

DEC. 2 1983

No. 82-914

ALEXANDER L. STEVAS
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

MONSANTO COMPANY,

Petitioner,

vs.

SPRAY-RITE SERVICE CORPORATION,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SUPPLEMENTAL BRIEF OF RESPONDENT
SPRAY-RITE SERVICE CORPORATION

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Dated: December 2, 1983

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SPRAY-RITE SERVICE CORPORATION**

Pursuant to Rule 35.5, Respondent Spray-Rite Service Corporation presents "newly enacted legislation" not available at the time Respondent filed its brief. Sup.Ct.R. 35.5. This legislation is directly relevant to the argument advanced by the government (*see* U.S. Amicus Br. at 6-7, 19-29) and acknowledged by Monsanto (Monsanto Br. at 23-24 n.25) that "resale price maintenance should not be deemed per se unlawful." U.S. Amicus Br. at 19. It also supports Point II of Respondent's Brief. Respondent's Br. at 39-41.

On November 28, 1983, President Reagan signed Public Law 98-166 (H.R. 3222), which provides in pertinent part:

MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1984. . . .

* * *

Sec. 510. None of the funds appropriated in title I and title II [Department of Justice and Related Agencies] of this Act may be used for any activity, the purpose of which is to overturn or alter *the per se prohibition on resale price maintenance in effect under Federal antitrust laws*. . . .

HR. 3222, 98th Cong., 1st Sess., 129 Cong. Rec. — (1983) (Emphasis added). The Conference Report accompanying Public Law 98-166 states:

The conferees continue to be concerned about the failure of the Antitrust Division of the Department of Justice to enforce the Nation's laws which prohibit vertical price fixing between manufacturers and retailers. Clearly, allowing manufacturers to fix prices has a detrimental effect on American consumers. The Supreme Court has ruled this type of price fixing is illegal, yet the Antitrust Division has adopted a policy of refusing to prosecute violations. . . . The conferees instruct the United States Department of Justice and all other appropriate Federal agencies to enforce the federal antitrust laws faithfully and vigorously, including the prohibition on resale price maintenance.

H.R. Rep. No. 478, 98th Cong., 1st Sess. 46 (November 3, 1983). *See also* 129 Cong. Rec. S14430-32 (daily ed. Oct. 21, 1983). Public Law 98-166 therefore establishes beyond peradventure Congress' intent and agreement with this Court that resale price maintenance is, and should remain, *per se* illegal. *See* Respondent's Br. at 39-41.

Respectfully submitted,

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