The Burger Court Opinion Writing Database

Japan Whaling Association v. American Cetacean Society

476 U.S. 852 (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

Sally -
The file

CHAMBERS OF
THE CHIEF JUSTICE

May 1, 1986

85-954 - Japan Whaling Assn. v. Am. Cetacean Society
85-955 - Baldrige v. Am. Cetacean Society

MEMORANDUM TO THE CONFERENCE

I failed to press for a resolution of the point that John and I made on whether there is a private cause of action available here. This would be a salutary way to dispose of the case.

If at least three more agree on this, we have a good solution.

Will you please let me know?

Regards,

WEB

Cabell 544-5198

7

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

CHAMBERS OF
THE CHIEF JUSTICE

June 11, 1986

85-954 - Japan Whaling Assn. v. Am. Cetacean Soc.

Dear Byron:

I join.

Regards,

WEB

Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 5, 1986

Dear Thurgood, Harry and Bill,

We four are in dissent in No. 85-954 and 85-955, Japan Whaling Ass'n v. American Cetacean Society and Baldrige v. American Cetacean Society. Would you, Bill, take on the dissent?

Sincerely,

Bill

Justice Marshall
Justice Blackmun
Justice Rehnquist

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 5, 1985

85-954 Japan Whaling Assn. v. American Cetacean Society
85-955 Baldridge v. American Cetacean Society

Dear Chief:

I do not see a "cause of action" problem in this case.

Respondents brought suit against the Secretaries of Commerce and State under, inter alia, 28 U.S.C. §1331 and 5 U.S.C. §702. J.A. 89. It is well-established by our cases that §702 waives sovereign immunity in actions against federal officials for declaratory, mandatory, and injunctive relief, see e.g., Block v. North Dakota, 461 U.S. 173, 286 n.22 (1983), and "confers a general cause of action upon persons 'adversely affected or aggrieved by agency action within the meaning of the statute.'" Block v. Community Nutrition Institute, 104 S.Ct. 2450, 2454 (1984) (quoting 5 U.S.C. §702). That is, §702 authorizes judicial review of agency action at the request of individuals injured by that action. Judicial review is limited, or, this "cause of action" is withdrawn, to the extent that the relevant organic statute "preclude[s] judicial review." 5 U.S.C. §701(a)(1). See also Community Nutrition, supra. The presumption is in favor of judicial review; only upon a showing of clear and convincing legislative intent should the courts restrict access to judicial review. See, e.g., Lindahl v. OPM, 105 S.Ct. 1620, 1627 (1985), Abbot Laboratories v. Gardner, 387 U.S. 136, 141 (1967). See also Community Nutrition, supra. My review of the Pelly and Packwood-Magnuson Amendments, 22 U.S.C. §1978 and 16 U.S.C. 1821(e) respectively, and of the chapters of the United States Code in which they appear, revealed no indication that Congress intended to restrict judicial review in any way.

Therefore, it seems to me that the only question which remains is whether or not the respondent's have what has come to be known as "statutory standing" -- that is, whether they are persons "adversely affected or aggrieved by agency action within the meaning of [the] relevant statute[s]." 5 U.S.C. §702. In Assn. of Data Processing Organizations v. Camp, 397 U.S. 150, 153 (1970), we held that the inquiry relevant to §702 "standing" is whether "the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute." Standing under §702 should ordinarily be found where there is evidence that Congress intended the plaintiff's class to be a beneficiary of the statute under which the plaintiff raises his claim. See Barlow v. Collins, 397 U.S. 159, 174 (1970) (BRENNAN, J., concurring).

I have no doubt that at least some, if not all, of the respondents have "statutory standing." The Cetacean Society, for

example, is devoted to the study and conservation of whales, dolphins and porpoises. It publishes a journal entitled Whalewatcher and provides grants to scientists to conduct research about whales. It also sponsors whale-watching trips for its members and other interested individuals. If Congress did not intend to benefit persons who watch and study whales when it enacted conservation measures to protect whales from extinction, I cannot imagine whom Congress did intend to benefit. Should a majority of the Court be inclined to think otherwise on this issue, however, I believe that we should either order further briefing or set this case for reargument.

