

The Burger Court Opinion Writing Database

Regan v. Wald

468 U.S. 222 (1984)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



13

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

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CHAMBERS OF
THE CHIEF JUSTICE

May 30, 1984

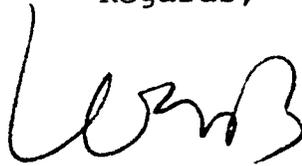
'84 MAY 30 P4:08

Re: 83-436 - Regan v. Wald

Dear Bill:

I join.

Regards,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 30, 1984

No. 83-436

Regan v. Wald

Dear Harry,

Thurgood, Lewis, you and I are in
dissent in the above. Would you
undertake the dissent?

Sincerely,

Bill

Justice Blackmun

Copies to: Justice Marshall
Justice Powell

222 RA 1- VIV 107

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

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SUPREME COURT, U.S.
JUSTICE MARSHALL

24 JUN 21 A9 56

June 21, 1984

No. 83-436

Regan v. Wald, et al.

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

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4

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

74 JUN -4 P2:49

June 4, 1984

Re: 83-436 - Regan v. Wald

Dear Bill,

Join me, please.

Sincerely,



Justice Rehnquist

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 21, 1984

Re: No. 83-436-Regan v. Wald

Dear Harry:

Please join me in your dissent.

Sincerely,



T.M.

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 1, 1984

Re: No. 83-436 - Regan v. Wald

Dear Bill:

I shall be glad to undertake the dissent in this case. You will recall that I was to affirm "with a question mark." I am still in that posture.

Sincerely,



Justice Brennan

cc: Justice Marshall
Justice Powell

22-01 1-784 AG

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84 JUN 20 P2 06

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

From: Justice Blackmun

Circulated: JUN 20 1984

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Handwritten notes:
1412
Please Review
in your office
6/14/84

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-436

DONALD REGAN, SECRETARY OF THE TREASURY,
ET AL., PETITIONER *v.* RUTH WALD ET AL.

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

[June —, 1984]

JUSTICE BLACKMUN, dissenting.

All parties concede that the 1982 restrictions on travel-related expenditures in Cuba, 47 Fed. Reg. 17030 (1982), were not promulgated in conformity with the procedural requirements of the International Emergency Economic Powers Act of 1977, Pub. L. 95-223, Title II, 91 Stat. 1626, 50 U. S. C. §§ 1701-1706 (IEEPA). Thus, those restrictions are invalid unless they were authorized by § 101(b) of Pub. Law 95-223, 91 Stat. 1625, the grandfather clause of the IEEPA. Because I do not agree that the grandfather clause encompasses the exercise of Presidential power at issue here, I would affirm the judgment of the United States Court of Appeals for the First Circuit.

I

Congress promulgated Public Law 95-223 to address problems unforeseen by the drafters of the Trading With the Enemy Act of 1917, 40 Stat. 411, as amended, 50 U. S. C. App. § 1 *et seq.* (TWEA). The TWEA was one of several statutes that reflected Congress' conclusion that the President should have increased authority in times of war or national emergency in order to respond to such crisis situations with the coordinated alacrity they require. Accordingly, the TWEA provided the President with a broad range of powers over international trade in time of war or "national emergency."

STYLLISTIC CHANGES

+ p-1

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84 JUN 25 A9 55

To: The Chief Justice
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From: Justice Blackmun

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-436

DONALD REGAN, SECRETARY OF THE TREASURY,
ET AL., PETITIONERS *v.* RUTH WALD ET AL.

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

[June —, 1984]

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

All parties concede that the 1982 restrictions on travel-related expenditures in Cuba, 47 Fed. Reg. 17030 (1982), were not promulgated in conformity with the procedural requirements of the International Emergency Economic Powers Act of 1977, Pub. L. 95-223, Title II, 91 Stat. 1626, 50 U. S. C. §§ 1701-1706 (IEEPA). Thus, those restrictions are invalid unless they were authorized by § 101(b) of Pub. L. 95-223, 91 Stat. 1625, the grandfather clause of the IEEPA. Because I do not agree that the grandfather clause encompasses the exercise of Presidential power at issue here, I would affirm the judgment of the United States Court of Appeals for the First Circuit.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

20 RA 10 11 83

May 30, 1984

83-436 Regan v. Wald

Dear Bill:

I will await the dissent.

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.

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JUSTICE MARSHALL

'84 JUN 21 P3:03

June 21, 1984

83-436 Regan v. Wald

Dear Harry:

Please join me in your dissent.

I also am writing a one paragraph concurring
dissent.

Sincerely,



Justice Blackmun

lfp/ss

cc: The Conference

82-436 Regan v. Wald

JUSTICE POWELL, dissenting.

