

The Burger Court Opinion Writing Database

Block v. Neal

460 U.S. 289 (1983)

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

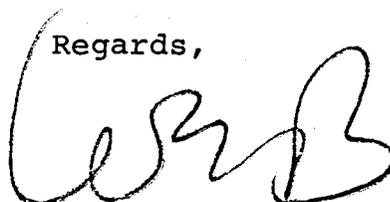
February 26, 1983

Re: No. 81-1494, Block v. Neal

Dear Thurgood:

Please show me as joining in the judgment.

Regards,

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

Justice Marshall

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

M

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

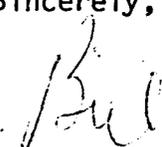
January 21, 1983

RE: No. 81-1494 Block v. Neal

Dear Chief:

Thurgood has agreed to undertake the opinion for the
Court in the above.

Sincerely,



The Chief Justice
Copies to the Conference

83 JAN 31 10 11 AM

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 12, 1983

RE: No. 81-1494 Block v. Neal

Dear Thurgood:

I agree.

Sincerely,

Bill

Justice Marshall

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 24, 1983

Re: 81-1494 - Block v. Neal

Dear Thurgood,

Please join me.

Sincerely,



Justice Marshall

Copies to the Conference

cpm

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

From: **Justice Marshall**

Circulated: **FEB 18 1983**

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1494

**JOHN R. BLOCK, SECRETARY OF AGRICULTURE,
ET AL., PETITIONERS v. ONILEA NEAL**

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

[February —, 1983]

JUSTICE MARSHALL delivered the opinion of the Court.

The Secretary of Agriculture is authorized by Title V of the Housing Act of 1949, 42 U. S. C. § 1471 et seq., to extend financial and technical assistance through the Farmers Home Administration (FmHA) to low-income rural residents who seek to obtain housing. Respondent Onilea Neal, the recipient of an FmHA loan for the construction of a prefabricated house, brought this action under the Federal Tort Claims Act, 28 U. S. C. §§ 1346(b), 2671-2680. She alleged that defects discovered after she set up residence were partly attributable to the failure of FmHA employees properly to inspect and supervise construction of her house. This case presents the question whether respondent's action is barred by 28 U. S. C. § 2680(h), which precludes recovery under the Tort Claims Act for "[a]ny claim arising out of . . . misrepresentation."

I

A

The facts described in respondent's complaint may be summarized as follows. Unable to obtain credit from other sources, Neal applied for a Rural Housing Loan from FmHA pursuant to § 502(a) of the Housing Act of 1949, 42 U. S. C. § 1472(a). FmHA approved her application in June 1977.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

STYLISTIC CHANGES THROUGHOUT.

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

From: Justice Marshall

Circulated: _____

Recirculated: FEB 24 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1494

JOHN R. BLOCK, SECRETARY OF AGRICULTURE,
ET AL., PETITIONERS *v.* ONILEA NEAL

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

[February —, 1983]

JUSTICE MARSHALL delivered the opinion of the Court.

The Secretary of Agriculture is authorized by Title V of the Housing Act of 1949, 42 U. S. C. § 1471 *et seq.*, to extend financial and technical assistance through the Farmers Home Administration (FmHA) to low-income rural residents who seek to obtain housing. Respondent Onilea Neal, the recipient of an FmHA loan for the construction of a prefabricated house, brought this action under the Federal Tort Claims Act, 28 U. S. C. §§ 1346(b), 2671-2680. She alleged that defects discovered after she set up residence were partly attributable to the failure of FmHA employees properly to inspect and supervise construction of her house. This case presents the question whether respondent's action is barred by 28 U. S. C. § 2680(h), which precludes recovery under the Tort Claims Act for "[a]ny claim arising out of . . . misrepresentation."

