

The Burger Court Opinion Writing Database

United States v. Erika, Inc.

456 U.S. 201 (1982)

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

December 29, 1981

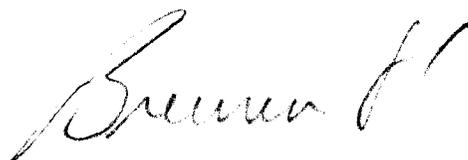
RE: 80-1594 - United States v. Erika, Inc.

MEMORANDUM TO THE CONFERENCE:

It may not be a simple matter to substitute another case for the above but the benefits of back-to-back consideration outweigh the difficulties.

I vote to strike Erika which is set for January and immediately try to advance another case in its place.

Regards,



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

CHAMBERS OF
THE CHIEF JUSTICE

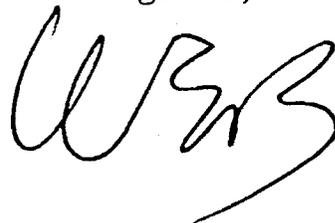
April 15, 1982

Re: No. 80-1594 - U.S. v. Erika, Inc.

Dear Lewis:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'W. Powell', written in a cursive style.

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 29, 1981

Re: No. 80-1594 - United States v. Erika, Inc.

MEMORANDUM TO THE CONFERENCE:

In preparing for the oral argument in No. 80-1594, it occurred to me that the issue presented ought not be decided until we decide the issue in Schweiker v. McClure (No. 81-212). Frank Lorson advises me that at present the argument in 81-212 is likely to be scheduled for February. The issue presented in 80-1594 is whether the Court of Claims has jurisdiction under 28 U.S.C. §1491 to review determinations by private insurance carriers of the amount of benefits payable under Part B of the Medicare Act. In No. 81-212, the issue is whether the failure to provide for a hearing before the Secretary after a carrier has denied a Part B claim constitutes a denial of due process.

My own feeling is that the cases should be argued in tandem. Frank Lorson has informed me that if we are to postpone No. 80-1594 to February, he must know no later than Monday, January 4, 1982. He wants at least a week's time to find another case to substitute for No. 80-1594.

Sincerely,

Bill

80-2134
Forwarded Jan. 6
v. Radiar Assoc. -

Brennan

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 30, 1981

MEMORANDUM TO THE CONFERENCE

RE: No. 80-1594 United States v. Erika, Inc.

The Chief Justice, Thurgood, Harry, Lewis and I have agreed that No. 80-1594 United States v. Erika be postponed from its present scheduled argument of January 11 to be argued in tandem with No. 81-212 Schweiker v. McClure in the February session. The Clerk is substituting No. 80-2134 Foremost Insurance Co. v. Richardson for Erika and will circulate the papers today.

W.J.B.

W.J.B.Jr.

cc: Mr. Stevas

Brennan

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 14, 1982

RE: No. 80-1594 United States v. Erika, Inc.

Dear Lewis:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "J.P.", is written below the typed word "Sincerely,".

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 14, 1982

Re: 80-1594 - United States v. Erika

Dear Lewis,

Please join me.

Sincerely yours,

A handwritten signature in cursive, appearing to read "Byron", written in dark ink.

Justice Powell

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 29, 1981

Re: No. 80 1594 - United States v. Erika, Inc.

Dear Bill:

I agree to hear this case in tandem
with No. 81-212, Schweiker v. McClure.

Sincerely,

T.M.
T.M.

Justice Brennan

cc: The Conference

Brennan

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 14, 1982

Re: 80-1594 - United States v. Erika, Inc.

Dear Lewis:

Please join me.

Sincerely,

J.M.

T.M.

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 29, 1981

Re: No. 80-1594 - United States v. Erika, Inc.

Dear Bill:

I am sympathetic to your suggestion that No. 80-1594, United States v. Erika, Inc., and No. 81-212, Schweiker v. McClure, should perhaps be argued in tandem.

Sincerely,



Justice Brennan

cc: The Conference



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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 14, 1982

Re: No. 80-1594 - United States v. Erika, Inc.

