

# The Burger Court Opinion Writing Database

## *Commodity Futures Trading Commission v Schor*

478 U.S. 833 (1986)

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





CHAMBERS OF  
THE CHIEF JUSTICE

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

June 11, 1986

85-621 - Commodity Futures v. Schor  
85-642 - Conticommodity Servs. v. Schor

Dear Sandra:

I join.

Regards,

Justice O'Connor

Copies to the Conference

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

From: Justice Brennan

Circulated: JUN 19 1986

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

WJB  
Please for me in your dissent  
7/19

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 85-621 AND 85-642

COMMODITY FUTURES TRADING  
COMMISSION, PETITIONER

85-621

v.

WILLIAM T. SCHOR ET AL.

CONTICOMMODITY SERVICES, INC.,  
PETITIONER

85-642

v.

WILLIAM T. SCHOR AND MORTGAGE  
SERVICES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June —, 1986]

JUSTICE BRENNAN, dissenting.

Article III, Section I, of the Constitution provides that "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." It further specifies that the federal judicial power must be exercised by judges who "shall hold their Offices during good Behaviour, and [who] shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office."

On its face, Article III, Section 1, seems to prohibit the vesting of any judicial functions in either the legislative or the executive branches. The Court has, however, recognized three narrow exceptions to the otherwise absolute mandate of Article III: territorial courts, see, e. g., *American Ins. Co. v. Canter*, 1 Pet. 511 (1828); courts martial, see, e. g., *Dynes v. Hoover*, 20 How. 65 (1857); and courts that ad-

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

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: /

From: **Justice Brennan**

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

Recirculated:       JUN 24 1986      

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 85-621 AND 85-642

COMMODITY FUTURES TRADING  
COMMISSION, PETITIONER

85-621

v.

WILLIAM T. SCHOR ET AL.

CONTICOMMODITY SERVICES, INC.,  
PETITIONER

85-642

v.

WILLIAM T. SCHOR AND MORTGAGE  
SERVICES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June —, 1986]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins,  
dissenting.

Article III, § I, of the Constitution provides that “[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.” It further specifies that the federal judicial power must be exercised by judges who “shall hold their Offices during good Behaviour, and [who] shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.”

On its face, Article III, § 1, seems to prohibit the vesting of *any* judicial functions in either the Legislative or the Executive Branches. The Court has, however, recognized three narrow exceptions to the otherwise absolute mandate of Article III: territorial courts, see, *e. g.*, *American Ins. Co. v. Canter*, 1 Pet. 511 (1828); courts martial, see, *e. g.*, *Dynes v.*

STYLISTIC CHANGES THROUGHOUT  
SEE PAGE : 7

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

From: Justice Brennan

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

Recirculated: JUN 30 1986

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 85-621 AND 85-642

COMMODITY FUTURES TRADING  
COMMISSION, PETITIONER

85-621

v.

WILLIAM T. SCHOR ET AL.

CONTICOMMODITY SERVICES, INC.,  
PETITIONER

85-642

v.

WILLIAM T. SCHOR AND MORTGAGE  
SERVICES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[July —, 1986]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins,  
dissenting.

Article III, § I, of the Constitution provides that "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." It further specifies that the federal judicial power must be exercised by judges who "shall hold their Offices during good Behaviour, and [who] shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office."

On its face, Article III, § 1, seems to prohibit the vesting of any judicial functions in either the Legislative or the Executive Branches. The Court has, however, recognized three narrow exceptions to the otherwise absolute mandate of Article III: territorial courts, see, e. g., *American Ins. Co. v. Canter*, 1 Pet. 511 (1828); courts martial, see, e. g., *Dynes v.*



CHAMBERS OF  
JUSTICE BYRON R. WHITE

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

June 2, 1986

85-621 and 85-642 - CFTC v. Schor and  
Conticommodity Services, Inc. v. Schor

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

June 23, 1986

Re: Nos. 85-621 and 642-Commodity Futures Trading  
Commission and Conticommodity Services, Inc. v.  
William T. Schor, et al.

Dear Bill:

Please join me in your dissent.

Sincerely,

*Jm*

T.M.

Justice Brennan

CC: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 26, 1986

Re: No. 85-621) Commodity Futures v. Schor  
No. 85-642) Conticommodity Services v. Schor

Dear Sandra:

Would you give serious consideration to eliminating the sentence that begins at the very bottom of page 23 of your second draft? This is the sentence that starts off with the word "Accordingly." I do not believe that it is necessary for the opinion, and it has an overtone of "original intent" that I would not like to be a party to at this point. If you feel able to do this, you have my joinder.

I suppose the cases will have to be held until the Bowsher cases are ready inasmuch as Bill Brennan cites them several times in his dissent.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 26, 1986

Re: No. 85-621) Commodity Futures v. Schor  
No. 85-642) Conticommodity Services v. Schor

Dear Sandra:

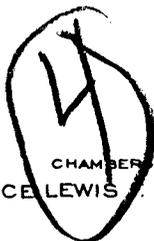
Thank you for making the change. This note confirms  
my joinder.

