

The Burger Court Opinion Writing Database

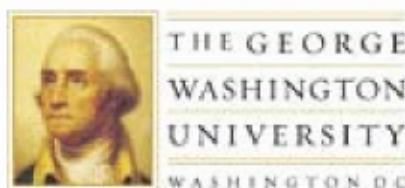
Perez v. Campbell

402 U.S. 637 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



50
The
Supreme Court will
not join in
any of his
opinions.

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

CHAMBERS OF
THE CHIEF JUSTICE

April 22, 1971

No. 5175 - Perez v. Campbell

Dear Byron:

This is to confirm reassignment of the
above case to you on the basis of your dissent.

Regards,

WSB

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

May 20, 1971

No. 5175 - Perez v. Campbell

Dear Harry:

Please join me in your separate opinion.

Regards,

WEB

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

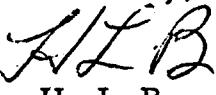
April 8, 1971

Dear Byron and Harry,

Re: No. 5175 - Perez v.
Campbell.

I prefer the disposition of this
case made by Brother White and therefore
join him.

Sincerely,


H. L. B.

Mr. Justice White
Mr. Justice Blackmun
cc: Members of the Conference

R
L
R

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

April 28, 1971

Dear Byron,

Re: No. 5175 - Perez v. Campbell

I am glad to agree to your opinion
in this case.

Sincerely,


Hugo

Mr. Justice White

cc: Members of the Court

April 7, 1971

Dear Byron:

Please join me in your dissent
in No. 5175 - Perez v. Campbell.

W. O. D.

Mr. Justice White

WD

Adm

April 7, 1971

Dear Harry:

In No. 5175 - Perez v. Campbell, I have joined Byron's dissent which puts me with your opinion except for Part III.

W. O. D.

Mr. Justice Blackman

WJM
adm

April 9, 1971

Re: No. 6176 - Perez v. Campbell

Dear Harry:

Confirming my telephone conversation with you of the day before yesterday, I would not be able to subscribe to an overruling of the substantive aspect of Kesler. From my standpoint Kesler was correctly decided, and, further, I think that store decisions should stand in the way of overruling. As to Emma Perez, I agree with your view that Kesler does not control.

Sincerely,

J. M. H.

Mr. Justice Blackmun

CC: The Conference

May 7, 1971

Re: No. 8178 - Perez v. Campbell

Dear Harry:

Please join me in your opinion.

Sincerely,

J. M. H.

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

May 7, 1971

Re: No. 5175 - Perez v. Campbell

Dear Harry:

Please join me in your separate opinion.

Sincerely,



J. M. H.

Mr. Justice Blackmun

CC: The Conference

Harry - You have done a
fine job, and I think we are in the
right corner.



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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 7, 1971

RE: No. 5175 - Perez v. Campbell

Dear Harry:

I voted at Conference to reverse as to both husband and wife and am still of that view. Byron's dissent expresses my feeling and I am prepared to join him.

Sincerely,


W.J.B. Jr.

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 7, 1971

RE: No. 5175 - Perez v. Campbell

Dear Byron:

Please join me in your dissent in
the above.

Sincerely,



W. J. B. Jr.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 27, 1971

RE: No. 5175 - Perez v. Campbell

Dear Byron:

I agree.

Sincerely,

Bill
W. J. B. Jr.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 7, 1971

No. 5175 -- Perez v. Campbell

Dear Harry,

I am glad to join your proposed opinion for the Court in this case, continuing to believe that the Kesler case was correctly decided on the merits.

Sincerely yours,

P. S.

Mr. Justice Blackmun

Copies to the Conference

CHAMBERS OF
JUSTICE POTTER STEWART

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

May 6, 1971

No. 5175, Perez v. Campbell

Dear Harry,

I am glad to join your separate
opinion in this case.

Sincerely yours,

P.S.

