

The Burger Court Opinion Writing Database

Securities Industry Association v. Board of Governors, FRS

468 U.S. 207 (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 11, 1984

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN 12 P3:52

Re: 83-614 - Securities Industry Ass'n. v. Federal Reserve System

Dear Lewis:

I join.



Justice Powell

Copies to the Conference



CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

June 4, 1984 84 JUN -4 11:30

No. 83-614

Securities Industry Association
v. Board of Governors of the
Federal Reserve System, et al.

Dear Lewis,

I agree.

Sincerely,

Justice Powell

Copies to the Conference

Supreme Court of the United States

RECEIVED
Washington, D.C. 20543
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE BYRON R. WHITE

84 JUN -5 AM:13

June 5, 1984

Re: 83-614 - Securities Industry Ass'n v. Board of
Governors of the Federal Reserve System

Dear Lewis,

I shall await Harry's circulation in No. 82-1766.

Sincerely yours,



Justice Powell

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

June 25, 1984

'84 JUN 25 P3:21

Re: 83-614 -

Securities Industry Ass'n v. Board of
Governors of the Federal Reserve System

Dear Lewis,

Please join me.

Sincerely yours,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 6, 1984

Re: No. 83-614-Securities Industry v. Board of
Governors of the Federal Reserve System

Dear Lewis:

Please join me.

Sincerely,

J.M.
T.M.

Justice Powell
cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 31, 1984

Dear Lewis:

Re: No. 83-614, Securities Industry Ass'n v. Board
of Governors of the Federal Reserve System

Thank you for your letter of May 25 and for giving me an advance copy of your proposed opinion in this case. I see no reason why you should not circulate your opinion now together with a memorandum of the kind suggested. I sense that the only possible tension with what you have written and what we shall propose in No. 82-1766 will be with respect to your footnote 16. If tension proves to exist, however, I feel that it can be worked out between us in the writings. It may be desirable ultimately not to have your opinion come down until mine is circulated and initial reactions are forthcoming. Perhaps they should come down together.

you
Sincerely,

Harry

Justice Powell

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 15, 1984

Re: No. 83-614, Securities Industry Association v.
Board of Governors of the Federal Reserve System

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

cc: The Conference

May 25, 1984

83-614 Securities Industries Association v. Board
of Governors

Dear Harry:

I enclose two copies of the first draft of my opinion for the Court in this case.

You are writing the Court opinion in 82-1766 Securities Industries Association v. Board of Governors, in which the Court (the vote was 6 to 3) decided that the Board has exceeded its authority in allowing banks to underwrite commercial paper. We will, of course, want the two opinions to harmonize, and anticipate no difficulty in this respect.

I could circulate my opinion now, accompanied by a letter along the lines of that enclosed. Or, if you prefer that I wait until you are ready to circulate, I will be glad to do so.

Sincerely,

Justice Blackmun

lfp/ss

05/24

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

L.F.P.
5/25
See my
letter to
HAB.

From: **Justice Powell**

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-614

SECURITIES INDUSTRY ASSOCIATION, PETITIONER v. BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM ET AL.

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

[May —, 1984]

JUSTICE POWELL delivered the opinion for the Court.

This case presents the question whether the Federal Reserve Board has statutory authority under §4(c)(8) of the Bank Holding Company Act, 12 U. S. C. § 1843(c)(8), to authorize a bank holding company to acquire a nonbanking affiliate engaged principally in retail securities brokerage.

I

BankAmerica Corporation [BAC] is a bank holding company within the meaning of the Bank Holding Company Act.¹ In March 1982, BAC applied to the Federal Reserve Board [Board] for approval under § 4(c)(8) of the Act to acquire 100 percent of the voting shares of The Charles Schwab Corporation, a company that engages through its wholly-owned subsidiary, Charles Schwab & Company [Schwab], in retail discount brokerage.² The Board ordered that formal public hearings be held before an Administrative Law Judge [ALJ]

¹ BAC operates one subsidiary bank, Bank of America. That bank is a member of the Federal Reserve System, and the parties inform us that it is the largest commercial bank in the United States.

² Schwab is known as a "discount" broker because of the low commissions it charges. Schwab can afford to charge lower commissions than full-service brokerage firms because it does not provide investment advice or analysis, but merely executes the purchase and sell orders placed by its customers.

lfp/ss 05/25/84 INDUSTRIE SALLY-POW

83-614 Securities Industries Association v. Board
of Governors

MEMORANDUM TO THE CONFERENCE:

Harry is writing for the Court in the other Federal Reserve Board case, No. 82-1766 Securities Industries Association v. Board of Governors. In 83-614 the Court is unanimous in agreeing that the Federal Reserve Board correctly construed the relevant statutes. In Harry's case (82-1766), the vote - according to my notes - was 6 to 3 to hold that the Board acted beyond its authority in authorizing banks to underwrite commercial paper. Thus, in one case we agree with the Board, and the other disagree.

