

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 11, 1971

Re: No. 61 – Investment Co. Institute v. Camp

Dear John:

Thank you for your letter of March 10.

I agree that the conclusion that a competitor has standing does not necessarily mean that he is entitled to relief after showing that agency action is ultra vires or otherwise invalid. I do not understand Data Processing to eliminate the need to establish that Congress intended to prohibit the competition of which the plaintiff complains. Cases in which competitors seek relief from agency action that gives an advantage to the competition, or that authorizes competition that Congress has not sought to proscribe, or that gives the Government's business to one competitor rather than another raise questions concerning entitlement to relief that were not decided in Data Processing and are not decided here. In this case we conclude that Congress did intend to prohibit the competition of which the petitioners complain.

If Data Processing is ambiguous, Arnold Tours v. Camp, 400 U.S. 45, makes it plain that standing and entitlement to relief do not turn on whether Congress legislated against competition for the purpose of protecting competitors. There we rejected the First Circuit's reading of Data Processing as requiring "proof of Congressional solicitude," proof that Congress "had protection of . . . competitors specifically in mind." 428 F. 2d 359, 361. It is enough that Congress intended to prohibit competition for whatever reason and did not intend to deny relief to one aggrieved by illegal competition. In my view there should be no presumption that judicial review of a Congressional prohibition on competition is limited to a situation where the prohibition was for the benefit of a special interest. And I think it disserves the important purposes which underlie a prophylactic prohibition to provide review only if the regulated industry loses at the administrative level.

I am not aware of support for a concept of discretionary standing. I have difficulty in seeing what criteria would guide the exercise of this discretion. And I fear that the exercise of district court discretion would prove unreviewable. Of course there is often discretion to deny the equitable relief sought in administrative review cases under the criteria set forth in your opinions for the Court in Abbott Laboratories v. Gardner, 387 U.S. 136, and companion cases. I

am inclined to think that this tool is adequate to avoid unwarranted judicial interference in the administrative process.

Sincerely yours,

P.S.

Mr. Justice Harlan

Copies to the Conference