

The Burger Court Opinion Writing Database

United States v. Riverside Bayview Homes, Inc.

474 U.S. 121 (1985)

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



8

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

CHAMBERS OF
THE CHIEF JUSTICE

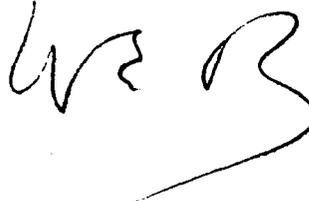
November 20, 1985

Re: No. 84-701 - United States v. Riverside Homes

Dear Byron:

I join.

Regards,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 13, 1985

No. 84-701

United States v. Riverside
Bayview Homes, Inc., et al.

Dear Byron,

I agree.

Sincerely,



Justice White

Copies to the Conference

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

From: **Justice White**

Circulated: NOV 11 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-701

UNITED STATES, PETITIONER *v.* RIVERSIDE
 BAYVIEW HOMES, INC., ET AL.

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

[November —, 1985]

JUSTICE WHITE delivered the opinion of the Court.

This case presents the question whether the Clean Water Act, 33 U. S. C. § 1251 *et seq.*, together with certain regulations promulgated under its authority by the Army Corps of Engineers, authorizes the Corps to require landowners to obtain permits from the Corps before discharging fill material into wetlands adjacent to navigable bodies of water and their tributaries.

I

The relevant provisions of the Clean Water Act originated in the Federal Water Pollution Control Act Amendments of 1972, 86 Stat. 816, and have remained essentially unchanged since that time. Under §§ 301 and 502 of the Act, 33 U. S. C. §§ 1311 and 1362, any discharge of dredged or fill materials into “navigable waters”—defined as the “waters of the United States”—is forbidden unless authorized by a permit issued by the Corps of Engineers pursuant to § 404, 33 U. S. C. § 1344.¹ After initially construing the Act to cover only waters navigable in fact, in 1975 the Corps issued in-

¹ With respect to certain waters, the Corps' authority may be transferred to States that have devised federally approved permit programs. CWA § 404(g), 33 U. S. C. § 1344(g). Absent such an approved program, the Corps retains jurisdiction under § 404 over all “waters of the United States.”

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

From: Justice White

Stylistic changes throughout
 and pp. 11 & 14

Circulated: _____

Recirculated: NOV 13 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-701

UNITED STATES, PETITIONER *v.* RIVERSIDE
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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
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[November —, 1985]

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

From: **Justice White**

Circulated: _____

Recirculated: NOV 25 1985

STYLISTIC CHANGES THROUGHOUT.
 ... PAGES:

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-701

UNITED STATES, PETITIONER *v.* RIVERSIDE
 BAYVIEW HOMES, INC., ET AL.

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

[November —, 1985]

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¹With respect to certain waters, the Corps' authority may be transferred to States that have devised federally approved permit programs. CWA § 404(g), as added, 91 Stat. 1600, 33 U. S. C. § 1344(g). Absent such an approved program, the Corps retains jurisdiction under § 404 over all “waters of the United States.”

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 13, 1985

Re: No. 84-701-U.S. v. Riverside Bayview Homes

Dear Byron:

Please join me.

Sincerely,

JM.

T.M.

Justice White

cc: The Conference

6

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

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

November 18, 1985

Re: No. 84-701, United States
v. Riverside Bayview Homes, Inc.

Dear Byron:

Please join me.

Sincerely,

Harry

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 12, 1985

84-701 United States v. Riverside Bayview Homes

Dear Byron:

Please join me.

Sincerely,



Justice White

lfp/ss

cc: The Conference



CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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

November 18, 1985

Re: No. 84-701 United States v. Riverside Bayview
Homes, Inc.

Dear Byron,

Please join me.

Sincerely,

wm

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 13, 1985

Re: 84-701 - United States v. Riverside
Bayview Homes

Dear Byron:

Please join me.

Respectfully,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

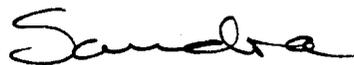
November 13, 1985

No. 84-701 U. S. v. Riverside Bayview Homes

Dear Byron,

Please join me.

Sincerely,



Justice White

Copies to the Conference