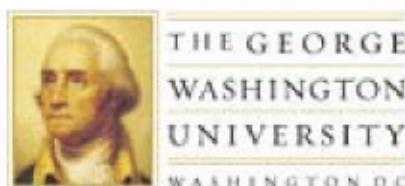


# The Burger Court Opinion Writing Database

*United States v. Reynolds*  
397 U.S. 14 (1970)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University  
Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

February 12, 1970

Re: No. 88 - U. S. v. Reynolds

Dear Potter:

I join you in the above.

A handwritten signature in black ink, appearing to read "W. E. B." followed by a stylized, irregular shape.

W. E. B.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE HUGO L. BLACK

February 6, 1970

2-5-73

S

Dear Bill,

Re: No. 88- United States v. W.G.  
Reynolds, et ux.

I have jotted down in pencil some changes that you might want to make. As I state on the face of the opinion, I would like to be noted as agreeing with you whether you take my suggestions or not.

Sincerely,



H. L. B.

Mr. Justice Douglas

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Dear Bill,  
Would you  
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N.Y.

## SUPREME COURT OF THE UNITED STATES

No. 88.—OCTOBER TERM, 1969

United States, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of  
W. G. Reynolds et ux. } Appeals for the Sixth  
Circuit.

[February —, 1970]

MR. JUSTICE DOUGLAS, dissenting.

All constitutional questions aside, there was in the present case a right to trial by jury on "the issue of just compensation" as provided in Rule 71A (L). I do not see how "the issue of just compensation" can be decided without considering whether or not the property was probably within or not within the project's original scope. As the opinion of the Court makes plain, unimportant questions of value turn on that decision. In this case it is seen in the difference between the value of the property as agricultural land and its value as potential lakeside residential or recreational property.

If it were certain beyond doubt that the property was within the original scope of the project, a different question might be presented. But there is nothing in this record to show that respondent's property was included in the original design. We deal here with probabilities or perhaps with possibilities. If the property were not within the original design, a purchaser could reasonably anticipate that he would be able to devote the land to its highest economic use reflected in part by its proximity to the government's project. Henry George<sup>1</sup> would have it otherwise; but that has not been the direction of our economy. Hence what we are talking about is market

<sup>1</sup> Progress and Poverty (15th Ann. ed. 1945) Book VI.

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Fortas  
Mr. Justice Marshall

2

**SUPREME COURT OF THE UNITED STATES**

No. 88.—OCTOBER TERM, 1969 From: Douglas, J.

United States, Petitioner, } On Writ of Certiorari to the 2-6  
v. } United States Court of Appeals for the Sixth  
W. G. Reynolds et ux. } Circuit.

[February —, 1970]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK concurs. dissenting.

All constitutional questions aside, there was in the present case a right to trial by jury on "the issue of just compensation" as provided in Rule 71A (L). I do not see how "the issue of just compensation" can be decided without considering whether or not the property was probably within or not within the project's original scope. As the opinion of the Court makes plain, important questions of value turn on that decision. In this case it is seen in the difference between the value of the property as agricultural land and its value as potential lakeside residential or recreational property.

If it were certain beyond doubt that the property was within the original scope of the project, a different question might be presented. But there is nothing in this record to show that respondent's property was included in the original design. We deal here with probabilities or perhaps with possibilities. If the property were not within the original design, a purchaser could reasonably anticipate that he would be able to devote the land to its highest economic use reflected in part by its proximity to the government's project. Henry George<sup>1</sup> would have it otherwise; but that has not been the direction of our

<sup>1</sup> Progress and Poverty (15th Ann. ed. 1945) Book VI.

February 5, 1870

Re: No. 88 - U.S. v. Reynolds

Dear Potter:

I am glad to join your opinion.

Sincerely,

J. M. H.

Mr. Justice Stewart

CC: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. February 6, 1970

RE: No. 88 - United States v. Reynolds

Dear Potter:

I agree with your opinion in the  
above case.

Sincerely,

*Bill*  
W. J. B. Jr.

Mr. Justice Stewart

cc: The Conference

To: The Chief Justice  
 Mr. Justice Black  
 Mr. Justice Douglas  
 Mr. Justice Harlan  
 Mr. Justice Brennan  
 Mr. Justice White  
 Mr. Justice Kearns  
 Mr. Justice Marshall

2

**SUPREME COURT OF THE UNITED STATES**

No. 88.—OCTOBER TERM, 1969

From: Stewart, J.

FEB 4 1970

Circulated:

United States, Petitioner,  
 v.  
 W. G. Reynolds et ux.

On Writ of Certiorari to the  
 United States Court of  
 Appeals for the Sixth  
 Circuit.

Recirculated:

[February —, 1970]

MR. JUSTICE STEWART delivered the opinion of the Court.

The United States brought this suit in the Western District of Kentucky to condemn more than 250 acres of the respondents' land for a federal development known as the Nolin Reservoir Project located in that State. An important issue in the case was raised by the respondents' claim that 78 acres of the land, taken for construction of recreational facilities adjacent to the reservoir, had not been within the original scope of the project.<sup>1</sup> A jury

<sup>1</sup> Congress authorized the Nolin Reservoir Project in 1938 as part of a comprehensive flood control plan for the Ohio and Mississippi Rivers. See Act of June 28, 1938, § 4, 52 Stat. 1217. Congress first appropriated funds for the planning stage of the project in 1956. See Public Works Appropriation Act of 1957, 70 Stat. 479–480. In July 1958 the Chief of Army Engineers approved a general design memorandum contemplating the construction of recreational areas in connection with the project, but evidently not specifying where they would be. The first funds for construction were appropriated in 1958. See Public Works Appropriation Act of 1959, 72 Stat. 1573. Construction began in January 1959.

Most of the respondents' acreage condemned by the Government was taken because it would be inundated by the reservoir, and there is no question that this land was within the original scope of the project. But 78 acres of the tract were taken for the construction of recreational facilities adjacent to the reservoir itself. These 78

February 6, 1970

Re: No. 88 - U.S. v. Reynolds

Dear Potter:

Please join us.

Sincerely,

B.R.W.

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 6, 1970

Re: No. 88 - United States v. Reynolds

Dear Potter:

Please join me.

Sincerely,



T.M.

Mr. Justice Stewart

cc: The Conference