

The Burger Court Opinion Writing Database

Connolly v. Pension Benefit Guaranty Corporation

475 U.S. 211 (1986)

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



4
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

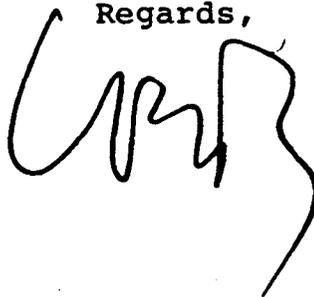
January 29, 1986

Re: No. 84-1555 - Connolly v. Pension Benefit
No. 84-1567 - Woodward Sand v. Pension Benefit

Dear Byron:

I join.

Regards,



Justice White

Copies to the Conference

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



CHAMBERS OF
JUSTICE W. BRENNAN, JR.

January 17, 1986

- No. 84-1555) Connolly v. Pension Benefit
-) Guaranty Corp., etc.,
-) et. al.
-)
-) Woodward Sand Co., Inc. v.
-) v. Pension Benefit Guaranty
- No. 84-1567) Corp., etc., et al.

Dear Byron:

I agree.

Sincerely,

Bill

Justice White

Copies to the Conference

JAN 17 1986

U.S. SUPREME COURT
LIBRARY

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

From: **Justice White**

JAN 15 1986

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 84-1555 AND 84-1567

JOHN L. CONNOLLY, ET AL., ETC., APPELLANTS
84-1555 v.
PENSION BENEFIT GUARANTY CORPORATION,
ETC., ET AL.

WOODWARD SAND COMPANY, INC., APPELLANT
84-1567 v.
PENSION BENEFIT GUARANTY CORPORATION,
ETC., ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA

[January —, 1986]

JUSTICE WHITE delivered the opinion of the Court.

In *Pension Benefit Guaranty Corp. v. R. A. Gray Co.*,
— U. S. — (1984), the Court held that retroactive appli-
cation of the withdrawal liability provisions of the Multiem-
ployer Pension Plan Amendments Act of 1980 did not violate
the Due Process Clause of the Fifth Amendment. In these
cases, we address the question whether the withdrawal liabil-
ity provisions of the Act are valid under the clause of the
Fifth Amendment that forbids the taking of private property
for public use without just compensation.

I

A

The background and legislative history of both the Em-
ployee Retirement Income Security Act (ERISA), 88 Stat.
829, 29 U. S. C. § 1001-1381 (1976) and the Multiemployer
Pension Plan Amendments Act of 1980 (MPPAA or Act), 94

B
W
W

Join

Justice Brennan
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice White

Stylistic changes throughout
 —and pp. 7, 13

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

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ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
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[February —, 1986]

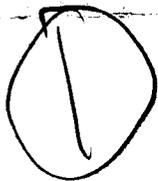
JUSTICE WHITE delivered the opinion of the Court.

In *Pension Benefit Guaranty Corporation v. R. A. Gray & Co.*, 467 U. S. 717 (1984), the Court held that retroactive application of the withdrawal liability provisions of the Multiemployer Pension Plan Amendments Act of 1980 did not violate the Due Process Clause of the Fifth Amendment. In these cases, we address the question whether the withdrawal liability provisions of the Act are valid under the Clause of the Fifth Amendment that forbids the taking of private property for public use without just compensation.

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A

The background and legislative history of both the Employee Retirement Income Security Act (ERISA), 88 Stat. 829, 29 U. S. C. §1001-1381 (1976) and the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA or Act), 94



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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 21, 1986

Re: Nos. 84-1555 and 1567-Connolly and Woodward Sand
Company v. Pension Benefit Guaranty Corporation

Dear Byron:

Please join me.

Sincerely,

T.M.

Justice White

cc: The Conference

(W)

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 30, 1986

Re: No. 84-1555, Connolly v. Pension Benefit Guaranty Corp.
No. 84-1567, Woodward Sand Co., Inc. v. Pension Benefit
Guaranty Corp.

Dear Byron:

Please join me.

Sincerely,



Justice White

cc: The Conference

22 JAN 30 6 14 AM

U.S. SUPREME COURT
WASHINGTON, D.C. 20543

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 10, 1986

84-1555 Connolly v. Pension Benefit

Dear Sandra:

Please add my name to your concurring opinion.

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

OR FEB 10 11:22

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CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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

January 30, 1986

Re: 84-1555 - Connolly v. Pension Benefit Guaranty Corp.
84-1567 - Woodward Sand Co. v. Pension Benefit
Guaranty Corp.

