

The Burger Court Opinion Writing Database

Tony and Susan Alamo Foundation v. Secretary of Labor

471 U.S. 290 (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

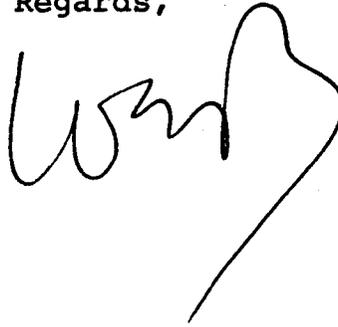
April 19, 1985

Re: No. 83-1935 - Alamo Foundation v. Donovan

Dear Byron:

I join.

Regards,

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

Justice White

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CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

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

April 17, 1985

No. 83-1935

Alamo Foundation, et al.
v. Donovan

Dear Byron,
I agree.

Sincerely,

Justice White
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APR 18 1985

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

From: Justice White

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

TONY AND SUSAN ALAMO FOUNDATION ET AL. v.
RAYMOND J. DONOVAN, SECRETARY OF LABOR

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

No. 83-1935. Decided October —, 1984

JUSTICE WHITE, dissenting.

In *Walling v. Portland Terminal Co.*, 330 U. S. 148 (1947), this Court undertook to define the scope of the word "employment" as used in the Fair Labor Standards Act, 29 U. S. C. §201 *et seq.* (FLSA). We held that Congress had not intended to "sweep under the Act each person who, without promise or expectation of compensation, but solely for his personal purpose or pleasure, worked in activities carried on by other persons either for their pleasure or profit." 330 U. S., at 152. Rather, the Act's purpose was limited to insuring that "every person whose employment contemplated compensation should not be compelled to sell his services for less than the prescribed minimum wage." *Ibid.* The test of "employment" under the FLSA, therefore, focuses on the expectations of the putative employee. In the present case, the Court of Appeals altered the test to focus on the nature and size of the employer's activity. Furthermore, the result below conflicts with that reached by the Court of Appeals for the First Circuit in a similar case. For these reasons, I dissent from the denial of certiorari.

The Tony and Susan Alamo Foundation is a nonprofit religious corporation whose primary purpose, as stated in its articles of incorporation, is to establish an evangelistic church. The foundation's evangelical work has been directed largely at rehabilitating derelicts, drug addicts and criminals. As part of their rehabilitation, these individuals, called "associates," work in a number of businesses owned and operated by the foundation. The foundation's businesses include con-

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

From: **Justice White**

Circulated: APR 15 1985

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~~BRW~~
~~Placed per me~~
~~by~~

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1935

**TONY AND SUSAN ALAMO FOUNDATION, ET AL.,
PETITIONERS *v.* RAYMOND J. DONOVAN,
SECRETARY OF LABOR**

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

[April —, 1985]

JUSTICE WHITE delivered the opinion of the Court.

The threshold question in this case is whether the minimum wage, overtime and record-keeping requirements of the Fair Labor Standards Act, 29 U. S. C. §201 *et seq.*, apply to workers engaged in the commercial activities of a religious foundation, regardless of whether those workers consider themselves "employees." A secondary question is whether application of the Act in this context violates the religion clauses of the First Amendment.

I

The Tony and Susan Alamo Foundation is a non-profit religious organization incorporated under the laws of California. Among its primary purposes, as stated in its Articles of Incorporation, are to "establish, conduct and maintain an Evangelistic Church; to conduct religious services, to minister to the sick and needy, to care for the fatherless and to rescue the fallen, and generally to do those things needful for the promotion of Christian faith, virtue and charity."¹ The Foundation does not solicit contributions from the public. It derives its income largely from the operation of a number of commercial businesses, which include service stations, retail

¹ App. to Brief for Petitioners 2.

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10
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 17, 1985

Re: No. 83-1935-Tony and Susan Alamo Foundation v.
Raymond J. Donovan

Dear Byron:

Please join me.

Sincerely,

Jm.
T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 10, 1984

Re: No. 83-1935, Alamo Foundation v. Donovan

Dear Byron:

Please join me in your dissent.

Sincerely,



Justice White

cc: The Conference

88:38 OCT 10 1984

20543

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 18, 1985

Re: No. 83-1935, Alamo Foundation v. Secretary of Labor

Dear Byron:

Please join me.

I would feel a little more comfortable if footnote 18 were omitted. I suspect the footnote is really unnecessary, for the petitioners did not even cite the Catholic Bishop case, and there can be no serious claim that it applies here. The CA8, of course, did discuss it. I shall abide by your judgment, however, as to this.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 18, 1985

83-1935 Alamo Foundation v. Donovan

Dear Byron:

Please join me.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference

APR 22 1985

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(D)

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 18, 1985

Re: No. 83-1935 Alamo Foundation v. Donovan

Dear Byron,

Please join me.

Sincerely,

WHR

Justice White

cc: The Conference

APR 19 1985

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CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

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

April 16, 1985

Re: 83-1935 - Alamo Foundation, et al.
v. Donovan

Dear Byron:

Please join me.

Respectfully,

Justice White

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APR 19 1985

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

October 9, 1984

Re: Tony & Susan Alamo Foundation, et al. v.
Raymond J. Donovan, Secretary of Labor

Dear Byron,

I am persuaded by your dissent. Please
join me.

Sincerely,

Sandra

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 16, 1985

Re: 83-1935 Tony & Susan Alamo Foundation, et al. v.
Raymond J. Donovan, Secretary of Labor

Dear Byron,

Please join me.

Sincerely,

Sandra

Justice White

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APR 16 1985