To my mind, our cases which address the question "when may a 'private cause of action' be inferred from a federal statute" are inapposite where 5 U.S.C. §702 creates a cause of action against federal officials for non-monetary relief. Furthermore, our implied "private cause of action" cases have essentially been concerned with the availability of a federal cause of action against private parties and state governments to individuals who have been harmed by the violation of a federal statute. See, e.g., Massachusetts Mut. Life Ins. Co. v. Russell, 105 S.Ct. 3085 (1985); Middlesex City Sewage Authority v. Seaclammers, 453 U.S. 1 (1981); Northwest Airlines v. Transport Workers, 451 U.S. 77 (1981); California v. Sierra Club, 451 U.S. 287 (1981); Texas Industries, Inc. v. Radcliff Materials, Inc., 451 U.S. 630 (1981); Transamerica Mortgage Advisors Inc. v. Lewis, 444 U.S. 11 (1979); Touche Ross & Co. v. Redington, 442 U.S. 560 (1979); Cannon v. University of Chicago, 441 U.S. 677 (1979); Universities Research Assn. v. Coutou, 450 U.S. 754 (1981); Cort v. Ash, 422 U.S. 66 (1975). They have not concerned judicial review of federal action authorized by the APA.

It is true that both Seaclammers and California v. Sierra Club involved federal, as well as private and state, defendants. In Seaclammers, the plaintiffs sought injunctive relief against federal officials as well as against private parties. The organic statutes at issue in that case, the Federal Water Pollution Control Act and the Marine Protection Resources and Sanctuaries Act, both contained citizen suit provisions expressly authorizing such relief, but which required prospective plaintiffs to comply with a 60-day notice requirement. The plaintiffs in Seaclammers had not complied with the notice requirements and thus were barred from suing under the review provisions of the organic statutes. The Court did not separate for purposes of analysis the plaintiffs' claim for damages against private parties from their claim for injunctive relief against federal defendants; it considered and rejected both, using general "private cause of action" language. Nonetheless, with respect to plaintiffs' claim for injunctive relief against federal officials, I think it clear that the we based our decision on the belief that where Congress specifies the form and timing of judicial review in an organic statute, we should not lightly infer a congressional intent to provide other avenues of judicial review -- particularly where doing so would circumvent an express limitation on review con-

tained in the organic statute. Seaclammers thus offers no insight into the situation presented by this case.

In California v. Sierra Club, the organization of the same name sued state officials and various federal officials, including the Secretary of the Interior, the Secretary of the Army and the Chief of Engineers of the Army Corps of Engineers, seeking injunctive relief for violations of §10 of the Rivers and Harbors Appropriation Act of 1899 and of the National Environmental Policy Act. 400 F. Supp. 610 (N.D.Ca. 1975). Essentially, §10 of the Rivers and Harbors Act provides that, absent approval by the Army Corps of Engineers, it is unlawful to alter the capacity of any navigable water body. The Sierra Club contended that a State water project violated §10 by diverting water from the Sacramento-San Joaquin Delta without the consent of the Army Corps of Engineers. The Club sought and received an injunction against State officials prohibiting further operation or construction of water diversion facilities until Corps consent was obtained. It also sought and obtained an order requiring federal officials to prepare adequate Environmental Impact Statements in conjunction with certain construction. The Court of Appeals vacated the District Court's order against the federal officials. However, it upheld the injunction against State officials on the theory that parties injured by a violation of §10 have a private cause of action to sue the violators in order to enforce the statute. 610 F.2d 581 (CA9 1979). Using the analysis set forth in Cort v. Ash, this Court reversed the Court of Appeals' holding that there exists a private cause of action to enforce §10. Sierra Club, as it came to this Court, involved only the existence vel non of an implied private cause of action against State officials to enforce a federal statute. It did not raise the question whether an individual may sue a federal official under the APA in order to compel that official to comply with federal law.

Finally, the fact that Baldridge and Schultz are cabinet officers is irrelevant. The fact that they head agencies of the federal government, as defined by 5 U.S.C. §701(b)(1), however, is relevant. Cabinet officers are frequent defendants in suits brought under the APA and organic statutes; this Term alone we have heard several cases involving the Secretaries of Health and Human Services, Labor, and Agriculture. The Secretary of the Interior is often a defendant in our cases; and we occasionally have decided cases involving the Secretaries of Commerce and State. See, e.g., Baldridge v. Shapiro, 455 U.S. 345 (1982); Rusk v. Cort, 369 U.S. 367 (1962) (holding that §10 of the APA, 5 U.S.C. §702, authorized review of a claim for injunctive and delaratory relief brought against the Secretary of State).

