

The Burger Court Opinion Writing Database

Pennsylvania v. Delaware Valley Citizens' Council for Clean Air

478 U.S. 546 (1986)

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



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

CHAMBERS OF
THE CHIEF JUSTICE

June 11, 1986

85-5 - Pennsylvania v. Delaware Valley Citizens'
Council for Clean Air, et al.

Dear Byron:

I have some problems that I may want you to hear me on
but meanwhile -- I join.

Regards,



Justice White

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

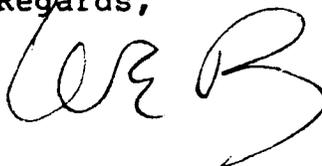
June 30, 1986

Re: No. 85-5, Pennsylvania v. Delaware Valley Citizens' Council
for Clean Air

Dear Byron:

I am still with you on your recirculated opinion. I also join
your proposed order.

Regards,



Justice White

Copies to Conference

MM

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 11, 1986

No. 85-5

Pennsylvania v. Delaware Valley
Citizens' Council

Dear Thurgood and Harry,

We three are in dissent in the
above. Would you, Harry, take it on?

Sincerely,

Bill

Justice Marshall

Justice Blackmun

82 MAR 11 1986

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 25, 1986

Pennsylvania v. Delaware Valley Citizens'
Council, No. 85-5

Dear Harry:

Please join me in your opinion concurring in part and dissenting in part in the above. I may add a few paragraphs of my own.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Justice Blackmun
Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 27, 1986

No. 85-5

Pennsylvania, et al.
v. Delaware Valley Citizens'
Council for Clear Air, et al.

Dear Harry,

Please join me in your opinion
concurring in part and dissenting in
part in the above case.

Sincerely,

Bill

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

JUN 28 1986
June 27, 1986

No. 85-5

Pennsylvania v. Delaware
Valley Citizens' Council

Dear Byron,

I, of course, was not in favor of a limited reargument but, since that's the way the Conference voted, I am willing to join your order if you can delete from the third line the words "a presumptively reasonable." That seems to put the burden on the awardee of coming up with some special reason why he's entitled to a multiplier.

Sincerely,

Bill

Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 30, 1986

Pennsylvania v. Delaware Valley Citizens'
Council
No. 85-5

Dear Harry:

Please join me in part II of your opinion concurring in part and dissenting in part in the above.

Sincerely,

W. J. B., jr.

Justice Blackmun
Copies to the Conference

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

From: **Justice White**

Circulated: APR 9 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-5

PENNSYLVANIA, ET AL. PETITIONERS *v.* DELA-
 WARE VALLEY CITIZENS' COUNCIL FOR
 CLEAR AIR ET AL.

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

[April —, 1986]

JUSTICE WHITE delivered the opinion of the Court.

The questions presented in this case are first, whether the Clean Air Act, 42 U. S. C. § 7401, *et. seq.*, authorizes attorney's fees awards for time spent by counsel participating in regulatory proceedings; second, whether a court may enhance an award to reflect superior quality of representation rendered by plaintiff's counsel; and third, whether enhancement of the fee is proper because of plaintiff's risk of not prevailing on the merits.

I

In 1977, Delaware Valley Citizens' Council for Clean Air (Delaware Valley) and the United States each filed suit to compel the Commonwealth of Pennsylvania to implement a vehicle emission inspection and maintenance program (I/M program) as required by the Clean Air Act. See 42 U. S. C. § 7410. Pursuant to a consent decree approved in 1978, the Commonwealth agreed to establish an I/M program for 10 counties in the Philadelphia and Pittsburgh areas by August 1, 1980. The decree called for the Pennsylvania Department of Transportation (PennDOT) to seek legislation instituting a franchise I/M system under which the Commonwealth would contract with garage owners for the establishment of inspection stations. If the legislature failed to approve such a sys-

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 10, 1986

85-5 - Pennsylvania v. Delaware Valley
Citizens' Council for Clean Air

Dear John,

The Conference vote on the risk factor was not all that clear to me, and Part IV may well not carry the day, in which event there will have to be suitable modification.

Sincerely yours,



ES 49 01 99A
Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 16, 1986

85-5 - Pennsylvania v. Delaware
Valley Citizens' Council

Dear Sandra,

My intention was to foreclose any consideration of the risk factor independent of other considerations, such as counsel's experience and ability and the time and effort expended on the case, that go into calculating the lodestar and that to an extent reflect the risk of loss. That is my decided preference, but as I indicated to John, if it does not carry the day, some modification will be necessary. I hope not, for I seriously doubt that risk enhancement was intended by Congress.

Sincerely yours,



Justice O'Connor

Copies to the Conference

APR 19 1986 10 53 24

OFFICE OF
CLERK

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 24, 1986

85-5 - Pennsylvania v. Delaware Valley Citizens' Council

Dear Harry,

In response to your opinion in this case, I am dropping the following new footnote at the end of Part IV:

___/ The dissent and ourselves are fairly at issue on the risk-enhancement phase of this case. JUSTICE BLACKMUN asserts that the legislative history demonstrates a congressional decision to permit risk enhancement in suitable cases and that without risk enhancement, the purpose of the statute--to enable plaintiffs to secure counsel--will go unfulfilled. We have different views: we find the legislative history inconclusive and as presently advised, believe that providing for the payment of proper lodestar fees for the time and effort of winning a case will adequately assure the availability of counsel to civil rights plaintiffs. As we see it, Congress intended to shift to losing defendants the liability for only those "reasonable" fees necessary to enable plaintiffs to engage competent counsel. If losing defendants are to pay any more, or if Congress has determined or now believes that risk enhancement is essential to implementing the fee shifting statutes, the courts should be so advised by Congress.

Sincerely yours,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 25, 1986

MEMORANDUM TO THE CONFERENCE

85-5 -

Pennsylvania v. Delaware Valley Citizens' Council

After discussing this case with Sandra, I gather that she agrees with Parts I, II and III of the circulating draft, but does not agree with Part IV dealing with risk enhancement. She would not, however, affirm the judgment below on the risk-enhancement issue and thus cannot join Harry. There may thus be some question of arriving at a judgment on this part of the case, let alone a rationale for risk enhancement. Because the issue is constantly on the dockets of lower courts and because we therefore should make every effort to avoid confusion, which further consideration may effect, I move that we reargue the issue of risk enhancement but hand down the rest of the case as presently resolved. I add that I would welcome the opportunity to reconsider the question.



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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 25, 1986

MEMORANDUM TO THE CONFERENCE

Re: 85-5 -

Pennsylvania v. Delaware Valley Citizens' Council

Should the motion for reargument carry, I would modify Part IV of the circulating draft to read somewhat as follows:

IV

There remains the question of upward adjustment, by way of multipliers or other means of enhancement of the lodestar, based on the risk of failing to prevail in litigation. This is a question left open in Blum and on which the Courts of Appeals are not entirely in accord. We are now of the view that our resolution of this issue would be benefitted by reargument and hence do not decide it now. Accordingly, this case is restored to the argument docket insofar as it raises the question whether attorney's fees chargeable to a losing defendant under the Clean Water Act and comparable fee-shifting statutes may be enhanced based on the risk of loss.

The judgment below is therefore affirmed insofar as it upheld the award of attorney's fees for the work done in Phases II and IX and, except for the multiplier for risk, is otherwise reversed.

It is so ordered.



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

pp. 13, 27, 30 and stylistic

From: Justice White

Circulated: _____

Recirculated: 6/25/86

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-5

PENNSYLVANIA, ET AL., PETITIONERS *v.* DELAWARE VALLEY CITIZENS' COUNCIL FOR CLEAR AIR ET AL.

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

[June —, 1986]

JUSTICE WHITE delivered the opinion of the Court.

The questions presented in this case are first, whether the Clean Air Act, 42 U. S. C. § 7401, *et. seq.*, authorizes attorney's fees awards for time spent by counsel participating in regulatory proceedings; second, whether a court may enhance an award to reflect superior quality of representation rendered by plaintiff's counsel; and third, whether enhancement of the fee is proper because of plaintiff's risk of not prevailing on the merits.

