

The Burger Court Opinion Writing Database

United States v. Fuller

409 U.S. 488 (1973)

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

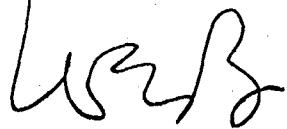
December 1, 1972

Re: 71-559 - U. S. v. Fuller

Dear Bill:

Please join me.

Regards,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

October 25, 1972

Dear Lewis:

I understand that you are undertaking
the dissent in No. 71-559 - Fuller. That is
fine with me, and Bill Brennan and Thurgood Marshall
agree.

W. O. D.
W. O. D.

Mr. Justice Powell

cc: Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

November 30, 1972

Dear Lewis:

Please join me in your dissent
in No. 71-559 - U. S. v. Fuller.

AWC
W. O. D.

Mr. Justice Powell

cc: Conference

(8) *W joined on 11/30*
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 6, 1972

Dear Lewis:

I am still with you in your
December 6th circulation in 71-559, U.S.
v. Fuller.

W.O.D.
William O. Douglas

Mr. Justice Powell

cc: Conference
Law Clerks

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 30, 1972

RE: No. 71-559 -- United States v. Fuller

Dear Lewis:

Please join me in your dissent in the
above.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 3, 1972

71-559 - U. S. v. Fuller

Dear Bill,

I am glad to join the opinion you have written for the Court in this case.

Sincerely yours,

P. S.
✓

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 1, 1972

Re: No. 71-559 - United States v. Fuller

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 30, 1972

Re: No. 71-559 - U. S. v. Fuller

Dear Lewis:

Please join me in your dissent.

Sincerely,


T.M.

Mr. Justice Powell

cc: Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 8, 1972

Re: No. 71-559 - U. S. v. Fuller

Dear Lewis:

I am still with you on this one.

Sincerely,


T.M.

Mr. Justice Powell

cc: Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 3, 1972

Re: No. 71-559 - U. S. v. Fuller

Dear Bill:

Please join me.

Sincerely,

H.A.B.
—

Mr. Justice Rehnquist

cc: The Conference

Please join me
PM

1st DRAFT

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

From: Powell, J.

No. 71-559

Circulated: NOV 30 1972

SUPREME COURT OF THE UNITED STATES

United States, Petitioner, v. Chester Fuller et al.

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

[December --, 1972]

MR. JUSTICE POWELL, dissenting.

This is a condemnation proceeding brought by the United States to acquire title to 920 of 1,280 acres of land, owned in fee by respondents, which is needed for the construction of a dam and reservoir project in Arizona. At the time of the taking respondents used this fee land as a base for a cattle operation known as a "cow-calf" ranch. A dependable source of water allowed intense cultivation of the fee land to provide the basic source of feed for the cattle. In connection with their fee land, respondents used 31,461 acres of adjacent public land on which they held revocable grazing permits issued under the Taylor Act. 43 U. S. C. § 315.¹ The public land was used for grazing during favorable seasons, and roads running across the public land connected respondents' three parcels of fee land.

The permits held by respondents on the public land accorded exclusive but revocable grazing rights to respondents. By the terms of the Act, the issuance of a permit does not "create any right, title, interest or estate in or to the lands." 43 U. S. C. § 315b. Nonetheless, grazing permits are of considerable value to ranchers and serve a corresponding public interest in assuring the

¹ In addition, respondents grazed their cattle on 12,027 acres of land leased from the State, but this land is not relevant to the controversy now before us.

*Changes
throughout*

*I am still
with you in
this one
AM*
2nd DRAFT

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
~~Mr.~~ Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

FILE: Powell, J.

No. 71-559

Circulated: _____

Recirculated: 12/1/72

United States, Petitioner, } On Writ of Certiorari to the
v. } United States Court of
Chester Fuller et al. } Appeals for the Ninth
Circuit.

[December —, 1972]

MR. JUSTICE POWELL, dissenting.

I dissent from a decision which in my view dilutes the meaning of the just compensation required by the Fifth Amendment when property is condemned by the Government. As a full understanding of the facts is necessary, I will begin by restating them.

This is a condemnation proceeding brought by the United States to acquire title to 920 of 1,280 acres of land, owned in fee by respondents, which is within the area to be flooded by a dam and reservoir project in Arizona. At the time of the taking respondents used this fee land as a base for a cattle operation known as a "cow-calf" ranch. A dependable source of water allowed intense cultivation of the fee land to provide the basic source of feed for the cattle. In connection with their fee land, respondents used 31,461 acres of adjacent public land on which they held revocable grazing permits issued under the Taylor Act. 43 U. S. C. § 315.¹ The public land was used for grazing during favorable seasons, and roads running across the public land connected respondents' three parcels of fee land.

