

# The Burger Court Opinion Writing Database

## *Landreth Timber Co. v. Landreth*

471 U.S. 681 (1985)

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



W

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

CHAMBERS OF  
THE CHIEF JUSTICE

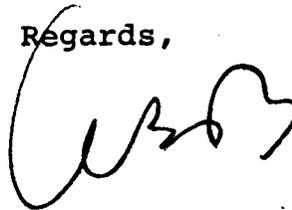
May 6, 1985

Re: No. 83-1961 - Landreth Timber Co. v. Landreth

Dear Lewis:

I join.

Regards,



Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 26, 1985

No. 83-1961

Landreth Timber Company  
v. Landreth, et al.

Dear Lewis,

I agree.

Sincerely,

Bill

Justice Powell

Copies to the Conference

5104

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 25, 1985

83-1961 - Landreth Timber Company v. Landreth

Dear Lewis,  
I agree.

Sincerely yours,



Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 25, 1985

Re: No. 83-1961 - Landreth Timber Co. v. Landreth

Dear Lewis:

Please join me.

Sincerely,

*JM.*

T.M.

Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 26, 1985

Re: No. 83-1961, Landreth Timber Co. v. Landreth

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

cc: The Conference

04/24

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

From: Justice Powell

Circulated: APR 25 1985

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*LKP*  
*Please join me*  
*M*

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83-1961

**LANDRETH TIMBER COMPANY, PETITIONER v.  
IVAN K. LANDRETH ET AL.**

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

[April —, 1985]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether the sale of all of the stock of a company is a securities transaction subject to the antifraud provisions of the federal securities laws (the Acts).

I

Respondents Ivan K. Landreth and his sons owned all of the outstanding stock of a lumber business they operated in Tonasket, Washington. The Landreth family offered their stock for sale through both Washington and out-of-state brokers. Before a purchaser was found, the company's sawmill was heavily damaged by fire. Despite the fire, the brokers continued to offer the stock for sale. Potential purchasers were advised of the damage, but were told that the mill would be completely rebuilt and modernized.

Samuel Dennis, a Massachusetts tax attorney, received a letter offering the stock for sale. On the basis of the letter's representations concerning the rebuilding plans, the predicted productivity of the mill, existing contracts, and expected profits, Dennis became interested in acquiring the stock. He talked to John Bolten, a former client who had retired to Florida, about joining him in investigating the offer. After having an audit and an inspection of the mill conducted, a stock purchase agreement was negotiated, with Dennis the purchaser of all of the common stock in the lumber company.

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05/02

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

Stylistic Changes Throughout

From: **Justice Powell**

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2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 83-1961

LANDRETH TIMBER COMPANY, PETITIONER *v.*  
IVAN K. LANDRETH ET AL.

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

[May —, 1985]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether the sale of all of the stock of a company is a securities transaction subject to the antifraud provisions of the federal securities laws (the Acts).

### I

Respondents Ivan K. Landreth and his sons owned all of the outstanding stock of a lumber business they operated in Tonasket, Washington. The Landreth family offered their stock for sale through both Washington and out-of-state brokers. Before a purchaser was found, the company's sawmill was heavily damaged by fire. Despite the fire, the brokers continued to offer the stock for sale. Potential purchasers were advised of the damage, but were told that the mill would be completely rebuilt and modernized.

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05/17

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

New footnote 7  
Stylistic changes throughout

See pp.  
5  
8  
10  
14

From: Justice Powell

MAY 18 1985

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3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83-1961

**LANDRETH TIMBER COMPANY, PETITIONER v.  
IVAN K. LANDRETH ET AL.**

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

[May —, 1985]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether the sale of all of the stock of a company is a securities transaction subject to the antifraud provisions of the federal securities laws (the Acts).

I

Respondents Ivan K. Landreth and his sons owned all of the outstanding stock of a lumber business they operated in Tonasket, Washington. The Landreth family offered their stock for sale through both Washington and out-of-state brokers. Before a purchaser was found, the company's sawmill was heavily damaged by fire. Despite the fire, the brokers continued to offer the stock for sale. Potential purchasers were advised of the damage, but were told that the mill would be completely rebuilt and modernized.

