

The Burger Court Opinion Writing Database

Brock v. Pierce County

476 U.S. 253 (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

May 5, 1986

Re: 85-385 - Brock v. Pierce County

Dear Thurgood:

I join.

Regards,



Justice Marshall

Copies to the Conference



CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

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

May 2, 1986

No. 85-385

Brock v. Pierce County

Dear Thurgood,

I agree.

Sincerely,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 2, 1986

85-385 - Brock v. Pierce County

Dear Thurgood,

Please join me.

Sincerely yours,



Justice Marshall

Copies to the Conference

BYRON R. WHITE

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

From: **Justice Marshall**

Circulated: MAY 1 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-385

WILLIAM E. BROCK, SECRETARY OF LABOR,
 PETITIONER *v.* PIERCE COUNTY

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

[May —, 1986]

JUSTICE MARSHALL delivered the opinion of the Court.

Section 106(b) of the Comprehensive Employment and Training Act (CETA), 29 U. S. C. § 816(b) (Supp. V 1981), provides that the Secretary of Labor (Secretary) "shall" issue a final determination as to the misuse of CETA funds by a grant recipient within 120 days after receiving a complaint alleging such misuse. The question presented in this case is whether the Secretary loses the power to recover misused CETA funds after that 120 day period has expired.

I

Before its repeal in 1982,¹ CETA provided for grants of federal funds to certain qualified entities known as "prime sponsors," principally state and local governments, for programs "provid[ing] job training and employment opportunities for economically disadvantaged, unemployed, or underemployed persons," § 801 (Supp. V 1981).² The statute contains detailed requirements concerning the operation of a CETA program and the training, pay, and terms of employment of participants in a program, see §§ 823-827. A prime

¹ Effective October 13, 1982, CETA was replaced by the Job Training Partnership Act, Pub. L. No. 97-300, 96 Stat. 1357 (now codified at 29 U. S. C. § 1501-1781 (1982)).

² Hereafter all citations to Title 29 of the United States Code will be to Supplement V of the 1976 edition, unless otherwise specified.

Stylistic changes throughout

pp 1-5

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

From: **Justice Marshall**

Circulated: _____

Recirculated: **MAY 7 1986**

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

 No. 85-385

WILLIAM E. BROCK, SECRETARY OF LABOR,
 PETITIONER *v.* PIERCE COUNTY

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

[May —, 1986]

JUSTICE MARSHALL delivered the opinion of the Court.

Section 106(b) of the Comprehensive Employment and Training Act (CETA), 92 Stat. 1926, 29 U. S. C. § 816(b) (1976 ed., Supp. V), provides that the Secretary of Labor (Secretary) "shall" issue a final determination as to the misuse of CETA funds by a grant recipient within 120 days after receiving a complaint alleging such misuse. The question presented in this case is whether the Secretary loses the power to recover misused CETA funds after that 120-day period has expired.

I

Before its repeal in 1982,¹ CETA provided for grants of federal funds to certain qualified entities known as "prime sponsors," principally state and local governments, for programs "provid[ing] job training and employment opportunities for economically disadvantaged, unemployed, or underemployed persons," 29 U. S. C. § 801 (1976 ed., Supp. V).² The statute contains detailed requirements concerning the operation of a CETA program and the training, pay, and

¹ Effective October 13, 1982, CETA was replaced by the Job Training Partnership Act, Pub. L. 97-300, 96 Stat. 1324 (now codified at 29 U. S. C. ~~et seq.~~ (1982) ed., and Supp. II). § 1501-1781 (1982)).

² Hereafter all citations to Title 29 of the United States Code will be to Supplement V of the 1976 edition, unless otherwise specified.

15C1 et seq. (1982 ed., and Supp. II)

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 19, 1986

Re: Holds for Brock v. Pierce County, No. 85-385

MEMORANDUM TO THE CONFERENCE

41 There are four cases held for Brock v. Pierce County:

GVR
(1) In Brock v. Southeastern Arizona Governments Org., No. 85-912, the Arizona Department of Economic Security (DES) received a CETA grant from the federal government, and in turn gave a subgrant to respondent, an association of local governments. A private accounting firm retained by DES audited respondent, and determined that respondent had hired ineligible participants. DES forwarded that report to the Secretary, and 184 days later the Secretary's grant officer disallowed \$2,461 of respondent's costs. Following administrative review, respondent appealed to the CA9, which summarily reversed the Secretary's determination based on its prior decision in City of Edmonds v. Dept. of Labor, because the Secretary had failed to make a final determination within 120 days of receiving the audit. Pierce County expressly rejects the CA9's City of Edmonds decision. I shall therefore vote to GVR.

J
42 (2) In St. Regis Mohawk Tribe v. Brock, No. 85-949, petitioner, an Indian tribe, received CETA grants. A private accounting firm audited petitioner's grants and filed the audit with the Secretary's grant officer, who issued a final determination more than three years later, disallowing \$68,334 in costs, principally due to ineligible participants. Petitioner sought review in the CA2, claiming that the Secretary lost the power to recover misspent CETA funds 120 days after the filing of the audit. The CA2 rejected this argument. Its decision, of course, is consistent with Pierce County.

Petitioner raises two additional arguments. First, petitioner argues that the Secretary has no authority to recover funds granted before the CETA amendments of 1978, which expressly conveyed that authority. We encountered a similar argument in Bell v. New Jersey, 461 U.S. 773 (1983), and held that the Elementary and Secondary Education Act of 1965 authorized the Secretary of Education to recover misspent grant funds even before the Act was amended to convey that authority in express



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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 5, 1986

Re: No. 85-385, Brock, Secretary of Labor v. Pierce County

Dear Thurgood:

Please join me.

Sincerely,


Justice Marshall

cc: The Conference



CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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

May 3, 1986

85-385 Brock v. Pierce County

Dear Thurgood:

Please join me.

Sincerely,

Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 2, 1986

Re: No. 85-385 Brock v. Pierce County

Dear Thurgood,

Please join me.

Sincerely,



Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 1, 1986

Re: 85-385 - Brock v. Pierce County

Dear Thurgood:

As indicated by my separate letter, my join in your opinion is unconditional. I would like to add, however, that I think your footnote 9 on page 9 is particularly important because I could not have agreed to an opinion that adopted the extreme position for which the Government contended. In this connection, I wonder if you would consider changing the second sentence in the second paragraph on page 5 by eliminating the words "longstanding and virtually unbroken," thereby merely referring to the "line of precedent in the Court of Appeals." I notice that the cases that Judge Friendly cited on page 41 of his St. Regis Mohawk Tribe opinion actually include only five Court of Appeals' cases. As I say, however, this is just a suggestion because I think your opinion is really first-rate.

Respectfully,



Justice Marshall

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 1, 1986

Re: 85-385 - Brock v. Pierce County

Dear Thurgood:

The Solicitor General did not convince me, but your opinion--with a strong assist from Henry Friendly--has changed my mind. Accordingly, please join me.

Respectfully,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 1, 1986

No. 85-385 Brock v. Pierce County

Dear Thurgood,

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sandra", is written in dark ink.

Justice Marshall

Copies to the Conference