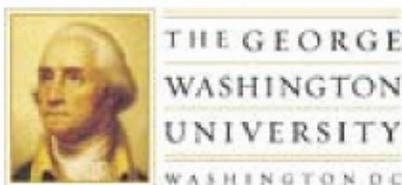


The Burger Court Opinion Writing Database

Young v. Community Nutrition Institute
476 U.S. 974 (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

June 11, 1986

85-664 - Young v. Community Nutrition

Dear Sandra:

I join.

Regards,

A handwritten signature in cursive script, likely belonging to Justice O'Connor, positioned below the word "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.

June 4, 1986

No. 85-664

Young v. Community Nutrition
Institution, et al.

Dear Sandra,

I agree.

Sincerely,

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

Justice O'Connor

Copies to the Conference



CHAMBERS OF
JUSTICE BYRON R. WHITE

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

June 2, 1986

85-664 -

Young v. Community Nutrition Institute

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 13, 1986

Re: No. 85-664-Young v. Community Nutrition

Dear Sandra:

Please join me.

Sincerely,

J.M.
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 2, 1986

Re: No. 85-664, Young v. Community Nutrition

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 LEWIS F. POWELL, JR.

June 4, 1986

85-664 Young v. Community Nutrition Institute

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

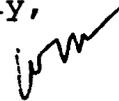
June 2, 1986

Re: 85-664 - Young v. Community Nutrition Institute

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

June 2, 1986

Re: 85-664 - Young v. Community Nutrition

Dear Sandra:

Sometime prior to the deadline imposed by the Rehnquist family reunion, I shall provide you with a dissenting opinion in this fascinating case.

Respectfully,



Justice O'Connor

Copies to the Conference

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

From: Justice Stevens

Circulated: JUN 9 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-664

FRANK YOUNG, COMMISSIONER OF FOOD AND
 DRUG ADMINISTRATION, PETITIONER *v.* COM-
 MUNITY NUTRITION INSTITUTE ET AL.

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

[June —, 1986]

JUSTICE STEVENS, dissenting.

The parties agree that aflatoxins are added, unavoidable contaminants of food and as such are governed by the following section of the Federal Food, Drug, and Cosmetic Act:

“[W]hen such substance . . . cannot be avoided, the Secretary shall promulgate regulations limiting the quantity therein or thereon to such extent as he finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of clause (2)(A) of section 342(a) of this title.” 21 U. S. C. § 346 (emphasis added).

To one versed in the English language, the meaning of this provision is readily apparent. The plain language of the section tells us when the Secretary's duty to promulgate regulations arises—“when such substance . . . cannot be so avoided”; it tells us the purpose of the regulations—to establish a tolerance level that will enable manufacturers to know what they can lawfully produce and to enable the public to know what they can safely consume; and it tells us what standard he should employ in drafting them—“to such extent as he finds necessary for the protection of public health.” For purposes of deciding this case, the parties' agreement

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 10 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-664

FRANK YOUNG, COMMISSIONER OF FOOD AND
DRUG ADMINISTRATION, PETITIONER *v.* COM-
MUNITY NUTRITION INSTITUTE ET AL.

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

[June —, 1986]

JUSTICE STEVENS, dissenting.

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contaminants of food and as such are governed by the follow-
ing section of the Federal Food, Drug, and Cosmetic Act:

“[W]hen such substance . . . cannot be so avoided, the
Secretary *shall promulgate regulations* limiting the
quantity therein or thereon *to such extent* as he finds
necessary for the protection of public health, and any
quantity exceeding the limits *so fixed* shall also be
deemed to be unsafe for purposes of the application of
clause (2)(A) of section 342(a) of this title.” 21 U. S. C.
§ 346 (emphasis added).

To one versed in the English language, the meaning of this
provision is readily apparent. The plain language of the
section tells us when the Secretary’s duty to promulgate
regulations arises—“when such substance . . . cannot be so
avoided”; it tells us the purpose of the regulations—to estab-
lish a tolerance level that will enable manufacturers to know
what they can lawfully produce and to enable the public to
know what they can safely consume; and it tells us what
standard he should employ in drafting them—“to such extent
as he finds necessary for the protection of public health.”
For purposes of deciding this case, the parties’ agreement

77

P.3

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-664

FRANK YOUNG, COMMISSIONER OF FOOD AND
 DRUG ADMINISTRATION, PETITIONER *v.* COM-
 MUNITY NUTRITION INSTITUTE ET AL.

