

The Burger Court Opinion Writing Database

Ruckelshaus v. Sierra Club

463 U.S. 680 (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

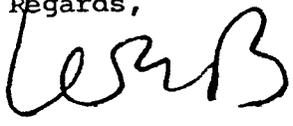
CHAMBERS OF
THE CHIEF JUSTICE

June 20, 1983

Re: 82-242 - Ruckelshaus v. Sierra Club

Dear John:

I voted your way at Conference but Bill's dissent gives me a great deal of trouble. You have tried to write narrowly but whether that is narrow enough, I'm not at all sure. I'll "sweat this out" as soon as possible.

Regards,


Justice Stevens

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 21, 1983

Re: 82-242 - Ruckelshaus, EPA Administrator v. Sierra Club

Dear John:

Following up my earlier memo, I am finally persuaded that we do not have a "Snail Darter" kind of statute but rather a typically "fuzzy" one in which Congress "ducked" the issue. To have candidly stated "yea" or "nay" on the issue might have lost votes in Congress - or back home. When Congress clearly tells us that "helpful losers" are to be paid, I will surely follow, but until they do, I lean to the traditional allocation concepts.

I have reached the point where I am unwilling to "bail out" Congress when it fails to speak clearly, and it now seems to me that the way to do it in this area is to say in effect: "Unless you speak clearly and plainly, we will not do your job for you."

That leads me to change my vote to a reverse. Your analysis will surely help to get Congress to focus on this subject.

Regards,



Justice Stevens

Copies to the Conference

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

M

CHAMBERS OF
THE CHIEF JUSTICE

June 23, 1983

Re: 82-242 - Ruckelshaus v. Sierra Club

Dear Bill:

In view of the new line up, the case is assigned to you.

Regards,

WRB

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 27, 1983

Re: 82-242 - Ruckelshaus v. Sierra Club

Dear Bill:

I join.

Regards,

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

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 7, 1983

No. 82-242

Ruckelshaus v. Sierra Club, et al.

Dear John,

I agree.

Sincerely,

Bill

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 28, 1983

No. 82-242

Administrator, Environmental
Protection Agency v. Sierra Club
and Environmental Defense Fund

Dear John,

Please join me in your
dissent.

Sincerely,

Bill

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 7, 1983

Re: 82-242 - Ruckelshaus v. Sierra Club

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

June 20, 1983

Re: 82-242 - Ruckelshaus v. Sierra Club

Dear Bill,

Please join me in your excellent
dissenting opinion.

Sincerely yours,



Justice Rehnquist

cc: The Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 6, 1983

Re: No. 82-242-Ruckelshaus v. Sierra Club

Dear John:

Please join me.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

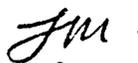
June 28, 1983

Re: No. 82-242-Ruckelshaus v. Sierra Club

Dear John:

Please join me in your dissent.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

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

✓

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 8, 1983

Re: No. 82-242 - Ruckelshaus v. Sierra Club

Dear John:

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN.

June 28, 1983

Re: No. 82-242 - Ruckelshaus v. Sierra Club

Dear John:

Please join me in your dissenting opinion.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 6, 1983

82-242 Ruckelshaus v. Sierra Club

Dear John:

I will await the dissent.

Sincerely,



Justice Stevens

lfp/ss

cc: The Conference

June 20, 1983

CONFIDENTIAL

82-242 Ruckelshaus v. Sierra Club

Dear Chief:

I have just read Bill Rehnquist's dissent in this case.

For me it is unanswerable and in accord with what I have understood your views to be generally about awarding fees, and particularly - as Bill says - to "self appointed representatives of the public interest".

Yet, my notes indicate that you voted the other way at Conference. Your vote will be controlling, and I write only to express the hope that Bill Rehnquist's opinion will persuade you.

The case is of exceptional importance because, as Bill notes, the decision presumably will set the standard for allowing fees under a large number of federal statutes in addition to the Clean Air Act.

