The Burger Court Opinion Writing Database

Ruckelshaus v. Monsanto Co.

467 U.S. 986 (1984)

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 19, 1984

Re: 83-196 - Ruckelshaus v. Monsanto Company

Dear Harry:

I join.

Regards,

Justice Blackmun

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 WM. J. BRENNAN, JR.

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN -8 A11 :44

June 8, 1984

No. 83-196

Ruckelshaus v. Monsanto Company

Dear Harry,

I agree.

Sincerely,

Justice Blackmun

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 THURGOOD MARSHALL

June 12, 1984

Re: No. 83-196-Ruckelshaus v. Monsanto

Dear Harry:

Please join me.

Sincerely,

T.M.

Justice Blackmun

cc: The Conference

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN -7 P12:03

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 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83–196

WILLIAM D. RUCKELSHAUS, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY *v.* MONSANTO COMPANY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

[June ——, 1984]

JUSTICE BLACKMUN delivered the opinion of the Court.

In this case, we are asked to review a United States District Court's determination that several provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 61 Stat. 163, as amended, 7 U. S. C. § 136 *et seq.*, are unconstitutional. The provisions at issue authorize the Environmental Protection Agency (EPA) to use data submitted by an applicant for registration of a pesticide[1] in evaluating the application of a subsequent applicant, and to disclose publicly some of the submitted data.

I

Over the past century, the use of pesticides to control weeds and minimize crop damage caused by insects, disease, and animals has become increasingly more important for American agriculture. See S. Rep. No. 95–334, p. 32 (1977); S. Rep. No. 92–838, pp. 3–4, 6–7 (1972); H. R. Rep. No. 92–511, pp. 3–7 (1971). While pesticide use has led to improvements in productivity, it has also led to increased risk of

[1] For purposes of our discussion of FIFRA, the term "pesticides" includes herbicides, insecticides, fungicides, rodenticides, and plant regulators. See §§ 2(t) and (u) of FIFRA, as amended, 7 U. S. C. §§ 136(t) and (u).

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

Stylistic Changes - Pages: 11, 12, 16-17, 23, 24, 25, 30

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

From: **Justice Blackmu**

Circulated: _____

Recirculated: JUN 15 1984

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83–196

WILLIAM D. RUCKELSHAUS, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY *v.* MONSANTO COMPANY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

[June ——, 1984]

JUSTICE BLACKMUN delivered the opinion of the Court.

In this case, we are asked to review a United States District Court's determination that several provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 61 Stat. 163, as amended, 7 U. S. C. § 136 *et seq.*, are unconstitutional. The provisions at issue authorize the Environmental Protection Agency (EPA) to use data submitted by an applicant for registration of a pesticide[1] in evaluating the application of a subsequent applicant, and to disclose publicly some of the submitted data.

I

Over the past century, the use of pesticides to control weeds and minimize crop damage caused by insects, disease, and animals has become increasingly more important for American agriculture. See S. Rep. No. 95–334, p. 32 (1977); S. Rep. No. 92–838, pp. 3–4, 6–7 (1972); H. R. Rep. No. 92–511, pp. 3–7 (1971). While pesticide use has led to improvements in productivity, it has also led to increased risk of

[1] For purposes of our discussion of FIFRA, the term "pesticides" includes herbicides, insecticides, fungicides, rodenticides, and plant regulators. See §§ 2(t) and (u) of FIFRA, as amended, 7 U. S. C. §§ 136(t) and (u).

V

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 15, 1984

Re: No. 83-196 - Ruckelshaus v. Monsanto Co.

Dear Bill, John, and Sandra:

Thank you for your respective notes. The new draft enclosed, I believe, accommodates John fully and, to an extent, accommodates Bill. It does not go along with Sandra's suggestions. I doubt if she anticipated that it would, for she already has circulated her partial dissent.

While I am sympathetic to Bill's concerns, I do not believe that the opinion raises either of the problems to which he alludes.

With respect to the subdivision hypothetical, I do not see that this case would be dispositive or even highly supportive of the finding that there is no taking. As Bill wrote in Kaiser Aetna, the inquiry into whether a taking has occurred is an inherently factual one, and the facts in this case are vastly different from those in the hypothetical. Throughout parts IV-A and IV-B, we emphasize the point that the pesticide industry is a highly regulated one. In Bill's example, I would suspect that our decision would rest on many factors, possibly including whether the claim is being made by one who purchased the property before or after the imposition of the statute.