Mr. Justice Blackmun

Copies to the Conference

April 6, 1971

Re: No. 5172 - Perez v. Campbell

Dear Harry:

I do disagree with your Part III and attach a draft of a dissenting opinion to this effect.

Sincerely,

B.R.H.

Mr. Justice Blackmun

cc: The Conference

DR

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 6, 1971

Re: No. 5175 - Perez v. Campbell

Dear Harry:

I do disagree with your Part III and attach a draft of a dissenting opinion to this effect.

Sincerely,



B.R.W.

Mr. Justice Blackmun

cc: The Conference

Harry,

No pride of authorship here. If I agree with me, which I doubt, feel free to handle the matter as you wish.



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

1st DRAFT

SUPREME COURT OF THE UNITED STATES.

No. 5175.—OCTOBER TERM, 1970

Circulated: 4-6-71

Recirculated: _____

Adolfo Perez et ux., Petitioners.

v.
David H. Campbell, Superintendent, Motor Vehicle Division, Arizona Highway Department, et al. On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[March —, 1971]

MR. JUSTICE WHITE, dissenting.

This case raises an important issue concerning the construction of the Supremacy Clause of the Constitution—whether Ariz. Rev. Stat. § 28-1163 (B), which is part of Arizona's Motor Vehicle Safety Responsibility Act, is invalid under that clause as being in conflict with the mandate of § 17 of the Bankruptcy Act, 11 U. S. C. § 35, providing that receipt of a discharge in bankruptcy fully discharges all but certain specified judgments. The Court of Appeals, concluding that this case was controlled by *Kesler v. Department of Public Safety*, 369 U. S. 153 (1962), and *Reitz v. Mealey*, 314 U. S. 33 (1941), two earlier opinions of this Court dealing with alleged conflicts between the Bankruptcy Act and state financial responsibility laws, ruled against the claim of conflict and upheld the Arizona statute. I cannot agree, however, that *Kesler* and *Reitz* are controlling.

1

The determination whether a state statute is in conflict with a federal statute and hence invalid under the Supremacy Clause is essentially a two-step process of first construing the two statutes and then determining the constitutional question whether they are in conflict.

B
—
2nd DRAFT

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

SUPREME COURT OF THE UNITED STATES

From: White, J.

No. 5175.—OCTOBER TERM, 1970

Circulated:

Recirculated: 4-7-71

Adolfo Perez et ux., Petitioners,

v.

David H. Campbell, Superintendent, Motor Vehicle Division, Arizona Highway Department, et al.

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

[April —, 1971]

MR. JUSTICE WHITE, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE BRENNAN join, dissenting.

This case raises an important issue concerning the construction of the Supremacy Clause of the Constitution—whether Ariz. Rev. Stat. § 28-1163 (B), which is part of Arizona's Motor Vehicle Safety Responsibility Act, is invalid under that clause as being in conflict with the mandate of § 17 of the Bankruptcy Act, 11 U. S. C. § 35, providing that receipt of a discharge in bankruptcy fully discharges all but certain specified judgments. The Court of Appeals, concluding that this case was controlled by *Kesler v. Department of Public Safety*, 369 U. S. 153 (1962), and *Reitz v. Mealey*, 314 U. S. 33 (1941), two earlier opinions of this Court dealing with alleged conflicts between the Bankruptcy Act and state financial responsibility laws, ruled against the claim of conflict and upheld the Arizona statute. I cannot agree, however, that *Kesler* and *Reitz* are controlling.

I

The determination whether a state statute is in conflict with a federal statute and hence invalid under the Supremacy Clause is essentially a two-step process of first construing the two statutes and then determining

WJD

You plan to
join me

Please join me
M 4/27

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

1st DRAFT

From: White, J.

Circulated:

Recirculated: 4-26-71

SUPREME COURT OF THE UNITED STATES

No. 5175.—OCTOBER TERM, 1970

Adolfo Perez et ux., Petitioners,

v.

