The Burger Court Opinion Writing Database

Fidelity Federal Savings & Loan Association v. De la Cuesta

458 U.S. 141 (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

June 9, 1982

Re: No. 81-750 - Fidelity Fed. Sav. and Loan Assn. v. de la Cuesta

Dear Harry:

I join.

Regards,

WEB

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 8, 1982

RE: No. 81-750 Fidelity Federal S & L Assn. v. Reginald D. de la Cuesta, et al.

Dear Harry:

Please join me.

Sincerely,

Bill

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 8, 1982

Re: 81-750 - Fidelity Federal S & L Ass'n
v. de la Cuesta

Dear Harry,

I join your opinion.

Sincerely yours,

Justice Blackmun

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 8, 1982

Re: No. 81-750 - Fidelity Federal Savings and Loan Association v. de la Cuesta

Dear Harry:

Please join me.

Sincerely,

T.M.

Justice Blackmun

cc: The Conference

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

From: **Justice Blackmun**

Circulated: JUN 7 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–750

FIDELITY FEDERAL SAVINGS AND LOAN ASSOCIATION, ET AL., APPELLANTS *v.* REGINALD D. DE LA CUESTA ET AL.

ON APPEAL FROM THE COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT

[June ——, 1982]

JUSTICE BLACKMUN delivered the opinion of the Court.

At issue in this case is the pre-emptive effect of a regulation, issued by the Federal Home Loan Bank Board (Board), governing the use of "due-on-sale" clauses by federal savings and loan associations. Appellees dispute both the Board's intent and its power to displace California's due-on-sale law.

I

A

The Federal Home Loan Bank Board, an independent federal regulatory agency, was formed in 1932 and thereafter was vested with plenary authority to administer the Home Owners' Loan Act of 1933 (HOLA), 48 Stat. 128, as amended, 12 U. S. C. § 1461 *et seq.* (1976 ed. and Supp. IV).[1] Section

[1] The Board came into being under § 17 of the earlier Federal Home Loan Bank Act, 47 Stat. 736, as amended, 12 U. S. C. § 1437, the statute which created the federal home loan bank system. The three members of the Board are appointed by the President, with the advice and consent of the Senate, for four-year terms. See note following 12 U. S. C. § 1437. In addition to providing for the establishment of federal savings and loan associations, the HOLA, by its § 3, 48 Stat. 129, repealed § 4(d) of the Federal Home Loan Bank Act, 47 Stat. 727, which had authorized federal home loan banks to make loans directly to homeowners. The HOLA, by its § 4,

STYLISTIC CHANGES
pp. 1, 4

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

From: **Justice Blackmun**

Circulated: _____

Recirculated: JUN 9 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-750

FIDELITY FEDERAL SAVINGS AND LOAN ASSOCIATION, ET AL., APPELLANTS *v.* REGINALD D. DE LA CUESTA ET AL.

ON APPEAL FROM THE COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT

[June ——, 1982]

JUSTICE BLACKMUN delivered the opinion of the Court.

At issue in this case is the pre-emptive effect of a regulation, issued by the Federal Home Loan Bank Board (Board), permitting federal savings and loan associations to use "due-on-sale" clauses in their mortgage contracts. Appellees dispute both the Board's intent and its statutory authority to displace restrictions imposed by the California Supreme Court on the exercise of these clauses.

I

A

The Federal Home Loan Bank Board, an independent federal regulatory agency, was formed in 1932 and thereafter was vested with plenary authority to administer the Home Owners' Loan Act of 1933 (HOLA), 48 Stat. 128, as amended, 12 U. S. C. § 1461 *et seq.* (1976 ed. and Supp. IV).[1] Section

[1]The Board came into being under § 17 of the earlier Federal Home Loan Bank Act, 47 Stat. 736, as amended, 12 U. S. C. § 1437, the statute which created the federal home loan bank system. The three members of the Board are appointed by the President, with the advice and consent of the Senate, for four-year terms. See note following 12 U. S. C. § 1437. In addition to providing for the establishment of federal savings and loan associations, the HOLA, by its § 3, 48 Stat. 129, repealed § 4(d) of the Fed-

