

The Burger Court Opinion Writing Database

*United States Trust Co. of New York v.
New Jersey*
431 U.S. 1 (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

March 15, 1977

PERSONAL

Re: 75-1687 - United States Trust v. New Jersey

Dear Harry:

I have gone over your draft several times during the last few days. We get so few cases in this area that it must have been a monumental task to marshal the required material. You are obviously closer to this case than any of us but I do have a few reservations with regard to this draft which I would like to mention to you alone at this point.

1. I agree that, in order to sustain the repeal of the 1962 covenant, the State must demonstrate that repeal was necessary to an important state purpose. I do not, however, see why we must add to this necessity requirement a distinct factor of "reasonableness." In determining that an impairment of a contractual obligation is necessary to accomplish an important state purpose, a court will, of course, have to inquire into the gravity of the asserted state purpose and the possibility of the state's employing alternate devices to reach that objective. I do not see any reason to prolong the analysis by a discussion of whether the action found "necessary" is also "reasonable."

2. I also have some doubt as to the necessity of discussing the question of valuation in Part III of the opinion. The remainder of your discussion, in this part, fully supports your conclusion that repeal of the covenant impaired a contractual obligation of the State. Given the general scheme of your draft, the importance of the covenant to the bondholders, as a security provision, might seem more appropriately part of your Part IV.

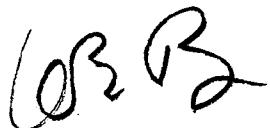
3. I also wonder if it is wise to give such an expanded treatment to Blaisdell's rather loosely-worded test regarding the circumstances under which it would be constitutionally permissible for the State to impair a private contractual obligation. I can see why you may want to distinguish private contractual situations from the one here where the State is a party. I wonder, however, if we ought to give some more thought as to whether, in this case, we want to so explicitly and so precisely emphasize the Court's past holdings in the private contract area.

4. Unless we are prepared to say that a "partial impairment" or a "less drastic modification" would have been constitutional (and I have some doubts that we should), I can see little reason in discussing such "partial impairment" or "less drastic modification" as an alternative to the complete repeal of the covenant undertaken here.

5. Footnote 28 could, in my view, be read as sanctioning the principle that "political problems" may determine "necessity."

In a major effort such as this one, you have probably already considered other areas for "tightening," but I would like to throw these "in the hopper" for your consideration.

Regards,

A handwritten signature in black ink, appearing to read "W. B. Blackmun".

Mr. Justice Blackmun

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

CHAMBERS OF
THE CHIEF JUSTICE

April 18, 1977

Dear Harry:

Re: 75-1687 U.S. Trust Co. v. New Jersey

I think I will add the enclosed "snapper" in this case. If you think it undercuts in any way, let me know, and I will try again.

Regards,



Mr. Justice Blackmun

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

CHAMBERS OF
THE CHIEF JUSTICE

April 21, 1977

Re: 75-1687 U.S. Trust Co. of New York v. New Jersey, et al

Dear Harry:

My "snapper" concurrence was not back from the printer at the close of business today, but the opinion can come down whenever all others are accounted for.

Regards,



Mr. Justice Blackmun

cc: The Conference

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

From: The Chief Justice
Circulated: APR 22 1977

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 75-1687

United States Trust Company
of New York, etc.,
Appellant,
v.
State of New Jersey, et al. } On Appeal from the Supreme
Court of New Jersey.

[April —, 1977]

MR. CHIEF JUSTICE BURGER, concurring.

In my view to repeal the 1962 covenant without running afoul of the constitutional prohibition against the impairment of contracts, the State must demonstrate that the impairment was essential to the achievement of an important state purpose. Furthermore, the State must show that it did not know and could not have known the impact of the contract on that state interest at the time that the contract was made. So reading the Court's opinion, I join it.

For emphasis, I note that the Court pointedly does not hold that, on the facts of this case, any particular "less drastic modification" would pass constitutional muster, p. 28 n. 28.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 10, 1977

RE: No. 75-1687 United States Trust Co. v. New Jersey

Dear Harry:

In due course I shall circulate a dissent in the
above.

Sincerely,



Mr. Justice Blackmun

cc: The Conference

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Burger
Mr. Justice Blackmun
Mr. Justice O'Connor
Mr. Justice Souter
Mr. Justice Thomas
Mr. Justice Scalia
Mr. Justice Stevens
Mr. Justice Breyer
Mr. Justice Ginsburg
Mr. Justice Souter
Mr. Justice Thomas
Mr. Justice Scalia
Mr. Justice Stevens
Mr. Justice Breyer
Mr. Justice Ginsburg

3/28/77

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1687

United States Trust Company
of New York, etc.,
Appellant,
v.
State of New Jersey, et al. } On Appeal from the Supreme
Court of New Jersey.