David H. Campbell, Superintendent, Motor Vehicle Division, Arizona Highway Department, et al.

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

[May —, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case raises an important issue concerning the construction of the Supremacy Clause of the Constitution—whether Ariz. Rev. Stat. § 28-1163 (B), which is part of Arizona's Motor Vehicle Safety Responsibility Act, is invalid under that clause as being in conflict with the mandate of § 17 of the Bankruptcy Act, 11 U. S. C. § 35, providing that receipt of a discharge in bankruptcy fully discharges all but certain specified judgments. The courts below, concluding that this case was controlled by *Kesler v. Department of Public Safety*, 369 U. S. 153 (1962), and *Reitz v. Mealey*, 314 U. S. 33 (1941), two earlier opinions of this Court dealing with alleged conflicts between the Bankruptcy Act and state financial responsibility laws, ruled against the claim of conflict and upheld the Arizona statute.

On July 8, 1965, petitioner Adolfo Perez, driving a car registered in his name, was involved in an automobile accident in Tucson, Arizona. The Perez automobile was not covered by liability insurance at the time of the collision. The driver of the second car was the minor

new material: pp 2-6, 7-11, 17-19
minor stylistic changes: pp 12, 14, 15

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

From: White, J.

2nd DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES

Recirculated: 5-19-71

No. 5175.—OCTOBER TERM, 1970

Adolfo Perez et ux., Petitioners.

v.

David H. Campbell, Superintendent, Motor Vehicle Division, Arizona Highway Department, et al.

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

[May —, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case raises an important issue concerning the construction of the Supremacy Clause of the Constitution—whether Ariz. Rev. Stat. § 28-1163 (B), which is part of Arizona's Motor Vehicle Safety Responsibility Act, is invalid under that clause as being in conflict with the mandate of § 17 of the Bankruptcy Act, 11 U. S. C. § 35, providing that receipt of a discharge in bankruptcy fully discharges all but certain specified judgments. The courts below, concluding that this case was controlled by *Kesler v. Department of Public Safety*, 369 U. S. 153 (1962), and *Reitz v. Mealey*, 314 U. S. 33 (1941), two earlier opinions of this Court dealing with alleged conflicts between the Bankruptcy Act and state financial responsibility laws, ruled against the claim of conflict and upheld the Arizona statute.

On July 8, 1965, petitioner Adolfo Perez, driving a car registered in his name, was involved in an automobile accident in Tucson, Arizona. The Perez automobile was not covered by liability insurance at the time of the collision. The driver of the second car was the minor

WJD

STYLISTIC CHANGES THROUGHOUT,
SEE PAGES: 2-4, 6, 8, 12-14, 18

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

NOTE: Where it is deemed desirable, 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.

From: White, J.

Circulated:

Recirculated:

S-27-71

SUPREME COURT OF THE UNITED STATES

Syllabus
PEREZ ET UX. V. CAMPBELL, SUPERINTENDENT,
MOTOR VEHICLE DIVISION, ARIZONA
HIGHWAY DEPARTMENT, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 5175. Argued January 19, 1971—Decided June 1, 1971

The provision that "discharge in bankruptcy following the rendering of any such judgment [as a result of an automobile accident] shall not relieve the judgment debtor from any of the requirements of this article," contained in Ariz. Rev. Stat. § 28-1163 (B), part of the Motor Vehicle Safety Responsibility Act, which the Arizona courts have construed as having as "its principal purpose the protection of the public using the highways from financial hardship which may result from the use of automobiles by financially irresponsible persons," directly conflicts with § 17 of the Bankruptcy Act, which states that a discharge in bankruptcy fully discharges all but certain specified judgments, and is thus unconstitutional as violative of the Supremacy Clause. *Kesler v. Department of Public Safety*, 369 U. S. 153, and *Reitz v. Mealey*, 314 U. S. 33, have no authoritative effect to the extent they are inconsistent with the controlling principle that state legislation that frustrates the full effectiveness of federal law is invalidated by the Supremacy Clause. Pp. 7-19.