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 25, 1982

MEMORANDUM TO THE CONFERENCE

Re: No. 81-750 - Fidelity Federal Savings and Loan Association v. de la Cuesta

I shall add two footnotes to the opinion in this case. The first is a new n. 17 to be dropped at the end of the first full paragraph on page 20. It reads as follows:

> "[17]Likewise, we find nothing in §8 of the Federal Home Loan Bank Act of 1932, 12 U.S.C. §1428, relied on by the dissent, see post, at 2, that suggests any limit on the Board's authority to issue regulations pre-empting state law. That provision, which is not even part of the HOLA, speaks only to the Board's authority to examine state laws governing the operation of federal home loan banks, not federal savings and loans, for the purpose of ensuring '[a]dequate protection to a Federal Home Loan Bank in making or collecting advances under th[at] chapter ... .' 12 U.S.C. §1428. It does not purport to constrict the Board's power to regulate the operations of federal savings and loans and does not negate the explicit language and history of the HOLA."

The second is a new n. 21 to be dropped at the end of the carry-over paragraph on page 26. It reads:

> "[21]The Board's Due-on-Sale Task Force estimates that the California Supreme Court's restrictions on the exercise of due-on-sale clauses accounted for 40% of the total losses suffered in 1981 by state-chartered associations in the State -- some $200 million. See Federal Home Loan Bank Board, Due-on-Sale Task Force Report, 2, 15 (1982). The Task Force projects that imposition of such restrictions nationwide would create, within two years, annual losses of $600 to $800 million for federal savings and loans, and $1.0 to $1.3 billion for all federal and state associations. See id., at 2, 18, 25."

Other footnotes will be renumbered accordingly.

H.A.B.

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

June 28, 1982

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

Memorandum to the Conference

Re: Cases Held for No. 81-750, Fidelity Federal Savings & Loan Association v. de la Cuesta

Seven cases were held for de la Cuesta. My recommendations are as follows.

1. No. 81-922, Pan American Sav. & Loan Assn. v. Panko (App. from Calif. Ct. App., First Appellate Dist.).

This case was initially straight-lined with de la Cuesta. The Court of Appeal's opinion in de la Cuesta quoted extensively from the opinion of the court below in this case, which concluded that the Federal Home Loan Bank Board's due-on-sale regulation did not foreclose application of the California Supreme Court's Wellenkamp doctrine to federal savings and loans. Appellants make the same arguments presented by Fidelity in de la Cuesta. Appellees respond that the decision below is not final because the Court of Appeal simply reversed the trial court's order of summary judgment and remanded for further proceedings.

Although the Court of Appeal remanded for further proceedings, this case appears to come within the fourth exception to the finality requirement articulated in Cox Broadcasting Co. v. Cohn, 420 U.S. 469 (1975). The federal issue has been resolved conclusively in the state courts, and appellants may prevail on nonfederal grounds -- for example, Pan American may be able to prove that its security was impaired by the transfer of the security property to appellees (although it did concede, for purposes of appeal, that its security was not impaired); reversal of the Court of Appeal on the question of pre-emption would preclude any further litigation; and refusal to review the state court decision immediately might seriously erode the federal policies underlying the Board's due-on-sale regulation.

I therefore recommend that we vacate and remand for reconsideration in light of de la Cuesta.

2 and 3. No. 81-992, Glendale Federal Sav. & Loan Assn. v. Hehir (App. from Calif. Ct. App., Fourth Appellate Dist.). No. 81-993, California Federal Sav. & Loan Assn. v. Tan (App. from Calif. Ct. App., Fourth Appellate Dist.).

These curve-lined cases raise the same issues decided in de la Cuesta. Reversing orders of summary judgment in favor of appellants and remanding for further proceedings, the Court of

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 9, 1982

Re: No. 81-750 Fidelity Federal Savings & Loan v. de la Cuesta

Dear Harry:

In due course I will circulate a dissent.