[March —, 1977]

MR. JUSTICE BRENNAN, dissenting.

Decisions of this Court for at least a century have construed the Contract Clause largely to be powerless in binding a State to contracts limiting the authority of successor legislatures to enact laws in furtherance of the health, safety, and similar collective interests of the polity. In short, those decisions established the principle that lawful exercises of a State's police powers stand paramount to private rights held under contract. Today's decision, in invalidating the New Jersey Legislature's 1974 repeal of its predecessor's 1962 covenant, rejects this previous understanding and remodels the Contract Clause into a potent instrument for overseeing the economic policy determinations of the state legislature. At the same time, by creating a constitutional safe haven for property rights embodied in a contract, the decision substantially distorts modern constitutional jurisprudence governing regulation of private economic interests. I might understand, though I could not accept, this revival of the Contract Clause were it in accordance with some coherent and constructive view of public policy. But elevation of the clause to the status of regulator of the municipal bond market at the intolerably heavy price of frustration of sound legislative policymaking is as demonstrably unwise as it is unneces-

1, 8, 11, 20-21, 23, 29, 30

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

Style changes

From: Mr. Justice Brennan

Circulated 4/15/77

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1687

United States Trust Company
 of New York, etc.,
 Appellant,
 v.
 State of New Jersey, et al.

On Appeal from the Supreme
 Court of New Jersey.

[March —, 1977]

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

Decisions of this Court for at least a century have construed the Contract Clause largely to be powerless in binding a State to contracts limiting the authority of successor legislatures to enact laws in furtherance of the health, safety, and similar collective interests of the polity. In short, those decisions established the principle that lawful exercises of a State's police powers stand paramount to private rights held under contract. Today's decision, in invalidating the New Jersey Legislature's 1974 repeal of its predecessor's 1962 covenant, rejects this previous understanding and remodels the Contract Clause into a potent instrument for overseeing the economic policy determinations of the state legislature. At the same time, by creating a constitutional safe haven for property rights embodied in a contract, the decision substantially distorts modern constitutional jurisprudence governing regulation of private economic interests. I might understand, though I could not accept, this revival of the Contract Clause were it in accordance with some coherent and constructive view of public policy. But elevation of the clause to the status of regulator of the municipal bond market at the intolerably heavy price of frustration of sound legislative policymaking is as demonstrably unwise as it is unnece-

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 22, 1977

Re: No. 75-1687, United States Trust Co.

v. New Jersey

Dear Harry,

I would appreciate your noting at the
foot of your opinion that I took no part in the
consideration or decision of 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

March 29, 1977

Re: No. 75-1687 — United States Trust
Company of New York, etc.
v. State of New Jersey, et al.

Dear Bill:

Please join me in your dissent in this
case.

Sincerely,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 11, 1977

Re: No. 75-1687, United States Trust Co. of New York v.
State of New Jersey

Dear Harry:

I shall await Brennan's dissent.

Sincerely,


T. M.

Mr. Justice Blackmun

cc: The Conference

3/9/77

No. 75-1687 - U. S. Trust

PS called to say that he will sit on the sidelines for the time being until he sees how the vote will go. If a Court is commanded, he probably will stay out of the case. This is because his posture is like that of LP. JPS, of course, has said that his posture is about the same, also, but that he will stay in the case.

H.L.

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: 3/9/77

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1687

United States Trust Company
 of New York, etc.,
 Appellant,
 v.
 State of New Jersey, et al. } On Appeal from the Supreme
 } Court of New Jersey.

[March —, 1977]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents a challenge to a New Jersey statute, Laws 1974, c. 25, as violative of the Contract Clause¹ of the United States Constitution. That statute, together with a concurrent and parallel New York statute, Laws 1974, c. 993, repealed a statutory covenant made by the two States in 1962 that had limited the ability of The Port Authority of New York and New Jersey² to subsidize rail passenger transportation from revenues and reserves.

The suit, one for declaratory relief, was instituted by appellant United States Trust Company of New York in the Superior Court of New Jersey, Law Division, Bergen County. Named as defendants were the State of New Jersey, its Governor, and its Attorney General. Plaintiff-appellant sued as trustee for two series of Port Authority Consolidated Bonds, as a holder (on its own account, as custodian, and as fiduciary

¹ "No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . ." U. S. Const., Art. I, § 10, cl. 1.

