

The Burger Court Opinion Writing Database

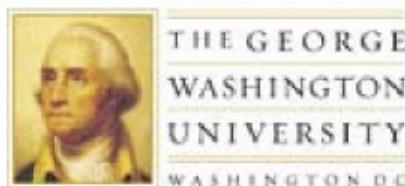
Utah v. United States

403 U.S. 9 (June 7, 1971)

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

May 26, 1971

No. 31 Orig. -- State of Utah v. United States

Dear Bill:

Please join me.

Regards,

W. B.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

May 25, 1971

Dear Bill,

Re: No. 31, Orig. - Utah v. United States.

I agree.

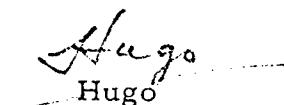
Re: Nos. 89, 659-70, Lemon v. Kurtzman, etc.

Please join me.

Re: No. 153 - Tilton v. Richardson

Please join me in your dissent.

Sincerely,


Hugo

Mr. Justice Douglas

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

2nd DRAFT

From: Douglas, J.

Jayne

SUPREME COURT OF THE UNITED STATES *5/24/71*

No. 31, Orig.—OCTOBER TERM, 1970

State of Utah, Plaintiff,
v. } On Bill of Complaint.
United States.

[June —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This suit was initiated by Utah to resolve a dispute between it and the United States as to shorelands around the Great Salt Lake. Utah's claim to the lands is premised on the navigability of the lake at the date of statehood, *viz.* January 4, 1896. If indeed the lake were navigable at that time, the claim of Utah would override any claim of the United States. For the operation of the "equal footing" principle has accorded newly admitted States the same property interests in submerged lands as was enjoyed by the Thirteen Original States as successors to the British Crown. *Pollard's Lessee v. Hagan*, 3 How. 212, 222–223, 228–230. That means that Utah's claim to the original bed of the Great Salt Lake—whether now submerged or exposed—ultimately rests on whether the lake was navigable (*Martin v. Waddell*, 16 Pet. 367, 410, 416–417) at the time of Utah's admission. *Shively v. Bowlby*, 152 U. S. 1, 26–28. It was to that issue that we directed the Special Master to address himself. See *Utah v. United States*, 394 U. S. 89. In the present report the Special Master found that at the time in question the Great Salt Lake was navigable. We approve that finding and direct that a decree be entered for Utah.

4

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 31, Orig.—OCTOBER TERM, 1970 Circulated:

State of Utah, Plaintiff,
 v.
 United States. } Recirculated: 5/26/71
 On Bill of Complaint.

[June —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This suit was initiated by Utah to resolve a dispute between it and the United States as to shorelands around the Great Salt Lake. Utah's claim to the lands is premised on the navigability of the lake at the date of statehood, *viz.* January 4, 1896. If indeed the lake were navigable at that time, the claim of Utah would override any claim of the United States. For the operation of the "equal footing" principle has accorded newly admitted States the same property interests in submerged lands as was enjoyed by the thirteen original States as successors to the British Crown. *Pollard's Lessee v. Hagan*, 3 How. 212, 222–223, 228–230. That means that Utah's claim to the original bed of the Great Salt Lake—whether now submerged or exposed—ultimately rests on whether the lake was navigable (*Martin v. Waddell*, 16 Pet. 367, 410, 416–417) at the time of Utah's admission. *Shively v. Bowlby*, 152 U. S. 1, 26–28. It was to that issue that we directed the Special Master to address himself. See *Utah v. United States*, 394 U. S. 89. In the present report the Special Master found that at the time in question the Great Salt Lake was navigable. We approve that finding and direct that a decree be entered for Utah.

Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 31. Orig.—OCTOBER TERM, 1970

6/1/71

State of Utah, Plaintiff, }
 v. }
 United States. } On Bill of Complaint.

[June —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This suit was initiated by Utah to resolve a dispute between it and the United States as to shorelands around the Great Salt Lake. Utah's claim to the lands is premised on the navigability of the lake at the date of statehood, *viz.* January 4, 1896. If indeed the lake were navigable at that time, the claim of Utah would override any claim of the United States with the possible exception of a claim based on the doctrine of reliction, not now before us.

The operation of the "equal footing" principle has accorded newly admitted States the same property interests in submerged lands as was enjoyed by the thirteen original States as successors to the British Crown. *Pollard's Lessee v. Hagan*, 3 How. 212, 222-223, 228-230. That means that Utah's claim to the original bed of the Great Salt Lake—whether now submerged or exposed—ultimately rests on whether the lake was navigable (*Martin v. Waddell*, 16 Pet. 367, 410, 416-417) at the time of Utah's admission. *Shively v. Bowbly*, 152 U. S. 1, 26-28. It was to that issue that we directed the Special Master, Hon. J. Cullen Ganey, to address himself. See *Utah v. United States*, 394 U. S. 89. In the present report the Special Master found that at the time in question the Great Salt Lake was navigable. We approve that finding.

