The Burger Court Opinion Writing Database

Universities Research Association v. Coutu

450 U.S. 754 (1981)

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

March 25, 1981

RE: 78-1945 - Universities Research Assn., Inc. v Coutu

Dear Harry:

I can join, but I do have two rather strong "preferences" that I hope you might be willing to accommodate.

(1) In the last paragraph of footnote 16, I question the desirability of a "post mortem" discussion of possible reasons why we denied cert in a case. Will litigants take the remarks in the footnote as an indication that a denial indicates some measure of approval of the decision?

(2) As to the discussion at pages 22-25 of Rep. Goodell's proposed amendment, you carefully state, an amendment never subjected to a vote on the merits is poor evidence of congressional intent. But when the Court embarks on an extensive discussion of it, despite our admonition that may encourage litigants -- and courts -- to rely on such shaky grounds in future cases.

Regards,

WEB

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

March 31, 1981

RE: No. 78-1945, Universities Research Assocs. v. Coutu

Dear Harry:

I will defer to your persistence with regard to Rep. Goodell's proposed amendment, even though the discussion risks out-of-context quoting, and nothing Goodell did has the remotest bearing on the case. Members of Congress sometimes vote against bills they consider redundant of existing law. United States v. Wise, 370 U.S. 405, 411 (1962).

My problem with note 16 is not solved by deleting the final sentence, for it still leaves floating intimations that we denied certiorari for the reasons advanced by the Solicitor General. My problem would be solved by deleting the first two sentences and noting in your characterization of the Court of Appeals' opinion on remand that that court had assumed the contract contained Davis-Bacon stipulations.

Regards,

WEB

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

April 1, 1981

Re: No. 78-1945 - Universities Research Association v. Coutu

Dear Harry,

I join.

Regards,

WEB

Justice Black

Copies to The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 20, 1981

RE: No. 78-1945 Universities Research Association v. Coutu, et al.

Dear Harry:

Please join me in your circulation of February 20.

Sincerely,

Bill

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 17, 1981

Re: No. 78-1945 - UNIVERSITIES RESEARCH ASSN. v. COUTU

Dear Harry,

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.
I.

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 26, 1981

Re: 78-1945 - Universities
Research Association, Inc. v. Coutu

Dear Harry,

It is likely that I shall concur separately in this case.

Sincerely yours,

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 17, 1981

Re: 78-1945 - Universities
Research Association v. Coutu

Dear Harry,

Please join me in your present circulation. I now see no reason to write separately.

Sincerely yours,

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 19, 1981

Re: No. 78-1945 - Universities Research Assoc. v. Stanley E. Coutu

Dear Harry:

Please join me.

Sincerely,

T.M.

T.M.

Justice Blackmun

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: FEB 16 1981

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No 78–1945

Universities Research Association, Inc., Petitioner, *v.* Stanley E. Coutu et al.	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

2/19

[February —, 1981]

JUSTICE BLACKMUN delivered the opinion of the Court.

The Davis-Bacon Act requires that certain federal construction contracts contain a stipulation that laborers and mechanics will be paid not less than prevailing wages, as determined by the Secretary of Labor. The question presented in this case is whether the Act confers upon an employee a private right of action for back wages under a contract that has been administratively determined *not* to call for Davis-Bacon work, and that therefore does not contain a prevailing wage stipulation.

I

Section 1 (a) of the Davis-Bacon Act of March 3, 1931 (Act), ch. 411, § 1, 46 Stat. 1494, as amended, 40 U. S. C. § 276a (a),[1] provides that the advertised specifications for

[1] Section 1 (a) reads:

(a) The advertised specifications for every contract in excess of $2,000, to which the United States or the District of Columbia is a party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the United States or the District of Columbia within the geographical limits of the States of the Union, or the District of Columbia, and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and

Stylistic changes, footnotes renumbered 22-39 pp. 6, 15-16, 23, 25-26, 29

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No 78–1945

Universities Research Association, Inc., Petitioner, *v.* Stanley E. Coutu et al. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[February —, 1981]

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 30, 1981

Re: 78-1945 - Universities Research Association, Incorporated v. Coutu

Dear Chief:

I shall attempt to respond to your letter of March 25 in which you outline your "strong preferences" about the opinion everyone else now has joined.

