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Supplementary Material

Chapter 10: The Reagan Era – Judicial Power and Constitutional Authority

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Thomas v. Union Carbide Agricultural Products Co., 473 U.S. 568 (1985)

A number of companies registered with the Environmental Protection Agency (EPA) as pesticide producers and provided health and safety data required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Manufacturers and the EPA often disagreed about these data requirements and necessary financial compensation, which in turn spawned litigation. To streamline the process, Congress amended the statute in 1978 to require binding arbitration in such cases. Several firms involved in lawsuits over the records challenged the new arbitration process in district court, contending that moving the disputes from trial courts established under Article III to arbitration panels established under Article I violated the constitutional structure and the design of Article III. The federal district court issued an injunction on the reporting requirements. EPA administrator Lee Thomas appealed directly to the U.S. Supreme Court.

The Supreme Court had long struggled over how to evaluate statutory schemes for resolving disputes outside the Article III courts. Most recently, in Northern Pipeline Construction Co. v. Marathon Pipe Line Co. *(1982), Justice Brennan argued for the Court that the assessment of legal rights had to be performed by regularly established Article III courts in order to properly secure judicial independence from executive influence.*

The Court unanimously reversed the district court's ruling and upheld the arbitration scheme, asserting that the constitutional structure should be understood pragmatically. But the Court did fracture on how best to explain the outcome (Justice Stevens would have dismissed the case on jurisdictional grounds). Writing for the majority, Justice O'Connor emphasized that these disputes were rooted in claims based in statutes rather than private rights and were ultimately reviewable by Article III courts.

When should Congress be allowed to route legal disputes into non-Article III courts? Why might it matter that the claims raised in these disputes are grounded in federal statutes rather than the common law? How much review by Article III courts is necessary to preserve the constitutional scheme?

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JUSTICE O'CONNOR delivered the opinion of the Court.

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As a threshold matter, we must determine whether appellees' Article III claims demonstrate sufficient ripeness to establish a concrete case or controversy. . . .

We agree that Stauffer has an independent right to adjudication in a constitutionally proper forum. Although appellees contend and the District Court found that they were injured by the shortfall in the award, it is sufficient for purposes of a claim under Article III challenging a tribunal's jurisdiction that the claimant demonstrate it has been or inevitably will be subjected to an exercise of such unconstitutional jurisdiction. . . . [A]ppellees' Article III injury is not a function of whether the tribunal awards reasonable compensation but of the tribunal's authority to adjudicate the dispute. Thus appellees state an independent claim under Article III, apart from any monetary injury sustained as a result of the arbitration.

"[Ripeness] is peculiarly a question of timing." The issue presented in this case is purely legal, and will not be clarified by further factual development. Doubts about the validity of FIFRA's data-

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consideration and compensation schemes have plagued the pesticide industry and seriously hampered the effectiveness of FIFRA's reforms of the registration process. "To require the industry to proceed without knowing whether the [arbitration scheme] is valid would impose a palpable and considerable hardship." Nothing would be gained by postponing a decision, and the public interest would be well served by a prompt resolution of the constitutionality of FIRFRA's arbitration scheme.

Finally, appellees clearly have standing to contest EPA's issuance of follow-on registrations pursuant to what they contend is an unconstitutional statutory provision. They allege an injury from EPA's unlawful conduct -- the injury of being forced to choose between relinquishing any right to compensation from a follow-on registrant or engaging in an unconstitutional adjudication. . . . A decision against the provision's constitutionality, therefore, would support remedies such as striking down the statutory restrictions on judicial review or enjoining EPA from issuing or retaining in force follow-on registrations . . . .

Appellees contend that Article III bars Congress from requiring arbitration of disputes among registrants concerning compensation under FIFRA without also affording substantial review by tenured judges of the arbitrator's decision. Article III, § 1, establishes a broad policy that federal judicial power shall be vested in courts whose judges enjoy life tenure and fixed compensation. These requirements protect the role of the independent judiciary within the constitutional scheme of tripartite government and assure impartial adjudication in federal courts. . . .

An absolute construction of Article III is not possible in this area of "frequently arcane distinctions and confusing precedents." . . . "[Neither] this Court nor Congress has read the Constitution as requiring every federal question arising under the federal law . . . to be tried in an Art. III court before a judge enjoying life tenure and protection against salary reduction." Instead, the Court has long recognized that Congress is not barred from acting pursuant to its powers under Article I to vest decisionmaking authority in tribunals that lack the attribute of Article III courts. Many matters that involve the application of legal standards to facts and affect private interests are routinely decided by agency action with limited or no review by Article III courts. . . .

The Court's most recent pronouncement on the meaning of Article III is *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.* (1982). A divided Court was unable to agree on the precise scope and nature of Article III's limitations. The Court's holding in that case establishes only that Congress may not vest in a non-Article III court the power to adjudicate, render final judgment, and issue binding orders in a traditional contract action arising under state law, without consent of the litigants, and subject only to ordinary appellate review. . . .