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

May 24, 1971

Re: No. 31, Orig. - Utah
v. United States

Dear Bill:

I agree with your opinion.

Sincerely,

J. M. H.

Mr. Justice Douglas

CC: The Conference

WB

WD

3P
V
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. May 24, 1971

RE: No. 31 Orig. - Utah v. United States

Dear Bill:

I agree.

Sincerely,


W. J. B. Jr.

Mr. Justice Douglas

cc: The Conference

CHAMBERS OF
JUSTICE POTTER STEWART

Supreme Court of the United States

Washington, D. C. 20543

May 26, 1971

31 CRIG. - Utah v. U. S.

Dear Bill,

I thoroughly agree with your opinion. My only difficulty is that I have a distinct recollection that at the oral argument both sides agreed that there was something defective or inaccurate in the wording of the decree proposed by the Master. The transcript of the oral argument is not yet available, but I am assured it will be here shortly. I would like to ask that the announcement of the opinion be deferred until I have had an opportunity to check that transcript.

Sincerely yours,

P. S.

Mr. Justice Douglas

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 28, 1971

No. 31 Orig. - Utah v. United States

Dear Bill,

The transcript of oral argument in this case has now become available. In it, counsel for the United States is recorded as having said the following:

"And I might just very brief remark in that connection that while the Report of the Special Master . . . possibly seems to rule on the reliction issue on the one hand in conclusion of Law 18, or in the proposed decree to state that if the lake was navigable Utah obtained title to all lands within the meander line. I think it is clear and that Counsel for Utah will agree, that the issues are as I have stated.

"The question of reliction remains open for future decision. . . .

"Q. Does this mean, Mr. Strauss, if Utah should prevail here that the proposed decree of the Special Master would not be proper?

"A. Well, I think that it's a question of construction, indeed, whether the decree is inconsistent it's susceptible to a reading that it's inconsistent with what I have stated. This Court has always followed the practice in the past of inviting proposals for decree after original cases. And we have been assuming that it would do so in this case and we can confront the question at that time." [Transcript at 3-4.]

Utah did not in its oral argument focus on possible ambiguities in the proposed decree, though its counsel did readily agree that the reliction issue was not before us:

"I would first like to state that Utah does agree that the issue of reliction is not before the Court at this time; that the question is one of navigability." [Transcript at 20.]

Though the Report of the Special Master explicitly reserves the reliction issue, at 3, Conclusion of Law 18 and the proposed decree can be read as deciding the reliction issue against the United States:

"18. The State of Utah is not required to pay the United States for the land covered by Great Salt Lake and below the boundary line of the Lake's bed as of January 4, 1896." [Report at 52.]

"1. The United States of America, its departments and agencies, are enjoined . . . from asserting against the State of Utah any claim of right, title and interest:

"(a) to the bed of the Great Salt Lake lying below the meander line of Great Salt Lake as duly surveyed. . . .

"2. The State of Utah is not required to pay the United States . . . for the lands, including any minerals, lying below the meander line. . . ." [Report at 53-54.]

Though it is not perfectly clear, it appears that the "meander line" is not the present high water mark but an old survey line taken when the lake was higher. Finding of Fact 29, Report at 28. It thus may be that the terms of the proposed decree enjoin the United States from pressing its claim under

the doctrine of reliction, which all concerned agree it may now do. I suggest, therefore, that we should make explicit that we do not understand the proposed decree to touch on any reliction question, or else ask the parties for a proposed decree rather than adopt the form suggested by the Special Master.

Sincerely yours,

P.S.

Mr. Justice Douglas

Copies to the Conference



Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 1, 1971

No. 31 Orig. - Utah v. United States

Dear Bill,

I am glad to join your opinion
for the Court, as recirculated today.

Sincerely yours,

P.S.

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 24, 1971

Re: No. 31 Orig. - Utah v. U. S.

Dear Bill:

Please join me.

Sincerely,

Byron

Mr. Justice Douglas

Copies to Conference

✓ We are out of this office.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 25, 1971

79

Re: No. 31, Orig. - Utah v. United States

Dear Bill:

Please join me.

Sincerely,


T.M.

Mr. Justice Douglas

cc: The Conference

✓ Ted Melone - Stewart
Thru - Douglas
Sklar - Blackmun
Jackson - White
Murray - Brennan
Potter - Harlan
Francis - Black
Helen R - Chief

May 25, 1971

Mo. 31 1971. (has 6. 1. 1. 1.)

Dear Sirs

Please join me.

Interest,

W. A. P.

REGULAR MAIL

100-102 STATION CO