421 F. 2d 619, reversed and remanded.

WHITE, J., delivered the opinion of the Court, in which BLACK, DOUGLAS, BRENNAN, and MARSHALL, JJ., joined. BLACKMUN, J., filed an opinion concurring in the result as to petitioner Emma Perez and dissenting as to petitioner Adolfo Perez, in which BURGER, C. J., and HARLAN and STEWART, JJ., joined.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 7, 1971

Re: No. 5175 - Perez v. Campbell

Dear Harry:

In response to your memorandum of April 6 I have read your opinion and the proposed dissenting opinion of Byron. My present inclination is strongly in favor of Byron's approach.

Sincerely,


T.M.

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 27, 1971

Re: No. 5175 - Perez v. Campbell

Dear Byron:

Please join me.

Sincerely,



T.M.

Mr. Justice White

cc: The Conference

April 6, 1971

MEMORANDUM TO THE CONFERENCE

Re: No. 5175 - Perez v. Campbell

With some diffidence, I circulate a proposed opinion for this case. The situation as to Emma Perez gives me no difficulty. That as to Adolfo Perez is, I think, close. Frankly, I could go either way. If five of you feel that Adolfo, too, should be granted relief, may I have the privilege of attempting a rewrite of Section III? My inclination at the moment is the other way, but I am willing to abide the judgment of a majority if my vote does not create that majority. To help Adolfo, what remains of Kesler perhaps must be overruled.

H. A. B.

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Blackmun, J.

4/6/71

No. 5175.—OCTOBER TERM, 1970

Circulated:

Recirculated:

Adolfo Perez, et ux., Petitioners,

v.

David H. Campbell, Superintendent, Motor Vehicle Division, Arizona Highway Department, et al.

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

[April —, 1971]

Memorandum from MR. JUSTICE BLACKMUN.

Under constitutional challenge here, solely on Bankruptcy Act-Supremacy Clause grounds, is Ariz. Rev. Stat. Ann. § 28-1163.B. This statute¹ conditions the renewal of a vehicle registration and of an operator's license, when suspended as a consequence of the entry of a judgment for bodily injury, death or property damage, upon the satisfaction of that judgment despite the debtor's subsequent petition in bankruptcy and his discharge. Arizona is a community property State. The issue is presented as to both the negligent driver and his non-negligent wife who comprise a marital community.

¹ "§ 28-1163. Suspension to continue until judgments paid and proof given

"A. The license, registration and nonresident operating privilege shall remain suspended and shall not be renewed, nor shall any license or registration be thereafter issued in the name of the person, including any person not previously licensed, unless and until every such judgment is satisfied in full or to the extent provided by this article, and until the person gives proof of financial responsibility subject to the exemptions stated in §§ 28-1161 and 28-1165.

"B. A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this article."

April 13, 1971

Re: No. 5175 - Perez v. Campbell

Dear Byron:

Upon further reflection, I believe I shall adhere to the conclusions I reached in the opinion I circulated, which is now aborted. The case, therefore, should be reassigned. I thus shall dissent in part, but shall defer an opinion until one for the Court has been prepared.

Sincerely,

H. A. B.

Mr. Justice White

cc: The Chief Justice

bcc: Mr. Justice Harlan ✓

April 26, 1971

MEMORANDUM TO THE CONFERENCE

Re: No. 5175 - Perez v. Campbell

I shall endeavor to formulate a dissent to
the opinion circulated today by B. R. W.

H. A. B.

B

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Blackmun, J.

No. 5175.—OCTOBER TERM, 1970

Circulated: 5/5/71

Reincorlated:

Adolfo Perez, et ux., Petitioners,

v.

David H. Campbell, Superintendent, Motor Vehicle Division, Arizona Highway Department, et al.