With respect to Bill's concerns about allowing a Tucker Act remedy, I do not feel that this opinion pushes the state of the law beyond where it has been since the Regional Rail Act Reorganization Cases were decided. I also do not think that this is a case where the SG has been unfaithful to the intent of Congress. As is mentioned in the opinion, the legislative history contains language that indicates that Congress saw the data as property. The inclusion of the arbitration scheme also shows Congress' intention that original submitters receive some sort of compensation. Thus, I do not think it likely that Congress had no inkling that this statute would be construed by the courts as a taking statute rather than as a regulatory statute. As for the concern about other statutes, there is little we can do to prevent the sort of action on the part of the SG that Bill mentions. I think we have to rely on the SG's good faith in construing the statute or on our own ability to discern intent from the legislative history.

Sincerely,

Harry

Justice Rehnquist
Justice Stevens
Justice O'Connor

cc: The Conference

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

STYLISTIC CHANGES

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 25 A9:55

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 2 2

3rd Draft

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 83–196

WILLIAM D. RUCKELSHAUS, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY *v.* MONSANTO COMPANY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

[June 26, 1984]

JUSTICE BLACKMUN delivered the opinion of the Court.

In this case, we are asked to review a United States District Court's determination that several provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 61 Stat. 163, as amended, 7 U. S. C. § 136 *et seq.*, are unconstitutional. The provisions at issue authorize the Environmental Protection Agency (EPA) to use data submitted by an applicant for registration of a pesticide[1] in evaluating the application of a subsequent applicant, and to disclose publicly some of the submitted data.

I

Over the past century, the use of pesticides to control weeds and minimize crop damage caused by insects, disease, and animals has become increasingly more important for American agriculture. See S. Rep. No. 95–334, p. 32 (1977); S. Rep. No. 92–838, pp. 3–4, 6–7 (1972); H. R. Rep. No. 92–511, pp. 3–7 (1971). While pesticide use has led to improvements in productivity, it has also led to increased risk of

[1] For purposes of our discussion of FIFRA, the term "pesticides" includes herbicides, insecticides, fungicides, rodenticides, and plant regulators. See §§ 2(t) and (u) of FIFRA, as amended, 7 U. S. C. §§ 136(t) and (u).

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

June 22, 1984

Memorandum to the Conference

Re: Case Held for No. 83-196, Ruckelshaus v. Monsanto Co.

We have held only one case for Monsanto. That case is No. 83-1564, Ruckelshaus v. Union Carbide Agricultural Products Co. In Union Carbide, the DC (SDNY Owen, J.) held unconstitutional the arbitration provision of FIFRA, §3(c)(1)(D). Although we left open in Monsanto the question of the constitutionality of the arbitration provision, I think that our decision in that case bears on the DC's judgment here in two ways.

First of all, we left the question open in Monsanto because it was not yet ripe for review. In Part VII of the opinion, we explain that a challenge to the arbitration provision will not become ripe until there has been an actual arbitration. One of the appellees in Union Carbide, Stauffer Chemical, had been a party to an arbitration by the time the DC issued its decision. But it does not appear as though Stauffer challenged the results of the arbitration in this litigation. The other party to the arbitration, however, has brought suit challenging the arbitration, PPG Industries, Inc. v. Stauffer Chemical Co., Civil Action No. 83-1941 (DDC filed July 7, 1983), and Stauffer has counterclaimed. The DC did not take into consideration any specific arbitration in making its decision. In response to the argument that the case was not ripe, the DC stated that since appellees were challenging the statutory compulsion to seek relief through arbitration, the issue was ripe even in the absence of an actual arbitration. This result is contrary to our holding in Monsanto, and probably stems from the DC's failure to consider the relationship of the Tucker Act to the challenged provision.

On the merits, the DC found the arbitration provision unconstitutional because the federal courts have no role in reviewing the arbitration process. Here again, the DC's failure to consider the Tucker Act remedy may have guided its decision. Because we have now clarified that there is a Tucker Act remedy for takings not justly compensated for through the arbitration process, there is clearly a role for the federal courts in determining the constitutional right to compensation of an original submitter. The arbitration provision creates a statutory right--the right to compensation from subsequent applicants--and I believe that our clarification in Monsanto that the arbitrators are adjudicating with respect to a purely statutory right will affect the DC's analysis of the need for judicial review of the results of arbitration.

