

The Burger Court Opinion Writing Database

Alamo Land & Cattle Co. v. Arizona

424 U.S. 295 (1976)

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



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

CHAMBERS OF
THE CHIEF JUSTICE

February 19, 1976

Re: 74-125 - Alamo Land & Cattle Co. v. Arizona

Dear Harry:

I join your proposed opinion dated February
12, 1976.

Regards,

WE MB

Mr. Justice Blackmun

Copies to the Conference

160.9

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

2

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 3, 1976

RE: No. 74-125 Alamo Land & Cattle Co. v. Arizona

Dear Byron:

Please join me in your dissenting opinion in
the above.

Sincerely,

Bren

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 7, 1976

Re: No. 74-125, Alamo Land & Cattle Co. v. Arizona

Dear Harry,

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

Sincerely yours,

P.S.
✓

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

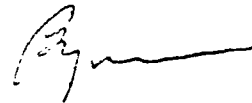
January 8, 1976

Re: No. 74-125 - Alamo Land & Cattle Co. Inc. v.
Arizona

Dear Harry:

In due course I shall circulate a dissent
in this case.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 1-31-76

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-125

Alamo Land & Cattle Co., Inc., Petitioner State of Arizona.	On Writ of Certiorari to the United States Court of Ap- peals for the Ninth Circuit.
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[February —, 1976]

MR. JUSTICE WHITE, dissenting.

The issue in this case is whether, under § 28 of the Arizona-New Mexico Enabling Act (the Act), 36 Stat. 557, 562 (1910), the State of Arizona had the power to grant to petitioner a compensable leasehold interest in the property in issue in this case. The question is solely one of statutory construction. As I agree with the Court of Appeals for the Ninth Circuit that Congress intended that lessees of land covered by the Act should acquire a compensable interest in leased land only to the extent of "improvements . . . placed thereon by such lessee," I dissent.

The Act states expressly, with respect to the lands involved here, that "no mortgage or other encumbrance of the said lands . . . shall be valid in favor of any person or for any purpose under any circumstances whatsoever. A lease, if not terminable at will by the State or terminable automatically upon sale or condemnation, is clearly an encumbrance." 7 Thompson on Real Property § 3183, at 277 (1962); 11 Bouvier's Law Dictionary 1530 3d Ed. (19—). A lease not so terminable is, therefore, expressly prohibited by the Act. The majority, however, find implicit in the Act an exception to the express ban on encumbrances in the case of leases for terms of 10 years or less. It points to the fact that 10 year

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 4, 6, 7

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Souter

From: Mr. Justice White

Circulated: _____

Recirculated: 2-18-

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-125

Alamo Land & Cattle Co., Inc., Petitioner, v. State of Arizona.	} On Writ of Certiorari to the United States Court of Ap- peals for the Ninth Circuit.
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[February —, 1976]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN joins, dissenting.

The question in this case is whether, under § 28 of the Arizona-New Mexico Enabling Act (the Act), 36 Stat. 557, 562 (1910), the State of Arizona had the power to grant to petitioner a compensable leasehold interest in the property in issue. The question is solely one of statutory construction. As I agree with the Court of Appeals for the Ninth Circuit that Congress intended that lessees of land covered by the Act should acquire a compensable interest in leased land only to the extent of "improvements . . . placed thereon by such lessee," I dissent.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 10, 1976

Re: No. 74-125 -- Alamo Land & Cattle Co., Inc. v.
State of Arizona

Dear Harry:

Please join me.

Sincerely,

TM

T.M.

Mr. Justice Blackmun

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Burger
Mr. Justice Douglas
Mr. Justice Marshall ✓
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Souter
Mr. Justice Stevens

From: Mr. Justice Black

Circulated: 1/6/76

1st DRAFT

Re-circulated: _____

SUPREME COURT OF THE UNITED STATES

No. 74-125

Alamo Land & Cattle Co.,
Inc., Petitioner.
v.
State of Arizona

On Writ of Certiorari to the
United States Court of Ap-
peals for the Ninth Circuit.

[January —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the
Court.

This case presents an issue of federal condemnation
law—as it relates to an outstanding lease of trust lands—
that, we are told, affects substantial acreage in our south-
western and western States.

Under § 24¹ of the New Mexico-Arizona Enabling
Act, 36 Stat. 557, 572 (1910), specified sections of every
township in the then proposed State were granted to
Arizona "for the support of common schools." By § 28²

"Sec. 24. That in addition to sections sixteen and thirty six,
heretofore reserved for the Territory of Arizona, sections two and
thirty-two in every township in said proposed State not otherwise
appropriated at the date of the passage of this Act are hereby
granted to the said State for the support of common schools. . . ."

