

Opinion in Chambers

BLOCK, SECRETARY OF AGRICULTURE, ET AL. v.
NORTH SIDE LUMBER CO. ET AL.

ON APPLICATION TO VACATE STAY

No. A-31. Decided July 24, 1985

An application by the Secretary of Agriculture to vacate the Court of Appeals' stay of the issuance of its own mandate is denied. The Court of Appeals had vacated the District Court's preliminary injunction against the Secretary's enforcing his contracts with respondent lumber company for the latter's harvesting of timber in national forests, but stayed the issuance of its mandate for 30 days to allow respondents to petition this Court for certiorari.

JUSTICE REHNQUIST, Circuit Justice.

The United States District Court for the District of Oregon preliminarily enjoined applicant John R. Block, Secretary of Agriculture, from enforcing contracts between him and respondent lumber company. These contracts required the latter to harvest timber in national forests. The Court of Appeals for the Ninth Circuit vacated the injunction holding that the Tucker Act, 28 U. S. C. §§ 1346 and 1491, impliedly barred the grant of such relief. The Court of Appeals stayed the issuance of this mandate for 30 days so that respondents might petition this Court for certiorari. The Secretary requests that I vacate that stay because of the prospect of continuing deterioration of abandoned timber on the ground. Respondents dispute this factual claim.

The District Court held that the "equity" favored respondents, and the Court of Appeals by staying issuance of the mandate even after vacating the injunction, must have agreed with the District Court on this point. The Secretary has furnished me no basis for disturbing their conclusion in this highly factual issue. The application is accordingly denied.