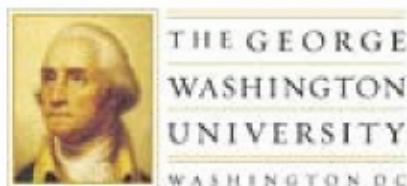


# The Burger Court Opinion Writing Database

*United States v. County of Fresno*  
429 U.S. 452 (1977)

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

November 29, 1976

Re: 75-1262 United States, Et Al., v. County  
of Fresno, Et Al.

Dear Bill:

Are you interested in writing a dissent  
in this case?

Regards,

*ERB*

Mr. Justice Brennan

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

CHAMBERS OF  
THE CHIEF JUSTICE

December 2, 1976

Re: 75-1262 United States, et al. v. County of Fresno, et al

Dear Lewis:

This will confirm that you will undertake a dissent in this case.

(I am glad to finally catch up with the internal deliberations on this subject!)

Regards,

W. B.

Mr. Justice Powell

cc: Mr. Justice Rehnquist

Dear C

I voted to affirm, and am awaiting Byron's opinion for the Court.

Perhaps you requested someone else to write a dissent.

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

12-2-76 75-1262

Fresno

Dear Lewis  
Deregard the  
second-and cryptic-  
sentence in my  
earlier memo today.  
That belonged on  
another memo to  
another Justice.  
Regards,  
H.W.B.

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

CHAMBERS OF  
THE CHIEF JUSTICE

December 16, 1976

Re: 75-1262 - United States v. County of Fresno

MEMORANDUM TO THE CONFERENCE:

I will await the dissent in this case.

Regards,

W. B.

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

CHAMBERS OF  
THE CHIEF JUSTICE

January 22, 1977

RE: 75-1262 - United States v. County of Fresno,  
et al.

Dear Byron:

At Conference I voted to reverse, but I am now  
persuaded that you have the better, and I think  
narrow, result.

I join.

Regards,

WEB

Mr. Justice White

Copies to the Conference

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

November 30, 1976

RE: No. 75-1262 United States, et al. v. County of  
Fresno, et al.

Dear Chief:

I would prefer not to write a dissent in the  
above. In matter of fact I may not dissent at all  
after I've seen the Court's opinion.

Sincerely,



.. The Chief Justice

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 14, 1976

RE: No. 75-1262 United States v. County of Fresno

Dear Byron:

You have almost persuaded me that I was wrong in voting to reverse. I'll mark time, however, until I've seen the dissent.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 17, 1977

RE: No. 75-1262 United States v. County of Fresno

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White  
cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

November 15, 1976

Re: No. 75-1262, United States v. County of Fresno

Dear Chief,

I have assigned the opinion in the above case  
to Lewis Powell.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

December 14, 1976

75-1262 - U. S. v. Fresno

Dear Byron,

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

Sincerely yours,

PS

Mr. Justice White

Copies to the 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: 12-13-76

Recirculated: \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-1262

United States et al.,  
Appellants, } On Appeal from the Court of Ap-  
v. } peal of California for the Fifth  
County of Fresno et al. } Appellate District.

[January —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court,

The issue in this case is whether, consistent with the Federal Government's immunity from state taxation inherent in the Supremacy Clause of the United States Constitution, see *McCulloch v. Maryland*, 4 Wheat. 316 (1819), the State of California may tax federal employees on their possessory interests in housing owned and supplied to them by the Federal Government as part of their compensation. We hold that it may.

### I

The individual petitioners in this case are employees of the Forest Service, a branch of the United States Department of Agriculture responsible for administering the national forests. Petitioners work in the Sierra, Sequoia, and Stanislaus National Forests which are located in Fresno and Tuolumne Counties in California. During the year 1967 each petitioner lived with his family in a house which was built and owned by the Forest Service in one of these national forests. Petitioners were required by the Forest Service to live in these houses<sup>1</sup> so that they would be nearer to the

<sup>1</sup> Some of the petitioners were not required, but simply permitted to live in houses owned by the Forest Service, in the sense that these particular petitioners might have been able to live in a privately owned house outside the forest if they had so elected. However, the Forest

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 9, 14

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:

Recirculated: 12-20-76

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 75-1262

United States et al.,  
Appellants,  
v.  
County of Fresno et al. } On Appeal from the Court of Ap-  
peal of California for the Fifth  
Appellate District.

