The Burger Court Opinion Writing Database

Heckler v. Chaney

470 U.S. 821 (1985)

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 16, 1985

Re: 83-1878 - Margaret M. Heckler, Secretary of Health and Human Services v. Larry Leon Chaney, et al.

Dear Bill:

I could do without Note 4, added in your second opinion, but I join.

Regards,

Justice Rehnquist

Copies to the Conference

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

From: **Justice Brennan**

Circulated: JAN 18 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1878

MARGARET M. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* LARRY LEON CHANEY ET AL.

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

[January ——, 1985]

JUSTICE BRENNAN, concurring.

Today the Court holds that individual decisions of the Food and Drug Administration not to take enforcement action in response to citizen requests are presumptively not reviewable under the Administrative Procedure Act, 5. U. S. C. §§ 701–706. I concur in this decision. This general presumption is based on the view that, in the normal course of events, Congress intends to allow broad discretion for its administrative agencies to make particular enforcement decisions, and there often may not exist readily discernible "law to apply" for courts to conduct judicial review of nonenforcement decisions. See *Citizens to Preserve Overton Park* v. *Volpe*, 401 U. S. 4021, 410 (1971).

I also agree that, despite this general presumption, "Congress did not set agencies free to disregard the legislative direction in the statutory scheme that the agency administers." *Ante*, at 11. Thus the Court properly does not decide today that nonenforcement decisions are unreviewable in cases where (1) an agency flatly claims that it has no statutory jurisdiction to reach certain conduct, *ante*, at 11, n. 4; (2) an agency engages in a pattern of nonenforcement of clear statutory language, as in *Adams* v. *Richardson*, —— U. S. App. D. C. ——, 480 F. 2d 1159 (1973) (*en banc*), *ante*, at 11, n. 4; (3) an agency has refused to enforce a regulation lawfully pro-

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 18, 1985

No. 83-1878

Heckler v. Chaney

Dear Bill,

I'm glad to join your proposed opinion for the Court, and plan to file the attached concurrence.

Sincerely,

Bill

Justice Rehnquist

Copies to the Conference

Attachment

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

From: **Justice Brennan**

Circulated: _____

Recirculated: JAN 24 1985

Stylistic changes only

(did not send memo)

Please join me

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1878

MARGARET M. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* LARRY LEON CHANEY ET AL.

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

[January ——, 1985]

JUSTICE BRENNAN, concurring.

Today the Court holds that individual decisions of the Food and Drug Administration not to take enforcement action in response to citizen requests are presumptively not reviewable under the Administrative Procedure Act, 5. U. S. C. §§ 701–706. I concur in this decision. This general presumption is based on the view that, in the normal course of events, Congress intends to allow broad discretion for its administrative agencies to make particular enforcement decisions, and there often may not exist readily discernible "law to apply" for courts to conduct judicial review of nonenforcement decisions. See *Citizens to Preserve Overton Park* v. *Volpe*, 401 U. S. 402, 410 (1971).

I also agree that, despite this general presumption, "Congress did not set agencies free to disregard legislative direction in the statutory scheme that the agency administers." *Ante*, at 11. Thus the Court properly does not decide today that nonenforcement decisions are unreviewable in cases where (1) an agency flatly claims that it has no statutory jurisdiction to reach certain conduct, *ante*, at 11, n. 4; (2) an agency engages in a pattern of nonenforcement of clear statutory language, as in *Adams* v. *Richardson*, 156 U. S. App. D. C. 267, 480 F. 2d 1159 (1973) (en banc), *ante*, at 11, n. 4; (3) an agency has refused to enforce a regulation lawfully pro-

wait for Sandra's

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 9, 1985

Re: 83-1878 - Heckler v. Chaney

Dear Bill,

Please join me.

Sincerely yours,

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 14, 1985

MEMORANDUM TO THE CONFERENCE

The District Court has denied relief to Doyle Skillern, scheduled for execution in Texas on the morning of Wednesday January 16. Skillern is one of the eight plaintiffs in Heckler v. Chaney, No. 83-1878. The District Court rejected his argument that a stay was required because execution pending this Court's decision in Chaney would impair his constitutional right of access to the federal courts under 42 U.S.C. §1983. The District Court reasoned that even success in the Chaney case would be unlikely to prevent Skillern's execution by lethal injection, and this Court's action in refusing to stay the execution in Barefoot v. Procunier pending the resolution in Chaney indicated that Skillern's arguments are without substantial merit.