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Looking beyond form to the substance of what FIFRA accomplishes, we note several aspects of FIFRA that persuade us the arbitration scheme adopted by Congress does not contravene Article III. First, the right created by FIFRA is not a purely "private" right, but bears many of the characteristics of a "public" right. Use of a registrant's data to support a follow-on registration serves a public purpose as an integral part of a program safeguarding the public health. Congress has the power, under Article I, to authorize an agency administering a complex regulatory scheme to allocate costs and benefits among voluntary participants in the program without providing an Article III adjudication. It also has the power to condition issuance of registrations or licenses on compliance with agency procedures. Article III is not so inflexible that it bars Congress from shifting the task of data valuation from the agency to the interested parties.

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We note as well that the FIFRA arbitration scheme incorporates its own system of internal sanctions and relies only tangentially, if at all, on the Judicial Branch for enforcement. The danger of Congress or the Executive encroaching on the Article III judicial powers is at a minimum when no unwilling defendant is subjected to judicial enforcement power as a result of the agency "adjudication."

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Finally, we note that FIFRA limits but does not preclude review of the arbitration proceeding by an Article III court. We conclude that, in the circumstances, the review afforded preserves the "appropriate exercise of the judicial function." *Crowell v. Benson* (1932). FIFRA at a minimum allows private parties to secure Article III review of the arbitrator's "findings and determination" for fraud, misconduct, or misrepresentation. This provision protects against arbitrators who abuse or exceed their powers or willfully misconstrue their mandate under the governing law. . . . Moreover, review of constitutional error is preserved, and FIFRA, therefore, does not obstruct whatever judicial review might be required by due process. We need not identify the extent to which due process may require review of determinations by the arbitrator because the parties stipulated below to abandon any due process claims. For purposes of our analysis, it is sufficient to note that FIFRA does provide for limited Article III review, including whatever review is independently required by due process considerations.

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Our holding is limited to the proposition that Congress, acting for a valid legislative purpose pursuant to its constitutional powers under Article I, may create a seemingly "private" right that is so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution with limited involvement by the Article III judiciary. To hold otherwise would be to erect a rigid and formalistic restraint on the ability of Congress to adopt innovative measures such as negotiation and arbitration with respect to rights created by a regulatory scheme. For the reasons stated in our opinion, we hold that arbitration of the limited right created by FIFRA does not contravene Article III. The judgment of the District Court is *reversed*, and the case is remanded for further proceedings consistent with this opinion.

JUSTICE BRENNAN, joined by JUSTICE MARSHALL and JUSTICE BLACKMN, concurring.

Our cases of both recent and ancient vintage have struggled to pierce through the language of Art. III of the Constitution to the full meaning of the deceptively simple requirement that "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." Art. III, § 1. We know that those who framed our Constitution feared the tyranny of "accumulation of all powers, legislative, executive, and judiciary, in the same hands," *The Federalist* No. 47, and sought to guard against it by dispersing federal power to three interdependent branches of Government. Each branch of Government was intended to exercise a distinct but limited power and function as a check on any aggrandizing tendencies in the other branches. . . . The salary and tenure guarantees of Art. III . . . were thought essential to the Judiciary's ability to function effectively as a check on Congress and the Executive. It is thus clear that when Congress establishes courts pursuant to Art. III the judges presiding in those courts must receive salary and tenure guarantees. The difficult question is to what extent the need to preserve the Judiciary's checking function requires Congress to assign the Federal Government's decisionmaking authority to independent tribunals so constituted.

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Given that this dispute is properly understood as one involving a matter in which Congress has substantial latitude to make use of Art. I decisionmakers, the question remains whether the Constitution nevertheless imposes some requirement of Art. III supervision of the arbitrator's decisions under this scheme. In this case Congress has provided for review of arbitrators' decisions to ensure against "fraud, misrepresentation, or other misconduct." The Court therefore need not reach the difficult question whether Congress is always free to cut off all judicial review of decisions respecting such exercises of Art. I authority.

The review prescribed under FIFRA encompasses the authority to invalidate an arbitrator's decision when that decision exceeds the arbitrator's authority or exhibits a manifest disregard for the

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governing law. . . . Such review preserves the judicial authority over questions of law in the present context. In essence, the FIFRA scheme delegates a significant case-by-case lawmaking function to the arbitrator in compensation disputes. . . . , [and] the Judiciary will exercise a restraining authority sufficient to meet whatever requirements Art. III might impose in the present context.

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JUSTICE STEVENS, concurring.

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For a party to have standing to invoke the jurisdiction of a federal court "relief from the injury must be 'likely' to follow from a favorable decision." . . . Because [FIFRA] does not give appellees any legal basis for claiming that they have been harmed by anything EPA did or threatened to do, a decision that FIFRA's arbitration provisions violate Article III could not support an injunction against the Administrator's use of appellees' data. Accordingly, appellees do not have standing to challenge the constitutionality of [the statutory provision] in this action. For this reason, I agree that the judgment of the District Court must be reversed.

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