² The name originally was "The Port of New York Authority." Laws of New Jersey 1921, c. 151, p. 416; Laws of New York 1921, c. 154, p. 496. It was changed to "The Port Authority of New York and New Jersey," effective July 1, 1972. Laws of New Jersey 1972, c. 69; Laws of New York 1972, c. 531.

April 1, 1977

Re: No. 75-1687 - United States Trust Company v. New Jersey

Dear Chief:

This is in response to your thoughtful (and uncirculated) letter of March 15. I have deferred my response until I saw what Bill Brennan would have to say in dissent. That dissent is now in, and Byron, in accord with his conference vote, has joined it. The critical votes are yours and John's. Potter stands on the sidelines for the time being for reasons expressed at conference. (I have the feeling that if you and John join me, Potter will also join, for his vote will not then swing the decision; it is possible, of course, that he will choose to stay out entirely.)

I have sent a revised draft to the printer, and, hopefully, it should be available and circulated by Monday or Tuesday. The following comments will bear upon those made in your letter to me:

1. I have indulged in the reasonableness determination because this looks more to motive. An impairment is unreasonable if the State knew or should have known the likely consequences when it made the contractual obligation. Thus, for example, an impairment might be "necessary" to the achievement of an important state objective but also "unreasonable" because the impact on the state objective was well known when the contract was made.

2. I assume that the comment in paragraph 3 of your letter refers primarily to footnote 19. The purpose of this discussion was to assure the Court that the opinion does not turn back the clock to the pre-Blaisdell era of Contract Clause interpretation. I suppose the footnote could be deleted without harm, but I have left it in for now because I think it will be of some influence on John.

3. I undertook to discuss somewhat the "less drastic modification" because, after experimenting, it was the easiest way to demonstrate that a

total repeal was not necessary. The advantage is that it does not depend on a subjective evaluation of the relative merits and disadvantages of possible courses of action.

4. Former footnote 28 has been revised and, I think, will meet with your approval.

Sincerely,

HAB

The Chief Justice

STYLISTIC CHANGES

✓
pp. 2, 4, 10, 11, 13-16, 22, 25-29

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: 4/4/77

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1687

United States Trust Company
of New York, etc.,
Appellant,
v.
State of New Jersey, et al. } On Appeal from the Supreme
Court of New Jersey.

[March —, 1977]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents a challenge to a New Jersey statute, Laws 1974, c. 25, as violative of the Contract Clause¹ of the United States Constitution. That statute, together with a concurrent and parallel New York statute, Laws 1974, c. 993, repealed a statutory covenant made by the two States in 1962 that had limited the ability of The Port Authority of New York and New Jersey² to subsidize rail passenger transportation from revenues and reserves.

The suit, one for declaratory relief, was instituted by appellant United States Trust Company of New York in the Superior Court of New Jersey, Law Division, Bergen County. Named as defendants were the State of New Jersey, its Governor, and its Attorney General. Plaintiff-appellant sued as trustee for two series of Port Authority Consolidated Bonds,

¹ "No State shall . . . pass any . . . Law impairing the Obligation of Contracts" U. S. Const., Art. I, § 10, cl. 1.

² The name originally was "The Port of New York Authority." Laws of New Jersey 1921, c. 151, p. 416; Laws of New York 1921, c. 154, p. 496. It was changed to "The Port Authority of New York and New Jersey," effective July 1, 1972. Laws of New Jersey 1972, c. 69; Laws of New York 1972, c. 531.

April 18, 1977

Re: No. 75-1687 - U.S. Trust Co. v. New Jersey

Dear Chief:

I feel that your proposed snapper does not undercut.

Sincerely,

HAB

The Chief Justice

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 22, 1977

Re: No. 75-1687, United States Trust Co. v. New Jersey

Dear Potter:

In line with our conversation at Friday's conference, I shall note your nonparticipation only "in the decision of this case," rather than as set forth in your note of April 22.

Sincerely,

Hab.

Mr. Justice Stewart

cc: The Conference

75-1687

Supreme Court of the United States

Memorandum

3-29

, 19⁷⁷

Harry -

Because your U.S. Court
was first contract impairment
case I have had on since I
came, I waited for WSB decision
& read some of cases myself.
I think the false quote libelous
with some of cases, particularly
Fairgate, & I will get you
information.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 29, 1977

Re: No. 75-1687 - U. S. Trust Co. v. New Jersey

Dear Harry:

Please join me.

Sincerely,

WW

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 10, 1977

Re: 75-1687 - United States Trust Co. v. New Jersey

Dear Harry:

Because of the importance of the case, I shall await the dissent. However, I expect to join your opinion.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 4, 1977

Re: 75-1687 - U.S. Trust Co. of New York v.
New Jersey

Dear Harry:

Please join me.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference