10-1974

Fry v. United States

Lewis F. Powell Jr.

Jack - If not on Discuss list, I will add it.

Want Discussion

You put this on the discuss list.

Emergency Price & Wage Controls were held applicable to salaries of state ~~employees~~ employees in Ohio, Leg. history indicates Hill was Congressional intent - altho language of act not specific.

5 G says this case controlled by Ned. v Wirtz 392 U.S. 183 holding FLSA applicable to state hospitals employees.

But operating hospital is a proprietary rather than a clearly governmental function.

Dery
Dennis

No. 73-822

FRY
v.
UNITED STATES

Cert to Temp. Emerg. Ct. of Apps.
(Tamm, Van Oosterhout & Hastings)
Federal/Civil

Timely

If Commerce Clause allows Fed Gov't to fix State salaries, there's not much left to Federalism.

→ See related memo, Ohio v. United States, No. 73-839

1. On a certification from the USDC S.D. Ohio, the U.S. Temporary Emergency Court of Appeals [TECA] held that the Economic Stabilization Act [Act] authorizes the Federal Pay Board and other administrative machinery created by the Act to control the salaries of employees of the State of Ohio, despite the passage of a bill by that state's legislature

Will state taxes & charges for municipal services be next?

Justice Powell: The Act at issue and the implementing regulations define "employee" by reference to the standards set forth in the NLRA. Jack

authorizing a pay raise for the state's employees. The petition in this case and that in the related case, Ohio v. United States (No. 73-839), challenges Congress' constitutional power to control the wages and salaries of state government employees.

2. FACTS: The United States brought suit pursuant to the Act in the District Court seeking a permanent injunction to prevent Ohio from violating the Act and the pertinent Executive Order by paying salaries in excess of those authorized by the Pay Board in its March 10, 1973 order. The facts were undisputed. The new Ohio pay bill called for an average pay increase of 10.6% for the 65,000 affected public employees. In a mandamus proceeding shortly after the law's passage, the Ohio courts ordered the Governor to pay the salaries. Acting upon an application by the State, the Federal Pay Board denied the application for exception (from the 5.5% wage control guidelines) to the extent the requested increase was in excess of 7% for the current year.

3. DECISION OF TECA:

a. TECA first rejected the State's argument that Congress did not intend in the Act to authorize control over state wage and salary practices. Case v. Bowles, 327 U.S. 92, 99 (1946) (Congress need not expressly use the word "State" in price regulation legislation in order to have intended that States be subject to the statutory scheme). While it was true that the Act does not explicitly state that it applies to state governments,

there is nothing looking the other way. The Act's extensive legislative history unequivocally reveals that Congress intended the salary and wage provisions to apply to state and local governments. In fact, Senator Proxmire's amendment on the floor to exempt them was debated and defeated 56-35. Moreover, the federal agencies charged by the Act with its administration have consistently construed it in this manner.

b. The Act, TECA held, was a legitimate exercise of Congress' power to impose economic controls under the Commerce Clause. The Tenth Amendment was no obstacle. Murphy v. O'Brien, ___ F.2d ___ (TECA Oct. 10, 1973). This case is controlled by Maryland v. Wirtz, 392 U.S. 183 (1968), where the Court upheld application of the Fair Labor Standards Act's minimum wage and overtime provisions to employees of state-operated hospitals and schools. While Congress lacks the power to regulate all state activities under the guise of the Commerce Clause, it does have the power to regulate certain activities when it has a rational basis to conclude that they substantially affect commerce. Congress had such a rational basis here for imposing temporary economic controls on state and local government salaries. Ohio has made no showing that they have unreasonably interfered with its ability to function as a sovereign state; nor has it demonstrated that the regulations are invidiously discriminatory.

c. The Ohio state court decision is not res judicata simply because the United States was permitted to intervene there.

Section 211 of the Act vests exclusive jurisdiction in the federal courts over the constitutionality of the Act and the validity of any action taken under the Act.

4. CONTENTIONS: Petrs in No. 73-822 maintain that the Tenth Amendment bars Congress from invading the sovereignty of a state and directing what wages and salaries may be paid to state employees. Principal reliance is placed upon the dissent by Mr. Justice Douglas in Maryland v. Wirtz, supra. Petrs in No. 73-839 argue that Congress has exceeded its powers under the Commerce Clause and invaded the province of state governments by regulating state government pay practices, which, petrs contend, affect the very scope, quality and adequacy of the overall operation of the state government. Petrs read Maryland v. Wirtz to mean that Congress can only regulate those state activities which are or could be performed by private enterprise. 392 U.S., at 196 n. 27. Under TECA's rationale, they see no logical way to stop 'Congress from legislatively abolishing the states as effective instruments of government." Petn., at 8. They finally argue that Congress had no rational basis for determining that the States' activity sought to be regulated had a substantial effect on interstate commerce. They argue that Congress never actually examined the alleged impact that state wages and salaries could have upon inflation.

The SG points to Maryland v. Wirtz, where the Court put to rest the Tenth Amendment argument, and further notes that neither that case nor this one turns on whether the State was

performing a proprietary vs. governmental function.

> "[W]e look to the activities in which the states have traditionally engaged as marking the boundary of the restriction upon the federal taxing power. But there is no such limitation upon the plenary power to regulate commerce. The state can no more deny the power if its exercise has been authorized by Congress than can an individual." United States v. California, 297 U.S. 175, 183-185.

In exercising its commerce powers, Congress "may override countervailing state interests whether these be described as 'governmental' or 'proprietary' in character." Maryland v. Wirtz, supra, 392 U.S., at 195. The Act here does not regulate the substantive performance of state functions. To the extent that they function in a capacity as employers, the States, like their private counterparts, are restricted in the area of wage and salary increases. The legislation is certainly rational: to be effective in stabilizing the economy and limiting inflation, it was imperative that all large employers, both public and private, be subject to the regulation.