Obviously, I do not share your concerns or I would not have written the opinion in its present form. I suspect that your worry about footnote 16 centers in the last sentence of that footnote. I shall be glad to accommodate you by eliminating that sentence.

I prefer to make no change with respect to the discussion of the Goodell Amendment. Much attention was given to the Amendment in the briefs and at oral argument. Indeed, the Amendment is the principal focus of the briefs of the United States and the AFL-CIO. I feel, therefore, that it deserves mention in the opinion.

This response, of course, may not satisfy you, and I shall understand if you wish to write separately.

Sincerely,

HAB.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 1, 1981

Re: No. 78-1945 - Universities Research Association v. Coutu

Dear Chief:

This is in response to your letter of March 31. Is it really the first two sentences in footnote 16 that are bothering you? Those sentences seem completely innocuous to me.

It may be that you are concerned with the last paragraph of the footnote which is carried over to page 11 of the draft of February 20. On the assumption that this is the source of your difficulty, I now propose the following to replace the footnote text on page 11:

> "66 (1975). On remand, the Court of Appeals reaffirmed its earlier opinion, again stressing that 'the plaintiffs-appellants allege that the government contract with appellee did contain the prevailing wage requirement, and appellee does not deny it.' 548 F.2d, at 695 (emphasis in original). Thereafter, defendant petitioned for certiorari; as indicated in the text, certiorari was denied."

Sincerely,

HAB.

The Chief Justice

cc: The Conference

p. 11

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No 78–1945

Universities Research Association, Inc., Petitioner, *v.* Stanley E. Coutu et al. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[February —, 1981]

JUSTICE BLACKMUN delivered the opinion of the Court.

The Davis-Bacon Act requires that certain federal construction contracts contain a stipulation that laborers and mechanics will be paid not less than prevailing wages, as determined by the Secretary of Labor. The question presented in this case is whether the Act confers upon an employee a private right of action for back wages under a contract that has been administratively determined *not* to call for Davis-Bacon work, and that therefore does not contain a prevailing wage stipulation.

I

Section 1 (a) of the Davis-Bacon Act of March 3, 1931 (Act), ch. 411, § 1, 46 Stat. 1494, as amended, 40 U. S. C. § 276a (a),[1] provides that the advertised specifications for

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 13, 1981

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 78-1945, Universities Research Association, Inc. v. Coutu

No. 80-108, First Pennsylvania Bank v. Zeffiro, et al.: This case presents the question whether there is a right of action in federal court in favor of debenture holders to enforce trust indenture provisions required by the Trust Indenture Act of 1939, 15 U.S.C. § 77aaa, et seq. After the issuer of the debentures in question defaulted on its obligations and filed for bankruptcy, resp debenture holders brought suit against petr, the indenture trustee. The USDC for ED Pa. (Bechtle, J.) concluded that the Act created a federal private right of action, and a divided CA3 panel affirmed (Rosenn, Higginbotham; Layton [Sr. DJ], dissenting). The CA noted that "'[t]he central inquiry remains whether Congress intended to create ... a private right of action,'" quoting Touche Ross & Co. v. Reddington, 422 U.S. 566, 575 (1979), and applied the test of Cort v. Ash, 422 U.S. 66 (1975), to determine legislative intent here. 623 F.2d 290, 296. The court concluded that debenture holders were the specific beneficiaries of the Act, that the legislative history indicated that Congress sought to deal with the problem of trust indentures on a national level, and that a federal remedy is consistent with the overall structure of the Act; finally, the court held that the interpretation of agreements containing federally mandated provisions is not a matter traditionally relegated to state law. The dissent argued that the legislative history suggests that Congress intended that the bondholders' remedy would lie in state court.

