

# The Burger Court Opinion Writing Database

## *Weinberger v. Romero-Barcelo*

456 U.S. 305 (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

April 22, 1982

Re: 80-1990 - Weinberger v. Romero-Barcelo

Dear Byron:

This one got lost in the "paper flood."

I thought I joined you April 12, and I do so now.

Regards,

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

Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 1, 1982

RE: No. 80-1990 Weinberger v. Carlos Romero-Barcelo

Dear Byron:

I agree.

Sincerely,



Justice White

cc: The Conference

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

From: **Justice White**

Circulated: 31 MAR 1982

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1st  
2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-1190 1990

CASPAR W. WEINBERGER, SECRETARY OF  
DEFENSE, ET AL., PETITIONERS *v.*  
CARLOS ROMERO-BARCELO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIRST CIRCUIT

[April —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is whether the Federal Water Pollution Control Act (FWPCA or the Act), 33 U. S. C. § 1251 *et seq.*, requires a district court to enjoin immediately all discharges of pollutants that do not comply with the Act's permit requirements or whether the district court retains discretion to order other relief to achieve compliance. The Court of Appeals for the First Circuit held that the Act withdrew the courts' equitable discretion. We reverse.

I

For many years, the Navy has used Vieques Island, a small island off the Puerto Rico coast, for weapons training. Currently all Atlantic Fleet vessels assigned to the Mediterranean and the Indian Ocean are required to complete their training at Vieques because it permits a full range of exercises under conditions similar to combat. During air-to-ground training, however, land-based targets are sometimes missed, and the ammunition falls into the sea. That is, accidental bombings of the navigable waters and, occasionally, intentional bombings of water targets occur. The District Court found that these discharges have not harmed the quality of the water.

Handwritten notes and signatures on the right margin, including a large '7' and the name 'Joan'.

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

From: **Justice White**

STYLISTIC CHANGES THROUGHOUT.  
 SEE PAGES:

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Recirculated: 10 APR 1982

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-1990

CASPAR W. WEINBERGER, SECRETARY OF  
 DEFENSE ET AL., PETITIONERS, *v.*  
 CARLOS ROMERO-BARCELO ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE FIRST CIRCUIT

[April —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is whether the Federal Water Pollution Control Act (FWPCA or the Act), 86 Stat. 816, 33 U. S. C. §1251 *et seq.* (1976 ed. and Supp. III), requires a district court to enjoin immediately all discharges of pollutants that do not comply with the Act's permit requirements or whether the district court retains discretion to order other relief to achieve compliance. The Court of Appeals for the First Circuit held that the Act withdrew the courts' equitable discretion. 643 F. 2d 835 (1981). We reverse.

I

For many years, the Navy has used Vieques Island, a small island off the Puerto Rico coast, for weapons training. Currently all Atlantic Fleet vessels assigned to the Mediterranean and the Indian Ocean are required to complete their training at Vieques because it permits a full range of exercises under conditions similar to combat. During air-to-ground training, however, pilots sometimes miss land-based targets and ordnance falls into the sea. That is, accidental bombings of the navigable waters and, occasionally, intentional bombings of water targets occur. The District Court

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

From: **Justice White**

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

Recirculated: 23 APR 1982

9.12  
3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-1990

CASPAR W. WEINBERGER, SECRETARY OF DEFENSE ET AL., PETITIONERS, *v.* CARLOS ROMERO-BARCELO ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

[April —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is whether the Federal Water Pollution Control Act (FWPCA or the Act), 86 Stat. 816, 33 U. S. C. § 1251 *et seq.* (1976 ed. and Supp. III), requires a district court to enjoin immediately all discharges of pollutants that do not comply with the Act's permit requirements or whether the district court retains discretion to order other relief to achieve compliance. The Court of Appeals for the First Circuit held that the Act withdrew the courts' equitable discretion. 643 F. 2d 835 (1981). We reverse.

### I

For many years, the Navy has used Vieques Island, a small island off the Puerto Rico coast, for weapons training. Currently all Atlantic Fleet vessels assigned to the Mediterranean and the Indian Ocean are required to complete their training at Vieques because it permits a full range of exercises under conditions similar to combat. During air-to-ground training, however, pilots sometimes miss land-based targets, and ordnance falls into the sea. That is, accidental bombings of the navigable waters and, occasionally, intentional bombings of water targets occur. The District Court

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 20, 1982

Re: No. 80-1990 - Weinberger v. Romero-Barcelo

Dear Byron:

Please join me.

Sincerely,

*J.M.*  
T.M.

Justice White

cc: The Conference

✓

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 1, 1982

Re: No. 80-1990 - Weinberger v. Romero-Barcelo

Dear Byron:

Please join me.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 1, 1982

80-1990 Weinberger v. Romero

Dear Byron:

I think you have written an excellent opinion in every respect except the "bottom line".