Skillern has now filed an application for a stay of execution with the Fifth Circuit Court of Appeals, presenting the same argument raised before the District Court.

I have asked Al Stevas to circulate the papers to the Conference.

B.R.W.

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

From: **Justice Marshall**

Circulated: MAR 12 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83–1878

MARGARET M. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER *v.* LARRY LEON CHANEY ET AL.

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

[March ——, 1985]

JUSTICE MARSHALL, concurring in the judgment.

Easy cases at times produce bad law, for in the rush to reach a clearly ordained result, courts may offer up principles, doctrines, and statements that calmer reflection, and a fuller understanding of their implications in concrete settings, would eschew. In my view, the "presumption of unreviewability" announced today is a product of that lack of discipline that easy cases make all too easy. The majority, eager to reverse what it goes out of its way to label as an "implausible result," *ante*, at 6, not only does reverse, as I agree it should, but along the way creates out of whole cloth the notion that agency decisions not to take "enforcement action" are unreviewable unless Congress has rather specifically indicated otherwise. Because this "presumption of unreviewability" is fundamentally at odds with rule-of-law principles firmly embedded in our jurisprudence, because it seeks to truncate an emerging line of judicial authority subjecting enforcement discretion to rational and principled constraint, and because, in the end, the presumption may well be indecipherable, one can only hope that it will come to be understood as a relic of a particular factual setting in which the full implications of such a presumption were neither confronted nor understood.

STYLISTIC CHANGES THROUGHOUT

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

From: **Justice Marshall**

Circulated: _____

Recirculated: MAR 15 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1878

MARGARET M. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER *v.* LARRY LEON CHANEY ET AL.

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

[March ——, 1985]

JUSTICE MARSHALL, concurring in the judgment.

Easy cases at times produce bad law, for in the rush to reach a clearly ordained result, courts may offer up principles, doctrines, and statements that calmer reflection, and a fuller understanding of their implications in concrete settings, would eschew. In my view, the "presumption of unreviewability" announced today is a product of that lack of discipline that easy cases make all too easy. The majority, eager to reverse what it goes out of its way to label as an "implausible result," *ante*, at 6, not only does reverse, as I agree it should, but along the way creates out of whole cloth the notion that agency decisions not to take "enforcement action" are unreviewable unless Congress has rather specifically indicated otherwise. Because this "presumption of unreviewability" is fundamentally at odds with rule-of-law principles firmly embedded in our jurisprudence, because it seeks to truncate an emerging line of judicial authority subjecting enforcement discretion to rational and principled constraint, and because, in the end, the presumption may well be indecipherable, one can only hope that it will come to be understood as a relic of a particular factual setting in which the full implications of such a presumption were neither confronted nor understood.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 14, 1985

Re: No. 83-1878 - Heckler v. Chaney

Dear Bill:

Please join me.

Sincerely,

H.A.B.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 14, 1985

83-1878 Heckler v. Chaney

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

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

From: **Justice Rehnquist**

Circulated: JAN 6 1985

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1878

MARGARET M. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER *v.* LARRY LEON CHANEY ET AL.

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

[January ——, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

This case presents the question of the extent to which a decision of an administrative agency to exercise its "discretion" not to undertake certain enforcement actions is subject to judicial review under the Administrative Procedure Act, 5 U. S. C. §§501 et seq (APA). Respondents are several prison inmates convicted of capital offenses and sentenced to death by lethal injection of drugs. They petitioned the Food and Drug Administration (FDA), alleging that under the circumstances the use of these drugs for capital punishment violated the Food, Drug & Cosmetics Act, 21 U. S. C. §300 *et seq.* (FDCA), and requesting that the FDA take various enforcement actions to prevent these violations. The FDA refused their request. We review here a decision of the Court of Appeals for the District of Columbia Circuit, which held the FDA's refusal to take enforcement action both reviewable and an abuse of discretion, and remanded the case with directions that the agency be required "to fulfill its statutory function." *Chaney* v. *Heckler*, 718 F. 2d 1174, 1191 (CADC 1983).