I shall vote to deny this petition. The CA3 properly recognized that the question whether Congress intended to create a private right of action is ultimately one of Congressional intent, and that "'[t]he first three factors discussed in Cort -- the language and focus of the statute, its legislative history and its purpose ... -- are ones traditionally relied upon in determining legislative intent.'" 623 F.2d, at 295, quoting Touche Ross, 422 U.S., at 575-576. This is the test reaffirmed in Coutu. Slip op., at 15. While closer, I cannot conclude that the CA erred in its application of the test to this particular legislative scheme. Although the language of the Act does not appear to "confer rights directly" on the benefited

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 19, 1981

78-1945 Universities Research v. Coutu

Dear Harry:

Please join me.

Sincerely,

Lewis

Mr. Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 16, 1981

78-1945 Coutu

No. 80-108 First Pennsylvania v. Zeffiro
No. 80-203 Merrill Lynch v. Curran

Dear Chief, Potter and Bill:

This refers to Harry's "hold" for Coutu memorandum. He recommends denial of 80-108 and granting 80-203. I agree that we should grant 80-203, Merrill Lynch v. Curran, but I would hold 80-108 First Pennsylvania v. Zeffiro for Merrill Lynch v. Curran.

You may recall that when 80-108 was before us in October, I circulated a dissent from the initial denial of cert vote. I later changed the recommendation to a "hold" for several other implied cause of action cases that were pending. My notes indicate that Potter and Bill joined me, and that the Chief expressed agreement, and voted "to hold". Accordingly, this case (Zeffiro) was held for Coutu. My opinion also mentioned Halderman v. Pennhurst State School, 79-1404 et seq., California v. Sierra Club, No. 79-1252, and Middlesex County Sewerage v. Sea Clammers, No. 79-1711, et seq.

Opinions have been circulated in Sierra Club and Pennhurst. In Sierra Club, no cause of action was implied. In Pennhurst State School, we will not reach this issue. Although I have not circulated Sea Clammers, the Court voted "no implied cause of action".

It thus appears that none of the cases for which we voted to hold this case (First Pennsylvania Bank v. Zeffiro) now presents an opportunity to reiterate the view expressed in the dissent I last circulated on October 29, 1980.

Although the decisions have come out against implying a cause of action, the opinions have been written

by Justices who would not take quite as firm a position as we would against creating casues of action where Congress is silent.

As Harry states in his hold memorandum on 80-203 Merrill Lynch v. Curran, that case squarely presents the implied private right of action question under the Commodity Exchange Act. We granted Leist v. Simplot, 80-757, et seq., on February 23, another case that involves the Commodity Exchange Act. But the SG, in his memo of April 1, recommends that we also grant the Merrill Lynch case - as Harry mentions in his hold memorandum.

In sum, I think it is important to grant 80-203 Merrill Lynch v. Curran, and also to hold (not deny as Harry recommends) First Pennsylvania Bank v. Zeffiro. Although Zeffiro may well end up being denied in the end, if it is we then could consider whether any useful purpose would be served by filing the substance of the dissent that I wrote last October.

It may be useful to put into the official reports a documentation of the extent to which Congress is leaving to the courts whether private causes of action should be brought. Too many lower courts continue to be more than generous in divining rights to sue. We have had here this Term at least a half-dozen examples.

Sincerely,

Lewis

The Chief Justice
Mr. Justice Stewart
Mr. Justice Rehnquist

LFP/ss

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 17, 1981

Re: No. 78-1945 Universities Research Association Inc. v. Coutu

Dear Harry:

Please join me.

Sincerely,

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 18, 1981

Re: 78-1945 - University Research v. Coutu

Dear Harry:

Please join me.

Respectfully,

JPS

Justice Blackmun

Copies to the Conference