The permits held by respondents on the public land accorded exclusive but revocable grazing rights to re-

¹ In addition, respondents grazed their cattle on 12,027 acres of land leased from the State, but this land is not relevant to the controversy now before us.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
✓Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

1st DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: 10/31/72

No. 71-559

Recirculated: _____

United States, Petitioner, | On Writ of Certiorari to the
v. | United States Court of
Chester Fuller et al. | Appeals for the Ninth
Circuit.

[November —, 1972]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Respondents operated a large-scale "cow-calf" ranch near the confluence of the Big Sandy and Bill Williams Rivers in western Arizona. Their activities were conducted on lands consisting of 1,280 acres which they owned in fee simple ("fee lands"), 12,027 acres leased from the State of Arizona, and 31,461 acres of federal domain held under Taylor Grazing Act permits issued in accordance with 43 U. S. C. § 315b. The Taylor Grazing Act authorizes the Secretary of the Interior to issue permits to livestock owners for grazing their stock on Federal Government lands. These permits are revocable by the Government. The Act provides, moreover, that its provisions "shall not create any right, title, interest, or estate in or to the lands." *Ibid.*

The United States, petitioner here, condemned 920 acres of respondents' fee lands. At the trial in the District Court for the purpose of fixing just compensation for the lands taken, the parties disagreed as to whether the jury might consider value accruing to the fee lands as a result of their actual or potential use in combination with the Taylor Grazing Act "permit" lands. The Government contended that such element of incremental value to the fee lands could neither be taken into consideration by the appraisers who testified for the parties

November 2, 1972

Re: 71-559 - United States v. Fuller

Dear Chief:

Your comment about the portion of my draft opinion in Fuller makes a good deal of sense to me, and I am rewriting that part of the draft. What I come up with may not be completely satisfactory to you, but I think you will like it better than the present version.

Sincerely,

WHR

The Chief Justice



RP MM
Range: p. 4 to end

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

3rd DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 71-559

Recirculated: 11/2/72

United States, Petitioner, } On Writ of Certiorari to the
v. } United States Court of
Chester Fuller et al. } Appeals for the Ninth
Circuit.

[November —, 1972]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Respondents operated a large-scale "cow-calf" ranch near the confluence of the Big Sandy and Bill Williams Rivers in western Arizona. Their activities were conducted on lands consisting of 1,280 acres which they owned in fee simple ("fee lands"), 12,027 acres leased from the State of Arizona, and 31,461 acres of federal domain held under Taylor Grazing Act permits issued in accordance with 43 U. S. C. § 315b. The Taylor Grazing Act authorizes the Secretary of the Interior to issue permits to livestock owners for grazing their stock on Federal Government lands. These permits are revocable by the Government. The Act provides, moreover, that its provisions "shall not create any right, title, interest, or estate in or to the lands." *Ibid.*

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✓ P.P. 5,6

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
✓Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

4th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Rehnquist, J.

Circulated:

No. 71-559

Recirculated: 12/11/72

United States, Petitioner, } On Writ of Certiorari to the
v. } United States Court of
Chester Fuller et al. } Appeals for the Ninth
Circuit.

[November —, 1972]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Respondents operated a large-scale "cow-calf" ranch near the confluence of the Big Sandy and Bill Williams Rivers in western Arizona. Their activities were conducted on lands consisting of 1,280 acres which they owned in fee simple ("fee lands"), 12,027 acres leased from the State of Arizona, and 31,461 acres of federal domain held under Taylor Grazing Act permits issued in accordance with 43 U. S. C. § 315b. The Taylor Grazing Act authorizes the Secretary of the Interior to issue permits to livestock owners for grazing their stock on Federal Government lands. These permits are revocable by the Government. The Act provides, moreover, that its provisions "shall not create any right, title, interest, or estate in or to the lands." *Ibid.*

The United States, petitioner here, condemned 920 acres of respondents' fee lands. At the trial in the District Court for the purpose of fixing just compensation for the lands taken, the parties disagreed as to whether the jury might consider value accruing to the fee lands as a result of their actual or potential use in combination with the Taylor Grazing Act "permit" lands. The Government contended that such element of incremental value to the fee lands could neither be taken into consideration by the appraisers who testified for the parties nor considered by the jury. Respondents conceded that