

# The Burger Court Opinion Writing Database

*Lyng v. Payne*

476 U.S. 926 (1986)

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

May 28, 1986

84-1948 - Lynq v. Payne

Dear Sandra:

I join.

Regards,

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 20, 1986

Lyng v. Payne  
No. 84-1948

Dear Sandra,

I will be happy to join your fine opinion, but I have one change to request. At the very end of the explanation why there was no violation of the regulations, you state that "even if §1823.82(a) did apply during this period, any violations of it alone would plainly be insufficient to support the District Court's remedy ...." Circulating Draft at 15. However, resolution of the case on the ground that the Secretary did not violate any regulations makes it unnecessary to address the extent of a court's remedial power under §706. Would you consider deleting this sentence?

Sincerely,

Justice O'Connor

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 21, 1986

No. 84-1948

Lyng v. Payne, et al., etc.

Dear Sandra,

Please join me.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 19, 1986

84-1948 - Lyng v. Payne

Dear Sandra,

Please join me.

Sincerely yours,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 21, 1986

Re: No. 84-1948-Lyng v. Payne

- Dear Sandra:

Please join me.

Sincerely,



T.M.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A BLACKMUN

June 11, 1986

Re: No. 84-1948, Lyng v. Payne

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

13

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 21, 1986

84-1948 Lyng v. Payne

Dear Sandra:

Please join me.

Sincerely,

*Lewis*

Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

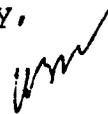
May 19, 1986

Re: 84-1948 - Lyng v. Payne

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 21, 1986

Re: 84-1948 - Lynq v. Payne

Dear Sandra:

As soon as I can I will circulate a dissent in  
this case.

Respectfully,



Justice O'Connor

Copies to the Conference

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

From: **Justice Stevens**

Circulated: 6/10/86

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1948

**RICHARD E. LYNG, SECRETARY OF AGRICULTURE, ET AL., PETITIONERS v. RONALD E. PAYNE ET AL., ETC.**

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

[June —, 1986]

JUSTICE STEVENS, dissenting.

When Congress enacts a generous program to provide relief for the victims of a natural disaster, the Secretary of Agriculture has a duty to implement that program in the spirit which motivated its enactment even if he believes a more parsimonious policy will serve the national interest. On January 2, 1974, Congress enacted such a program to benefit, among others, the Florida farmers who had suffered serious losses as the result of a disaster that the President had declared on May 26, 1973. Pub. L. 93-237. On the date the statute was enacted, as well as the date of the disaster and the date of the President's declaration, regulations were in place that required the Department to give appropriate notice to the State Director, the appropriate County officials, the agricultural lenders in the area, and the public. See 7 CFR § 1832.3(a). *Ante*, at 4, n. 1. The regulations plainly stated that effective notice should be given "immediately."

The District Court found—and the Court does not disagree—that the Secretary failed to comply with § 1832.3(a). For several weeks after the enactment of the statute, the Secretary took no public action. On February 27, he promulgated a new announcement—which was explicitly intended to "supplement" the existing notice regulations—requiring that advice be given to the news media. Pursuant to

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 12, 1986

Re: 84-1948 - Lyng v. Payne

Dear Chief:

Confirming our telephone conversation, I have decided to retain my citation to Young v. Community Nutrition, at page 9 of my dissenting opinion in this case. Since this will merely require holding the announcement of Lyng until Tuesday, when Young is scheduled to come down, I would be grateful if that change could be made. Perhaps you could arrange to have Nantahala (85-568) announced on Monday.

Respectfully,



The Chief Justice

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

From: Justice Stevens

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_ JUN 12 1986

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-1948

RICHARD E. LYNG, SECRETARY OF AGRICULTURE, ET AL., PETITIONERS *v.* RONALD E. PAYNE ET AL., ETC.

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

[June —, 1986]

JUSTICE STEVENS, dissenting.