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

[June —, 1986]

JUSTICE STEVENS, dissenting.

The parties agree that aflatoxins are added, unavoidable
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 ing section of the Federal Food, Drug, and Cosmetic Act:

“[W]hen such substance . . . cannot be so avoided, the
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 quantity therein or thereon *to such extent* as he finds
 necessary for the protection of public health, and any
 quantity exceeding the limits *so fixed* shall also be
 deemed to be unsafe for purposes of the application of
 clause (2)(A) of section 342(a) of this title.” 21 U. S. C.
 §346 (emphasis added).

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 section tells us when the Secretary’s duty to promulgate
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 know what they can safely consume; and it tells us what
 standard he should employ in drafting them—“to such extent
 as he finds necessary for the protection of public health.”
 For purposes of deciding this case, the parties’ agreement

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

From: Justice O'Connor

Circulated: ~~MAY 30 1986~~

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-664

FRANK YOUNG, COMMISSIONER OF FOOD AND
DRUG ADMINISTRATION, PETITIONER *v.* COM-
MUNITY NUTRITION INSTITUTE ET AL.

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

[June —, 1986]

Join

JUSTICE O'CONNOR delivered the opinion of the Court.

We granted certiorari in this case to determine whether the Court of Appeals for the District of Columbia Circuit correctly concluded that the Food and Drug Administration's longstanding interpretation of 21 U. S. C. § 346 was in conflict with the plain language of that provision. — U. S. — (1985). We hold that, in light of the inherent ambiguity of the statutory provision and the reasonableness of the Food and Drug Administration's interpretation thereof, the Court of Appeals erred. We therefore reverse.

*1 PS
District 1*

I
A

The Food and Drug Administration (FDA) enforces the Federal Food, Drug, and Cosmetic Act (Act) as the designee of the Secretary of Health and Human Services. 21 U. S. C. § 371(a). See also 21 CFR § 5.10. The Act seeks to ensure the purity of the Nation's food supply, and accordingly bans "adulterated" food from interstate commerce. 21 U. S. C. § 331(a). Section 342(a) deems food to be "adulterated"

"(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food

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

From: **Justice O'Connor**

Circulated: _____

Recirculated: ~~JUN~~ 4 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-664

FRANK YOUNG, COMMISSIONER OF FOOD AND
 DRUG ADMINISTRATION, PETITIONER *v.* COM-
 MUNITY NUTRITION INSTITUTE ET AL.

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

[June —, 1986]

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We granted certiorari in this case to determine whether the Court of Appeals for the District of Columbia Circuit correctly concluded that the Food and Drug Administration's longstanding interpretation of 21 U. S. C. § 346 was in conflict with the plain language of that provision. 474 U. S. — (1985). We hold that, in light of the inherent ambiguity of the statutory provision and the reasonableness of the Food and Drug Administration's interpretation thereof, the Court of Appeals erred. We therefore reverse.

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"(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food

pp. 9

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 1985

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-664

FRANK YOUNG, COMMISSIONER OF FOOD AND
DRUG ADMINISTRATION, PETITIONER v. COM-
MUNITY NUTRITION INSTITUTE ET AL.

ON WRIT 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.

We granted certiorari in this case to determine whether the Court of Appeals for the District of Columbia Circuit correctly concluded that the Food and Drug Administration's longstanding interpretation of 21 U. S. C. §346 was in conflict with the plain language of that provision. 474 U. S. — (1985). We hold that, in light of the inherent ambiguity of the statutory provision and the reasonableness of the Food and Drug Administration's interpretation thereof, the Court of Appeals erred. We therefore reverse.

I
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"(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 19, 1986

No. 85-664 Young v. Community Nutrition Institute

MEMORANDUM TO THE CONFERENCE

If there is no objection, I would like to add the word "ordinarily" to the final sentence of Section IA on page 3, so that it reads:

"In setting an action level, the FDA essentially assures food producers that it ordinarily will not enforce the general adulteration provisions of the Act against them if the quantity of the harmful added substance in their food is less than the quantity specified by the action level."

Sincerely,

