

The Burger Court Opinion Writing Database

Anderson Brothers Ford v. Valencia

452 U.S. 205 (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

May 19, 1981

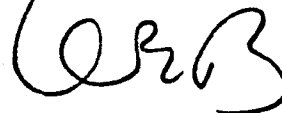
No. 80-84, Anderson Bros. Ford v. Valencia

Dear Byron:

I have reviewed your opinion and am troubled by the extent to which it relies on the legislative history of the 1980 amendments to the Truth-in-Lending Act and on regulations promulgated in response to that enactment. We have said that remarks made by subsequent Congresses provide little support for interpreting what an earlier Congress intended. Similarly, I do not believe an agency's revision of pre-existing regulations can be so easily construed as intending no changes when (1) the revision follows an amendment to the relevant statutory language and (2) the agency itself admits that it is narrowing that definition, as you note in footnote 13.

I also am somewhat troubled by the "deference" paid to the proposed interpretive ruling. This is not yet like a formally announced policy, as in Agee, for example. We may be setting a dangerous precedent by regarding as "official" preliminary steps taken by an agency that subsequently has chosen to defer final approval, even when, as here, the "real reason" for the delay may be readily apparent.

Regards,



Justice White
Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

May 20, 1981

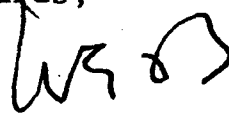
RE: No. 80-84, Anderson Bros. Ford v. Valencia

Dear Byron:

Thank you for your prompt and thorough response to my note of yesterday. Mine was not a "criticism," for you have a difficult assignment. But it seemed to me that a reversal can be justified on the history of the original statute and our cases interpreting it. My "unhappiness" is with so extensive a reliance on comments in subsequent Congresses and proposed, but not promulgated, interpretations.

I shall continue to meditate!

Regards,



Justice White

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

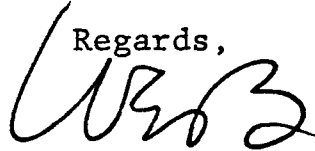
May 27, 1981

RE: 80-84 - Anderson Brothers Ford and Ford Motor
Credit Co. v. Valencia

Dear Byron:

With this case turning on post-legislative
history (my memo 5/19/81) I fear I am with Potter's
dissent and therefore join him.

Regards,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 7, 1981

RE: No. 80-84 Anderson Bros. Ford v. Valencia

Dear Potter:

You, Thurgood and I were in dissent in the above.
I understand you will undertake the dissent.

Sincerely,



Mr. Justice Stewart

cc: Mr. Justice Marshall

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 19, 1981

RE: No. 80-84 Anderson Bros. Ford v. Valencia

Dear Byron:

I'll await the dissent in the above.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 27, 1981

RE: No. 80-84 Anderson Bros. Ford v. Valencia

Dear Potter:

Please join me.

Sincerely,

Bill

Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 8, 1981

Re: No. 80-84, Anderson Bros.
Ford v. Valencia

Dear Bill,

As you correctly understand, I
shall be glad to undertake a dissenting
opinion in this case.

Sincerely yours,

P.S.

Justice Brennan

Copy to Justice Marshall

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 18, 1981

Re: 80-84 - Anderson Bros. Ford v. Valencia

Dear Byron:

In due course I shall circulate a
dissenting opinion.

Sincerely yours,

P.S.
/

Justice White

Copies to the Conference

PS
Please join me in
your dissent

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: 26 MAY 1981

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-84

Anderson Bros. Ford and Ford
Motor Credit Company,
Petitioners,
v.
Olga Valencia and Miguel
Gonzalez.

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

[June —, 1981]

JUSTICE STEWART, dissenting.

The Court correctly states that the respondent in this case maintains "that the plain language of the statute and the regulation requires the result reached by the court below." *Ante*, at 6. Yet the Court nowhere attempts a direct answer to the respondent's contention. Despite the elementary principle that the starting point in construing a statute is the language of the statute itself, the Court simply ignores the plain language of the TILA and the equally plain language of the only applicable Federal Reserve Board construction of it. Instead, the Court contrives to discover contrary legislative intent in such dubious materials as the legislative history of a subsequent statute which does not cover the transaction at hand, a regulation issued to implement that inapplicable statute, and an unofficial administrative staff interpretation which, by its own express terms, is a mere proposal intended to have no legal effect.¹

¹ The Court does indirectly refer to the plain language of the TILA when it concedes that "[u]naided by an administrative construction of the TILA and Regulation Z, a court could easily conclude that the interest in unearned insurance premiums acquired by the creditor in this case should be characterized as a 'security' interest that must be disclosed." *Ante*, at 16. But the Court does not rely on the one administrative construction that resolves any possible uncertainty in the statutory language.

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 4, 1981

MEMORANDUM TO THE CONFERENCE

80-84, Anderson Brothers Ford v. Valencia

The second draft of my dissent in this case, circulated this morning, failed to note that the changes from the first draft were "Stylistic Only."

Regards,

P.S.
✓

Stylistic Only

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

2nd DRAFT

Circulated: _____
4 JUN 1981

SUPREME COURT OF THE UNITED STATES

No. 80-84

<p>Anderson Bros. Ford and Ford Motor Credit Company, Petitioners, v. Olga Valencia and Miguel Gonzalez.</p>	}	<p>On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.</p>
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[June —, 1981]

JUSTICE STEWART, with whom THE CHIEF JUSTICE, JUSTICE BRENNAN, and JUSTICE MARSHALL join, dissenting.

The Court correctly states that the respondent in this case maintains "that the plain language of the statute and the regulation requires the result reached by the court below." *Ante*, at 6. Yet the Court nowhere attempts a direct answer to the respondent's contention. Despite the elementary principle that the starting point in construing a statute is the language of the statute itself, the Court simply ignores the plain language of the TILA and the equally plain language of the only applicable Federal Reserve Board construction of it. Instead, the Court contrives to discover contrary legislative intent in such dubious materials as the legislative history of a subsequent statute which does not cover the transaction at hand, a regulation issued to implement that inapplicable statute, and an unofficial administrative staff interpretation which, by its own express terms, is a mere proposal intended to have no legal effect.¹

¹The Court does indirectly refer to the plain language of the TILA when it concedes that "[u]naided by an administrative construction of the TILA and Regulation Z, a court could easily conclude, based on the language of the statute and Regulation Z, that the interest in unearned insurance premiums acquired by the creditor in this case should be characterized as a 'security interest' that must be disclosed." *Ante*, at 17. But

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~~BRW~~
~~James H. ...~~
~~M~~

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

From: Mr. Justice White
Circulated: 15 MAY 1981
Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-84

Anderson Bros. Ford and Ford
Motor Credit Company,
Petitioners,
v.
Olga Valencia and Miguel
Gonzalez. } On Writ of Certiorari to the
United States Court of
Appeals for the Seventh
Circuit.

[May —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

The issue presented in this case is whether an assignment of certain unearned insurance premiums created a "security interest" that should have been disclosed pursuant to the Truth in Lending Act ("TILA"), 82 Stat. 146, as amended, 15 U. S. C. § 1601 *et seq.*¹

I

In September 1977, respondents purchased an automobile from petitioner Anderson Brothers Ford. They signed the dealer's standard automobile retail installment contract. This contract was assigned for value to petitioner Ford Motor Credit Company. A provision on the face of the contract disclosed that the seller retained a security interest in the automobile.² A provision on the back of the contract

¹ The Truth in Lending Act was enacted as Title I of the Consumer Credit Protection Act, 82 Stat. 146.

² The provision stated:

"Security Interest: Seller shall have a security interest under the Uniform Commercial Code in the Property (described above) and in the proceeds thereof to secure the payment in cash of the Total of Payments and all other amounts due or to become due hereunder."

The "Property" was defined as the automobile.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 20, 1981

Re: No. 80-84 - Anderson Brothers Ford v. Valencia

Dear Chief,

I have your letter of May 19 and appreciate your criticisms. As you may suspect, however, I think the draft is sound and will create no troublesome precedent.

It would be relatively easy to decide this case--which, although it involves more than pennies, has no ongoing importance for future transactions--on a plain language approach: the statute and Regulation Z require security interests to be disclosed, the creditor's interest in unearned premiums is a security interest and that interest must therefore be disclosed. Most of the courts of appeals have followed this line.

But the Truth in Lending Act as originally drafted by Senator Proxmire did not find it necessary to disclose security interests to enable borrowers or buyers on time to credit shop. And the proponent of the floor amendment that required the disclosure of security interests was aiming at

Stylistic & pp. 7-9, 11-12, 17 -

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

From: Mr. Justice White

Circulated: _____

Recirculated: 30 MAY 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-84

<p>Anderson Bros. Ford and Ford Motor Credit Company, Petitioners, <i>v.</i> Olga Valencia and Miguel Gonzalez.</p>	}	<p>On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.</p>
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[May —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

The issue presented in this case is whether an assignment of certain unearned insurance premiums created a "security interest" that should have been disclosed pursuant to the Truth in Lending Act ("TILA"), 82 Stat. 146, as amended, 15 U. S. C. § 1601 *et seq.*¹

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Stylistic & pp. 4, 12

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

From: Mr. Justice White

Circulated: _____

Recirculated: 2 JUN 1981

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-84

Anderson Bros. Ford and Ford
Motor Credit Company,
Petitioners,
v.
Olga Valencia and Miguel
Gonzalez. } On Writ of Certiorari to the
United States Court of
Appeals for the Seventh
Circuit.

[May —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

The issue presented in this case is whether an assignment of certain unearned insurance premiums created a "security interest" that should have been disclosed pursuant to the Truth in Lending Act ("TILA"), 82 Stat. 146, as amended, 15 U. S. C. § 1601 *et seq.*¹

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The "Property" was defined as the automobile.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 15, 1981

Re: No. 80-84 - Anderson Bros. Ford v. Valencia

Dear Byron:

I await the dissent.

Sincerely,

JM.
T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 27, 1981

Re: No. 80-84 - Anderson Bros. Ford v. Valencia

Dear Potter:

Please join me in your dissent.

Sincerely,

Jm.

T.M.

Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 27, 1981

Re: No. 80-84 - Anderson Brothers Ford and
Ford Motor Credit Company v. Valenica

Dear Byron:

Please join me.

Sincerely,

Harry

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 18, 1981

80-84 Anderson Bros. Ford v. Valencia

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 18, 1981

Re: No. 80-84 Anderson Bros. Ford and Ford Motor
Credit Company, v. Valencia and Gonzalez

Dear Byron:

Please join me.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 15, 1981

Re: 80-84 - Anderson Bros. Ford v. Valencia

Dear Byron:

Please join me.

Respectfully,



Justice White

Copies to the Conference