Samuel Dennis, a Massachusetts tax attorney, received a letter offering the stock for sale. On the basis of the letter's representations concerning the rebuilding plans, the predicted productivity of the mill, existing contracts, and expected profits, Dennis became interested in acquiring the stock. He talked to John Bolten, a former client who had retired to Florida, about joining him in investigating the offer. After having an audit and an inspection of the mill conducted, a stock purchase agreement was negotiated, with Dennis the purchaser of all of the common stock in the lumber company.

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XAE

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 3, 1985

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 83-1961, Landreth Timber v. Landreth

One case, No. 84-901, Avco Financial Services, Inc. v. Davis, was held for No. 83-1961, Landreth Timber Co. v. Landreth. Avco involves the scope of §12(2) of the Securities Act of 1933. Avco had lent money to the respondents so that they could buy shares ("adventures") in an entity called Dare to Be Great (DTBG). DTBG turned out to be a pyramid scheme that collapsed. Resps sued Avco to recover the money they had paid on the loans Avco made to them, and for cancellation of whatever sums were still due on the loans. A divided panel of CA6 held that Avco was liable to resps under §12(2) of the 1933 Act as one who had "offer[ed] or s[old] a security." Avco claimed a conflict with CA3 on the scope of this phrase of §12(2), contending that the plain language of §12(2) repudiated CA6's position that Avco had "sold" the adventures.

Our decision in Landreth has no bearing on this case at all. As the pool memo notes, there is no direct conflict between CA6 and CA3. I will vote to deny.

L. F. P.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 24, 1985

83-1961 Landreth Timber Co. et al v. Landreth, et al.

MEMORANDUM TO THE CONFERENCE:

Counsel for respondents has filed a "motion for clarification of facts" that the Clerk referred to me. Counsel for petitioners have advised the Clerk that they will make no response.

The substance of the motion is that we make it explicitly clear that our statement of facts represents allegations of petitioners rather than findings of fact by the District Court, and that we refer to the fact that sale of the "business" as well as sale of the stock was mentioned.

We did say that respondents "moved for summary judgment", and that the DC granted the motion and dismissed the complaint for want of federal jurisdiction. Slip opinion, p. 2. Nevertheless, I am willing to add at the very beginning of Part I the following:

"The facts, as alleged by petitioners, are as follows:"

In addition, I am clarifying the first sentence in the second paragraph on p. 1 to read as follows:

"Samuel Dennis, a Massachusetts tax attorney, received a letter offering the business for sale".

In the preceding paragraph, we accurately stated that the family offered their stock for sale through both Washington and out-of-state brokers, and - of course - the deal as negotiated was only for the sale of stock.

Absent objection, the foregoing will be added, and Henry Lind and the Clerk will be so advised.

L. F. P.

L.F.P., Jr.

7

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 29, 1985

Re: 83-1961 - Landreth Timber Co. v. Landreth

Dear Lewis:

Please join me.

Sincerely,  
*W*

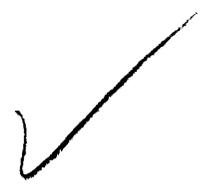
Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS



April 26, 1985

Re: 83-1961 Landreth v. Landreth  
84-165 Gould v. Ruefenacht

Dear Lewis:

As I stated at Conference, after oral argument I concluded that I would follow your lead in these cases. I voted with you, and, having read your opinions, must acknowledge that they are extremely persuasive. I continue to be troubled, however, by a rather firm conviction that Congress did not intend the statutes to apply to transactions of this kind, but rather was intending to deal with transactions in publicly traded securities. Perhaps it's far too late in the day to confine the statute to its original purpose, but I'm sufficiently troubled by the cases that I hope you will forgive me if I take a few days to reflect before coming to rest. I would like to try to write out two or three paragraphs summarizing my thoughts, but I have so many balls in the air right now that I need a little time to sort them out.

