

The Burger Court Opinion Writing Database

United States v. Rutherford
442 U.S. 544 (1979)

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 11, 1979

Re: 78-605 - U.S. v. Rutherford

Dear Thurgood:

I see Potter's point on the subjects we did not thresh out at Conference. However, I am content to let the Court of Appeals struggle with these comparatively subsidiary issues.

Accordingly, I join.

Regards,

WB

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 24, 1979

(4)

RE: No. 78-605 United States v. Rutherford

Dear Thurgood:

Please join me. I agree with John that the Court of Appeals should have the first crack at the constitutional and grandfather clause issues.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 23, 1979

Re: 78-605 - United States v. Rutherford

Dear Thurgood:

In view of the established principle that a respondent is entitled to support a judgment in his favor on any ground, see, e.g., Dandridge v. Williams, 397, U.S. 471, 475 and note 6, I wonder if it is appropriate to forgo decision on the constitutional and grandfather clause questions presented in this case. If others see no problem, however, I shall join your opinion without identifying my concern, since I agree with everything you have written on these statutory issues.

Sincerely yours,

PS,
P

Mr. Justice Marshall

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 22, 1979

Re: No. 78-605 - U. S. v. Rutherford

Dear Thurgood,

Please join me.

Sincerely yours,



Mr. Justice Marshall

Copies to the Conference

cmc

No. 78-605

United States v. Rutherford

22 MAY 1979

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The question presented in this case is whether the Federal Food, Drug, and Cosmetic Act precludes terminally ill cancer patients from obtaining Laetrile, a drug not recognized as "safe and effective" within the meaning of §201(p)(1) of the Act, 21 U.S.C. §321(p)(1).

I

Section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §355, prohibits interstate distribution of any "new drug" unless the Secretary of Health, Education, and Welfare approves an application supported by substantial evidence of the drug's safety and effectiveness.^{1/} As defined in §201(p)(1) of the Act, 21 U.S.C. §321(p)(1), the term "new

3, 4, 9, 10, 11

29 MAY 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-605

United States et al., Petitioners, } On Writ of Certiorari to the
v. } United States Court of
Glen L. Rutherford et al. } Appeals for the Tenth
Circuit.

[June —, 1979]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The question presented in this case is whether the Federal Food, Drug, and Cosmetic Act precludes terminally ill cancer patients from obtaining Laetrile, a drug not recognized as "safe and effective" within the meaning of § 201 (p)(1) of the Act, 21 U. S. C. § 321 (p)(1).

I

Section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U. S. C. § 355, prohibits interstate distribution of any "new drug" unless the Secretary of Health, Education, and Welfare approves an application supported by substantial evidence of the drug's safety and effectiveness.¹ As defined in § 201 (p)

¹ Section 505 provides in part:

"(a) No person shall introduce or deliver for introduction into interstate commerce any new drug, unless an approval of an application filed pursuant to subsection (b) of this section is effective with respect to such drug.
"(b) Any person may file with the Secretary an application with respect to any drug subject to the provisions of subsection (a) of this section. Such person shall submit to the Secretary as a part of the application (1) full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use. . . .

"(d) If the Secretary finds . . . that (1) the investigations . . . required to be submitted to the Secretary . . . do not include adequate tests by all

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

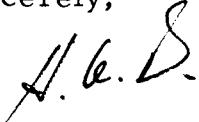
May 31, 1979

Re: No. 78-605 - United States v. Rutherford

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 26, 1979

78-605 U.S. v. Rutherford

Dear Thurgood:

Please join me.

It is possible that I may write a few paragraphs in concurrence.

Sincerely,

Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

(5)

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 29, 1979

78-605 U.S. v. Rutherford

Dear Thurgood:

I have concluded not to write even a brief concurring opinion.

My "join", of course, stands.

Sincerely,

L. Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

W

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 5, 1979

Re: No. 78-605 - United States v. Rutherford

Dear Thurgood:

Please join me.

Sincerely,

W

Mr. Justice Marshall

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

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CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 23, 1979

Re: 78-605 - United States v. Rutherford

Dear Thurgood:

Please join me. I agree with your decision to let the Court of Appeals have the first crack at the constitutional and grandfather clause issues.

Respectfully,

JH

Mr. Justice Marshall

Copies to the Conference