Sincerely,

The Chief Justice

lfp/ss

bc: Justice White

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 20, 1983

82-242 Ruckelshaus v. Sierra Club

Dear Bill:

Please join me in your dissenting opinion.

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 27, 1983

82-242 Ruckelshaus v. Sierra Club

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 7, 1983

MEMORANDUM TO THE CONFERENCE

Re: No. 82-242 Ruckelshaus v. Sierra Club

In due course I will circulate a dissent.

Sincerely,



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

From: **Justice Rehnquist**

Circulated: JUN 20 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-242

WILLIAM D. RUCKELSHAUS, ADMINISTRATOR,
ENVIRONMENTAL PROTECTION AGENCY,
PETITIONER *v.* SIERRA CLUB ET AL.

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

[June —, 1983]

JUSTICE REHNQUIST, dissenting.

The Court errs badly in this case. Relying on § 307(f) of the Clean Air Act, the Court orders the Environmental Protection Agency to pay some \$100,589.00 in attorney's fees to two "self-appointed representatives of the public interest"¹ that wrongly charged the agency with gross violations of the law. These accusations were rejected—not just in part, or even in major part, but in *every conceivable respect*—by the court to which they were tendered. Having totally defeated the parties attacking its actions, no doubt incurring substantial legal fees in so doing, the EPA is now commanded to reward those same parties for their futile, but very expensive, efforts.

Today's decision will set the standard for attorney's fees under sixteen federal statutes² and § 304(d) of the Clean Air

¹See *Gorsuch v. Sierra Club*, No. 79-1565 (CADC January 22, 1982), withdrawn, 672 F. 2d 33 (CADC 1982).

²See Toxic Substances Control Act, 15 U. S. C. § 2618(d); Endangered Species Act, 16 U. S. C. § 1540(g)(4); Surface Mining Control and Reclamation Act, 30 U. S. C. (Supp. IV) § 1270(d); Deep Seabed Hard Mineral Resources Act, 30 U. S. C. (Supp. IV) § 1427(c); Clean Water Act, 33 U. S. C. § 1365(d); Marine Protection, Research and Sanctuaries Act, 33 U.S.C. § 1415(g)(4); Deepwater Port Act, 33 U. S. C. § 1515(d); Safe Drinking Water Act, 42 U. S. C. § 300j-8(d); Noise Control Act, 42 U. S. C. § 4911(d); Energy Policy and Conservation Act, 42 U. S. C. § 6305(d); Powerplant and Industrial Fuel Use Act, 42 U. S. C. (Supp. IV) § 8435(d);

Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

P. 12

From: Justice Rehnquist

Circulated: JUN 27 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-242

WILLIAM D. RUCKELSHAUS, ADMINISTRATOR,
ENVIRONMENTAL PROTECTION AGENCY,
PETITIONER *v.* SIERRA CLUB ET AL.

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

[June —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

In 1979, following a year of study and public comment, the Environmental Protection Agency (EPA) promulgated standards limiting the emission of sulfur dioxide by coal-burning power plants. Both respondents in this case—the Environmental Defense Fund (EDF) and the Sierra Club—filed petitions for review of the agency's action in the United States Court of Appeals for the District of Columbia. EDF argued that the standards promulgated by the EPA were tainted by the agency's *ex parte* contacts with representatives of private industry, while the Sierra Club contended that EPA lacked authority under the Clean Air Act to issue the type of standards that it did. In a lengthy opinion, the Court of Appeals rejected all the claims of both EDF and the Sierra Club. *Sierra Club v. Costle*, 657 F. 2d 298 (CADC 1981).

Notwithstanding their lack of success on the merits, EDF and the Sierra Club filed a request for attorney's fees incurred in the *Sierra Club* action. They relied on § 307(f) of the Clean Air Act, 42 U. S. C. § 7607(f), which permits the award of attorney's fees in certain proceedings "whenever [the court] determines that such an award is appropriate." Respondents argued that, despite their failure to obtain any

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

P. 12

Handwritten scribbles and a large diagonal line across the left side of the page.