5. DISCUSSION: It would seem that the federal government wins the argument hands down in view of Maryland v. Wirtz and Congress' abundant power under the Commerce Clause to regulate wages and salaries. There would appear to be little need for the Court to grant cert only to confirm this proposition.

There is a response.

1/29/74 O'Donnell TECA Opinion in Petn. Appx.

ME

Court ..... *Voted on*....., *19*...

Argued ....., *19*... *Assigned* ....., *19*... No. 73-822 (Vide 73-839)

Submitted ....., *19*... *Announced* ....., *19*...

ERNEST FRY AND THELMA BOEHM, Petitioners

vs.

UNITED STATES

11/24/73 - Cert. filed.

If this becomes moot we can take second look.

Granted

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING	
		G	D	N	POST	DIS	AFF	REV	AFF	G	D			
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Rehnquist, J.	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Powell, J.	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Blackmun, J.	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Marshall, J.	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
White, J.	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Stewart, J.	.....	✓	.....	.....	.....	Join 3	.....	.....	.....	.....	.....	.....	.....	.....
Brennan, J.	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Douglas, J.	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Burger, Ch. J.	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

No. 73-822

In the Supreme Court of the United States

OCTOBER TERM, 1973

ERNEST FRY AND THELMA BOEHM, PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES TEMPORARY EMERGENCY COURT OF APPEALS

MOTION TO DISMISS THE WRIT OF CERTIORARI

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-822

ERNEST FRY AND THELMA BOEHM, PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES TEMPORARY EMERGENCY COURT OF APPEALS

MOTION TO DISMISS THE WRIT OF CERTIORARI

The Solicitor General, on behalf of the United States, moves the Court to dismiss the writ of certiorari in this case. This motion is based on the ground that since the Economic Stabilization Act of 1970, 84 Stat. 799, has expired, the issue presented by this case no longer has prospective importance.

The question presented by the petition for a writ of certiorari is whether the Tenth Amendment of the Constitution bars the federal government from enforcing against the States, in their capacities as employers, general regulations of commerce that affect governmental and nongovernmental employers alike. In particular, petitioners challenge the validity of the Economic Stabilization Act insofar as that Act limited the extent to which the State of Ohio could increase the salaries of its public employees. The petition was granted on February 19, 1974. After the petition was granted, Congress

permitted the Economic Stabilization Act to expire at midnight on April 30, 1974.[1]

It appears unlikely that there will be significant litigation involving wages and salaries of state employees under the Act. The question presented here is at issue in only two other pending actions.[2] We have been informed by the Cost of Living Council that no proceedings raising this issue are pending before it. And no litigation of this nature can arise with respect to wages and salaries paid for periods after April 30, 1974. See Section 218 of the Act, as amended, 87 Stat. 29. The issue in this case, therefore, has no substantial continuing importance.

The general question of the federal government's power under the Commerce Clause to subject the States to commercial or economic regulation may of course arise in the future under different statutes. But we believe that this Court should reserve consideration of that general question until it arises in the context of an operative regulatory scheme of broad and continuing significance.

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[1]As orginally enacted, the Act would have expired on February 28, 1971. See Section 206 of the Act, 84 Stat. 800. The Act was then extended five times. 84 Stat. 1468; 85 Stat. 13; 85 Stat. 38; 85 Stat. 743; 87 Stat. 27. The final extension was to April 30, 1974.

[2]The States of California and Missouri are currently litigating the question raised here. See *United States* v. *Missouri*, Civ. No. 1888 (W.D. Mo.); *United States* v. *California*, Civ. No. S74-186, preliminary injunction granted May 17, 1974 (E.D. Calif.). Apparently there is only one other action involving public employees, and the constitutional question presented here has not been raised in that case. *County of Nassau, New York* v. *Cost of Living Council*, Civ. No. 74-C-618 (E.D. N.Y.).

In short, we believe that this case is no longer appropriate for the exercise of this Court's certiorari jurisdiction under Rule 19 of the Rules of this Court. See, *e.g.*, *Morris* v. *Weinberger*, 410 U.S. 422; *Rice* v. *Sioux City Cemetery*, 349 U.S. 70; *District of Columbia* v. *Sweeney*, 310 U.S. 631. The writ of certiorari should therefore be dismissed.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

MAY 1974.

Grant
motion
to Dismiss

The 10th Amend. issue
here appears moot, at least
insofar as it relates to the
Economic Stabilization Act.
An immediate response
may be appropriate, ~~if~~ time
permits.
otherwise, GRANT

Hintz

June 14, 1974 Conference
List 1, Sheet 5

I would grant.
Owens

No. 73-822 Motion to Dismiss Writ of Certiorari

FRY

v.

UNITED STATES

The Court granted cert to TECA in this case on February 19, 1974 in order to review the question of whether the 10th Amendment bars the federal government from enforcing against the States, in their capacities as employers, general regulations of commerce that affect governmental and nongovernmental employers alike. The issue arises in the context of the Economic Stabilization Act which limited the extent to which Ohio could increase the salaries of its public employees.

Noting that the Act expired on April 30, the SG moves to dismiss the writ on the ground that the case no longer has prospective importance. The SG advises that the issue is raised in only two other pending actions [U.S. v. Mo. (W.D. Mo.) and U.S. v. Calif. (E.D. Cal.)] and that he has been informed by the Cost of Living Council that no proceedings raising this issue are pending before it. Conceding that the issue could arise in the future under different statutes, the SG suggests that the Court should reserve consideration of the issue until it arises in the context of an operative regulatory scheme of broad and continuing significance. The SG cites Morris v. Weinberger, 410 U.S. 422; Rice v. Sioux City Cemetery, 349 U.S. 70; and District of Columbia v. Sweeney, 310 U.S. 631, in support of his motion.

