead to decide the question here ourselves. If we choose the former alternative, it requires saying less about it right now and having the benefit of at least one Court of Appeals opinion if we must consider the question at a later date. The latter alternative has the merit of finally deciding here an essential element of the government's case. My Conference notes indicate that none of the five of us addressed this question, though of course they could be wrong; I will be glad to go along with whatever a majority of you prefer on this point. Will you let me know?

Sincerely,

The Chief Justice  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell

*We will decide whether  
or not this is an emission standard*

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

From: Mr. Justice Brennan

1st DRAFT

Circulated: NOV 3 1977

SUPREME COURT OF THE UNITED STATES

No. 76-911

Adamo Wrecking Co., Petitioner, v. United States.	}	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.
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[November —, 1977]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

The Clean Air Act of 1970 authorizes the Administrator of the Environmental Protection Agency to promulgate "emission standards" for hazardous air pollutants, "at the level which in his judgment provides an ample margin of safety to protect the public health." § 112 (b)(1)(B), 42 U. S. C. § 1857 c-7 (b)(1)(B). The emission of an air pollutant in violation of an applicable emission standard is prohibited by § 112 (c)(1)(B) of the Act, 42 U. S. C. § 1857 c-7 (1)(B). The knowing violation of the latter section, in turn, subjects the violator to fine and imprisonment under the provisions of § 113 (c)(1)(C) of the Act, 42 U. S. C. § 1857 c-8 (c)(1)(C). The final piece in this statutory puzzle is § 307 (b) of the Act, which provides in pertinent part:

"(1) A petition for review of action of the Administrator in promulgating . . . any emission standard under section 112, . . . may be filed only in the United States Court of Appeals for the District of Columbia. . . . Any such petition shall be filed within 30 days from the date of such promulgation or approval, or after such date if such petition is based solely on grounds arising after such 30th day.

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

From: Mr. Justice Rehnquist

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

Recirculated: NOV 11 1977

2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 76-911

Adamo Wrecking Co., Petitioner, v. United States.	}	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.
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[November —, 1977]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

The Clean Air Act of 1970 authorizes the Administrator of the Environmental Protection Agency to promulgate "emission standards" for hazardous air pollutants, "at the level which in his judgment provides an ample margin of safety to protect the public health." § 112 (b)(1)(B), 42 U. S. C. § 1857 c-7 (b)(1)(B). The emission of an air pollutant in violation of an applicable emission standard is prohibited by § 112 (c)(1)(B) of the Act, 42 U. S. C. § 1857 c-7 (c)(1)(B). The knowing violation of the latter section, in turn, subjects the violator to fine and imprisonment under the provisions of § 113 (c)(1)(C) of the Act, 42 U. S. C. § 1857 c-8 (c)(1)(C). The final piece in this statutory puzzle is § 307 (b) of the Act, which provides in pertinent part:

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

November 16, 1977

Re: No. 76-911 Adamo Wrecking Co. v. United States

Dear Lewis:

I think I can accomodate the suggestions contained in your letter of November 16. I would propose the following changes in the first full paragraph on page 3 of the present circulating second draft:

(1) For the second sentence in that paragraph substitute: "That case, however, does not decide this one."

(2) Add at the end of that paragraph the following sentence: "For the reasons hereafter stated, we hold that one such as respondent who is charged with a criminal violation under the Act may defend on the ground that the 'emission standard' which he is charged with having violated was not an 'emission standard' within the contemplation of Congress when it employed that term, even though the 'emission standard' in question has not been previously reviewed under the provisions of § 307(b) of the Act."

Because Byron has already joined the present draft, I am sending him a copy of these proposed changes.

Sincerely,



Mr. Justice Powell

Copy to Mr. Justice White

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

From: Mr. Justice Rehnquist

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

Recirculated: NOV 23 1977

3rd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 76-911

Adamo Wrecking Co.,  
Petitioner,  
v.  
United States. } On Writ of Certiorari to the United  
States Court of Appeals for the Sixth  
Circuit.

[November —, 1977]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

The Clean Air Act of 1970 authorizes the Administrator of the Environmental Protection Agency to promulgate "emission standards" for hazardous air pollutants, "at the level which in his judgment provides an ample margin of safety to protect the public health." § 112 (b) (1) (B), 42 U. S. C. § 1857 c-7 (b) (1) (B). The emission of an air pollutant in violation of an applicable emission standard is prohibited by § 112 (c) (1) (B) of the Act, 42 U. S. C. § 1857 c-7 (c) (1) (B). The knowing violation of the latter section, in turn, subjects the violator to fine and imprisonment under the provisions of § 113 (c) (1) (C) of the Act, 42 U. S. C. § 1857 c-8 (c) (1) (C). The final piece in this statutory puzzle is § 307 (b) of the Act, which provides in pertinent part:

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PP 11-13

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

From: Mr. Justice Rehnquist

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

Recirculated: DEC 6 1977

4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-911

Adamo Wrecking Co., Petitioner, v. United States.	}	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.
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[November —, 1977]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

The Clean Air Act of 1970 authorizes the Administrator of the Environmental Protection Agency to promulgate "emission standards" for hazardous air pollutants, "at the level which in his judgment provides an ample margin of safety to protect the public health." § 112 (b)(1)(B), 42 U. S. C. § 1857 c-7 (b)(1)(B). The emission of an air pollutant in violation of an applicable emission standard is prohibited by § 112 (c)(1)(B) of the Act, 42 U. S. C. § 1857 c-7 (c)(1)(B). The knowing violation of the latter section, in turn, subjects the violator to fine and imprisonment under the provisions of § 113 (c)(1)(C) of the Act, 42 U. S. C. § 1857 c-8 (c)(1)(C). The final piece in this statutory puzzle is § 307 (b) of the Act, which provides in pertinent part:

"(1) A petition for review of action of the Administrator in promulgating . . . any emission standard under section 112, . . . may be filed only in the United States Court of Appeals for the District of Columbia. . . . Any such petition shall be filed within 30 days from the date of such promulgation or approval, or after such date if such petition is based solely on grounds arising after such 30th day.