From: **Justice Stevens**

Circulated: JUN 6 '83

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-242

**WILLIAM D. RUCKELSHAUS, ADMINISTRATOR,
ENVIRONMENTAL PROTECTION AGENCY,
PETITIONER v. SIERRA CLUB ET AL.**

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

[June —, 1983]

JUSTICE STEVENS delivered the opinion of the Court.

This case presents a narrow question: whether the Court of Appeals has any statutory authority to award attorney's fees and costs, pursuant to §307(f) of the Clean Air Act, 42 U. S. C. § 7607(f) (1976 ed., Supp. V), to a party that did not prevail on any of its challenges to rulemaking by the Environmental Protection Agency. If Congress granted such authority, it is clear that it should only be exercised in exceptional circumstances. The Government contends that, no matter how exceptional the circumstances may be, Congress intended fees and costs to be awarded only to prevailing parties. Although many statutes contain such an express limitation, neither statutory language nor legislative history supports the Government's construction of § 307(f).

The millions of tons of sulfur dioxide emitted by coal-burning power plants constitute a major source of air pollution in the United States. One method of reducing sulfur dioxide emissions is to install flue gas desulfurization equipment; another is to burn coal with lower sulfur content. In 1977 Congress amended the section of the Clean Air Act governing emission standards for newly-built or modified stationary pollution sources, including power plants. These amendments raised significant questions regarding the pollution control

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 20, 1983

Re: 82-242 - Ruckelshaus v. Sierra Club

Dear Chief:

Bill's dissent relies heavily on the possibility that fees might be awarded to a nonprevailing party in a suit against a private defendant. That has never been done to my knowledge and I frankly am unable to conceive of a situation in which that would not be an abuse of discretion.

As far as Bill's point about reviewing the award in this particular case is concerned, I suppose that we would have the power to do so but I did not understand that the Court had granted cert for the purpose of reviewing the record and determining whether in this particular case the Court of Appeals had abused its discretion. I thought it was our intent to confront the ultimate question of whether the statute that Congress wrote ever authorizes the award of fees to a party who does not prevail on any issue. Despite Bill's colorful writing, I think the answer to that is fairly clear if one does not approach the case with a rather strong bias in one direction or the other.

In all events, I will welcome any suggestions that may occur to you.

Respectfully,



The Chief Justice

Copies to the Conference

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

pg. 9, 11, 15, 16
Footnote renumbered
style to the changes

From: **Justice Stevens**

Circulated: _____

Recirculated: **JUN 21 '83**

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-242

WILLIAM D. RUCKELSHAUS, ADMINISTRATOR,
 ENVIRONMENTAL PROTECTION AGENCY,
 PETITIONER *v.* SIERRA CLUB ET AL.

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

[June —, 1983]

JUSTICE STEVENS delivered the opinion of the Court.

This case presents a narrow question: whether the Court of Appeals has any statutory authority to award attorney's fees and costs, pursuant to § 307(f) of the Clean Air Act, 42 U. S. C. § 7607(f) (1976 ed., Supp. V), to a party that did not prevail on any of its challenges to rulemaking by the Environmental Protection Agency. If Congress granted such authority, it is clear that it should only be exercised in exceptional circumstances. The Government contends that, no matter how exceptional the circumstances may be, Congress intended fees and costs to be awarded only to prevailing parties. Although many statutes contain such an express limitation, neither statutory language nor legislative history supports the Government's construction of § 307(f).

The millions of tons of sulfur dioxide emitted by coal-burning power plants constitute a major source of air pollution in the United States. One method of reducing sulfur dioxide emissions is to install flue gas desulfurization equipment; another is to burn coal with lower sulfur content. In 1977 Congress amended the section of the Clean Air Act governing emission standards for newly-built or modified stationary pollution sources, including power plants. These amendments raised significant questions regarding the pollution control

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

June 27, 1983

From: Justice Stevens

Circulated: JUN 27 '83

Recirculated: _____

82-242 - Administrator, Environmental Protection Agency

v. Sierra Club and Environmental Defense Fund

JUSTICE STEVENS, dissenting.