DISCUSSION: In Morris, the Court, after argument, dismissed the writ as improvidently granted. The Court noted that 20 days after the writ had been granted, Congress amended the relevant statutory provisions of the Social Security Act there in issue. Rice concerned a private cemetery's refusal to bury an Indian. Upon rehearing, five members of the Court dismissed the writ on the ground that, after commencement of the action, the State enacted a statute prohibiting cemeteries from denying burial on account of race. Although the statute was, by its terms, not applicable to pending actions, the Court noted that it made the case one of "isolated significance." In a memo decision in Sweeney, the Court denied cert "in view of the fact that the tax is laid under a statute which has been repealed and the question is therefore not of public importance."

There is no response.

Ginty

Court .... Voted on.................., 19...
Argued ...., 19... Assigned ...., 19... No. 73-822
Submitted ...., 19... Announced ...., 19...

FRY

vs.

UNITED STATES

Grant motion to Dismiss

Relist for June 21 at request of White & Rehnquist

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING	
		G	D	N	POST	DIS	AFF	REV	AFF	G	D			
Rehnquist, J.														
Powell, J.			✓											
Blackmun, J.		✓												
Marshall, J.			✓											
White, J.		✓												
Stewart, J.			✓		Case not moot									
Brennan, J.		✓												
Douglas, J.		✓												
Burger, Ch. J.														

Court ..... Voted on ....., 19...

Argued ....., 19... Assigned ....., 19... No. 73-822

Submitted ....., 19... Announced ....., 19...

FRY

vs.

UNITED STATES MOTION

RELIST

Motion to Dismiss

~~Then case has~~ ~~been granted~~ ~~— & the vote~~ ~~below was on motion~~ ~~to dismiss or moot.~~

After discussion, we agreed to defer action on motion until we have case on merits.

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POST	JURISDICTIONAL STATEMENT DIS	JURISDICTIONAL STATEMENT AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	ABSENT	NOT VOTING	
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Rehnquist, J.	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Powell, J.	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Blackmun, J.	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Marshall, J.	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
White, J.	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Stewart, J.	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Brennan, J.	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Douglas, J.	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Burger, Ch. J.	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

MEMORANDUM

TO: Mr. Justice Powell DATE: November 8, 1974

FROM: Penny Clark

No. 73-822 Fry v. United States

The issues in this case are whether Congress intended to subject state salaries to wage and price controls under the Economic Stabilization Act of 1970 and whether, if it did, its action was constitutional.

The SG argues that the issue of coverage is not properly before the Court because it was not raised in the petition for certiorari. This is a very mechanical approach, since it would be inappropriate to reach the constitutional question without first resolving the issue of coverage. The SG has briefed the issue, and even though petitioners themselves have not addressed it, the TECA decided it, and several amici (including the State of Ohio) have briefed it as well.

The Court has deferred consideration of the SG's motion to dismiss the writ of certiorari as improvidently granted. The SG notes that the Economic Stabilization Act expired after cert was granted, and argues that the issue is no longer of major importance. [It is not moot, because Ohio has been enjoined from paying a total of $10.5 million to its employees. There is a suggestion that, if the injunction were dissolved, Ohio would pay back wages to its employees.] Petitioner says

that the SG is taking an inconsistent position by petitioning for cert in an Economic Stabilization Act case that the Government lost in California, but the clerk's office tells me no such petition has been filed (as of 11/8/74).

The coverage issue isn't crystal clear, but it does seem that Congress intended to include state employees. The Act is exceptionally broad, with almost no exceptions, and it even leaves the definition of "wages" to the administrative process. The only strong argument that state salaries should not be included is the doctrine that statutes should not be presumed to include sovereigns unless they say so explicitly. This doctrine has been undermined in several of this Court's cases, and like other doctrines of statutory interpretation, is resorted to only for ambiguous statutes. The Senate's rejection of a floor amendment exempting state employees is a strong indicator of congressional intent and probably makes the presumption unnecessary.

Yes!

The constitutional issue is largely governed by Maryland v. Wirtz, 392 U.S. 183 (1968). There the Court reaffirmed the doctrine that Congress, acting within a delegated power (i.e., the commerce power) may override countervailing state interests. The Court rejected the analogy to cases adopting the governmental/propietary distinction as a limit on Congress's power to tax state activities. The issue is simply whether the legislation is an "otherwise valid regulation

of commerce." Noting that the Court has power to keep Congress from destroying the states, the Court held:

> But while the commerce power has limits, valid general regulations of commerce do not cease to be regulations of commerce because a State is involved. If a State is engaging in economic activities that are validly regulated by the Federal Government when engaged in by private persons, the State too may be forced to conform its activities to federal regulation.

392 U.S. at 196-197. Justices Douglas and Stewart dissented, saying that requiring the state to pay minimum wages to its hospitals and schools gave the federal government too much power over state budgetary policy. They would have applied the governmental/proprietary distinction of the tax cases.

The petitioners argue that control over state wages threatens the very existence of state government. They vastly overstate their case. When wages in all sectors of the economy are under controls, applying the same controls to state wages is unlikely to cause a mass exodus from the state civil service. While the state has a strong interest in setting its own employment policies, a temporary freeze on wages is a minor interference.

I think the rule suggested in Maryland v. Wirtz is a good solution to the conflict between the state's interests and the federal interests. Taking a narrow view of the quoted passage, it suggests that in the absence of special circumstances, a state may be included in a regulatory program of general applicability. There is little danger that such a

rule would allow Congress to interfere substantially in state governance. The special problems of legislation aimed directly at the states can be dealt with under other principles, such as those prompting the limits on federal power to tax state activities.

The governmental/proprietary distinction is on its way out of other areas of law, primarily because a number of state activities fit neither of the two categories exactly (e.g., transportation, hospitals, public utilities). Moreover, it is not especially well suited to commerce-clause principles. For example, the federal commerce power nullifies certain kinds of state taxes on interstate commerce. The taxation power is integral to the existence of any state government, but the needs of interstate commerce have been deemed to justify federal interference.

Recommendations

Although the constitutional issue has lost immediate importance with the expiration of the Economic Stabilization Act, there is still a lot of money involved. Since the case can probably be decided under Maryland v. Wirtz, I would recommend reaching the merits, [redacted] On the merits, I would first decide the coverage issue in favor of the Government and then affirm on a Maryland v. Wirtz rationale.