Respectfully,

Justice Powell

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

From: Justice Stevens

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83-1961

**LANDRETH TIMBER COMPANY, PETITIONER v.  
IVAN K. LANDRETH ET AL.**

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

[May —, 1985]

JUSTICE STEVENS, dissenting.

In my opinion, Congress did not intend the antifraud provisions of the federal securities laws to apply to every transaction in a security described in §2(1) of the 1933 Act:<sup>1</sup>

“The term ‘security’ means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, . . . investment contract, voting-trust certificate, . . . or in general, any interest or instrument commonly known as a ‘security.’” 15 U. S. C. §77b(1).  
See also n. 1, *ante*.

Congress presumably adopted this sweeping definition “to prevent the financial community from evading regulation by inventing new types of financial instruments rather than to prevent the courts from interpreting the Act in light of its purposes.” *Sutter v. Groen*, 687 F. 2d 197, 201 (CA7 1982). Moreover, the “broad statutory definition is preceded . . . by the statement that the terms mentioned are not to be considered securities if ‘the context otherwise requires . . . .’

<sup>1</sup> Cf. *Milnarik v. M-S Commodities, Inc.*, 457 F.2d 274, 275-276 (CA7) (STEVENS, J., for the court), cert. denied, 409 U.S. 887 (1972) (“we do not believe every conceivable arrangement that would fit a dictionary definition of an investment contract was intended to be included within the statutory definition of a security”).

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

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: /

From: Justice Stevens

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-1961 AND 84-165

LANDRETH TIMBER COMPANY, PETITIONER  
83-1961  
v.  
IVAN K. LANDRETH ET AL.

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

W. GEORGE GOULD, PETITIONER  
84-165  
v.  
MAX A. RUEFENACHT ET AL.

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

[May —, 1985]

JUSTICE STEVENS, dissenting.

In my opinion, Congress did not intend the antifraud provisions of the federal securities laws to apply to every transaction in a security described in §2(1) of the 1933 Act:<sup>1</sup>

“The term ‘security’ means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, . . . investment contract, voting-trust certificate, . . . or in general, any interest or instrument commonly known as a ‘security.’” 15 U. S. C. §77b(1).  
See also n. 1, *ante*.

<sup>1</sup> Cf. *Milnarik v. M-S Commodities, Inc.*, 457 F.2d 274, 275-276 (CA7) (STEVENS, J., for the court), cert. denied, 409 U.S. 887 (1972) (“we do not believe every conceivable arrangement that would fit a dictionary definition of an investment contract was intended to be included within the statutory definition of a security”).

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

From: Justice Stevens

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3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 83-1961 AND 84-165

LANDRETH TIMBER COMPANY, PETITIONER  
83-1961  
v.  
IVAN K. LANDRETH ET AL.

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

W. GEORGE GOULD, PETITIONER  
84-165  
v.  
MAX A. RUEFENACHT ET AL.

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

[May —, 1985]

JUSTICE STEVENS, dissenting.

In my opinion, Congress did not intend the antifraud provisions of the federal securities laws to apply to every transaction in a security described in § 2(1) of the 1933 Act:<sup>1</sup>

“The term ‘security’ means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, . . . investment contract, voting-trust certificate, . . . or in general, any interest or instrument commonly known as a ‘security.’” 15 U. S. C. § 77b(1). See also n. 1, *ante*.

<sup>1</sup> Cf. *Milnarik v. M-S Commodities, Inc.*, 457 F.2d 274, 275-276 (CA7) (STEVENS, J., for the court), cert. denied, 409 U.S. 887 (1972) (“we do not believe every conceivable arrangement that would fit a dictionary definition of an investment contract was intended to be included within the statutory definition of a security”).

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

April 25, 1985

No. 83-1961 Landreth Timber Company v.  
Landreth

Dear Lewis,

Please join me.

Sincerely,

*Sandra*

Justice Powell

Copies to the Conference