Dear Byron:

Please join me.

Sincerely,

Justice White

cc: The Conference

22 JAN 30 10:10

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 17, 1986

Re: 84-1555 - Connolly v. Pension Benefit
Guaranty Corporation
84-1567 - Woodward Sand Co., Inc. v.
Pension Benefit Guaranty Corporation

Dear Byron:

Please join me.

Respectfully,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 4, 1985

No. 84-1555 Connolly v. Pension Benefit Guaranty
No. 84-1567 Woodward Sand Co. v. Pension Benefit
Guaranty Corporation

MEMORANDUM TO THE CONFERENCE

I will change my vote to note and consolidate
these cases rather than affirm summarily.

Sincerely,

Sandra

JUN 10 1985

ST
100

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 17, 1986

No. 84-1555 Connolly v. Pension Benefit
Guaranty Corporation
No. 84-1567 Woodward Sand Co. v. Pension
Benefit Guaranty Corporation

Dear Byron,

I am in general agreement with your opinion in this case. I continue to be concerned about some of the implications of the program adopted by Congress, however, and plan to write something to mention some of those concerns.

Sincerely,

Sandra

Justice White

Copies to the Conference

22 JAN 21 1986

U.S. SUPREME COURT
LIBRARY

Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens

From: Justice O'Connor

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

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 v.
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 ETC., ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
 THE CENTRAL DISTRICT OF CALIFORNIA

[January —, 1986]

JUSTICE O'CONNOR, concurring.

Today the Court upholds the withdrawal liability provisions of the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA) against a facial challenge to their validity based on the Taking Clause of the Fifth Amendment. *I* ^{its} agree with the Court's reasoning and its result, but I write separately to emphasize some of the issues the Court does not decide today. Specifically, the Court does not decide today, and has left open in previous cases, whether the imposition of withdrawal liability under the MPPAA and of plan termination liability under the Employee Retirement Income Security Act of 1974 (ERISA) may in some circumstances be so arbitrary and irrational as to violate the Due Process Clause of the Fifth Amendment. See *Pension Benefit Retirement Corporation v. Gray*, — U. S. —, —, n. 7 (1984); *Nachman Corp. v. Pension Benefit Guaranty Corp.*, 446 U. S. 359, 367-368 (1980). The Court also has no occasion to decide whether the MPPAA may violate the Taking ^{join the Court's opinion and}

Stylistic Changes Throughout

Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens

From: Justice O'Connor

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

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[January —, 1986]

JUSTICE O'CONNOR, concurring.

Today the Court upholds the withdrawal liability provisions of the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA) against a facial challenge to their validity based on the Taking Clause of the Fifth Amendment. I join the Court's opinion and agree with its reasoning and its result, but I write separately to emphasize some of the issues the Court does *not* decide today. Specifically, the Court does not decide today, and has left open in previous cases, whether the imposition of withdrawal liability under the MPPAA and of plan termination liability under the Employee Retirement Income Security Act of 1974 (ERISA) may in some circumstances be so arbitrary and irrational as to violate the Due Process Clause of the Fifth Amendment. See *Pension Benefit Retirement Corporation v. Gray*, 467 U. S. 717, 728, n. 7 (1984); *Nachman Corp. v. Pension Benefit Guaranty Corp.*, 446 U. S. 359, 367-368 (1980). The Court also has no occasion to decide whether the MPPAA may vio-

p. 1

Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens

From: **Justice O'Connor**

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

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ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
 THE CENTRAL DISTRICT OF CALIFORNIA

[February —, 1986]

JUSTICE O'CONNOR, with whom JUSTICE POWELL joins,
 concurring.

Today the Court upholds the withdrawal liability provisions of the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA) against a facial challenge to their validity based on the Taking Clause of the Fifth Amendment. I join the Court's opinion and agree with its reasoning and its result, but I write separately to emphasize some of the issues the Court does *not* decide today. Specifically, the Court does not decide today, and has left open in previous cases, whether the imposition of withdrawal liability under the MPPAA and of plan termination liability under the Employee Retirement Income Security Act of 1974 (ERISA) may in some circumstances be so arbitrary and irrational as to violate the Due Process Clause of the Fifth Amendment. See *Pension Benefit Retirement Corporation v. Gray*, 467 U. S. 717, 728, n. 7 (1984); *Nachman Corp. v. Pension Benefit Guaranty Corp.*, 446 U. S. 359, 367-368 (1980). The Court