The State of Ohio's petition for cert in this case is still pending, No. 73-839. The SG raises a point of timeliness, arguing that the petition was untimely because it was filed under an extension and the statute authorizing certiorari from TECA does not provide for extensions. Act § 211(g), 85 Stat. 750. I have found no general statute or rule that would authorize an extension, so I think the SG is right. Since the time is prescribed by statute, the tardiness would be jurisdictional. But, since the issues can be resolved under this petition, an order denying Ohio's petition will be academic.

P.C.

ss

SG urges vs to Dismiss in view of expiration of Act.

73-822 FRY v. UNITED STATES (Ohio)" Argued 11/11/74

The Economic Stabilization Act (1970) provided for wage & price controls. The Pay Board refused to approve a wage increase duly authorized by Ohio Legislature.

Statutory Issue: Act's statute does not explicitly include control of state wages, & the Senate rejected amend. that would have exempted states.

Const. Issue: Close, but as this is national leg. applying - on emergency basis - to all salaries & wages, public & private, it is probable a valid exercise of commerce power. In Wirtz, we sustained FLSA as to state hospitals.

Browne (for Pets)

State employees have no counterparts in private industries & are not in competition (as in Wirtz) with private employees.

LaFontant (for SG)

Since statute has expired, we should not pass upon Const. of statute. (But right to pay would remain undecided - some $1,5 million.)

Elected officials were not covered by the Ohio Pay Increase Act.

73-822 FRY v. UNITED STATES Argued 11/11/74

The Chief Justice Dismiss as improvidently Granted or Affirm
Non-case in many respects.
Wirtz is relevant

Douglas, J. Dismiss on ground that Act has expired.

Brennan, J. Affirm
Principle of Wirtz applies.
Would not DIG

Stewart, J. Affirm
Expiration of Presidential Order makes case less imp - but case is still here.
Under Wirtz, Federal power controls
Not a Tenth Amend case - Commerce Clause in case of Fed action

On merits

Also willing to D/G

Blackmun, J. Affirm

On merits.

Could do this by PC — or Writ

Powell, J. Affirm

(See my notes at Argument)

On merits.

Various grounds — Fed action must be arm's length; covering private & public employees

Rehnquist, J. D/G but also would Affirm on merits

Chambers Op.

L.F.P.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: JAN 9 1975

No. 73-822

Recirculated: _____

This case is relevant to Nat. League of Cities v. Brennan A-553 (See C.J.'s Chamber's opn. of 12/31/74)

Hold for that or write this more narrowly. See p 6

Reviewed LFP 1/3/75

See my letter 1/1/75 to J. Marshall

Ernest Fry and Thelma Boehm, Petitioners, v. United States. | On Writ of Certiorari to the Temporary Emergency Court of Appeals of the United States.

[January —, 1975]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The Economic Stabilization Act of 1970[1] authorized the President to issue orders and regulations to stabilize wages and salaries at levels not less than those prevailing on May 25, 1970. By Executive Order, the President created the Pay Board to oversee wage and salary controls imposed under the Act's authorization. Executive Order 11627, 36 Fed. Reg. 20136. In implementing the wage stabilization program, the Pay Board issued regulations that limited annual salary increases for covered employees to 5.5% and required prior Board approval for all salary adjustments affecting 5,000 or more employees.[2] The State of Ohio subsequently enacted legislation providing for a 10.6% wage and salary increase, effective January 1, 1972, for almost 65,000 state employees.[3] The State applied to the Pay Board for

[1] Pub. L. 91-379, Aug. 15, 1970, 84 Stat. 799, as amended, 12 U. S. C. § 1204 (Supp. I, 1970). The Act was extended five times before it expired on April 30, 1974.

[2] 6 CFR §§ 201.10; 101.21 (1972). See also *id.*, § 101.28.

[3] Ohio Revised Code § 143.102 (A), as amended, § 124.15 (A) (1972). The Act provided for salary increases for employees of the state government, state universities, and county welfare departments. Elected state officials were not included.

approval of the increases, and a public hearing was held. In March 1972, the Board denied the application for an exemption to the extent that it exceeded salary increases of 7% for the 1972 wage year.[4] Petitioners, two state employees, sought a writ of mandamus in state court to compel Ohio officials to pay the full increases provided in the state Pay Bill Act. The Ohio Supreme Court granted the writ and ordered the increases to be paid. *Fry* v. *Ferguson*, 34 Ohio St. 2d 252, 298 N. E. 2d 129 (1973).

After the State Supreme Court decision, the United States filed this action in the District Court to enjoin Ohio and its officials from paying wage and salary increases in excess of the 7% authorized by the Pay Board. The District Court certified to the Temporary Emergency Court of Appeals the question of the applicability of federal wage and salary controls to state employees. See 12 U. S. C. §§ 1904, 211 (c) (1970 Supp. I).

The Court of Appeals construed the Act as applying to state employees and as such upheld its constitutionality. *United States* v. *Ohio*, 487 F. 2d 936 (T. E. C. A. 1973). Relying on the decisions of this Court in *Maryland* v. *Wirtz*, 392 U. S. 183 (1968), and *United States* v. *California*, 297 U. S. 175 (1936), the court concluded that the interference with state affairs incident to the uniform implementation of federal economic controls was of no consequence since Congress had a rational basis upon which to conclude that the state activity substantially

[4] The Pay Board determined that the implementation of the pay increase from March 1972 to November 1972 would reduce the effective rate to 7% for the wage year November 14, 1971, to November 13, 1972. The payments in issue here therefore represent the wages and salaries that were due from January 1, 1972, when the pay increase was to take effect, to March 16, 1972. The total amount involved is $10.5 million.

affected commerce. The Court of Appeals accordingly enjoined the payment of wage and salary increases in excess of the amount authorized by the Pay Board. We affirm.