I

Respondents have been sentenced to death by lethal injection of drugs under the laws of the States of Oklahoma and

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

From: **Justice Rehnquist**

Circulated: _____

Recirculated: 1/11/85

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1878

MARGARET M. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER *v.* LARRY LEON CHANEY ET AL.

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

[January ——, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

This case presents the question of the extent to which a decision of an administrative agency to exercise its "discretion" not to undertake certain enforcement actions is subject to judicial review under the Administrative Procedure Act, 5 U. S. C. §§501 et seq (APA). Respondents are several prison inmates convicted of capital offenses and sentenced to death by lethal injection of drugs. They petitioned the Food and Drug Administration (FDA), alleging that under the circumstances the use of these drugs for capital punishment violated the Food, Drug & Cosmetics Act, 21 U. S. C. §300 *et seq.* (FDCA), and requesting that the FDA take various enforcement actions to prevent these violations. The FDA refused their request. We review here a decision of the Court of Appeals for the District of Columbia Circuit, which held the FDA's refusal to take enforcement action both reviewable and an abuse of discretion, and remanded the case with directions that the agency be required "to fulfill its statutory function." *Chaney* v. *Heckler*, 718 F. 2d 1174, 1191 (CADC 1983).

I

Respondents have been sentenced to death by lethal injection of drugs under the laws of the States of Oklahoma and

STYLISTIC CHANGES THROUGHOUT

wait

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

From: **Justice Rehnquist**

Circulated: _____

Recirculated: JAN 15 1985

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1878

MARGARET M. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER *v.* LARRY LEON CHANEY ET AL.

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

[January ——, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

This case presents the question of the extent to which a decision of an administrative agency to exercise its "discretion" not to undertake certain enforcement actions is subject to judicial review under the Administrative Procedure Act, 5 U. S. C. §501 *et seq.* (APA). Respondents are several prison inmates convicted of capital offenses and sentenced to death by lethal injection of drugs. They petitioned the Food and Drug Administration (FDA), alleging that under the circumstances the use of these drugs for capital punishment violated the Federal Food, Drug, and Cosmetic Act, 21 U. S. C. §301 *et seq.* (FDCA), and requesting that the FDA take various enforcement actions to prevent these violations. The FDA refused their request. We review here a decision of the Court of Appeals for the District of Columbia Circuit, which held the FDA's refusal to take enforcement actions both reviewable and an abuse of discretion, and remanded the case with directions that the agency be required "to fulfill its statutory function." 231 U. S. App. D. C. 136, 153, 718 F. 2d 1174, 1191 (1983).

I

Respondents have been sentenced to death by lethal injection of drugs under the laws of the States of Oklahoma and

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 15, 1985

Re: 83-1878 - Heckler v. Chaney

Dear Chief:

Because of the cross-cite problems, I think this case should come down Wednesday rather than Monday.

Sincerely,

The Chief Justice

cc: The Conference

7HB

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 28, 1985

MEMORANDUM TO THE CONFERENCE

Re: No. 83-2034 United States Dept. of Justice v. Falkowski
(Held for No. 83-1878 Heckler v. Chaney)

This case was held pending our decision in No. 83-1878 Heckler v. Chaney. Respondent Falkowski, a former director of a branch of the EEOC, was sued by a former co-worker after actions she took in illegally taping a conversation with him led to his dismissal. She requested that the federal government provide her representation. The relevant federal statute, 28 U.S.C. §517, provides:

> "The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States."

Pursuant to this section a regulation, 28 C.F.R. §50.15, provides that "a federal employee ... may be provided representation in civil ... proceedings ... in which he is sued ...." It further provides that upon receipt of the individual's request for counsel, "the litigating division shall determine whether the employee's actions reasonably appear to have been performed within the scope of his employment and whether providing representation would be in the interest of the United States."

The government declined to represent respondent, and sent an explanation indicating that under the circumstances representation would not be "in the best interest of the United States." Resp then brought suit under the judicial review provisions of the APA, urging that the denial was

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 8, 1985

Re: 83-1878 - Heckler v. Chaney

Dear Bill:

Please join me.

Respectfully,

John

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 10, 1985

No. 83-1878 Heckler v. Chaney

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Rehnquist

Copies to the Conference