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

[May —, 1971]

MR. JUSTICE BLACKMUN.

I concur in the result as to petitioner Emma Perez and dissent as to petitioner Adolfo Perez.

I

The slaughter on the highways of this Nation exceeds the death toll of all our wars.¹ The country is fragmented about the current conflict in Southeast Asia, but I detect little genuine public concern about what takes place in our very midst and on our daily travel routes. See *Tate v. Short*, 401 U. S. —, — (1971).

This being so, it is a matter of deep concern to me that today the Court lightly brushes aside and overrules two cases where it had upheld a representative attempt by the States to regulate traffic and where the Court had considered and rejected the very Supremacy Clause argument that it now discovers to be so persuasive.²

¹ See Appendix to this opinion p. 17.

² The petitioners urge upon us only the Supremacy Clause. The other constitutional claims asserted in their complaint and mentioned in the Court's footnote 6, *ante*, p. 4, are abandoned here.

HAB

May 24, 1971

Re: No. 5175 - Perez v. Campbell

Dear Byron:

I am putting through a rerun of my dissent in this case with minor changes necessitated by your re-circulation of May 19. It looks to me as though the case will be ready to come down on June 1. I appreciate your putting it over for this past week.

Sincerely,

HAB

Mr. Justice White

SP
You joined Bree's
To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Blackmun, J.

Circulated:

No. 5175.—OCTOBER TERM, 1970

Recirculated: 5/25/71

Adolfo Perez, et ux., Petitioners,
v.
David H. Campbell, Superintendent, Motor Vehicle Division, Arizona Highway Department, et al.

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

[June 1, 1971]

MR. JUSTICE BLACKMUN, joined by THE CHIEF JUSTICE, MR. JUSTICE HARLAN, and MR. JUSTICE STEWART.

I concur in the result as to petitioner Emma Perez and dissent as to petitioner Adolfo Perez.

I

The slaughter on the highways of this Nation exceeds the death toll of all our wars.¹ The country is fragmented about the current conflict in Southeast Asia, but I detect little genuine public concern about what takes place in our very midst and on our daily travel routes. See *Tate v. Short*, 401 U. S. —, — (1971).

This being so, it is a matter of deep concern to me that today the Court lightly brushes aside and overrules two cases where it had upheld a representative attempt by the States to regulate traffic and where the Court had considered and rejected the very Supremacy Clause argument that it now discovers to be so persuasive.²

¹ See Appendix to this opinion p. 17.

² The petitioners urge upon us only the Supremacy Clause. The other constitutional claims asserted in their complaint and mentioned in the Court's footnote 10, *ante*, p. 6, are abandoned here.

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

B

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: _____

Recirculated: 5/25/71 (G)

No. 5175.—OCTOBER TERM, 1970

Adolfo Perez, et ux., Petitioners,
v.
David H. Campbell, Superintendent, Motor Vehicle Division, Arizona Highway Department, et al.

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

[June 1, 1971]

MR. JUSTICE BLACKMUN, joined by THE CHIEF JUSTICE, MR. JUSTICE HARLAN, and MR. JUSTICE STEWART.

I concur in the result as to petitioner Emma Perez and dissent as to petitioner Adolfo Perez.

I

The slaughter on the highways of this Nation exceeds the death toll of all our wars.¹ The country is fragmented about the current conflict in Southeast Asia, but I detect little genuine public concern about what takes place in our very midst and on our daily travel routes. See *Tate v. Short*, 401 U. S. —, — (1971).

This being so, it is a matter of deep concern to me that today the Court lightly brushes aside and overrules two cases where it had upheld a representative attempt by the States to regulate traffic and where the Court had considered and rejected the very Supremacy Clause argument that it now discovers to be so persuasive.²

¹ See Appendix to this opinion p. 17.

² The petitioners urge upon us only the Supremacy Clause. |