Sincerely,

Bill

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 8, 1986

No. 85-954) Japan Whaling Association
) v. American Cetacean
) Society
)
) Baldrige v. American
No. 85-955) Cetacean Society

Dear Thurgood,

You will recall that I had asked Bill Rehnquist to take on the dissent in the above. As you know, he circulated to Harry, you and me a note that he would prefer not to undertake it. Would you care to?

Sincerely,

Bill

Justice Marshall

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 28, 1986

No. 85-954) Japan Whaling Ass'n
) v. American Cetacean
) Society, et al.
)
) Baldrige v. American
No. 85-955) Cetacean Society

Dear Byron,

I shall await further writing in this case.

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 25, 1986

No. 85-954) Japan Whaling Ass'n v. American Cetacean Society, et al.
)
)
No. 85-955) Baldrige v. American Cetacean Society

Dear Thurgood,

Please join me in your dissent in the above.

Sincerely,

Bill

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 5, 1986

Re: 85-954 - Japan Whaling Ass'n v. American Cetacean Society
85-955 - Baldrige v. American Cetacean Society

Dear Chief:

I would not resolve this case on the basis of the supposed absence of a "cause of action" for these plaintiffs. Most of our recent cases limiting private enforcement of federal statutory schemes have involved claims by private plaintiffs that such statutes implicitly created rights of action against other private parties or against state or local governments, and it is in this context that we have adopted the rule that "unless ... congressional intent [to create a private right of action] can be inferred from the language of the statute, the statutory scheme, or some other source, the essential predicate for implication of a private remedy simply does not exist." Northwest Airlines, Inc. v. Transport Workers 451 U.S. 77, 94 (1981). Here, by contrast, the suit is against a federal agency, and it is in essence one to "compel agency action unlawfully withheld," 5 U.S.C. §706(1), or, alternatively, to "hold unlawful and set aside agency action ... found to be ... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. §706(2)(A). The "right of action" in such cases is expressly created by §§704 and 702 of the APA, which state that "final agency action for which there is no other adequate remedy in a court [is] subject to judicial review" (§704) at the behest of "[a] person ... adversely affected or aggrieved by agency action" (§702). Under our cases, a separate indication of congressional intent to make agency action reviewable under the APA is not necessary; rather, the rule is that the cause of action for review of such action is available absent some clear and convincing evidence of legislative intention to preclude review. See Block v. Community Nutrition Institute, 467 U.S. 340, 345 (1984); Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971); Abbott Laboratories v. Gardner, 387 U.S. 136 (1967).

It is tolerably clear that the plaintiffs here may avail themselves of the right of action created by the APA. There has undoubtedly been a "final agency action": the Secretary's actions constitute action of an "agency," see 5 U.S.C. §551(1); Citizens v. Volpe, supra, and the element of finality is present in that the Secretary has formally agreed with the Japanese that there will be no certification. Moreover, this appears to be an action "for which there is no other adequate remedy in a court," as the issue whether the Secretary's failure to certify was lawful will not otherwise arise in litigation. Further, it appears that the plaintiffs are sufficiently "aggrieved" by the agency's action: they have undoubtedly alleged a sufficient "injury in fact" under our decisions in Sierra Club v. Morton, 405 U.S. 727 (1972), and United States v. SCRAP, 412 U.S. 669 (1973), in that the whale-watching and -studying of their members will be affected by the continued killing of great whales, and this type of injury seems to be within the "zone of interests" protected by the statutes. Association of Data Processing Service Organizations v. Camp, 397 U.S. 150 (1970). Finally, no one has pointed to any expressed intention on the part of Congress to foreclose APA review of actions under the relevant statutes. Under our cases, then, the plaintiffs are entitled to avail themselves of the right of action created by the APA.

Of course, the APA also forecloses review of actions "committed to agency discretion by law." But I assume that those who suggest that we avoid the merits by holding that these plaintiffs lack a "cause of action" for review of the Secretary's decision are not referring to this provision, for the issue on the merits here is precisely whether and to what extent the certification determination is discretionary. If the plaintiffs are correct in their assertion that the Secretary has no discretion not to certify in this situation, I see nothing in the APA that would bar their action. At least, then, the APA entitles the plaintiffs to come into court and make the claim that the Secretary's refusal to certify was either a violation of a nondiscretionary duty or an abuse of discretion, I urge, therefore, that we face the merits of that claim.

Sincerely yours,

The Chief Justice

Copies to the Conference

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

From: **Justice White**

MAY 27 1986

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 85–954 AND 85–955

JAPAN WHALING ASSOCIATION AND JAPAN FISHERIES ASSOCIATION, PETITIONERS
85–954 *v.*
AMERICAN CETACEAN SOCIETY ET AL.

MALCOLM BALDRIGE, SECRETARY OF COMMERCE, ET AL., PETITIONERS
85–955 *v.*
AMERICAN CETACEAN SOCIETY ET AL.

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

[May ——, 1986]

JUSTICE WHITE delivered the opinion of the Court.

In these cases, we address the question whether, under what are referred to in these cases as the Pelly and Packwood Amendments, 22 U. S. C. § 1978; 16 U. S. C. § 1821, the Secretary of Commerce is required to certify that Japan's whaling practices "diminish the effectiveness" of the International Convention for the Regulation of Whaling because that country's annual harvest exceeds quotas established under the Convention.

I

For centuries, men have hunted whales in order to obtain both food and oil, which in turn, can be processed into a myriad of other products. Although at one time a harrowing and perilous profession, modern technological innovations have transformed whaling into a routine form of commercial fishing, and have allowed for a multifold increase in whale harvests worldwide.

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

From: **Justice White**

Stylistic changes & p. 11

Circulated: _____

Recirculated: JUN 2 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 85-954 AND 85-955

JAPAN WHALING ASSOCIATION AND JAPAN FISHERIES ASSOCIATION, PETITIONERS
85-954 *v.*
AMERICAN CETACEAN SOCIETY ET AL.

MALCOLM BALDRIGE, SECRETARY OF COMMERCE, ET AL., PETITIONERS
85-955 *v.*
AMERICAN CETACEAN SOCIETY ET AL.

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

[June ——, 1986]

JUSTICE WHITE delivered the opinion of the Court.

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

From: **Justice White**

Circulated: _____

Recirculated: JUN 5 1986

[illegible] THROUGHOUT.

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 85-954 AND 85-955

JAPAN WHALING ASSOCIATION AND JAPAN FISHERIES ASSOCIATION, PETITIONERS
85-954 *v.*
AMERICAN CETACEAN SOCIETY ET AL.

MALCOLM BALDRIGE, SECRETARY OF COMMERCE, ET AL., PETITIONERS
85-955 *v.*
AMERICAN CETACEAN SOCIETY ET AL.

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

[June ——, 1986]

JUSTICE WHITE delivered the opinion of the Court.

In these cases, we address the question whether, under what are referred to in these cases as the Pelly and Packwood Amendments, 85 Stat. 786, as amended, 22 U. S. C. § 1978; 90 Stat. 337, as amended, 16 U. S. C. § 1821 (1982 ed. and Supp. II), the Secretary of Commerce is required to certify that Japan's whaling practices "diminish the effectiveness" of the International Convention for the Regulation of Whaling because that country's annual harvest exceeds quotas established under the Convention.

I

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 28, 1986

Re: Nos. 85-954 and 955 - Japan Whaling Assoc. and Japan Fisheries Assoc. v. American Cetacean Society and Malcolm Baldrige v. American Cetacean Society

Dear Byron:

In due course, I shall circulate a dissent in this one.

Sincerely,

T.M.

Justice White

cc: The Conference

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

From: **Justice Marshall**

Circulated: JUN 24 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 85–954 AND 85–955

JAPAN WHALING ASSOCIATION AND JAPAN FISHERIES ASSOCIATION, PETITIONERS
85–954 *v.*
AMERICAN CETACEAN SOCIETY ET AL.

MALCOLM BALDRIGE, SECRETARY OF COMMERCE, ET AL., PETITIONERS
85–955 *v.*
AMERICAN CETACEAN SOCIETY ET AL.

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

[June ——, 1986]

JUSTICE MARSHALL, dissenting.

Since 1971, Congress has sought to lead the world, through the repeated exercise of its power over foreign commerce, in preventing the extermination of whales and other threatened species of marine animals. I deeply regret that it will now have to act again before the Executive Branch will finally be compelled to obey the law. I believe that the Court has misunderstood the question posed by the case before us, and has reached an erroneous conclusion on a matter of intense worldwide concern. I therefore dissent.

Congress began its efforts with the Pelly Amendment, which directs that "[w]hen the Secretary of Commerce determines that nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program, the Secretary of Commerce shall certify such fact to the President." 22 U. S. C. § 1978(a)(1). That Amendment, although appar-

STYLISTIC CHANGES THROUGHOUT

+P.1

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

From: **Justice Marshall**

Circulated: _____

Recirculated: JUN 25 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 85–954 AND 85–955

JAPAN WHALING ASSOCIATION AND JAPAN FISHERIES ASSOCIATION, PETITIONERS
85–954 *v.*
AMERICAN CETACEAN SOCIETY ET AL.

