

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

# SUPREME COURT OF THE UNITED STATES

Syllabus

POSTERS `N' THINGS, LTD., ET AL. v. UNITED STATES  
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE  
EIGHTH CIRCUIT

No. 92-903. Argued October 5, 1993—Decided May 23, 1994

Upon searching petitioner Acty's residence and the premises of her business, petitioner Posters `N' Things, Ltd., officers seized, among other things, pipes, ``bongs," scales, ``roach clips," drug diluents, and advertisements describing various drug-related products sold by petitioners. Petitioners were indicted on, and convicted in the District Court of, a number of charges, including the use of an interstate conveyance as part of a scheme to sell drug paraphernalia in violation of former 21 U.S.C. §857(a)(1), a provision of the Mail Order Drug Paraphernalia Control Act. In affirming, the Court of Appeals held, *inter alia*, that §857 requires proof of scienter and that the Act is not unconstitutionally vague.

*Held:*

1. Section 857 requires proof of scienter. Section §857(d)—which, among other things, defines ``drug paraphernalia" as any equipment ``primarily intended or designed for use" with illegal drugs—does not serve as the basis for a subjective-intent requirement on the part of the defendant, but merely establishes objective standards for determining what constitutes drug paraphernalia: The ``designed for use" element refers to the manufacturer's design, while the ``primarily intended . . . for use" standard refers generally to an item's likely use. However, neither this conclusion nor the absence of the word ``knowingly" in §857(d)'s text means that Congress intended to dispense entirely with a scienter requirement. Rather, §857(a)(1) is properly construed under this Court's decisions as requiring the Government to prove that the defendant knowingly made use of an interstate conveyance as part of a scheme to sell items that he knew were likely to be used with illegal drugs. It need not prove specific knowledge

that the items are ``drug paraphernalia" within the statute's meaning. Pp. 3-12.

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2. Section 857 is not unconstitutionally vague as applied to petitioners, since §857(d) is sufficiently determinate with respect to the items it lists as constituting *per se* drug paraphernalia, including many of the items involved in this case; since §857(e) sets forth objective criteria for assessing whether items constitute drug paraphernalia; and since the scienter requirement herein inferred assists in avoiding any vagueness problem. Because petitioners operated a full-scale "head shop" devoted substantially to the sale of drug paraphernalia, the Court need not address §857's possible application to a legitimate merchant selling only items—such as scales, razor blades, and mirrors—that may be used for legitimate as well as illegitimate purposes. Pp. 13–14.

3. Petitioner Acty's other contentions are not properly before the Court. Pp. 14–15.  
969 F. 2d 652, affirmed.

BLACKMUN, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, SOUTER, and GINSBURG, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment, in which KENNEDY and THOMAS, JJ., joined.