I

In 1977, Delaware Valley Citizens' Council for Clean Air (Delaware Valley) and the United States each filed suit to compel the Commonwealth of Pennsylvania to implement a vehicle emission inspection and maintenance program (I/M program) as required by the Clean Air Act. See 42 U. S. C. § 7410. Pursuant to a consent decree approved in 1978, the Commonwealth agreed to establish an I/M program for 10 counties in the Philadelphia and Pittsburgh areas by August 1, 1980. The decree called for the Pennsylvania Department of Transportation (PennDOT) to seek legislation instituting a franchise I/M system under which the Commonwealth would contract with garage owners for the establishment of inspection stations. If the legislature failed to approve such a sys-

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

From: **Justice White**

- Stylistic; Part IV new;
 - Part V eliminated

- Circulated: _____

Recirculated: JUN 27 1986

3d
 2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-5

PENNSYLVANIA, ET AL., PETITIONERS *v.* DELA-
 WARE VALLEY CITIZENS' COUNCIL FOR
 CLEAR AIR ET AL.

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

[June —, 1986]

JUSTICE WHITE delivered the opinion of the Court.

The questions presented in this case are first, whether the Clean Air Act, 42 U. S. C. § 7401, *et. seq.*, authorizes attorney's fees awards for time spent by counsel participating in regulatory proceedings; second, whether a court may enhance an award to reflect superior quality of representation rendered by plaintiff's counsel; and third, whether enhancement of the fee is proper because of plaintiff's risk of not prevailing on the merits.

I

In 1977, Delaware Valley Citizens' Council for Clean Air (Delaware Valley) and the United States each filed suit to compel the Commonwealth of Pennsylvania to implement a vehicle emission inspection and maintenance program (I/M program) as required by the Clean Air Act. See 42 U. S. C. § 7410. Pursuant to a consent decree approved in 1978, the Commonwealth agreed to establish an I/M program for 10 counties in the Philadelphia and Pittsburgh areas by August 1, 1980. The decree called for the Pennsylvania Department of Transportation (PennDOT) to seek legislation instituting a franchise I/M system under which the Commonwealth would contract with garage owners for the establishment of inspection stations. If the legislature failed to approve such a sys-

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 27, 1986

MEMORANDUM TO THE CONFERENCE

Re: 85-5 -

Pennsylvania v. Delaware Valley Citizens' Council

I suggest the following order setting this case for partial reargument:

The case is restored to the calendar for reargument insofar as it poses the issue whether a presumptively reasonable attorneys' fee award under Section 304(d) of the Clean Air Act, 42 U.S.C. 7604(d), may be "multiplied" or otherwise enhanced to reflect the risk that plaintiffs might not have prevailed and, therefore, might have obtained from defendants no attorneys' fees at all.

BRW.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 9, 1986

Re: No. 85-5-Pennsylvania v. Delaware Valley Citizens'
Council For Clear Air

Dear Byron:

I await the dissent.

Sincerely,



T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 24, 1986

Re: No. 85-5-Pennsylvania v. Delaware Valley
Citizens' Council for Clear Air

Dear Harry:

Please join me in your opinion concurring in part
and dissenting in part.

Sincerely,

JM

T.M.

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 11, 1986

Re: No. 85-5, Pennsylvania v. Delaware
Valley Citizens' Council

Dear Bill:

I shall be glad to undertake the dissent in this case
when the time is ripe.

Sincerely,



Justice Brennan

cc: Justice Marshall

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 11, 1986

Re: No. 85-5, Pennsylvania v. Delaware Valley
Citizen' Council

Dear Byron:

In due course, I shall try my hand at a dissent in
this case.

Sincerely,



Justice White

cc: The Conference

92 Vb6 61 28

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

From: **Justice Blackmun**

Circulated: JUN 24 1986

Recirculated: _____

HAB
Please join me in your opinion
Concurring in part and dissenting
in part
MB

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-5

PENNSYLVANIA, ET AL., PETITIONERS v. DELA-
WARE VALLEY CITIZENS' COUNCIL FOR
CLEAR AIR ET AL.

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

[June —, 1986]

JUSTICE BLACKMUN, concurring in part and dissenting in part.