I am confident there will be no inconsistency in the basic rationale of the two Court opinions. I have talked to Harry and have agreed that we will collaborate to assure that our reasoning - to the extent necessary - is compatible.

I circulate my opinion now in view of the time constraints at this season of the year, but will make appropriate changes if this seems desirable when Harry's opinion is ready to circulate.

L.F.P., Jr.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 31, 1984

83-614 Securities Industries Association v. Board
of Governors

MEMORANDUM TO THE CONFERENCE:

Harry is writing for the Court in the other Federal Reserve Board case No. 82-1766 Securities Industries Association v. Board of Governors. In 83-614 the Court is unanimous in agreeing that the Federal Reserve Board correctly construed the relevant statutes. In Harry's case (82-1766), the vote - according to my notes - was 6 to 3 to hold that the Board acted beyond its authority in authorizing banks to underwrite commercial paper. Thus, in one case we agree with the Board, and the other disagree.

I am confident there will be no inconsistency in the basic rationale of the two Court opinions. I have talked to Harry and have agreed that we will collaborate to assure that our reasoning - to the extent necessary - is compatible.

I circulate my opinion now in view of the time constraints at this season of the year, but will make appropriate changes if this seems desirable when Harry's opinion is ready to circulate.

L. F. P.

L.F.P., Jr.

SS

05/24

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

From: **Justice Powell**

Circulated: MAY 31 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-614

SECURITIES INDUSTRY ASSOCIATION, PETI-
TIONER *v.* BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM ET AL.

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

[May —, 1984]

JUSTICE POWELL delivered the opinion for the Court.

This case presents the question whether the Federal Reserve Board has statutory authority under §4(c)(8) of the Bank Holding Company Act, 12 U. S. C. §1843(c)(8), to authorize a bank holding company to acquire a nonbanking affiliate engaged principally in retail securities brokerage.

I

BankAmerica Corporation [BAC] is a bank holding company within the meaning of the Bank Holding Company Act.¹ In March 1982, BAC applied to the Federal Reserve Board [Board] for approval under §4(c)(8) of the Act to acquire 100 percent of the voting shares of The Charles Schwab Corporation, a company that engages through its wholly-owned subsidiary, Charles Schwab & Company [Schwab], in retail discount brokerage.² The Board ordered that formal public hearings be held before an Administrative Law Judge [ALJ]

¹BAC operates one subsidiary bank, Bank of America. That bank is a member of the Federal Reserve System, and the parties inform us that it is the largest commercial bank in the United States.

²Schwab is known as a "discount" broker because of the low commissions it charges. Schwab can afford to charge lower commissions than full-service brokerage firms because it does not provide investment advice or analysis, but merely executes the purchase and sell orders placed by its customers.

06/21

Stylistic Changes Throughout

2 P 12, n 2

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 21 P3:12

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

From: Justice Powell

Circulated: _____

Recirculated: JUN 21 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-614

SECURITIES INDUSTRY ASSOCIATION, PETITIONER *v.* BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM ET AL.

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

[June —, 1984]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether the Federal Reserve Board has statutory authority under §4(c)(8) of the Bank Holding Company Act of 1956, 12 U. S. C. § 1843(c)(8), to authorize a bank holding company to acquire a nonbanking affiliate engaged principally in retail securities brokerage.

I

BankAmerica Corp. (BAC) is a bank holding company within the meaning of the Bank Holding Company Act.¹ In March 1982, BAC applied to the Federal Reserve Board [Board] for approval under §4(c)(8) of the Act to acquire 100 percent of the voting shares of The Charles Schwab Corp., a company that engages through its wholly-owned subsidiary, Charles Schwab & Co. (Schwab), in retail discount brokerage.² The Board ordered that formal public hearings be held before an Administrative Law Judge (ALJ) to consider

¹BAC operates one subsidiary bank, Bank of America. That bank is a member of the Federal Reserve System, and the parties inform us that it is the largest commercial bank in the United States.

²Schwab is known as a "discount" broker because of the low commissions it charges. Schwab can afford to charge lower commissions than full-service brokerage firms because it does not provide investment advice or analysis, but merely executes the purchase and sell orders placed by its customers.

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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 -4 P2:49

June 4, 1984

Re: No. 83-614 Securities Industries Association v.
Board of Governors

Dear Lewis:

Please join me.

Sincerely,

Justice Powell

cc: The Conference

①

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN -4 A9:52

June 1, 1984

Re: 83-614 - Securities Industry Association
v. Board of Governors of the Federal
Reserve System

Dear Lewis:

Please join me.

Respectfully,



Justice Powell

Copies to the Conference

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3

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

84 JUN -4 10:48

June 4, 1984

Re: No. 83-613⁴ Securities Industries Association v.
Board of Governors

Dear Lewis,

Please join me.

Sincerely,



Justice Powell

Copies to the Conference