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United States v. Southern Ute Tribe
402 U.S. 159 (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

April 22, 1971

Re: No; 515 - U. S. v. Southern Ute Tribe or Band of Indians

Dear Bill:

Please join me.

Regards,

WEP

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

Oct. 22, 1970

Dear Chief,

Re: No. 515- U.S. v.
Southern Utes.

In view of the note sent around by
Brother White, I would like to state that I join
him in wishing to grant certiorari in this case.

Sincerely,



H. L. B.

The Chief Justice

cc: Members of the Conference

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

April 13, 1971

Dear Bill,

Re: No. 515 - United States v. Southern Ute
Tribe of Indians

I agree.

Sincerely,


H. L. B.

Mr. Justice Brennan

cc: Members of the Conference

*Jill
cid
4-1*

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 515.—OCTOBER TERM, 1970

United States, Petitioner,
v.
Southern Ute Tribe or
Band of Indians. } On Writ of Certiorari to the
United States Court of
Claims.

[April —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

Though the facts of this case are complex, they present but one major question, whether the lands in question were "ceded to defendant by the Act of June 15, 1880," and included in a consent judgment before the Court of Claims in 1951.

More precisely, what was the status of these lands (Royce Area 617) between 1880 and 1895? Were they ceded in 1880, yet not released by the Indians until 1895? How can it be said that the Royce Area 617 was ceded in 1880 yet retained until 1895, since, as the Court of Claims stated, "the Southern Utes were allowed to remain on their surveyed reservation for 15 years after the purported cession, and the right to remove them without their further consent was not asserted or exercised." 423 F. 2d 356.

Twice the facts have been considered, once by the Indian Claims Commission and once by the Court of Claims. And both have resolved the question presented in favor of the respondent Southern Utes. That result below is amply supported by the record.

As of 1880, the Confederated Bands of Ute Indians occupied a reservation of 12,000,000 acres in Western Colorado. The White River Utes and the Uncompahgre Utes occupied the northern portion (Royce Area 616),

W

2P
JW
p6

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

From: Douglas, J.
Circulated:

No. 515.—OCTOBER TERM, 1970

Recirculated: 4-10

United States, Petitioner, v. Southern Ute Tribe or Band of Indians. } On Writ of Certiorari to the United States Court of Claims.

[April —, 1971]

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More precisely, what was the status of these lands (Royce Area 617) between 1880 and 1895? Were they ceded in 1880, yet not released by the Indians until 1895? How can it be said that the Royce Area 617 was ceded in 1880 yet retained until 1895, since, as the Court of Claims stated, "the Southern Utes were allowed to remain on their surveyed reservation for 15 years after the purported cession, and the right to remove them without their further consent was not asserted or exercised." 423 F. 2d 356.

Twice the facts have been considered, once by the Indian Claims Commission and once by the Court of Claims. And both have resolved the question presented in favor of the respondent, Southern Utes. That result below is amply supported by the record.

As of 1880, the Confederated Bands of Ute Indians occupied a reservation of 12,000,000 acres in Western Colorado. The White River Utes and the Uncompahgre Utes occupied the northern portion (Royce Area 616),

April 21, 1971

Re: No. 615 - United States v. Southern U.S.

Dear Bill:

Having given this case further consideration, I write to say that I am now ready to join your opinion. I appreciate your having put the case over.

Sincerely,

J.M.H.

Mr. Justice Brennan

cc: The Conference

B

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

2nd DRAFT

From: Brennan, J.

4/7/71

SUPREME COURT OF THE UNITED STATES

No. 515.—OCTOBER TERM, 1970

Recirculated:

United States, Petitioner,
v. Southern Ute Tribe or
Band of Indians. } On Writ of Certiorari to the
United States Court of
Claims.