I join only Parts I and II of the Court's opinion, for I cannot acquiesce in the Court's continuing restrictive view of what constitutes a reasonable attorney's fee in cases of this kind.

Congress, in enacting fee-shifting statutes, has stressed that the fee awarded must be "adequate to attract competent counsel, but . . . not produce windfalls to attorneys." S. Rep. No. 94-1011, p. 6 (1976). Today, the Court ignores the fact that a fee which is proper when paid to a lawyer promptly and regardless of the outcome may be inadequate and unreasonable when paid to a lawyer whose fee depends upon winning the case. Once again, the Court has subordinated congressional intent to its own "strong predisposition in favor of . . . the 'American Rule' endorsed by the Court in *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U. S. 240, 247 (1975), and repeatedly rejected by Congress thereafter." *Ruckelshaus v. Sierra Club*, 463 U. S. 680, 694 (1983) (dissenting opinion).

I

In directing courts to award a "reasonable" attorney's fee to a litigant who vindicates various statutory rights, *e. g.*, 42

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

From: **Justice Blackmun**

Circulated: JUN 27 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-5

PENNSYLVANIA, ET AL., PETITIONERS *v.* DELA-
 WARE VALLEY CITIZENS' COUNCIL FOR
 CLEAR AIR ET AL.

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

[June —, 1986]

JUSTICE BLACKMUN, concurring in part and dissenting in part.

I dissent from the piecemeal adjudication of the issues in this case. I would set the entire case, and not just a part of it, for reargument next Term. This rush to judgment on certain issues will serve only to confuse the federal courts until the entire case is decided.

But the Court insists on covering the merits in part, and so I turn to them. I join only Parts I and II of the Court's opinion. In Part III, the Court purports to follow *Blum v. Stenson*, 465 U. S. 886 (1984), in which we held that an adjustment for quality was available "in the rare case where the fee applicant offers specific evidence to show that the quality of service rendered was superior to that one reasonably should expect in light of the hourly rates charged and that the success was 'exceptional.'" *Id.*, at 899, citing *Hensley v. Eckerhart*, 461 U. S. 424, 435 (1983). The Court today, however, improperly heightens the showing required to the point where it may be virtually impossible for a plaintiff to meet. Compare *Blum, supra*, at 899, with *ante*, at 20.

Although the District Court's decision was issued before *Blum*, its quality adjustment in Phase V was in full accord with the standards subsequently laid down in *Blum*. Compare 581 F. Supp. 1412, 1431 (ED Pa. 1984), with 465 U. S.,

10.1

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

From: Justice Blackmun

Circulated: _____

Recirculated: JUN 30 1986

SUPREME COURT OF THE UNITED STATES

No. 85-5

PENNSYLVANIA, ET AL., PETITIONERS *v.* DELAWARE VALLEY CITIZENS' COUNCIL FOR CLEAR AIR ET AL.

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

[July 2, 1986]

JUSTICE BLACKMUN, concurring in part and dissenting in part.

I

I dissent from the piecemeal adjudication of the issues in this case. I would set the entire case, and not just a part of it, for reargument next Term. This rush to judgment on certain issues will serve only to confuse the federal courts until the entire case is decided. But the Court insists on covering the merits in part, and so I turn to them.

II

I join only Parts I and II of the Court's opinion. In Part III, the Court purports to follow *Blum v. Stenson*, 465 U. S. 886 (1984), in which we held that an adjustment for quality was available "in the rare case where the fee applicant offers specific evidence to show that the quality of service rendered was superior to that one reasonably should expect in light of the hourly rates charged and that the success was 'exceptional.'" *Id.*, at 899, citing *Hensley v. Eckerhart*, 461 U. S. 424, 435 (1983). The Court today, however, improperly heightens the showing required to the point where it may be virtually impossible for a plaintiff to meet. Compare *Blum*, *supra*, at 899, with *ante*, at 20.

