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Associated General Contractors of California, Inc. v. Carpenters

459 U.S. 519 (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

January 6, 1983

Re: No. 81-334, Associated General Contractors of CA
v. CA State Council of Carpenters

Dear John:

I join your January 3 draft.

Regards,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 17, 1982

RE: No. 81-334 Associated General Contractors v. California
State Council

Dear Byron, Thurgood and Harry:

We four were in dissent in the above. But frankly the changes John has made in his original draft (reflecting some suggestions I made) have persuaded me that with the deletion of one sentence* I could probably join him. As now constructed, the reversal now rests on a detailed analysis of this specific complaint. The basic proposition of law is that specific intent to harm a plaintiff may in some circumstances support his claim for antitrust damages but on the allegations of this complaint prudential factors counsel against allowing these respondents to sue. This thrust appears particularly at the discussion at pages 18 and 19 and footnote 37.

If you think I am wrong, won't you let me know and, of course I'll reconsider.

Sincerely,

Bill

Justice White
Justice Marshall
Justice Blackmun

*"The District Court, after all, concluded that the Union's antitrust claim was that the defendants had refused to agree to deal only with subcontractors which were signatories to union contracts - agreements that, under Connell, would be subject to antitrust liability." (page 20 from middle of paragraph)

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Supreme Court of the United States

Washington, D. C. 20543

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SUPREME COURT U.S.
JUSTICE W.M.J. BRENNAN, JR.

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 4, 1983

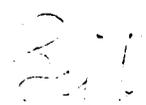
'82 DEC 35 P1:35

RE: No. 81-334 Associated General Contractors v.
California State Council, etc.

Dear Byron, Thurgood and Harry:

John's third draft in this case incorporates the final suggestion I made. I am now satisfied that he has addressed my major concerns and therefore will join his opinion.

Sincerely,



Justice White

Justice Marshall

Justice Blackmun

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

RECORDED
SUPREME COURT U.S.
JUSTICE STEVENS

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 4, 1983

'82 DEC 35 P1:35

RE: No. 81-334 Associated General Contractors v.
California State Council, etc.

Dear John:

I agree.

Sincerely,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 24, 1982

Re: 81-334 - Associated General Contractors
of California, Inc. v. California State
Council of Carpenters and Carpenters 46
Northern Counties Conference Board

Dear John,

I await the dissent.

Sincerely yours,



Justice Stevens

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 23, 1982

Re: No. 81-334, Associated
General Contractors v.
California State Council

Dear Bill:

I shall follow your lead in
this case.

Sincerely,



Justice Brennan

cc: Justice Marshall
Justice Blackmun

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 4, 1983

Re: 81-334 - Associated General Contractors
v. California State Council, etc.

Dear John,

Following my leader, WJB, I, too, join
your opinion.

Sincerely,



Justice Stevens

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 23, 1982

Re: No. 81-334 - Associated General Contractors of
California v. California State Council of
Carpenters and Carpenters 46 Northern Counties
Conference Board

Dear John:

I await the dissent.

Sincerely,

J.M.

T.M.

Justice Stevens

cc: The Conference

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

From: Justice Marshall

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-334

ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC., PETITIONER *v.* CALIFORNIA STATE COUNCIL OF CARPENTERS AND CARPENTERS 46 NORTHERN COUNTIES CONFERENCE BOARD ET AL.

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

[February —, 1983]

JUSTICE MARSHALL, dissenting.

Section 4 of the Clayton Act provides that a damage action may be brought under the antitrust laws by “[a]ny person who [has been] injured in his business or property by reason of anything forbidden in the antitrust laws.” 15 U. S. C. § 15 (emphasis added). Despite the absence of an “articulable consideration of statutory policy” supporting the denial of standing, *Blue Shield of Virginia v. McCready*, — U. S. —, — (1982), the Court today holds that the intended victim of a restraint of trade does not constitute a “person who [has been] injured in his business or property by reason of anything forbidden in the antitrust laws.” Because I believe that today’s decision imposes an unwarranted judge-made limitation on the antitrust laws, I respectfully dissent.