I

A

The facts described in respondent's complaint may be summarized as follows. Unable to obtain credit from other sources, Neal applied for a Rural Housing Loan from FmHA pursuant to § 502(a) of the Housing Act of 1949, 42 U. S. C. § 1472(a). FmHA approved her application in June 1977.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

p. 10

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

From: Justice Marshall

Circulated: _____

Recirculated: MAR 1 1983

3rd
2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1494

JOHN R. BLOCK, SECRETARY OF AGRICULTURE,
ET AL., PETITIONERS *v.* ONILEA NEAL

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

[February —, 1983]

JUSTICE MARSHALL delivered the opinion of the Court.

The Secretary of Agriculture is authorized by Title V of the Housing Act of 1949, 42 U. S. C. § 1471 *et seq.*, to extend financial and technical assistance through the Farmers Home Administration (FmHA) to low-income rural residents who seek to obtain housing. Respondent Onilea Neal, the recipient of an FmHA loan for the construction of a prefabricated house, brought this action under the Federal Tort Claims Act, 28 U. S. C. §§ 1346(b), 2671-2680. She alleged that defects discovered after she set up residence were partly attributable to the failure of FmHA employees properly to inspect and supervise construction of her house. This case presents the question whether respondent's action is barred by 28 U. S. C. § 2680(h), which precludes recovery under the Tort Claims Act for "[a]ny claim arising out of . . . misrepresentation."

I

A

The facts described in respondent's complaint may be summarized as follows. Unable to obtain credit from other sources, Neal applied for a Rural Housing Loan from FmHA pursuant to § 502(a) of the Housing Act of 1949, 42 U. S. C. § 1472(a). FmHA approved her application in June 1977.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

HAB



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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 15, 1983

MEMORANDUM TO THE CONFERENCE

Re: Case held for Block v. Neal, No. 81-1494

No. 81-1326, Baroni v. United States

Petitioners purchased homes in a subdivision that had been approved for FHA guaranteed financing. One condition of FHA approval was that certain lots had to be filled to an elevation above the predicted 50-year flood height. The FHA fixed an incorrect flood level location on which the builder relied in constructing houses. Petitioners purchased houses in the subdivision which were damaged by flooding in 1973 and 1975. They brought this action under the Federal Tort Claims Act to recover for damages caused by the FHA's alleged negligence. The DC dismissed the suit under the "misrepresentation exception," and the CA5 affirmed.

In my view this case is distinguishable from Block v. Neal and is controlled by United States v. Neustadt, in which we held that the "misrepresentation exception" applied. The lower courts in this case found initially that the only claim that petitioners possibly could state under state tort law was a claim for implied misrepresentation or deceit. They reasoned that any damages attributable to the FHA's actions were the result of reliance on the agency's misrepresentation of the flood level. Thus, neither court found any duty on the part of the FHA to supervise development of the lots comparable to the duty under the Good Samaritan doctrine that was found in Block v. Neal. They did not find any other duty

Reproduced from the Collections of the Manuscript Division, Library of Congress

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 22, 1983

Re: No. 81-1494 - Block v. Neal

Dear Thurgood:

Please join me.

Sincerely,



Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 23, 1983

81-1494 Block v. Neal

Dear Thurgood:

Please join me.

Sincerely,

Lewis

Justice Marshall

Copies to the Conference

LFP/vde

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 22, 1983

Re: No. 81-1494 Block v. Neal

Dear Thurgood:

Please join me.

I suggest for your consideration the substitution of a word other than "duty" in the penultimate sentence of footnote 1 on page 2. I think the word "duty" is a word of art in tort law, and that it would be best to use a more neutral term if the regulations upon which you rely permit it.

Sincerely,



Justice Marshall

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 22, 1983

Re: 81-1494 - Block v. Neal

Dear Thurgood:

Please join me.

Respectfully,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

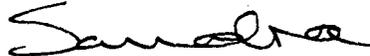
February 22, 1983

No. 81-1494 Block v. Neal

Dear Thurgood,

Please join me.

Sincerely,



Justice Marshall

Copies to the Conference