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

From: Mr. Justice Rehnquist

5th DRAFT

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

**SUPREME COURT OF THE UNITED STATES**

Circulated: DEC 9 1977

No. 76-911

Adamo Wrecking Co.,  
 Petitioner,  
 v.  
 United States.

On Writ of Certiorari to the United  
 States Court of Appeals for the Sixth  
 Circuit.

[November —, 1977]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

The Clean Air Act of 1970 authorizes the Administrator of the Environmental Protection Agency to promulgate "emission standards" for hazardous air pollutants, "at the level which in his judgment provides an ample margin of safety to protect the public health." § 112 (b)(1)(B), 42 U. S. C. § 1857 c-7 (b)(1)(B). The emission of an air pollutant in violation of an applicable emission standard is prohibited by § 112 (c)(1)(B) of the Act, 42 U. S. C. § 1857 c-7 (c)(1)(B). The knowing violation of the latter section, in turn, subjects the violator to fine and imprisonment under the provisions of § 113 (c)(1)(C) of the Act, 42 U. S. C. § 1857 c-8 (c)(1)(C). The final piece in this statutory puzzle is § 307 (b) of the Act, which provides in pertinent part:

"(1) A petition for review of action of the Administrator in promulgating . . . any emission standard under section 112, . . . may be filed only in the United States Court of Appeals for the District of Columbia. . . . Any such petition shall be filed within 30 days from the date of such promulgation or approval, or after such date if such petition is based solely on grounds arising after such 30th day.

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

October 17, 1977

Re: 76-911 - Adamo Wrecking Co. v. United States

Dear Bill:

Thanks for inviting me to take on the dissent.  
I will be happy to do so.

Respectfully,



Mr. Justice Brennan

cc: Mr. Justice Stewart  
Mr. Justice Blackmun

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

November 7, 1977

Re: 76-911 - Adamo Wrecking v. United States

Dear Bill:

In a few days I will circulate a dissent in this case.

Respectfully,



Mr. Justice Rehnquist

Copies to the Conference

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

From: Mr. Justice Stevens

Circulated: DEC 1 1977

1st DRAFT

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

## SUPREME COURT OF THE UNITED STATES

No. 76-911

Adamo Wrecking Co., Petitioner, v. United States.	}	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.
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[December —, 1977]

MR. JUSTICE STEVENS, dissenting.

The reason Congress attached "the most stringent criminal liability," *ante*, at 7, to the violation of an emission standard for a "hazardous air pollutant" is that substances within that narrow category pose an especially grave threat to human health. That is also a reason why the Court should avoid a construction of the statute that would deny the Administrator the authority to regulate these poisonous substances effectively.

The reason the Administrator did not frame the emissions standard for asbestos in numerical terms is that asbestos emissions cannot be measured numerically. For that reason, if Congress simultaneously commanded him (a) to regulate asbestos emissions by establishing and enforcing emissions standards and (b) never to use any kind of standard except one framed in numerical terms, it commanded an impossible task.

Nothing in the language of the 1970 statute, or in its history, compels so crippling an interpretation of the Administrator's authority. On the contrary, I am persuaded (1) that the Administrator's regulation of asbestos emissions was entirely legitimate; (2) that if this conclusion were doubtful, we would nevertheless be required to respect his reasonable interpretation of the governing statute; (3) that the 1977 Amendments, fairly read, merely clarified his pre-existing

pp. 7-9, 12-13  
new. n. 23

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-911

From: Mr. Justice Stevens

Circulated: DEC 7 1977  
Recirculated:

Adamo Wrecking Co.,  
Petitioner,  
v.  
United States.

On Writ of Certiorari to the United  
States Court of Appeals for the Sixth  
Circuit.

[December —, 1977]

MR. JUSTICE STEVENS, dissenting.

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

From: Mr. Justice Stevens

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

Recirculated: DEC 12 1977

3rd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 76-911

Adamo Wrecking Co., Petitioner, v. United States.	}	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.
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[December —, 1977]

MR. JUSTICE STEVENS, dissenting.

The reason Congress attached "the most stringent criminal liability," *ante*, at 7, to the violation of an emission standard for a "hazardous air pollutant" is that substances within that narrow category pose an especially grave threat to human health. That is also a reason why the Court should avoid a construction of the statute that would deny the Administrator the authority to regulate these poisonous substances effectively.

The reason the Administrator did not frame the emissions standard for asbestos in numerical terms is that asbestos emissions cannot be measured numerically. For that reason, if Congress simultaneously commanded him (a) to regulate asbestos emissions by establishing and enforcing emissions standards and (b) never to use any kind of standard except one framed in numerical terms, it commanded an impossible task.

Nothing in the language of the 1970 statute, or in its history, compels so crippling an interpretation of the Administrator's authority. On the contrary, I am persuaded (1) that the Administrator's regulation of asbestos emissions was entirely legitimate; (2) that if this conclusion were doubtful, we would nevertheless be required to respect his reasonable interpretation of the governing statute; (3) that the 1977 Amendments, fairly read, merely clarified his pre-existing

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

From: Mr. Justice Stevens

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4th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-911

Adamo Wrecking Co., Petitioner, v. United States.	}	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.
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[January —, 1978]

MR. JUSTICE STEVENS, dissenting.

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