Congress’ adoption of the broad language of § 4 was not accidental. As this Court observed in *Pfizer Inc. v. India*, 434 U. S. 308, 312 (1978), “Congress used the phrase ‘any person’ intending it to have its naturally broad and inclusive meaning. There was no mention in the floor debates of any more restrictive definition.” Only last Term we emphasized that

STATISTIC DIVISION

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

From: **Justice Marshall**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-334

ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC., PETITIONER *v.* CALIFORNIA STATE COUNCIL OF CARPENTERS AND CARPENTERS 46 NORTHERN COUNTIES CONFERENCE BOARD ET AL.

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

[February —, 1983]

JUSTICE MARSHALL, dissenting.

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Congress’ adoption of the broad language of § 4 was not accidental. As this Court observed in *Pfizer Inc. v. India*, 434 U. S. 308, 312 (1978), “Congress used the phrase ‘any person’ intending it to have its naturally broad and inclusive meaning. There was no mention in the floor debates of any more restrictive definition.” Only last Term we emphasized that

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 12, 1982

Re: No. 81-334 - Associated General Contractors of
California v. California State Council of Carpenters

Dear Bill:

I, of course, have no objection to your undertaking the
dissent in this case.

Sincerely,



Justice Brennan

cc: Justice White
Justice Marshall

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 10, 1981

Re: No. 81-334, Associated General Contractors of Calif.,
Inc. v. Calif. State Council of Carpenters, Etc.

Dear John:

As you have surmised, I too shall await the dissent.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 21, 1981

Re: No. 81-334 - AGC v. California State Council

Dear Bill:

I am in basic agreement with what you have said in your letter of December 17. I think the sentence on page 20 of John's opinion should go. If it does, I too am inclined to join John's draft circulated December 15.

I would have preferred to have the various standing tests rejected more strongly than the opinion rejects them in n. 13. I would also be more comfortable if the opinion stated explicitly that the Court is not inviting lower courts to dismiss on standing grounds any complaint that looks tenuous or presents problems of proof. Nevertheless, given the very particularized nature of the holding, and of the analysis in the opinion, the case no longer seems to me to be worth a full-fledged dissent.

Sincerely,



Justice Brennan

cc: Justice White
Justice Marshall

82 DEC 22 AMO:13

SUPREME COURT
JUSTICE

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 4, 1983

Re: No. 81-334 - Associated General Contractors
v. California State Council

Dear John:

Please join me in your recirculation of January 3.

Sincerely,



Justice Stevens

cc: The Conference

November 23, 1982

81-334 Associated General Contractors v. California State
Council of Carpenters

Dear John:

Your opinion reflects a great deal of care and thought, and I have read it with much interest.

I intend to join you, but write to make a suggestion. It seems to me that the basic issue is whether "antitrust injury" is alleged. You conclude - correctly, I think - that it is not. I find what you say on pages 23 and 24 particularly persuasive in support of the view that the union's "alleged injury in this case is not of the type that the antitrust statute was intended to forestall".

I would think this conclusion alone is sufficient to dispose of the case. You also rely, however, on a number of other factors including, for example, the speculative character of damages, the manageable limitations of this type of antitrust suit, and the problem of causation. I would view these as "prudential" type of factors that merely lend support to the controlling absence of any antitrust injury. In reflecting on how DCs and CAs may read the opinion, would we not afford clearer guidance by focusing on antitrust injury as the crucial question? Otherwise, courts might think it appropriate to weigh or balance the prudential factors that - as I view it - merely lend support to the soundness of the "antitrust injury" requirement.

One further thought: unions rarely will be able to prove antitrust injury as a result of their employers' activities. Only when the union acts as consumer in the market (or as seller of some product other than labor) would it suffer compensable injury under the antitrust laws. Perhaps we could say something like this in a footnote.

Sincerely,

Justice Stevens

lfp/ss

December 17, 1982

81-334 Associated General Contractors

Dear John:

I like your second draft, and - to the extent you responded to my letter - send thanks. I will reread it again, but expect to join you.

I write now to record a couple of reactions, both of which are prompted primarily by a desire to discourage, rather than encourage, antitrust suits by unions. For reasons you state very well, the antitrust laws really were not designed to protect unions in their relationships with employers anymore than they are intended to protect employers.