In the final paragraph of your opinion, you state that the proper standard for appellate review is whether the DC abused its discretion. You would then "reverse and remand to the Court of Appeals for proceedings consistent with this opinion". I agree that this is the standard, and that CAL probably will find no abuse of discretion.

But on the record before us, I see no reason why we should not decide there was no abuse of discretion and dispose of the case. The undisputed findings of the District Court are that the Navy's violations were "technical", causing no "appreciable harm", and indeed that the Navy's control of the area "probably constitutes a positive factor in its overall ecology". See p. 4 and n. 4 of your opinion.

If we made the decision here, this would avoid an unnecessary remand and another opinion by CAL.

I mention one minor point in reference to my favorite case, TVA v. Hill. On page 8 you state that it was "conceded in Hill that completion of the dam would eliminate an endangered species by destroying its critical habitat". This contention of the Department of Interior apparently was accepted unquestioningly by the courts below on the basis of speculative testimony of "experts" who since have been demonstrated not to have been very expert. The snail darters are happy and multiplying in various new environments.

Sincerely,

*Lewis*

Justice White

lfp/ss

cc: The Conference

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

From: **Justice Powell**

Circulated: APR 19 1982

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-1990

CASPAR W. WEINBERGER, SECRETARY OF  
 DEFENSE ET AL., PETITIONERS, v.  
 CARLOS ROMERO-BARCELO ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE FIRST CIRCUIT

[April —, 1982]

JUSTICE POWELL, concurring.

I join the opinion of the Court. In my view, however, the record clearly establishes that the District Court in this case did not abuse its discretion by refusing to enjoin the immediate cessation of all discharges. Finding that the District Court acted well within the equitable discretion left to it under the Federal Water Pollution Control Act (FWPCA), I would remand the case to the Court of Appeals with instructions that the decision of the District Court should be affirmed.\*

\*The District Court's thorough opinion demonstrates the reasonableness of its decision in light of all pertinent factors, including of course the evident purpose of the statute. The District Court concluded as matters of fact that the Navy's violations have caused no "appreciable harm," 478 F. Supp., at 706, and indeed that the Navy's control of the area "probably constitutes a positive factor in its over all ecology," *id.*, at 682. Moreover, the District Court found it "abundantly clear from the evidence in the record . . . that the training that takes place in Vieques is vital to the defense of the interests of the United States." *Id.*, at 707. Balancing the equities as they then stood, the District Court declined to order an *immediate* cessation of all violations but nonetheless issued affirmative orders aimed at securing compliance with the law. See *id.*, at 708. As I read its opinion, the District Court did not foreclose the possibility of ordering further relief that might become appropriate under changed circumstances at a later date.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

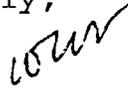
April 14, 1982

Re: No. 80-1990 Weinberger v. Romero-Barcelo

Dear Byron:

Please join me in your opinion for the Court.

Sincerely,



Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 1, 1982

Re: 80-1990 - Weinberger v. Romero-Barcelo

Dear Byron:

Although it may not write, I would like to try  
my hand at a dissent. I will try not to hold you up  
too long.

Respectfully,



Justice White

Copies to the Conference

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

From: **Justice Stevens**

Circulated: APR 15 1982

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-1990

CASPAR W. WEINBERGER, SECRETARY OF DEFENSE, ET AL., PETITIONER, *v.* CARLOS ROMERO-BARCELO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[April —, 1982]

JUSTICE STEVENS, dissenting.

The appropriate remedy for the violation of a federal statute depends primarily on the terms of the statute and the character of the violation. Unless Congress specifically commands a particular form of relief, the question of remedy remains subject to a court's equitable discretion.<sup>1</sup> Because the Federal Water Pollution Control Act does not specifically command the federal courts to issue an injunction every time an unpermitted discharge of a pollutant occurs, the Court today is obviously correct in asserting that such injunctions should not issue "automatically" or "mechanically" in every case. It is nevertheless equally clear that by enacting the 1972 amendments to the FWPCA Congress channeled the discretion of the federal judiciary much more narrowly than the Court's rather glib opinion suggests. Indeed, although there may well be situations in which the failure to obtain an NPDES permit would not require immediate cessation of all discharges, I am convinced that Congress has circumscribed the district courts' discretion on the question of remedy so narrowly that a general rule of immediate cessation must be

<sup>1</sup>Cf. *United Steelworkers of America v. United States*, 361 U. S. 39, 54-59 (Opinion of Frankfurter and Harlan, JJ.).

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

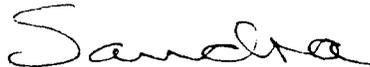
April 1, 1982

80-1990 Weinberger v. Romero-Barcelo

Dear Byron,

Please join me in your opinion.

Sincerely,



Justice White

Copies to the Conference