

The Burger Court Opinion Writing Database

United States v. United Continental Tuna Corp.

425 U.S. 164 (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

March 4, 1976

Re: 74-869 - United States v. United Continental Tuna Corp.

Dear Thurgood:

My recollection is that I voted simply to "reverse" in this case, as did all but Potter who would affirm.

I do not see the need to remand. I think I will write a brief comment that for the reasons stated in the opinion, we should simply reverse. I will have this around next week.

Regards,

WRB

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

March 5, 1976

Re: 74-869 - U. S. v. United Continental Tuna Corp.

Dear Thurgood:

In light of your March 5 circulation I will not write
separately in the above.

Regards,

W B B

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

✓
(5)

March 9, 1976

Re: 74-869 - U.S. v. United Continental Tuna Corp.

Dear Thurgood:

To keep the record straight, I join your opinion
dated March 5.

Regards,

WSB

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 1, 1976

RE: No. 74-869 United States v. United Continental
Tuna Corporation

Dear Thurgood:

I agree.

Sincerely,

Bul

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 1, 1976

Re: No. 74-869, United States v. United Continental
Tuna Corp.

Dear Thurgood,

I shall shortly circulate a dissenting opinion in
this case.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

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

From: Mr. Justice Stewart

Dated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-869

United States, Petitioner,	} On Writ of Certiorari to the	
v.		United States Court of Ap-
United Continental Tuna Corporation.		peals for the Ninth Circuit,

[March —, 1976]

MR. JUSTICE STEWART, dissenting.

Congress amended the Suits in Admiralty Act in 1960 to eliminate the distinction the Act formerly drew between public vessels and merchant vessels owned or operated by the United States. Act of Sept. 13, 1960, Pub. L. No. 86-770, § 3, 74 Stat. 912. See S. Rep. No. 1894, 86th Cong., 2d Sess., 3. See also S. Rep. No. 92-1079, 92d Cong., 2d Sess., 5-6. Six years later then Solicitor General Marshall explained the effect of that amendment in a brief filed on behalf of the Government in this Court:

"As originally enacted, the Suits in Admiralty Act was limited to government merchant vessels and tugboats, and excluded public vessels. The latter were separately covered in the Public Vessels Act. . . . Because of the uncertainty engendered by the public-merchant vessel distinction, . . . Congress in 1960 amended Section 2 of the Suits in Admiralty Act to delete the reference to merchant vessels. . . . Thus, the Suits in Admiralty Act now extends to government public as well as merchant vessels." Brief for the United States at 9 n. 1, *Amell v. United States*, 384 U. S. 158.¹

¹ This Court agreed: "In 1960, . . . Congress abolished the distinction between public and merchant vessels, a matter which had

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

cc: Mr. Justice Stewart

Circulation: _____

Received: _____ MAY 24 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-869

United States, Petitioner,	} On Writ of Certiorari to the	
v.		United States Court of Ap-
United Continental Tuna Corporation.		peals for the Ninth Circuit.

[March —, 1976]

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 4, 1976

Re: No. 74-869 - United States v. United
Continental Tuna Corp.

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to Conference

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

From: Mr. Justice Marshall

Circulated: **FEB 27 1976**

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-869

United States, Petitioner,	} On Writ of Certiorari to the
<i>v.</i>	
United Continental Tuna Corporation.	
	United States Court of Appeals for the Ninth Circuit.

[March —, 1976]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Respondent, a Philippine corporation owned largely by Americans, brought this suit against the United States in the United States District Court for the Central District of California, alleging jurisdiction under the Suits in Admiralty Act, 41 Stat. 525, as amended, 46 U. S. C. § 741 *et seq.*, and the Public Vessels Act, 43 Stat. 1112, as amended, 46 U. S. C. § 781 *et seq.* It sought recovery for damages resulting from the sinking of its fishing vessel, the *M. V. Orient*, after a collision with the *U. S. S. Parsons*, a naval destroyer of the United States.

Upon the United States' motion for summary judgment, the District Court held that since the naval destroyer was a "public vessel of the United States," the suit was governed by the provisions of the Public Vessels Act. See 46 U. S. C. § 781. In particular, the court held that respondent was subject to the Act's reciprocity provision, which bars any suit by a foreign national under the Act unless it appears that his government, "under similar circumstances, allows nationals of the United States to sue in its courts." 46 U. S. C. § 785. Finding no such reciprocity, the District Court dismissed the complaint.

2, 11 STYLISTIC CHANGES THROUGHOUT

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

From: Mr. Justice Marshall

Circulated: _____

Recirculated: **MAR 5 1976**

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-869

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v.	
United Continental Tuna Corporation.	
	United States Court of Appeals for the Ninth Circuit.

[March —, 1976]

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

(1)

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 1, 1976

Re: No. 74-869 - United States v. United
Continental Tuna Corp.

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 5, 1976

No. 74-869 United States v. United
Continental Tuna Corp.

Dear Thurgood:

Please join me.

Sincerely,

Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

3

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 2, 1976

Re: No. 74-869 - United States v. United Continental
Tuna

Dear Thurgood:

Please join me.

Sincerely,

WHR

Mr. Justice Marshall

Copies to the Conference