When Congress enacts a generous program to provide relief for the victims of a natural disaster, the Secretary of Agriculture has a duty to implement that program in the spirit which motivated its enactment even if he believes a more parsimonious policy will serve the national interest. On January 2, 1974, Congress enacted such a program to benefit, among others, the Florida farmers who had suffered serious losses as the result of a disaster that the President had declared on May 26, 1973. Pub. L. 93-237. On the date the statute was enacted, as well as the date of the disaster and the date of the President's declaration, regulations were in place that required the Department to give appropriate notice to the State Director, the appropriate County officials, the agricultural lenders in the area, and the public. See 7 CFR § 1832.3(a) (1973). *Ante*, at 4, n. 1. The regulations plainly stated that effective notice should be given "immediately."

The District Court found—and the Court does not disagree—that the Secretary failed to comply with § 1832.3(a). For several weeks after the enactment of the statute, the Secretary took no public action. On February 27, he promulgated a new announcement—which was explicitly intended to "supplement" the existing notice regulations—re-

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: **Justice O'Connor**

Circulated: **MAY 14 1986**

Recirculated: \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-1948

RICHARD E. LYNG, SECRETARY OF AGRICULTURE, ET AL., PETITIONERS *v.* RONALD E. PAYNE ETC.

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

[May —, 1986]

JUSTICE O'CONNOR delivered the opinion of the Court.

Federal law vests in the Secretary of Agriculture the authority to make emergency loans to farmers who suffer economic losses as a result of a natural disaster. See Consolidated Farm and Rural Development Act §§ 321-330, 7 U. S. C. § 1961-1971 (The Act). Pursuant to an agency rule, the Secretary required loan applicants suffering from disasters occurring between December 26, 1972 and April 20, 1973 to file their applications by April 2, 1974. 7 CFR § 1832.82(a) (1975). That rule embodied a statutory command to keep the loan program open at least until that date. Pub. L. 93-237. The question presented is whether a federal court has the remedial authority to reopen this long terminated loan program on the basis of its finding that the Secretary, in alleged violation of another rule, failed adequately to notify affected farmers of the program's availability and terms.

### I

In early April, 1973 torrential rains struck thirteen counties in the northern part of Florida. Initial estimates, which were later sharply reduced, projected that resulting crop and property losses would be in excess of three million dollars. In light of the scope of these anticipated losses, on May 26,

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Stylistic Changes Throughout

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: Justice O'Connor

Circulated: \_\_\_\_\_

Recirculated: MAY 19 1986

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1948

RICHARD E. LYNG, SECRETARY OF AGRICULTURE, ET AL., PETITIONERS *v.* RONALD E. PAYNE ET AL., ETC.

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

[May —, 1986]

JUSTICE O'CONNOR delivered the opinion of the Court.

Federal law vests in the Secretary of Agriculture the authority to make emergency loans to farmers who suffer economic losses as a result of a natural disaster. See Consolidated Farm and Rural Development Act, §§ 321-330, 7 U. S. C. § 1961-1971 (Act). Pursuant to an agency rule, the Secretary required loan applicants suffering from disasters occurring between December 26, 1972, and April 20, 1973, to file their applications by April 2, 1974. 7 CFR § 1832.82(a) (1975). That rule embodied a statutory command to keep the loan program open at least until that date. Pub. L. 93-237. The question presented is whether a federal court has the remedial authority to reopen this long terminated loan program on the basis of its finding that the Secretary, in alleged violation of another rule, failed adequately to notify affected farmers of the program's availability and terms.

I

In early April, 1973 torrential rains struck 13 counties in the northern part of Florida. Initial estimates, which were later sharply reduced, projected that resulting crop and property losses would be in excess of \$3 million. In light of the scope of these anticipated losses, on May 26, 1973, President Nixon declared the region a major disaster area. 38 Fed.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

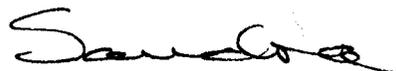
May 20, 1986

Re: 84-1948 Lyng v. Payne

Dear Bill,

I will delete the language which you have requested be deleted on page 15 on the draft of this opinion. I am happy to have you join.

Sincerely,



Justice Brennan

A.15

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens



From: **Justice O'Connor**

Circulated: \_\_\_\_\_

Recirculated: MAY 20 1986

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1948

**RICHARD E. LYNG, SECRETARY OF AGRICULTURE, ET AL., PETITIONERS v. RONALD E. PAYNE ET AL., ETC.**

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

[May —, 1986]

JUSTICE O'CONNOR delivered the opinion of the Court.

Federal law vests in the Secretary of Agriculture the authority to make emergency loans to farmers who suffer economic losses as a result of a natural disaster. See Consolidated Farm and Rural Development Act, §§ 321-330, 7 U. S. C. § 1961-1971 (Act). Pursuant to an agency rule, the Secretary required loan applicants suffering from disasters occurring between December 26, 1972, and April 20, 1973, to file their applications by April 2, 1974. 7 CFR § 1832.82(a) (1975). That rule embodied a statutory command to keep the loan program open at least until that date. Pub. L. 93-237. The question presented is whether a federal court has the remedial authority to reopen this long terminated loan program on the basis of its finding that the Secretary, in alleged violation of another rule, failed adequately to notify affected farmers of the program's availability and terms.

I

In early April, 1973 torrential rains struck 13 counties in the northern part of Florida. Initial estimates, which were later sharply reduced, projected that resulting crop and property losses would be in excess of \$3 million. In light of the scope of these anticipated losses, on May 26, 1973, President Nixon declared the region a major disaster area. 38 Fed.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Stylistic Changes Throughout

pp. 13, 14

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: Justice O'Connor

Circulated: \_\_\_\_\_

Recirculated: ~~JUN 10 1986~~ \_\_\_\_\_

4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1948

**RICHARD E. LYNG, SECRETARY OF AGRICULTURE, ET AL., PETITIONERS v. RONALD E. PAYNE ET AL., ETC.**

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

[June —, 1986]

JUSTICE O'CONNOR delivered the opinion of the Court.

Federal law vests in the Secretary of Agriculture the authority to make emergency loans to farmers who suffer economic losses as a result of a natural disaster. See Consolidated Farm and Rural Development Act, §§ 321-330, 7 U. S. C. § 1961-1971 (Act). Pursuant to an agency rule, the Secretary required loan applicants suffering from disasters occurring between December 26, 1972, and April 20, 1973, to file their applications by April 2, 1974. 39 Fed. Reg. 7569 (1974) (later codified at 7 CFR § 1832.82(a) (1975)). That rule embodied a statutory command to keep the loan program open at least until that date. Pub. L. 93-237. The question presented is whether a federal court has the remedial authority to reopen this long terminated loan program on the basis of its finding that the Secretary, in alleged violation of another rule, failed adequately to notify affected farmers of the program's availability and terms.

I

In early April, 1973 torrential rains struck 13 counties in the northern part of Florida. Initial estimates, which were later sharply reduced, projected that resulting crop and property losses would be in excess of \$3 million. In light of the scope of these anticipated losses, on May 26, 1973, President

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 17, 1986

84-1966, CWT Farms, Inc. v. Comm'r of Internal Revenue  
(Hold memo for 84-1948 Lyng v. Payne)

MEMORANDUM TO THE CONFERENCE

In 1972 petitioner set up a wholly owned subsidiary to serve as an agent for its export sales. Petitioner's objective in so doing was to take advantage of the tax benefits provided for domestic international sales corporations (DISCS). Upon audit of petitioner's 1975-1977 returns, the Commissioner determined that it had failed to comply with the strict statutory requirements for qualifying as a DISC. Among the bases for this conclusion was the determination that certain accounts receivable did not qualify as "export assets" because petitioner had failed to pay them within 60 days as required by an IRS regulation. The Tax Court upheld the ruling, rejecting petitioner's contention that the 60-day filing requirement was beyond the authority of the Commission to impose. The CA11 affirmed. Among petitioner's many contentions was the claim that the Commissioner had abused his discretion by applying the 60-day rule retroactively. The rule had been adopted in 1976, and an IRS handbook had informed taxpayers that any modifications of the taxpayer's obligations would be applied prospectively only. Disagreeing with the contrary conclusion of the CA2 in Lecroy Research v. Comm'r, 751 F.2d 123 (1985), the court rejected the argument. It was well settled, the court observed, that a government handbook is simply a guideline for taxpayers and does not bind the agency. Thus a taxpayer relies on such handbook only at its peril. In view of the established rule that changes in tax laws presumptively apply retroactively, the court held, the Commissioner did not abuse his discretion in following that course here.