With this thought in mind, I suggest for your consideration modest changes on page 19. In the first paragraph, second line I would delete "character of the anti-trust violation" as a factor. I would prefer to delete the entire second paragraph, but at least think it would be desirable - in referring to the possibility that a union may allege a "marketwide restraint of trade" - to suggest that rarely would a union have standing to raise such a claim on its own behalf. It is not easy to imagine a bona fide union claim that "output [in an industry] has been curtailed or prices enhanced throughout an entire competitive market".

Similarly, on page 27, second sentence of the last paragraph, I would eliminate "the scope of the alleged violation" as a relevant factor. Also, perhaps you could take out the words "weigh heavily against", and state simply that they "preclude". The less balancing on this issue, the less likely courts - including this one - will be called upon to litigate this type of union/employer claim.

This concluding paragraph also would be an ideal place to add a sentence along the following lines:

"In sum, the union's alleged injury is not the harm against which the antitrust laws were intended to protect".

I think you have written an excellent opinion. The foregoing suggestions do not alter your basic analysis. They may, however, help deter the bringing of antitrust suits in the collective bargaining area - a type of suit never contemplated by the antitrust laws.

Sincerely,

Justice Stevens

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 3, 1983

81-334 Associated General Contractors v. California
State Council of Carpenters

Dear John:

Please join me.

Sincerely,



Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 30, 1982

Re: No. 81-334 Associated General Contractors of
California, Inc. v. California State
Council of Carpenters

Dear John,

I agree with the result reached in your opinion, and with most, if not all, of the reasons you give. I am somewhat concerned that the opinion as it stands now could be interpreted to hold only that this particular complaint does not state a claim upon which relief may be granted. I wonder whether you could, in a paragraph somewhere in the opinion, distill one or more rules from the opinion and state them in the paragraph.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 21, 1982

Re: 81-334 Associated General Contractors of California
v. California State Council of Carpenters

Dear John:

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

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

From: **Justice Stevens**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-334

ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC., PETITIONER *v.* CALIFORNIA STATE COUNCIL OF CARPENTERS AND CARPENTERS 46 NORTHERN COUNTIES CONFERENCE BOARD ET AL.

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

[November —, 1982]

JUSTICE STEVENS delivered the opinion of the Court.

This case arises out of a dispute between parties to a multi-employer collective bargaining agreement. The plaintiff unions allege that, in violation of the antitrust laws, the multi-employer association and its members coerced certain third parties, as well as some of the association's members, to enter into business relationships with nonunion firms. This coercion, according to the complaint, adversely affected the trade of certain unionized firms and thereby restrained the business activities of the unions. The question presented is whether the complaint sufficiently alleges that the unions have been "injured in [their] business or property by reason of anything forbidden in the antitrust laws" and may therefore recover treble damages under § 4 of the Clayton Act. 15 U. S. C. § 15. Unlike the majority of the Court of Appeals for the Ninth Circuit, we agree with the District Court's conclusion that the complaint is insufficient.

I

The first 21 paragraphs of the amended complaint describe

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 30, 1982

Re: 81-334 - Assoc. General Contractors v.
California State Council of Carpenters

Dear Bill:

Thanks for your note. I think your suggestion is a good one. In addition, I think I need to edit the opinion down to a somewhat shorter version and will do so in the next circulation.

Respectfully,



Justice Rehnquist

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Stevens
9-10
7 18-19, 20-22, 27

2nd
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-334

ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC., PETITIONER v. CALIFORNIA STATE COUNCIL OF CARPENTERS AND CARPENTERS 46 NORTHERN COUNTIES CONFERENCE BOARD ET AL.

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

[December —, 1982]

JUSTICE STEVENS delivered the opinion of the Court.

This case arises out of a dispute between parties to a multiemployer collective bargaining agreement. The plaintiff unions allege that, in violation of the antitrust laws, the multiemployer association and its members coerced certain third parties, as well as some of the association's members, to enter into business relationships with nonunion firms. This coercion, according to the complaint, adversely affected the trade of certain unionized firms and thereby restrained the business activities of the unions. The question presented is whether the complaint sufficiently alleges that the unions have been "injured in [their] business or property by reason of anything forbidden in the antitrust laws" and may therefore recover treble damages under § 4 of the Clayton Act, 15 U. S. C. § 15. Unlike the majority of the Court of Appeals for the Ninth Circuit, we agree with the District Court's conclusion that the complaint is insufficient.