Even though the Court may regard the practice as "novel, costly, and intuitively unsatisfying," ante, at 7 n. 8, it is not at all unusual for a government to pay an unsuccessful adversary's counsel fees; indeed, in the largest category of litigation in which governments engage--criminal litigation--they do so routinely.¹ The question presented in this case is whether Congress has authorized any such award in a challenge to rulemaking by the Environmental Protection Agency. Today the Court holds that, no matter how exceptional the circumstances may be, Congress intended such awards to be made only to prevailing parties. But in § 307(f) Congress deliberately used language that differs from the "prevailing party" standard, and it carefully explained in the legislative history that it intended

¹See 18 U.S.C. §3006(A) (b).

Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: _____

Recirculated: _____ JUN 28 '83

Printed

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-242

WILLIAM D. RUCKELSHAUS, ADMINISTRATOR,
ENVIRONMENTAL PROTECTION AGENCY,
PETITIONER *v.* SIERRA CLUB ET AL.

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

[June —, 1983]

JUSTICE STEVENS, dissenting.

Even though the Court may regard the practice as “novel, costly, and intuitively unsatisfying,” *ante*, at 7 n. 8, it is not at all unusual for a government to pay an unsuccessful adversary’s counsel fees; indeed, in the largest category of litigation in which governments engage—criminal litigation—they do so routinely.¹ The question presented in this case is whether Congress has authorized any such award in a challenge to rulemaking by the Environmental Protection Agency. Today the Court holds that, no matter how exceptional the circumstances may be, Congress intended such awards to be made only to prevailing parties. But in § 307(f) Congress deliberately used language that differs from the “prevailing party” standard, and it carefully explained in the legislative history that it intended to give the court of appeals discretionary authority to award fees and costs to a broader category of parties. If one reads that statute and its legislative history without any strong predisposition in favor or against the “American Rule” endorsed by the Court in *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U. S. 240, 247 (1975), and repeatedly rejected by Congress

¹See 18 U. S. C. § 3006(A)(b).

Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice O'Connor

2-1,10

stylistic changes

From: **Justice Stevens**

Circulated: _____

Recirculated: _____ JUN 29 '83

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-242

WILLIAM D. RUCKELSHAUS, ADMINISTRATOR,
 ENVIRONMENTAL PROTECTION AGENCY,
 PETITIONER *v.* SIERRA CLUB ET AL.

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

[June —, 1983]

JUSTICE STEVENS, with whom JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE BLACKMUN join, dissenting.

Even though the Court may regard the practice as “novel, costly, and intuitively unsatisfying,” *ante*, at 7, n. 8, it is not at all unusual for a government to pay an unsuccessful adversary’s counsel fees; indeed, in the largest category of litigation in which governments engage—criminal litigation—they do so routinely.¹ The question presented in this case is whether Congress has authorized any such award in a challenge to rulemaking by the Environmental Protection Agency. Today the Court holds that, no matter how exceptional the circumstances may be, Congress intended such awards to be made only to prevailing parties. But in § 307(f) Congress deliberately used language that differs from the “prevailing party” standard, and it carefully explained in the legislative history that it intended to give the court of appeals discretionary authority to award fees and costs to a broader category of parties. If one reads that statute and its legislative history without any strong predisposition in favor or against the “American Rule” endorsed by the Court in *Alyeska Pipeline Service Co. v. Wilderness Society*, 421

¹See 18 U. S. C. § 3006(A)(d)(1976).

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 6, 1983

No. 82-242 Ruckelshaus v. Sierra Club

Dear John,

I will await further writing on this, if
there is any.

Sincerely,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 21, 1983

No. 82-242 Ruckelshaus v. Sierra Club

Dear Bill,

Please join me in Parts II, III & IV
of your dissent.

Sincerely,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 27, 1983

No. 82-242 Ruckelshaus v. Sierra Club

Dear Bill,

Please join me.

Sincerely,



Justice Rehnquist

Copies to the Conference