For these reasons, I shall to vote to GVR in light of Monsanto.

HAB.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN -8 A9:48

June 8, 1984

83-196 Ruckelshaus v. Monsanto Company

Dear Harry:

Please join me.

Sincerely,

Lewis

Justice Blackmun

lfp/ss

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 WILLIAM H. REHNQUIST

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 12 P1 :49

June 12, 1984

Re: No. 83-196 Ruckelshaus v. Monsanto Company

Dear Harry:

I think you have written an excellent opinion in this case, but I am troubled by a couple of points which I want to call to your attention.

The first question pertains to the post-1978 data submitted by Monsanto, which is treated at pages 17-19 of your draft. Does this portion of your opinion decide, or at least intimate, that it would be consistent with the "takings" clause for a board of supervisors to provide that all submissions for subdivision of more than 40 acres made after a particular date would have to include a deed of at least 25% of the gross acreage owned to the county as a park? I have no desire to see that question decided one way or the other by this opinion.

The second "problem" in my mind is the apparent facility with which we resort to Tucker Act relief in connection with a statute which Congress seems to have intended only as a regulatory measure and not as an invocation of the government's condemnation power. I fear that if we are too generous in permitting Tucker Act relief through the Court of Claims, the government may chose to defend the constitutionality of a statute against a "takings" clause claim by only half-heartedly defending against the claim, or perhaps conceding its validity, while going on to contend that the statute is not unconstitutional

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

because resort may be had to the Court of Claims. In short, I think that the Solicitor General's point of view might be quite different from the point of view of the majority in Congress who enacted the legislation.

Sincerely,

WEB

Justice Blackmun

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 WILLIAM H. REHNQUIST

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 20 P3:33

June 20, 1984

Re: No. 83-196 Ruckelshaus v. Monsanto Co.

Dear Harry:

Please join me.

Sincerely,

WM

Justice Blackmun

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHAL
'84 JUN 12 P1:4

June 12, 1984

Re: 83-196 - Ruckelshaus v. Monsanto Company

Dear Harry:

You have written a fine opinion and I will certainly join most of it, including Parts I, II, III, IV-A and B, and V. My main reservation is with Part IV-C. I am not sure that any question concerning the data submitted between 1972 and 1978 is ripe for decision on the present record.

While it is certainly possible that EPA may find it appropriate to disclose publicly some confidential data that Monsanto submitted to it between 1972 and 1978, or that it may use some of that data in reviewing some other company's application for registration of its pesticide, it is not clear to me that it is yet appropriate to say that this would constitute a taking without just compensation. The value of the data appears to consist entirely in its use to Monsanto's competitors in registering their own pesticides. However, under the statute whenever they do make use of the data they must compensate Monsanto. We should not presume that arbitrators' awards will be too small to compensate Monsanto fully for the reduction in the market value of the data. The statute appears to require arbitrators to ensure that Monsanto recover its costs of developing data from its competitors, and cost should be an adequate proxy for market value. Thus arbitration may well ensure that Monsanto recovers the full market value of its trade secrets -- just compensation. Thus it is not clear to me that the statute will necessarily operate to take Monsanto's property without just compensation, as you seem to suggest in Part IV-C of your opinion.

Until there has been a specific use of Monsanto's data in processing another company's application, followed by a specific claim for compensation and a factual record supporting the conclusion that Monsanto was undercompensated

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

in a constitutional sense by the arbitration award, the possibility that Monsanto's property will be taken is surely too speculative to declare the statute unconstitutional on its face and enjoin its operation. If you could alter your analysis in Part IV-C slightly to indicate that it is not yet clear that Monsanto will not receive just compensation, I could join it.

This reasoning is supported by your holding in Part VI that the Tucker Act is available to Monsanto, and your further holding in Part VII that Monsanto's claims are now premature. Since it can seek a remedy for any undercompensation of a constitutional magnitude there, it seems especially inappropriate to prejudge the taking issue at this juncture. While I do not think Part VI is strictly necessary to the holding, I could surely join it to support the conclusion that Monsanto's takings claim is premature.

I do not think we are very far apart, especially since your ultimate judgment is that the Act is constitutional and that any takings claim concerning the 1972-1978 data is now premature. If you can see your way clear to making these changes I would be happy to join you.