I

The two named plaintiffs (the "Union")—the California

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*stylistic and typographic
changes throughout
substantive changes*

pp. 19, 20, 27

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

From: **Justice Stevens**

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-334

ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC., PETITIONER *v.* CALIFORNIA STATE COUNCIL OF CARPENTERS AND CARPENTERS 46 NORTHERN COUNTIES CONFERENCE BOARD ET AL.

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

[January —, 1982]

JUSTICE STEVENS delivered the opinion of the Court.

This case arises out of a dispute between parties to a multi-employer collective bargaining agreement. The plaintiff unions allege that, in violation of the antitrust laws, the multi-employer association and its members coerced certain third parties, as well as some of the association's members, to enter into business relationships with nonunion firms. This coercion, according to the complaint, adversely affected the trade of certain unionized firms and thereby restrained the business activities of the unions. The question presented is whether the complaint sufficiently alleges that the unions have been "injured in [their] business or property by reason of anything forbidden in the antitrust laws" and may therefore recover treble damages under §4 of the Clayton Act. 15 U. S. C. § 15. Unlike the majority of the Court of Appeals for the Ninth Circuit, we agree with the District Court's conclusion that the complaint is insufficient.

I

The two named plaintiffs (the "Union")—the California

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Justice O'Connor

changes pp 2, 21

From: **Justice Stevens**

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4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-334

ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC., PETITIONER *v.* CALIFORNIA STATE COUNCIL OF CARPENTERS AND CARPENTERS 46 NORTHERN COUNTIES CONFERENCE BOARD ET AL.

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

[February —, 1982]

JUSTICE STEVENS delivered the opinion of the Court.

This case arises out of a dispute between parties to a multi-employer collective bargaining agreement. The plaintiff unions allege that, in violation of the antitrust laws, the multi-employer association and its members coerced certain third parties, as well as some of the association's members, to enter into business relationships with nonunion firms. This coercion, according to the complaint, adversely affected the trade of certain unionized firms and thereby restrained the business activities of the unions. The question presented is whether the complaint sufficiently alleges that the unions have been "injured in [their] business or property by reason of anything forbidden in the antitrust laws" and may therefore recover treble damages under §4 of the Clayton Act. 15 U. S. C. §15. Unlike the majority of the Court of Appeals for the Ninth Circuit, we agree with the District Court's conclusion that the complaint is insufficient.

I

The two named plaintiffs (the "Union")—the California

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 22, 1983

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Associated General Contractors of California v. California State Council of Carpenters, No. 81-334

- 1) Mitsui & Co., Ltd. v. Industrial Investment Development Corp., No. 82-178

This case was held for No. 81-334 because it raises the question whether the "antitrust injury" test set forth in Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc. may properly be applied to dismiss an antitrust complaint before trial. Respondent alleges that petitioner violated Sections 1 and 2 of the Sherman Act by activities that displaced respondent as the purchaser of timber from a logging concession in Indonesia. The complaint asserts that petitioner, which competes with respondent in the business of importing lumber into the United States, sought to restrain and monopolize the importing business by cutting off respondent's source of supply. The district court granted summary judgment for petitioner on three grounds: that the alleged conduct was beyond the extraterritorial scope of the antitrust laws, that respondent had no standing to sue under the antitrust laws, and that the United States court was forum non conveniens. The Fifth Circuit reversed, rejecting all three grounds.

Asserting that "Brunswick is not a standing case," the Fifth Circuit concluded that it was "analytically unsound ... to consider the requirement of antitrust injury an additional component of the standing inquiry." It reasoned that the substantive question of whether the plaintiff had alleged "antitrust injury" should not be confused with the causation issues involved in the standing determination. It noted, however, that two other circuits had previously held that antitrust injury is a component of standing. Chrysler

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

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JUSTICE SANDRA DAY O'CONNOR

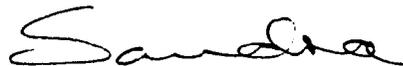
December 16, 1982

Re: 81-334 Associated General Contractors of
California v. California State Council
of Carpenters, etc.

Dear John,

Please join me.

Sincerely,



Justice Stevens

Copies to the Conference