Dear Lewis:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 29, 1981

80-1594 United States v. Erika, Inc.

Dear Bill:

I am entirely agreeable to your suggestion that the above case and 81-212, Schweiker v. McClure, be argued in tandem.

Sincerely



Justice Brennan

Copies to the Conference

LFP/vde



✓
 To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall ✓
 Justice Blackmun
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Powell**

Circulated: **APR 13 1982**

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1594

UNITED STATES, PETITIONER v. ERIKA, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES
 COURT OF CLAIMS

[April —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

The question is whether the Court of Claims has jurisdiction to review determinations by private insurance carriers of the amount of benefits payable under Part B of the Medicare statute.

I

Part B of the Medicare program, 42 U. S. C. § 1395j *et seq.*, is a federally subsidized, voluntary health insurance system for persons who are 65 or older or who are disabled. The companion Part A Medicare program covers institutional health costs such as hospital expenses. Part B supplements Part A's coverage by insuring against a portion of some medical expenses, such as certain physician services and x-rays, that are excluded from the Part A program. Eligible individuals pay monthly premiums if they choose to enroll in Part B. These premiums, together with contributions from the federal government, are deposited in the Federal Supplementary Insurance Trust Fund that finances the Part B program. See §§ 1395j, 1395r, 1395s, 1395t, and 1395w (1976 ed. and Supp. III).

The Secretary of Health and Human Services administers the Medicare program. "In order to provide for the administration of the benefits . . . with maximum efficiency and convenience for individuals entitled to benefits," the Secretary is

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 20, 1982

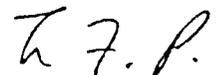
Memorandum to the Conference

Case held for 80-1594 U.S. v. Erika

In Alabama Hospital Ass'n v. United States, No. 81-875, the petitioner requests that we grant cert to review a Court of Claims decision holding that it lacked jurisdiction to review a Medicare Part A claim determination. The petitioner is an association of health care institutions that qualify as "providers of services" under the Medicare statute. See 42 U.S.C. §1395x(u). Blue Cross/Blue Shield, the insurance carrier that represented the Secretary of HHS in the relevant region, found that petitioner and its members hospitals had rendered services before 1972 that were not medically necessary. Blue Cross/Blue Shield consequently denied payment for these portions of the Part A claims.

The pre-1972 Medicare Part A statute granted Part A beneficiaries the right to administrative hearings and judicial review. Medical providers that billed the carriers directly, however, were not granted this right -- although they were permitted to proceed against the Medicare beneficiaries to recover the value of services that carriers ruled were not covered by Part A. Rather than proceeding against the Medicare beneficiaries in this manner, however, petitioner sued the United States in federal district court. It claimed that it had been deprived of due process because it had not been given an evidentiary hearing before an impartial decisionmaker. The DC agreed in a 1976 decision. But in 1979 the CA5 vacated this decision on the ground that the DC lacked jurisdiction, and transferred the case to the Court of Claims. The Court of Claims ruled in 1981 that it also lacked jurisdiction because 42 U.S.C. §405(h), as in effect at the time these claims arose, bars further judicial review.

I would not recommend a grant in this case, even though petitioner ended up without a forum. The Court of Claims decision is consistent with (although not compelled by) our decision in Erika. The petitioner identifies no conflicts. In 1972 the Medicare statute was amended to provide judicial review rights for Part A medical providers under certain circumstances. See 42 U.S.C. §1395pp(d). Any further review of this case therefore would be of limited precedential value.


L.F.P., Jr.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

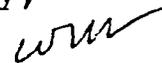
April 14, 1982

Re: No. 80-1594 United States v. Erika, Inc.

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

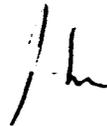
April 15, 1982

Re: 80-1594 - United States v. Erika

Dear Lewis:

Please join me.

Respectfully,

A handwritten signature, likely of Justice Powell, consisting of a stylized 'J' followed by a cursive 'P'.

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 14, 1982

No. 80-1594 United States v. Erika, Inc.

Dear Lewis,

Please join me in your opinion.

Sincerely,



Justice Powell

Copies to the Conference