"Sec. 28. That it is hereby declared that all lands hereby
granted, including those which, having been heretofore granted to
the said Territory, are hereby expressly transferred and confirmed
to the said State, shall be by the said State held in trust, to be
disposed of in whole or in part only in manner as herein provided
and for the several objects specified in the respective granting and
confirmatory provisions, and that the natural products and money

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 12, 1976

Re: No. 74-125 - Alamo Land & Cattle Co. v. Arizona

Dear Lewis:

This note is in response to our telephone conversation the other day. I made the passing reference to "possible lease renewals" on page 16 of the circulation because Arizona has a statute giving preference of a renewal to a lessee of state lands. This is A.R.S. § 37-291, and it reads as follows:

"§ 37-291. Preferred rights to renewal of lease;
exceptions

A. Upon application to the state land department not less than thirty nor more than sixty days prior to the expiration of a lease of state lands, the lessee, if he is a bona fide resident of the state, shall have a preferred right to renewal, bearing even date with the expiration of the old lease, for a term not longer than ten years, as determined by the department, at a re-appraised rental.

B. The preferred right of renewal shall not extend to a lessee who has not substantially complied with the terms of his lease or who has not placed the land to the use prescribed in the lease during the term thereof or within the time prescribed therein, unless for good cause the failure to perform was given written authorization by the department. If the department determines the continued leasing of the land not in the best interest of the state, the lease shall not be renewed."

- 2 -

This preference is referred to in the briefs and I feel I should not ignore it. The reference is not very important so if you feel strongly about it, the paranthetical expression on page 16 may be omitted. I, however, prefer to retain it.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a long horizontal flourish extending to the right.

Mr. Justice Powell

10/16 ✓
To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 2/9/76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-125

Alamo Land & Cattle Co., Inc., Petitioner, v. State of Arizona.	} On Writ of Certiorari to the United States Court of Ap- peals for the Ninth Circuit.
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[January —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents an issue of federal condemnation law—as it relates to an outstanding lease of trust lands—that, we are told, affects substantial acreage in our southwestern and western States.

I

Under § 24¹ of the New Mexico-Arizona Enabling Act, 36 Stat. 557, 572 (1910), specified sections of every township in the then proposed State were granted to Arizona “for the support of common schools.” By § 28²

¹“Sec. 24. That in addition to sections sixteen and thirty-six, heretofore reserved for the Territory of Arizona, sections two and thirty-two in every township in said proposed State not otherwise appropriated at the date of the passage of this Act are hereby granted to the said State for the support of common schools. . . .”

²“Sec. 28. That it is hereby declared that all lands hereby granted, including those which, having been heretofore granted to the said Territory, are hereby expressly transferred and confirmed to the said State, shall be by the said State held in trust, to be disposed of in whole or in part only in manner as herein provided and for the several objects specified in the respective granting and confirmatory provisions, and that the natural products and money

p. 16 ✓

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 2/12/76

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-125

Alamo Land & Cattle Co., Inc., Petitioner, v. State of Arizona.	} On Writ of Certiorari to the United States Court of Ap- peals for the Ninth Circuit.
--	--

[January —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents an issue of federal condemnation law—as it relates to an outstanding lease of trust lands—that, we are told, affects substantial acreage in our southwestern and western States.

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²Sec. 28. That it is hereby declared that all lands hereby granted, including those which, having been heretofore granted to the said Territory, are hereby expressly transferred and confirmed to the said State, shall be by the said State held in trust, to be disposed of in whole or in part only in manner as herein provided and for the several objects specified in the respective granting and confirmatory provisions, and that the natural products and money

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 20, 1976

No. 74-125 Alamo Land v. Arizona

Dear Harry:

Thank you for calling my attention to the Arizona statute with respect to renewal.

My difficulty with the reference to renewal rights, however, does not derive from any feeling that Alamo could point to nothing suggesting it might have renewal rights. Rather, I think that renewal rights are incompatible with the Enabling Act. The ten-year grazing leases authorized by the Enabling Act are an exception to the general requirement that the trust give property interests only after an auction. There is no express authorization in the Act for the trust to include renewal rights in a ten-year lease.

Thus, although I agree with you that "nothing in the Enabling Act itself . . . prevents the application of the Fifth Amendment protection of the outstanding leasehold interest," I am inclined to think that the outstanding interest is limited to the ten-year lease and nothing more. This view, if correct, would lead me to conclude that no value can be assigned to any renewal rights that might otherwise be created by the Arizona statute.

When I first spoke to you, I thought perhaps omission on page 16 of the reference to the right of renewal might meet my concern. A rereading of your opinion indicates, however, that you apparently would recognize power in the District Court on remand to consider renewal rights.

If we continue to have a different view on this element of value, I will probably write something concurring in major part in your opinion but dissenting on this issue.

Sincerely,

Mr. Justice Blackmun

Lewis

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 9, 1976

No. 74-125 Alamo Land v. Arizona

Dear Harry:

Please join me.

Sincerely,

Lewis

Mr. Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 7, 1976

Re: No. 74-125 - Alamo Land & Cattle Co. v. Arizona

Dear Harry:

Please join me.

Sincerely,
WHR

Mr. Justice Blackmun

Copies to the Conference