I

At the outset, it is contended that Congress did not intend to include state employees within the reach of the Economic Stabilization Act and that the Pay Board therefore did not have the authority to regulate the compensation due state employees.[5] We disagree. The language and legislative history of the Act leave no doubt that Congress intended that it apply to employees throughout the economy, including those employed by state and local governments. The Act contemplated general stabilization of "prices, rents, wages, salaries, dividends, and interest," 12 U. S. C. §§ 1904, 202, and it provided that the controls should "call for generally comparable sacrifices by business and labor as well as other segments of the economy." *Id.*, § 203 (b)(5). It contained no exceptions for employees of any governmental bodies, even at the federal level.[6] The failure

[5] Petitioners did not raise the statutory issue either in their petition for certiorari or in their brief. Rather than decide a constitutional question when there may be doubt whether there is any statutory basis for it, however, we deal first with the statutory question, which is addressed in the briefs of *amici curiae* seeking reversal.

[6] Congress did provide for the exemption of certain categories of employees, such as members of the working poor, those earning substandard wages, and those entitled to wage increases under the Fair Labor Standards Act. 12 U. S. C. § 1904, §§ 203 (d), (f) (Supp. I, 1970). See also *id.*, §§ 203 (c)(1)–(3), (f)(2)(3), and (g). The various stabilization agencies have uniformly interpreted the Act to include the States within its scope, see 36 Fed. Reg. 21790; *id.*, at 25420; 37 Fed. Reg. 1240; *id.*, at 24961; *id.*, at 24989–24991. We have long recognized that the interpretation of a statute by an implementing agency is entitled to great weight. *Udall* v. *Tallman*, 380 U. S. 1, 16–18 (1965).

of the Act to make express reference to the States does not warrant the inference that controls may not be extended to their employees. See *Case* v. *Bowles*, 327 U. S. 92, 99 (1946); *United States* v. *California*, 297 U. S., at 186. Indeed, in framing the Act, Congress specifically rejected an amendment that would have exempted employees of state and local governments. 117 Cong. Rec. 43673–43677. And the Senate Committee Report makes it plain that the Committee considered and rejected a proposed exemption for the same group. S. Rep. No. 92–507, 92d Cong., 1st Sess., 4 (1971). It is clear, then, that Congress intended to reach state and local governmental employees. The only remaining question is whether it could do so consistent with the constitutional limitations on its power.

II

Petitioners acknowledge that Congress' power under the Commerce Clause is very broad. Even activity that is purely intrastate in character may be regulated by Congress, where the activity, combined with like conduct by others similarly situated, affects commerce among the States or with foreign nations. See *Heart of Atlanta Motel* v. *United States*, 379 U. S. 241, 255 (1964); *Wickard* v. *Filburn*, 317 U. S. 111, 127–128 (1942). There is little difficulty in concluding that such an effect could well result from large wage increases to 65,000 employees in Ohio and similar numbers in other States.

Petitioners do not appear to challenge Congress' conclusion that unrestrained wage increases, even for employees of wholly intrastate operations, could have a significant effect on commerce. Instead, they contend that applying the Economic Stabilization Act to state employees interferes with sovereign state functions and for that reason the Commerce Clause should not be read

to permit regulation of all state and local governmental employees.[7]

On the facts of this case, this argument is foreclosed by our decision in *Maryland* v. *Wirtz*, *supra*, where we held that the Fair Labor Standards Act could constitutionally be applied to schools and hospitals run by a State. *Wirtz* reiterated the principle that States are not immune from all federal regulation under the Commerce Clause merely because of their sovereign status. 392 U. S., at 196–197. We noted, moreover, that the statutory regulation in *Wirtz* was quite limited in character. The "interference" with sovereign state functions went only so far as to provide that when a State employs people to perform functions normally covered by the Fair Labor Standards Act, "it is subject to the same restrictions as a wide range of other employers whose activities affect commerce, including privately operated schools and hospitals." *Id.*, at 194. In this case, the interference with state sovereignty is similarly limited in nature. The wage restrictions were not directed particularly at the States, but included the States in a plenary scheme, the comprehensiveness of which was judged essential to its success. Nor did the regulation affect the manner in which state officials could perform their

[7] Petitioners have stated their argument not in terms of the Commerce power, but in terms of the limitations on that power imposed by the Tenth Amendment. While the Tenth Amendment has been characterized as a "truism," stating merely that "all is retained which has not been surrendered," *United States* v. *Darby*, 312 U. S. 100, 124 (1941), it is not without significance. The Amendment expressly declares the constitutional policy that Congress may not exercise power in a fashion that impairs the States' integrity or their ability to function effectively in a federal system. Despite the extravagant claims on this score made by some *amici*, we are convinced that the wage restriction regulations constituted no such drastic invasion of state sovereignty.

duties. As in *Wirtz*, the federal regulations merely limited the wages and salaries paid to state employees: it did not purport to impose substantive restrictions on the functions the States could perform or otherwise to affect the way state employees carry out their work.

Petitioners seek to distinguish *Maryland* v. *Wirtz* on the ground that the employees in that case performed primarily "proprietary" functions, while those subject to the wage regulations in this case performed both "proprietary" and "governmental" functions. But this Court rejected a similar attempted distinction as early as *United States* v. *California*, 297 U. S., at 183, where the Federal Safety Appliance Act was held applicable to an intrastate railroad owned by the State of California. Indeed, we reiterated the same view in *Wirtz* itself. See 392 U. S., at 195.

We conclude that the Economic Stabilization Act was constitutional as applied to state and local governmental employees. Since the Ohio wage legislation conflicted with the Pay Board's ruling, under the Supremacy Clause the State must yield to the federal mandate. See *Public Utilities Comm'n* v. *United States*, 355 U. S. 534, 542–545 (1958); *Murphy* v. *O'Brien*, 485 F. 2d 671, 675 (T. E. C. A. 1973).

Affirmed.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 6, 1975

Re: No. 73-822 - Fry v. United States

Dear Thurgood:

Please join me.