Sincerely,

WHR

Justice Blackmun

Copies to the Conference

pp. 2 & 4

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

From: **Justice Rehnquist**

Circulated: 6/18/82

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–750

FIDELITY FEDERAL SAVINGS AND LOAN ASSOCIATION, ET AL., APPELLANTS *v.* REGINALD D. DE LA CUESTA ET AL.

ON APPEAL FROM THE COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT

[June ——, 1982]

JUSTICE REHNQUIST, dissenting.

The Court today concludes that in § 5(a) of the Home Owners' Loan Act of 1933, 12 U. S. C. § 1464(a), Congress authorized the Federal Home Loan Bank Board to preempt by administrative fiat California's limitations upon the enforceability of "due-on-sale" clauses in real estate mortgages held by federal savings and loan institutions. The Court reaches this extraordinary result by concluding that due-on-sale clauses relate to a savings and loan's mortgage lending practices which "are a critical aspect of its 'operation' over which the Board unquestionably has jurisdiction." *Ante*, at 24. Because I conclude that Congress has not authorized the Board to promulgate a regulation such as 12 CFR § 545.8–3(f), I dissent.

Section 5(a) of the HOLA, 12 U. S. C. § 1464(a), unquestionably grants broad authority to the Board to regulate the mortgage lending practices of federal savings and loans. In order to perform this role, the Board may take into account state property and contract law which governs real estate transactions in general and the enforceability and interpretation of mortgage lending instruments in particular. Thus, it would be within the Board's power to determine that it constitutes an unsafe lending practice for a federal savings and

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 25, 1982

Re: No. 81-750, Fidelity Federal Sav. & L. Assn. v. de la Cuesta

Dear Harry:

On page 3 of my dissent, I am replacing a citation to Jackson Transit Authority with "See Texas Industries, Inc. v. Radcliff Materials, Inc., 451 U.S. 630 (1981)."

Sincerely,

WHR/gpb

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 9, 1982

Re: 81-750 - Fidelity v. de la Cuesta

Dear Harry:

As you no doubt realize, I am waiting for Bill's dissent.

Respectfully,

JPS

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 18, 1982

Re: 81-750 - Fidelity Federal Savings and Loan Association v. de la Cuesta

Dear Bill:

Please join me.

Respectfully,

JPS

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 8, 1982

No. 81-750 Fidelity Federal Savings and Loan Association v. de la Cuesta

Dear Harry,

Please join me in your opinion. I will also circulate a brief concurring opinion making clear that I believe there are some limits on the power of the Board to preempt such matters as state and local taxes and zoning laws and regulations.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: JUN 24 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-750

FIDELITY FEDERAL SAVINGS AND LOAN ASSOCIATION, ET AL., APPELLANTS *v.* REGINALD D. DE LA CUESTA ET AL.

ON APPEAL FROM THE COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT

[June ——, 1982]

JUSTICE O'CONNOR, concurring.

I join in the Court's opinion but write separately to emphasize that the authority of the Federal Home Loan Bank Board to preempt state laws is not limitless.* Although Congress delegated broad power to the Board to ensure that federally chartered savings and loan institutions "would remain financially sound," *ante*, at 25, it is clear that HOLA does not permit the Board to preempt the application of all state and local laws to such institutions. Nothing in the language of § 5(a) of HOLA, which empowers the Board to "provide for the organization, incorporation, examination, operation, and regulation" of federally chartered savings and loans, remotely suggests that Congress intended to permit the Board to displace local laws, such as tax statutes and zoning ordinances, not directly related to savings and loan practices. Accordingly, in my view, nothing in the Court's opinion should be read to the contrary.

*At one point in today's opinion, the Court states that "we need not decide whether the HOLA or the Board's regulations occupy . . . the entire field of federal savings and loan regulation." *Ante*, at 16 n. 14.