Sincerely,



Justice O'Connor

cc: The Conference



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

June 11, 1986

85-621 Commodity Futures v. Schor

Dear Sandra:

Please join me.

Sincerely,

*Lewis*

Justice O'Connor

lfp/ss

cc: The Conference



CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

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

June 3, 1986

Re: 85-621 - Commodity Futures Trading Commission  
v. Schor; 85-642 - Conticommodity Services, Inc.  
v. William T. Schor, et al.

Dear Sandra:

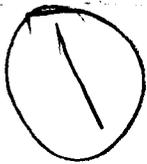
Please join me.

Sincerely,

A handwritten signature in dark ink, appearing to be "WR", written over a horizontal line.

Justice O'Connor

cc: The Conference



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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 2, 1986

Re: 85-621 - Commodity Futures Trading  
Comm. v. Schor, et al.  
85-642 - Conticommodity Services, Inc.  
v. Schor and Mortgage Services of  
America

Dear Sandra:

Please join me.

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 Stevens

From: Justice O'Connor

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

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 85-621 AND 85-642

COMMODITY FUTURES TRADING  
COMMISSION, PETITIONER

85-621

v.

WILLIAM T. SCHOR ET AL.

CONTICOMMODITY SERVICES, INC.,  
PETITIONER

85-642

v.

WILLIAM T. SCHOR AND MORTGAGE  
SERVICES OF AMERICA

W.B.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June —, 1986]

JUSTICE O'CONNOR delivered the opinion of the Court.

The question presented is whether the Commodity Exchange Act (CEA), 7 U. S. C. § 1 *et seq.*, empowers the Commodity Futures Trading Commission (CFTC or Commission) to entertain state law counterclaims in reparation proceedings and, if so, whether that grant of authority violates Article III of the Constitution.

I

The CEA broadly prohibits fraudulent and manipulative conduct in connection with commodity futures transactions. In 1974, Congress "overhaul[ed]" the Act in order to institute a more "comprehensive regulatory structure to oversee the volatile and esoteric futures trading complex." H. R. Rep. No. 93-975, p. 1 (1974). See Pub. L. No. 93-463, 88 Stat. 1389. Congress also determined that the broad regulatory powers of the CEA were most appropriately vested in an

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: JUN 11 1986

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 85-621 AND 85-642

COMMODITY FUTURES TRADING  
COMMISSION, PETITIONER

85-621

*v.*

WILLIAM T. SCHOR ET AL.

CONTICOMMODITY SERVICES, INC.,  
PETITIONER

85-642

*v.*

WILLIAM T. SCHOR AND MORTGAGE  
SERVICES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June —, 1986]

JUSTICE O'CONNOR delivered the opinion of the Court.

The question presented is whether the Commodity Exchange Act (CEA or Act), 7 U. S. C. §1 *et seq.*, empowers the Commodity Futures Trading Commission (CFTC or Commission) to entertain state law counterclaims in reparation proceedings and, if so, whether that grant of authority violates Article III of the Constitution.

I

The CEA broadly prohibits fraudulent and manipulative conduct in connection with commodity futures transactions. In 1974, Congress "overhaul[ed]" the Act in order to institute a more "comprehensive regulatory structure to oversee the volatile and esoteric futures trading complex." H. R. Rep. No. 93-975, p. 1 (1974). See Pub. L. 93-463, 88 Stat. 1389. Congress also determined that the broad regulatory powers of the CEA were most appropriately vested in an agency

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

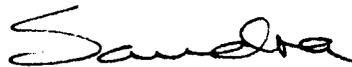
June 26, 1986

No. 85-621 Commodity Futures v. Schor  
No. 85-642 Conticommodity Services v. Schor

Dear Harry,

I will go along with your request and have sent your requested change to the printer.

Sincerely,



Justice Blackmun

Copies to the Conference

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

From: Justice O'Connor

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

Recirculated: JUN 27 1986

Stylistic Changes Throughout

P.P. 20, 22, 23, 24

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 85-621 AND 85-642

COMMODITY FUTURES TRADING  
COMMISSION, PETITIONER

85-621

v.

WILLIAM T. SCHOR ET AL.

CONTICOMMODITY SERVICES, INC.,  
PETITIONER

85-642

v.

WILLIAM T. SCHOR AND MORTGAGE  
SERVICES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June —, 1986]

JUSTICE O'CONNOR delivered the opinion of the Court.

The question presented is whether the Commodity Exchange Act (CEA or Act), 7 U. S. C. §1 *et seq.*, empowers the Commodity Futures Trading Commission (CFTC or Commission) to entertain state law counterclaims in reparation proceedings and, if so, whether that grant of authority violates Article III of the Constitution.

I

The CEA broadly prohibits fraudulent and manipulative conduct in connection with commodity futures transactions. In 1974, Congress "overhaul[ed]" the Act in order to institute a more "comprehensive regulatory structure to oversee the volatile and esoteric futures trading complex." H. R. Rep. No. 93-975, p. 1 (1974). See Pub. L. 93-463, 88 Stat. 1389. Congress also determined that the broad regulatory powers of the CEA were most appropriately vested in an agency