Sincerely,

Mr. Justice Marshall

Copies to Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 6, 1976

Re: No. 75-835, Fry v. United States

Dear Thurgood,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 5, 1978

Dear Chief:

Re: No. 77-822 - Yee, et al. v. United States

Please join me.

Sincerely,

T.M.

The Chief Justice
cc: Mr. Justice Marshall

January 14, 1975

No. 73-822 Fry v. United States

Dear Thurgood:

As I mentioned at Friday's Conference, I have refrained from joining you in Fry because of concern as to its effect on National League of Cities v. Brennan and California v. Brennan.

There were at least five, perhaps six of us, who indicated that we will vote to note these cases. I have reread your circulation in Fry, and it seems to me that in its present form Fry would make it difficult for us to consider National League of Cities with genuine freedom to decide it on its own merits. Putting it differently, Fry (as now written) will strengthen the force of Wirtz as a precedent and possibly be viewed as extending Wirtz.

In my view, Fry need not constitute an extention or even an endorsement of Wirtz. The Economic Stabilization Act was addressed to a national emergency regarded by everyone as being temporary in character. No one supposed that the wage and price freeze was permanent legislation comparable to the Fair Labor Standards Act. As you point out in your opinion, the freeze applied as an emergency measure across the board to all wages and salaries both public and private. It was an extraordinary exercise of commerce clause power, designed to meet an emergency. I would gladly join an opinion focused primarily on this aspect of the case.

On page 5 of your draft in Fry you point out, quite correctly, that Wirtz was "limited in character", and that it applied only to state employees who "performed functions normally covered by the Fair Labor Standards Act," namely,

employees in privately operated schools and hospitals. This leaves open the possibility of distinguishing Wirtz in National League of Cities.

In the last paragraph in your draft (p. 6), you conclude, that there is no merit to the distinction between "proprietary" and "governmental" functions so far as the Fair Labor Standards Act is concerned. It is true that Wirtz so indicated in a dictum. But I am unwilling to go so far, at least until we have considered oral arguments and briefs in National League of Cities v. Brennan.

In summary, if you are disposed to write Fry somewhat more narrowly, emphasizing the national emergency and its temporary nature, and eliminating or modifying the next to the last paragraph with respect to proprietary functions, I will happily join you now. Otherwise, I suggest we hold Fry for National League of Cities.

If Fry comes down in its present form, I am afraid the the Court will have gone a long way to pre-judge National League of Cities.

Sincerely,

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 14, 1975

Re: No. 73-822 - Fry v. United States

Dear Thurgood:

I am substantially in accord with the sentiments Lewis expressed to you in his letter of January 14th; I cannot offer you the same assurance that a narrower rendition, on your part, would procure my vote, but I can't join the opinion in its present form and if no one else writes either a dissent or concurrence, I probably will. I will decide in the next few days and let you know.

Sincerely,

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 16, 1975

Re: No. 73-823 - Fry v. United States

Dear Thurgood:

I have already joined your opinion in this case and you have a court. There is much to be said, however, for Lewis' point of view, set forth in his letter to you of January 14. This note is just to state that it is all right with me if you wish to accommodate him.

Sincerely,

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 16, 1975

No. 73-822 -- Fry v. United States

Dear Lewis:

I have read and reread your note concerning this case. I have considered your suggestions along with a rereading of my opinion and regret that I cannot agree with you.

Fry was carefully cut to the bone and about as narrow a holding as I can imagine. That was true before National League of Cities came along, and, I submit is true now.

You are correct about one decision affecting a later case. Since both sides of the case heard on Tuesday cited our opinion in the I. T. T. case handed down an hour or so before, maybe we should have held up the I. T. T. opinion.

More than that, I fear if we follow your suggestions we will be doing just what you fear: we will indeed be prejudging National League of Cities.

Sincerely,

T. M.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

January 17, 1975

Re: Fry v. United States - No. 73-823

Dear Thurgood:

I will circulate a dissent in this case. I am sorry to have taken so long to fish or cut bait, and will do my best to get it out during the week after next.

Sincerely,

WOD

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 11, 1975

Dear Thurgood:

Re: Fry v. United States, No. 73-822.

Please add at the end of your opinion in Fry v. Unites States the following statement.

Less than three months after we granted certiorari, Congress allowed the Economic Stabilization Act to expire on April 30, 1974. There is therefore no continuing impediment to the payment of salary increases of the kind at issue in this case. I would therefore dismiss the writ as improvidently granted.

WILLIAM O. DOUGLAS

Mr. Justice Marshall

cc: The Conference

Keep in File

As J. Marshall incorporated most of this in his opinion for the Court, I withdrew this.

From: Powell, J.

Circulated: MAR 20 1975

Recirculated:

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-822

Ernest Fry and Thelma Boehm, Petitioners, v. United States.	On Writ of Certiorari to the Temporary Emergency Court of Appeals of the United States.

[March —, 1975]

MR. JUSTICE POWELL, concurring in the judgment.

I am persuaded that principles of federalism impose some limits on direct congressional regulation of state government, but I do not think they have been exceeded in this case. In 1970 Congress enacted the Economic Stabilization Act as an emergency measure to counter severe inflation that threatened the national economy. H. R. Rep. No. 91-1330, 91st Cong., 2d Sess., at 9-11 (1970). The method it chose, under the Commerce Clause, was to give the President authority to freeze virtually all wages and prices, including the wages of state and local government employees. In 1971, when the freeze was activated, state and local government employees composed 14% of the Nation's work force. Brief for the United States, at 20. It seems inescapable that the effectiveness of federal action would have been drastically impaired if wage increases to this sizeable group of employees were left outside the reach of these emergency federal wage controls.

Although the issue is not free from doubt, I am willing to sustain the action of Congress under the circumstances of this case.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 20, 1975

Re: No. 73-837 - Fry v. United States

Dear Lewis:

Please join me in your separate concurring opinion.

Sincerely,

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 20, 1975

Re: No. 73-822 - Fry v. United States

Dear Thurgood:

I expressed to you some time ago my discomfort with the implications of the opinion, and in my note of January 15 I indicated my sympathy with Lewis' point of view as set forth in his letter of the preceding day.