As the Solicitor General argues, the judgment of the Court may well be in the best interest of the United States. The regulations upheld today limit Cuba's ability to acquire hard currency, currency that the Executive has found might be used to support violence and terrorism. Our role is limited, however, to ascertaining and sustaining the intent of Congress. It is the responsibility of the President and Congress to determine the course of the nation's foreign affairs. In this case, the legislative history canvassed by JUSTICE BLACKMUN's dissenting opinion unmistakably demonstrates that Congress intended to bar the President from expanding the exercise of emergency authority under §5(b). Contrary to the Court's view, the meaning of the word "authorities" in the grandfather clause is not "clear," see ante, at 14, nor in my view is it contrary to the fair import of this history.

06/21

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

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84 JUN 22 19:35

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-436

DONALD REGAN, SECRETARY OF THE TREASURY,
ET AL., PETITIONERS *v.* RUTH WALD ET AL.

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

[June —, 1984]

JUSTICE POWELL, dissenting.

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'84 MAY 29 A10:14

To: The Chief Justice
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Justice O'Connor

From: Justice Rehnquist

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-436

DONALD REGAN, SECRETARY OF THE TREASURY,
ET AL., PETITIONERS *v.* RUTH WALD ET AL.

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

[May —, 1984]

JUSTICE REHNQUIST delivered the opinion of the Court.

Respondents are American citizens who want to travel to Cuba. They are inhibited from doing so by a Treasury Department regulation, first promulgated in 1963, which prohibits any transaction involving property in which Cuba, or any national thereof, has "any interest of any nature whatsoever, direct or indirect." 31 CFR § 515.201(b) (1983) (Regulation 201(b)). For a period of about five years, "transactions ordinarily incident to" travel to and from as well as within Cuba were, with some limitations, exempted from the broad prohibition of Regulation 201(b) by a general license. See 31 CFR § 515.560, 42 Fed. Reg. 16621 (1977). But this general license was amended in 1982, and the scope of permissible economic transactions in connection with travel to Cuba was significantly narrowed. 47 Fed. Reg. 17030 (1982).

Respondents challenged the amendment to the general license on constitutional and statutory grounds and sought a preliminary injunction against its enforcement. The District Court for the District of Massachusetts concluded that respondents had not demonstrated a substantial likelihood of success on the merits and refused to issue the injunction. Pet. App., at 22a. On appeal taken by respondents, the Court of Appeals for the First Circuit, concluding that the

*Donald Regan
H.A.F.*

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Justice O'Connor

From: Justice Rehnquist

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STYLISTIC CHANGES THROUGHOUT

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-436

DONALD REGAN, SECRETARY OF THE TREASURY,
ET AL., PETITIONERS *v.* RUTH WALD ET AL.

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

[June —, 1984]

JUSTICE REHNQUIST delivered the opinion of the Court.

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Respondents challenged the amendment to the general license on constitutional and statutory grounds and sought a preliminary injunction against its enforcement. The District Court for the District of Massachusetts concluded that respondents had not demonstrated a substantial likelihood of success on the merits and refused to issue the injunction. Pet. App., at 22a. On appeal taken by respondents, the Court of Appeals for the First Circuit, concluding that the

STATISTIC CHANGES PROHIBITED

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN -5 A11:14

To: The Chief Justice
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Justice O'Connor

From: Justice Rehnquist

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-436

DONALD REGAN, SECRETARY OF THE TREASURY,
ET AL., PETITIONERS *v.* RUTH WALD ET AL.

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

[June —, 1984]

Rehnquist
6/5/84

JUSTICE REHNQUIST delivered the opinion of the Court.

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Respondents challenged the amendment to the general license on constitutional and statutory grounds and sought a preliminary injunction against its enforcement. The District Court for the District of Massachusetts concluded that respondents had not demonstrated a substantial likelihood of success on the merits and refused to issue the injunction. Pet. App., at 22a. On appeal taken by respondents, the Court of Appeals for the First Circuit, concluding that the

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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JUSTICE MARSHALL

'84 JUN 22 P1:14

June 22, 1984

Re: No. 83-436 Regan v. Wald

Dear Harry:

Upon further consideration, I have decided that I will not make any changes in the Court's opinion in this case in response to your dissent. So far as I am concerned, the case is now ready to come down.

Sincerely,

wm

Justice Blackmun

cc: The Conference

2

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

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

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JUSTICE MARSHALL

'84 MAY 29 P3:19

May 29, 1984

Re: 83-436 - Regan v. Wald

Dear Bill:

Please join me.

Respectfully,



Justice Rehnquist

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

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JUSTICE MARSHALL

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

'84 MAY 29 AM 10

May 30, 1984

No. 83-436 Regan v. Wald

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Rehnquist

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