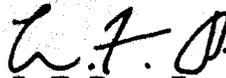
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 7, 1986

MEMORANDUM TO THE CONFERENCE:

Although hardly relevant to our decision in 85-5, Pennsylvania v. Delaware Valley Citizens Council, the enclosed brief article from the March 1 edition of LawScope may be of interest. Apparently there are a number of studies that make rather clear there is no problem in obtaining lawyers in cases where federal statutes authorize attorney's fees. Judge Sarokin (DC New Jersey) may be right when he says: "There's a cottage industry over counsel fees." I have not seen the Federal Judicial Center's study, though it may possibly be of interest.


L.F.P., Jr.

SS

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 11, 1986

85-5 Pennsylvania v. Delaware Valley Citizens' Council

Dear Byron:

Please join me.

Sincerely,

L. Lewis

Justice White

lfp/ss

cc: The Conference

APR 11 1986

LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 17, 1986

85-5 Pennsylvania v. Delaware Valley Citizen's Council

Dear Byron:

This is to reiterate my agreement that "risk enhancement" hardly could have been intended by Congress.

I am still with you.

Sincerely,



Justice White

lfp/ss

cc: The Conference

APR 17 1986

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 25, 1986

85-5 Pennsylvania v. Delaware Valley Citizens Council

MEMO TO THE CONFERENCE:

In view of our problems with the above case, you may be interested in the enclosed article in yesterday's Wall Street Journal.

L. F. P.
L.F.P., Jr.

SS

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 27, 1986

85-5 Pennsylvania v. Delaware Valley Citizens' Council

Dear Byron:

I agree with your proposed order in this case.

Sincerely,



Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 14, 1986

Re: No. 85-5 Pennsylvania v. Delaware Valley
Citizens' Council

Dear Byron,

Please join me.

As you probably know better than I do, we have granted certiorari in No. 85-767, North Carolina Department of Transportation v. Crest Street Community Council. The issue there, as I understand it, is whether 42 U.S.C. §1988 authorizes attorneys' fees in federal administrative proceedings when there is no connected court action in which fees are recoverable. Will you consider putting in a footnote in an appropriate place in your circulating opinion in this case reserving the question presented in that case?

Sincerely,



Justice White

cc: The conference

WM 15 65 22

APR 15 1986

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 27, 1986

Re: No. 85-5 Pennsylvania v. Delaware Valley Citizens' Council

Dear Byron,

I agree with your proposed order in this case.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 10, 1986

Re: 85-5 - Pennsylvania, et al. v. Delaware
Valley Citizens' Council for Clean Air

Dear Byron:

Although I agree that the upward adjustment in the "lodestar" amount was excessive in this case, and while I may end up joining Parts I, II and III of your opinion, I surely cannot agree with what you have written in Part IV. I shall therefore await further writing.

Respectfully,



Justice White

Copies to the Conference

APR 10 1986

RECEIVED

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 27, 1986

Re: 85-5 - Pennsylvania v. Delaware Valley
Citizens' Council for Clear Air, et al.

Dear Byron:

Please join me in your most recent opinion, as well as
the form of order you just circulated.

Respectfully,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 15, 1986

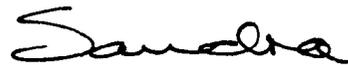
Re: 85-5 Pennsylvania v. Delaware Valley Citizens' Council

Dear Byron,

Your opinion takes a significant step in restricting the discretion of trial courts in awarding attorneys fees under federal statutes such as section 1988. I may join it but for now I will wait to see other writing.

No mention is made in your opinion of the possibility of basing the lodestar calculation on a higher hourly rate which takes into account higher market fees for general risks of pursuing litigation of this type. I had understood counsel for both sides at the oral argument believed such a calculation could be proper. I am wondering whether you agree that your opinion does not foreclose such an award.

Sincerely,



Justice White

Copies to the Conference

100 V66 12 W1 50

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 25, 1986

No. 85-5 Pennsylvania v. Delaware Valley
Citizens' Council

MEMORANDUM TO THE CONFERENCE

I agree with Byron it would be useful to set
the issue of risk enhancement for reargument.

Sincerely,



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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 30, 1986

No. 85-5 Pennsylvania v. Delaware Valley
Citizens' Council for Clear Air

Dear Byron,

I agree with your proposed order and your
recirculated opinion.

Sincerely,



Justice White

Copies to the Conference