I have now determined that my views coincide with those of Lewis. I am therefore joining his separate concurrence and am withdrawing my joinder in your opinion.

Sincerely,

Harry

Mr. Justice Marshall

cc: The Conference

pp 1-3, 5-6

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Marshall, J.

Circulated: _____

Recirculated: MAR 27 1975

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-822

Ernest Fry and Thelma Boehm, Petitioners, *v.* United States. | On Writ of Certiorari to the Temporary Emergency Court of Appeals of the United States.

[January —, 1975]

MR. JUSTICE MARSHALL delivered the judgment of the Court.

The Economic Stabilization Act of 1970[1] authorized the President to issue orders and regulations to stabilize wages and salaries at levels not less than those prevailing on May 25, 1970. By Executive Order, the President created the Pay Board to oversee wage and salary controls imposed under the Act's authorization. Executive Order 11627, 36 Fed. Reg. 20136. In implementing the wage stabilization program, the Pay Board issued regulations that limited annual salary increases for covered employees to 5.5% and required prior Board approval for all salary adjustments affecting 5,000 or more employees.[2] The State of Ohio subsequently enacted legislation providing for a 10.6% wage and salary increase, effective January 1, 1972, for almost 65,000 state employees.[3] The State applied to the Pay Board for

[1] Pub. L. 91-379, Aug. 15, 1970, 84 Stat. 799, as amended, note following 12 U. S. C. § 1904 (1970 ed. Supp. I). The Act was extended five times before it expired on April 30, 1974.

[2] 6 CFR §§ 201.10; 101.21 (1972). See also *id.*, § 101.28.

[3] Ohio Revised Code § 143.102 (A), as amended, § 124.15 (A) (1972). The Act provided for salary increases for employees of the state government, state universities, and county welfare departments. Elected state officials were not included.

Received 3/27 LFP

This goes for to meet my objections & incorporate some of the opinions I've circulated.

I want to compare this with ~~Brennan~~ draft of Court's op. Also, I may join with a brief Concurrence

approval of the increases, and a public hearing was held. In March 1972, the Board denied the application for an exemption to the extent that it exceeded salary increases of 7% for the 1972 wage year.[4] Petitioners, two state employees, sought a writ of mandamus in state court to compel Ohio officials to pay the full increases provided in the state Pay Bill Act. The Ohio Supreme Court granted the writ and ordered the increases to be paid. *Fry* v. *Ferguson*, 34 Ohio St. 2d 252, 298 N. E. 2d 129 (1973).

After the State Supreme Court decision, the United States filed this action in the District Court to enjoin Ohio and its officials from paying wage and salary increases in excess of the 7% authorized by the Pay Board. The District Court certified to the Temporary Emergency Court of Appeals the question of the applicability of federal wage and salary controls to state employees. See § 211 (c) of the Economic Stabilization Act, note following 12 U. S. C. § 1904 (1970 ed. Supp. I).

The Court of Appeals construed the Act as applying to state employees and as such upheld its constitutionality. *United States* v. *Ohio*, 487 F. 2d 936 (T. E. C. A. 1973). Relying on the decisions of this Court in *Maryland* v. *Wirtz*, 392 U. S. 183 (1968), and *United States* v. *California*, 297 U. S. 175 (1936), the court concluded that the interference with state affairs incident to the uniform implementation of federal economic controls was of no consequence since Congress had a rational basis upon which to conclude that the state activity substantially

[4] The Pay Board determined that the implementation of the pay increase from March 1972 to November 1972 would reduce the effective rate to 7% for the wage year November 14, 1971, to November 13, 1972. The payments in issue here therefore represent the wages and salaries that were due from January 1, 1972, when the pay increase was to take effect, to March 16, 1972. The total amount involved is $10.5 million.

affected commerce. The Court of Appeals accordingly enjoined the payment of wage and salary increases in excess of the amount authorized by the Pay Board. We affirm.

I

At the outset, it is contended that Congress did not intend to include state employees within the reach of the Economic Stabilization Act and that the Pay Board therefore did not have the authority to regulate the compensation due state employees.[5] We disagree. The language and legislative history of the Act leave no doubt that Congress intended that it apply to employees throughout the economy, including those employed by state and local governments. The Act contemplated general stabilization of "prices, rents, wages, salaries, dividends, and interest," § 202, note following 12 U. S. C. § 1904, and it provided that the controls should "call for generally comparable sacrifices by business and labor as well as other segments of the economy." *Id.*, at § 203 (b)(5). It contained no exceptions for employees of any governmental bodies, even at the federal level.[6] The

[5] Petitioners did not raise the statutory issue either in their petition for certiorari or in their brief. Rather than decide a constitutional question when there may be doubt whether there is any statutory basis for it, however, we deal first with the statutory question, which is addressed in the briefs of *amici curiae* seeking reversal.

[6] Congress did provide for the exemption of certain categories of employees, such as members of the working poor, those earning substandard wages, and those entitled to wage increases under the Fair Labor Standards Act. §§ 203 (d), (f). See also §§ 203 (c)(1)–(3), (f)(2)(3), and (g). The various stabilization agencies have uniformly interpreted the Act to include the States within its scope, see 36 Fed. Reg. 21790; *id.*, at 25420; 37 Fed. Reg. 1240; *id.*, at 24961; *id.*, at 24989–24991. We have long recognized that the interpretation of a statute by an implementing agency is entitled to great weight, *Udall* v. *Tallman*, 380 U. S. 1, 16–18 (1965).

failure of the Act to make express reference to the States does not warrant the inference that controls may not be extended to their employees. See *Case* v. *Bowles*, 327 U. S. 92, 99 (1946); *United States* v. *California*, 297 U. S., at 186. Indeed, in framing the Act, Congress specifically rejected an amendment that would have exempted employees of state and local governments. 117 Cong. Rec. 43673–43677. And the Senate Committee Report makes it plain that the Committee considered and rejected a proposed exemption for the same group. S. Rep. No. 92–507, 92d Cong., 1st Sess., 4 (1971). It is clear, then, that Congress intended to reach state and local governmental employees. The only remaining question is whether it could do so consistent with the constitutional limitations on its power.