Respectfully,

Justice Blackmun

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 JOHN PAUL STEVENS

June 15, 1984

Re: 83-196 - Ruckelshaus v. Monsanto Co.

Dear Harry:

Please join me.

Respectfully,

John

Justice Blackmun

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 SANDRA DAY O'CONNOR

June 8, 1984

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 11 A9:3

No. 83-196 Ruckelshaus v. Monsanto Co.

Dear Harry,

I expect to join most of your very fine opinion in this case, but I have reservations about Part IVB and your conclusion regarding the pre-1972 data on p.24 of your circulation.

You conclude that data submitted to EPA before 1972 may be used within the agency, in connection with "me-too" applications, and may also be disclosed to the public. I am not sure that I can go along with either conclusion.
I definitely feel that the Trade Secrets Act gave pre-1972 applicants a firm expectation that the data would not be publicly disclosed. Even if use of the data for "me-too" applications within EPA were permissible, non-disclosure to the public could be vitally important for applicants who market their products--and therefore undergo regulatory review--in other countries.
I also remain uncomfortable about the use of pre-1972 data in connection with "me-too" applications. The District Court found that prior to 1972 only two competitors' registrations were granted on the basis of data submitted by Monsanto, and that Monsanto had no knowledge of either of these registrations prior to their being granted. These facts, together with the the Trade Secrets Act and the other matters discussed in footnote 14 of your draft, lead me to conclude that Monsanto did have a reasonable expectation that trade secrets from its pre-1972 submissions would not be used as a basis for issuing licenses to others.

If you are not inclined to modify Part IVB, I will circulate a brief partial concurrence.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 14 A10:47

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

From: Justice O'Conno

Circulated: 6/14

Recirculated: _____

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83–196

WILLIAM D. RUCKELSHAUS, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY *v.* MONSANTO CO.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

[June ——, 1984]

JUSTICE O'CONNOR, concurring in part and dissenting in part.

I join all of the Court's opinion except for Part IVB and the Court's conclusion, *ante* at 24, that "EPA's consideration or disclosure of data submitted by Monsanto to the agency prior to October 22, 1972 . . . does not effect a taking." In my view public disclosure of pre-1972 data would effect a taking. As to consideration of this information within EPA in connection with other license applications not submitted by Monsanto, I believe we should remand to the District Court for further factual findings concerning Monsanto's expectations regarding inter-agency uses of trade secret information prior to 1972.

It is important to distinguish at the outset public disclosure of trade secrets from use of those secrets entirely within EPA. Internal use may undermine Monsanto's competitive position within the United States, but it leaves Monsanto's position in foreign markets undisturbed. As the Court notes, *ante*, at 19 n. 11, the likely impact on foreign market position is one that Monsanto would weigh when deciding whether to submit trade secrets to EPA. Thus a submission of trade secrets to EPA that implicitly consented to further use of the information within the agency is not necessarily the same as one that implicitly consented to public disclosure.

Stylistic Changes Throughout

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 18 P2:51

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

From: Justice O'Conno

Circulated: _____

Recirculated: JUN 18

2d ~~1st~~ DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83–196

WILLIAM D. RUCKELSHAUS, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY *v.* MONSANTO CO.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

[June ——, 1984]

JUSTICE O'CONNOR, concurring in part and dissenting in part.

I join all of the Court's opinion except for Part IV–B and the Court's conclusion, *ante*, at 24, that "EPA's consideration or disclosure of data submitted by Monsanto to the agency prior to October 22, 1972 . . . does not effect a taking." In my view public disclosure of pre-1972 data would effect a taking. As to consideration of this information within EPA in connection with other license applications not submitted by Monsanto, I believe we should remand to the District Court for further factual findings concerning Monsanto's expectations regarding interagency uses of trade secret information prior to 1972.

It is important to distinguish at the outset public disclosure of trade secrets from use of those secrets entirely within EPA. Internal use may undermine Monsanto's competitive position within the United States, but it leaves Monsanto's position in foreign markets undisturbed. As the Court notes, *ante*, at 19, n. 11, the likely impact on foreign market position is one that Monsanto would weigh when deciding whether to submit trade secrets to EPA. Thus a submission of trade secrets to EPA that implicitly consented to further use of the information within the agency is not necessarily the same as one that implicitly consented to public disclosure.

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