[January —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is whether, consistent with the Federal Government's immunity from state taxation inherent in the Supremacy Clause of the United States Constitution, see *McCulloch v. Maryland*, 4 Wheat. 316 (1819), the State of California may tax federal employees on their possessory interests in housing owned and supplied to them by the Federal Government as part of their compensation. We hold that it may.

I

The individual appellants in this case are employees of the Forest Service, a branch of the United States Department of Agriculture responsible for administering the national forests. Petitioners work in the Sierra, Sequoia, and Stanislaus National Forests which are located in Fresno and Tuolumne Counties in California. During the year 1967 each appellant lived with his family in a house which was built and owned by the Forest Service in one of these national forests. Appellants were required by the Forest Service to live in these houses<sup>1</sup> so that they would be nearer to the

<sup>1</sup> Some of the appellants were not required, but simply permitted to live in houses owned by the Forest Service, in the sense that these particular appellants might have been able to live in a privately owned house outside the forest if they had so elected. However, the Forest

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 15, 1976

Re: No. 75-1262 -- United States v. County of Fresno

Dear Byron:

You have convinced me--I surrender--please join  
me.

Sincerely,

*JM*

T. M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 14, 1976

Re: No. 75-1262 - United States v. Fresno

Dear Byron:

Please join me.

Sincerely,

*Harry*  
\_\_\_\_

Mr. Justice White

cc: The Conference

December 2, 1976

No. 75-1262 United States v. County of Fresno

Dear Chief:

I voted to affirm, and am awaiting Byron's opinion for the Court.

Perhaps you requested someone else to write a dissent.

Sincerely,

The Chief Justice

lfp/ss

cc: Mr. Justice Rehnquist

✓✓  
Supreme Court of the United States  
Washington, D. C. 20542

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 15, 1976

No. 75-1262 United States v. County  
of Fresno

Dear Byron:

Please join me.

Sincerely,

*Lewis*

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 14, 1976

Re: No. 75-1262 United States v. County of Fresno

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

December 15, 1976

Re: 75-1262 - United States v. County of Fresno

Dear Byron:

Although you have written a fine opinion, I am still inclined to vote the other way. If no one else indicates an interest in writing a dissent, I will try to draft one.

Respectfully,



Mr. Justice White

Copies to the Conference

✓

TO: THE CHIEF JUSTICE  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist

2nd DRAFT

From: Mr. Justice Stevens  
JAN 13 1977

## SUPREME COURT OF THE UNITED STATES

No. 75-1262

Recirculated: \_\_\_\_\_

United States et al.,  
 Appellants,  
 v.  
 County of Fresno et al. } On Appeal from the Court of Ap-  
 peal of California for the Fifth  
 Appellate District.

[January —, 1977]

MR. JUSTICE STEVENS, dissenting.

The application of the California possessory interest tax to federal employees' use of real estate located in a national forest is significantly different from other forms of state taxation and, in my opinion, creates the kind of potential for friction between two sovereigns that the doctrine of constitutional immunity was intended to avoid.

## I

If a State were to tax the income of federal employees without imposing a like tax on others, the tax would be plainly unconstitutional. Cf. *McCulloch v. Maryland*, 4 Wheat. 316. On the other hand, if the State taxes the income of all its residents equally, federal employees must pay the tax. *Graves v. New York ex rel. O'Keefe*, 306 U. S. 466. This case involves a tax more like the former than the latter and, in my opinion, is invalid.

There are two alternatives between the two extremes just posited. Instead of just taxing federal employees, the State might impose a special tax on both state and federal employees but no one else; or, making the tax base somewhat broader, the State might impose a special tax on employees of all tax-exempt entities, including private organizations. Arguably, in the latter situation, the tax would affect enough voters in the State to provide the type of political safeguard