II

Petitioners acknowledge that Congress' power under the Commerce Clause is very broad. Even activity that is purely intrastate in character may be regulated by Congress, where the activity, combined with like conduct by others similarly situated, affects commerce among the States or with foreign nations. See *Heart of Atlanta Motel* v. *United States*, 379 U. S. 241, 255 (1964); *Wickard* v. *Filburn*, 317 U. S. 111, 127–128 (1942). There is little difficulty in concluding that such an effect could well result from large wage increases to 65,000 employees in Ohio and similar numbers in other States, *e. g.*, general raises to state employees could inject millions of dollars of purchasing power into the economy and might exert pressure on other segments of the work force to demand comparable increases.

Petitioners do not appear to challenge Congress' conclusion that unrestrained wage increases, even for employees of wholly intrastate operations, could have a significant effect on commerce. Instead, they contend

that applying the Economic Stabilization Act to state employees interferes with sovereign state functions and for that reason the Commerce Clause should not be read to permit regulation of all state and local governmental employees.[7]

On the facts of this case, this argument is foreclosed by our decision in *Maryland* v. *Wirtz*, *supra*, where we held that the Fair Labor Standards Act could constitutionally be applied to schools and hospitals run by a State. *Wirtz* reiterated the principle that States are not immune from all federal regulation under the Commerce Clause merely because of their sovereign status. 392 U. S., at 196–197. We noted, moreover, that the statute at issue in *Wirtz* was quite limited in application. The federal regulation in this case is even less intrusive. Congress enacted the Economic Stabilization Act as an emergency measure to counter severe inflation that threatened the national economy. H. R. Rep. No. 91–1330, 91st Cong., 2d Sess., at 9–11 (1970). The method it chose, under the Commerce Clause, was to give the President authority to freeze virtually all wages and prices, including the wages of state and local government employees. In 1971, when the freeze was activated, state and local government employees composed 14% of the Nation's work force. Brief for the

[7] Petitioners have stated their argument not in terms of the Commerce power, but in terms of the limitations on that power imposed by the Tenth Amendment. While the Tenth Amendment has been characterized as a "truism," stating merely that "all is retained which has not been surrendered," *United States* v. *Darby*, 312 U. S. 100, 124 (1941), it is not without significance. The Amendment expressly declares the constitutional policy that Congress may not exercise power in a fashion that impairs the States' integrity or their ability to function effectively in a federal system. Despite the extravagant claims on this score made by some *amici*, we are convinced that the wage restriction regulations constituted no such drastic invasion of state sovereignty.

United States, at 20. It seems inescapable that the effectiveness of federal action would have been drastically impaired if wage increases to this sizeable group of employees were left outside the reach of these emergency federal wage controls.

We conclude that the Economic Stabilization Act was constitutional as applied to state and local governmental employees. Since the Ohio wage legislation conflicted with the Pay Board's ruling, under the Supremacy Clause the State must yield to the federal mandate. See *Public Utilities Comm'n* v. *United States*, 355 U. S. 534, 542–545 (1958); *Murphy* v. *O'Brien*, 485 F. 2d 671, 675 (T. E. C. A. 1973).

Affirmed.

MR. JUSTICE DOUGLAS.

Less than three months after we granted certiorari, Congress allowed the Economic Stabilization Act to expire on April 30, 1974. There is therefore no continuing impediment to the payment of salary increases of the kind at issue in this case. I would therefore dismiss the writ as improvidently granted.

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

CHAMBERS OF
THE CHIEF JUSTICE

March 27, 1975

PERSONAL

Re: 73-823 - Fry v. United States

Dear Lewis:

I can join your limited concurrence in the above if you can see your way to insert the words "temporary emergency" after "President" on the 9th line of your opinion. The powers were both temporary and emergency, and I think it crucial to hit this aspect "hard" to avoid implications as to our next case in this area.

Regards,

WEB

Mr. Justice Powell

cc: Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 7, 1975

Re: No. 73-832 - Fry v. United States

Dear Thurgood:

If you will permit me, I am glad to join your re-circulation of March 27.

Sincerely,

Harry

Mr. Justice Marshall

cc: The Conference

April 8, 1975

No. 73-972, Fry v. United States

Dear Thurgood:

In view of the changes made in your circulation of March 27, I am happy to withdraw my concurring opinion and join you.

Sincerely,

Mr. Justice Marshall

lfp/ss

cc: The Conference

April 8, 1975

No. 73-655 Fry v. United States

Dear Chief:

As Thurgood understandably incorporated my suggestions in his opinion, and omitted the most objectionable language from his prior drafts, I am joining him.

Perhaps he will make the change suggested in your letter to me of March 27, if you request it, although I really do not think this is necessary.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF
THE CHIEF JUSTICE

May 23, 1975

Re: 73-822 - Bryan v. U.S.

Dear Thurgood:

Please join me.

Regards,

WEB

Mr. Justice Marshall

Copies to the Conference

THE C. J.	W. O. D.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.
					11/26/74			
Join TM 5-23-75	Dismiss as IPG 2-12-75	Join TM 1/6/75	Join TM 1-6-75	Join TM 1-6-75	1st draft 1-3-75	Join TM 1-9-75 Agree with LFP Memo 1-15-75	Memo - 1-14-75 Concurring opinion	Join LFP Memo 1-15-75 Concur Dissent
					2nd draft 1/9/75 Don't agree with note of LFP 1-16-75	Join LFP 3-20-75	~~2nd draft~~ 3/20/75	1-17-75 Dissent 1st draft 1-28-75
					~~3rd draft~~ 3-27-75	Join TM of 3-27-75	Withdrew at 4/8/75	2nd draft 4/1/75
							Join TM 4/8/75	
					73-822 Fry v. U.S.			