[April —, 1971]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

In 1951 the Southern Ute Tribe or Band of Indians, a part of the Confederated Bands of Utes, brought this claim before the Indian Claims Commission.¹ The claim asserted that the United States had violated its fiduciary duty to respondent by (1) disposing of 220,000 acres of land as "free homesteads" although obligated by 21 Stat. 199 (1880) and 28 Stat. 677 (1895) to sell the acreage for the respondent's benefit; and (2) by failing to account for the proceeds of 82,000 acres of land, which proceeds were, under the same acts, to be held for the respondent's benefit. The Government's basic defense was *res judicata* by reason of Court of Claims consent judgments entered in 1950 between the United States and the Confederated Bands of Utes, including the respondent.² *Confederated*

¹ The claim was filed pursuant to the Indian Claims Commission Act, 25 U. S. C. § 70a. See also 25 U. S. C. § 70k.

² The 1950 cases were brought under the Jurisdictional Act of 1938, 52 Stat. 1029. The settlement reduced to consent judgment principally relied upon by the Government is that in Case No. 46640, 117 Ct. Cl. 433, 436 (1950). Related stipulations are reported at 117 Ct. Cl. 434-435, 439, 441. The aggregate amount of the settlements exceeded 31 million dollars. The United States also unsuccessfully asserted below defenses of failure to state a claim and failure to join all necessary parties. Those questions are not before us.

203 The Chief Justice
Mr. Justice Bala
Mr. Justice Doug
Mr. Justice Hart
Mr. Justice Stern
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 515.—OCTOBER TERM, 1970

United States, Petitioner,
v.
Southern Ute Tribe or
Band of Indians. } On Writ of Certiorari to the
United States Court of
Claims.

[April —, 1971]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

In 1951 the Southern Ute Tribe or Band of Indians, a part of the Confederated Bands of Utes, brought this claim before the Indian Claims Commission.¹ The claim asserted that the United States had violated its fiduciary duty to respondent by (1) disposing of 220,000 acres of land as "free homesteads" although obligated by 21 Stat. 199 (1880) and 28 Stat. 677 (1895) to sell the acreage for the respondent's benefit; and (2) by failing to account for the proceeds of 82,000 acres of land, which proceeds were, under the same acts, to be held for the respondent's benefit. The Government's basic defense was *res judicata* by reason of Court of Claims consent judgments entered in 1950 between the United States and the Confederated Bands of Utes, including the respondent.² *Confederated*

¹ The claim was filed pursuant to the Indian Claims Commission Act, 25 U. S. C. § 70a. See also 25 U. S. C. § 70k.

² The 1950 cases were brought under the Jurisdictional Act of 1938, 52 Stat. 1029. The settlement reduced to consent judgment principally relied upon by the Government is that in Case No. 46640, 117 Ct. Cl. 433, 436 (1950). Related stipulations are reported at 117 Ct. Cl. 434-435, 439, 441. The aggregate amount of the settlements exceeded 31 million dollars. The United States also unsuccessfully asserted below defenses of failure to state a claim and failure to join all necessary parties. Those questions are not before us.

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 7, 1971

No. 515 - U. S. v. Southern Ute Indians

Dear Bill,

I am glad to join your opinion for the
Court in this case.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

10/21/70

Dear Chief,

I don't request that No. 515,
U.S. v. Southern Utilities be discussed,
but please note on the public record
that I would grant certiorari.
I think the Court of Claims probably
went off the trolley here.

Sincerely,

Byron.

P.S. No. Secretary today.

*bookmarks
on 1B's sheet*

APRIL 8, 1971

Re: No. 515 - U.S. v. Southern Ute Tribe

Dear Mr.:

Please join me.

Sincerely,

B.R.W.

Mr. Justice BREWSTER

cc: Conference

AM

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 7, 1971

Re: No. 515 - United States v. Southern Ute Tribe

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Brennan

cc: The Conference

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LIBRARY OF CONGRESS

R J M
April 9, 1971

Re: No. 515 - U. S. v. Southern Ute Tribe of Indians

Dear Bill:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Brennan

cc: The Conference