MALCOLM BALDRIGE, SECRETARY OF COMMERCE, ET AL., PETITIONERS
85–955 *v.*
AMERICAN CETACEAN SOCIETY ET AL.

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

[June ——, 1986]

JUSTICE MARSHALL, with whom JUSTICE REHNQUIST joins, dissenting.

Since 1971, Congress has sought to lead the world, through the repeated exercise of its power over foreign commerce, in preventing the extermination of whales and other threatened species of marine animals. I deeply regret that it will now have to act again before the Executive Branch will finally be compelled to obey the law. I believe that the Court has misunderstood the question posed by the case before us, and has reached an erroneous conclusion on a matter of intense worldwide concern. I therefore dissent.

Congress began its efforts with the Pelly Amendment, which directs that "[w]hen the Secretary of Commerce determines that nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program, the Secretary of Commerce shall certify such fact to the President." 22

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 5, 1986

Re: No. 85-954) Japan Whaling Association
v. American Cetacean Society
No. 85-955) Baldrige v. American Cetacean Society

Dear Chief:

I cannot go along with your suggested solution that no private cause of action is available. As I recall, Associate Attorney General Burns at oral argument expressly conceded a private right of action, and the federal petitioners' first attack on respondents' standing came only in the antepenultimate footnote of their reply brief in this Court.

It seems to me that respondents have sufficiently alleged both an injury in fact and a direct causal connection between that injury and the Secretary's refusal to certify Japan to confer standing.

Sincerely,

HAB.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 26, 1986

Re: No. 85-954) Japan Whaling Association
v. American Cetacean Society
No. 85-955) Baldrige v. American Cetacean Society

Dear Thurgood:

Please join me in your strong dissent.

Sincerely,

Harry

Justice Marshall

cc: The Conference

May 30, 1986

85-954 & 85-955 Japan Whaling Assn. v. American Cetacean Society

Dear Byron:

I think your opinion is excellent, and have joined it.

I do have one minor suggestion. On p. 11, the sentence beginning "We do not understand...." is not clear as to the scope of the Secretary's discretion. I see no compelling reason to be more specific, but it would be helpful if you added language (e.g., "for example") to make clear that the sentence is illustrative rather than a definition of that discretion.

Sincerely,

Justice White

LFP/vde

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 30, 1986

85-954 Japan Whaling Association v. American Cetacean Society
85-955 Baldridge v. American Cetacean Society

Dear Byron:

Please join me.

Sincerely,

Lewis

Justice White

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. 85-954) Japan Whaling Association v. ACS
85-955) Baldrige v. ACS

Dear Chief,

I tentatively vote to affirm on the "merits" of the case; I think that a violation of this sort probably was sufficiently serious so that the Secretary had no discretion as to whether to certify. But on the question of remedy, I doubt that the question was so clear that mandamus should issue were there no foreign affairs concerns involved, and with foreign affairs being implicated I believe mandamus is all the more inappropriate.

Sincerely,

WHR

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 6, 1986

Re: No. 85-954) Japan Whaling Association v. American Cetacean Society
85-955) Baldrige v. American Cetacean Society

Dear Bill,

As you will recall, I passed at Conference on this case and later tentatively voted to affirm. My views are still so unsettled -- and very likely at least partially at odds with those expressed by the other dissenters at Conference -- that I would prefer not to undertake the dissent in this case.

Sincerely,

WHR

cc: Justice Marshall
Justice Blackmun

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 24, 1985

Re: No. 85-954) Japan Whaling Association v. American Cetacean Society
85-955) Baldrige v. American Cetacean Society

Dear Thurgood,

Please join me in your dissent in this case.

Sincerely,

WHR

Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 28, 1986

Re: 85-954 - Japan Whaling Association and Japan Fisheries Association v. American Cetacean Society, et al.
85-955 - Baldridge v. American Cetacean Society

Dear Byron:

Please join me.

Respectfully,

JPS

Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 29, 1986

No. 85-954 Japan Whaling Association and Japan Fisheries Association v. American Cetacean Society
No. 85-955 Baldrige v. American Cetacean Society

Dear Byron,

Please join me.

Sincerely,

Sandra

Justice White

Copies to the Conference