

# The Burger Court Opinion Writing Database

## *United States v. California*

436 U.S. 32 (1978)

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

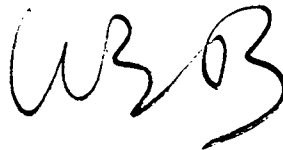
May 6, 1978

Dear Byron:

Re: No. 5 Orig. United States v. California

Please show me as joing in your dissent.

Regards,

A handwritten signature in dark ink, appearing to be 'W.B. White', written in a cursive style.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 17, 1978

RE: No. 5 Orig. United States v. California

Dear Potter:

May I make two suggestions: (1) delete "owned or" from the quote from the Submerged Lands Act at lines 4-5 of the second full paragraph at page 4 and (2) delete "nor have we found any" from the last line of page 7 and top of page 8. As to (1): am I not right that the doctrine of paramount rights is not a doctrine of ownership and, if so, ought we not avoid even the negative implication that it is? As to (2): Isn't it at least arguable that the Treaty of Guadalupe Hidalgo cited at your note 3 establishes a claim of right in the United States to the subsurface lands and water unrelated to paramount rights? If so, shouldn't we avoid precluding the argument as "nor have we found any" might be construed to do? Of course, I'm with you.

Sincerely,

Mr. Justice Stewart

W. Brennan 00-77

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 19, 1978

RE: No. 5 Orig. United States v. California

Dear Potter:

I agree.

Sincerely,

*Bill*  
7

Mr. Justice Stewart

cc: 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

Circulated: 14 APR 1978

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 5, Orig.

United States, Plaintiff,

v.

State of California.

On Bill in Equity.

[April —, 1978]

MR. JUSTICE STEWART delivered the opinion of the Court.

The question in this case, arising under our original jurisdiction, is whether California or the United States has dominion over the submerged lands and waters within the Channel Islands National Monument, which is situated within the three-mile marginal sea off the southern California mainland.<sup>1</sup> For the reasons that follow, we hold that dominion lies with California and not the United States.

The Antiquities Act of 1906 authorizes the President to reserve lands "owned or controlled by the Government of the United States" for use as national monuments.<sup>2</sup> Pursuant to

<sup>1</sup> This case is part of ongoing litigation stemming from an action brought in this Court more than two decades ago. *United States v. California*, 332 U. S. 19. The first decree was entered in 1947, 332 U. S. 804; a supplemental decree was entered in 1966, 382 U. S. 448; and a second supplemental decree in 1977, 432 U. S. 40. In each instance, jurisdiction was reserved to enter further orders necessary to effectuate the decrees. California initiated the present suit under the 1966 reservation of jurisdiction:

"As to any portion of such boundary line or of any areas claimed to have been reserved under § 5 of the Submerged Lands Act as to which the parties may have been unable to agree, either party may apply to the Court at any time for the entry of a further supplemental decree."

<sup>2</sup> Section 2 of the Act, 34 Stat. 225, 16 U. S. C. § 431, provides in pertinent part as follows:

"The President of the United States is authorized, in his discretion, to

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 17, 1978

No. 5 ORIG., U. S. v. California

Dear Bill,

I shall be glad to adopt both of  
your suggested changes.

Sincerely yours,

*P.S.*

Mr. Justice Brennan

*Wm Brennan  
04/17/78*

Mr. Justice Brandeis  
 Mr. Justice White  
 ✓ Mr. Justice Marshall  
 Mr. Justice Black  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From Mr. Justice Brandeis

Concluded

Concluded

2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 5, Orig.

United States, Plaintiff,  
 v.  
 State of California.

On Bill in Equity.

[April —, 1978]

MR. JUSTICE STEWART delivered the opinion of the Court.

The question in this case, arising under our original jurisdiction, is whether California or the United States has dominion over the submerged lands and waters within the Channel Islands National Monument, which is situated within the three-mile marginal sea off the southern California mainland.<sup>1</sup> For the reasons that follow, we hold that dominion lies with California and not the United States.

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"As to any portion of such boundary line or of any areas claimed to have been reserved under § 5 of the Submerged Lands Act as to which the parties may have been unable to agree, either party may apply to the Court at any time for the entry of a further supplemental decree."

<sup>2</sup> Section 2 of the Act, 34 Stat. 225, 16 U. S. C. § 431, provides in pertinent part as follows:

"The President of the United States is authorized, in his discretion, to

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 14, 1978

Re: 5 Original - United States  
v. California

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Dear Potter,

I shall try my hand at a brief  
dissent in this case.

Sincerely yours,



Mr. Justice Stewart

Copies to the Conference



Mr. Justice Stewart  
 ✓ Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Mr. Justice White

No. 5, Orig.

Circulated: 5/3

United States, Plaintiff,  
 v.  
 State of California.

Recirculated: \_\_\_\_\_  
 On Bill in Equity.

[May —, 1978]

MR. JUSTICE WHITE, dissenting.

Although the majority lucidly states the issue in this case, it plainly errs in deciding it.

Section 5 (a) of the Submerged Lands Act excepted from its general cession of land to the States those "rights the United States has in lands presently and actually occupied by the United States under claim of right."<sup>1</sup> Actual title to the lands was not required; lands to which the United States held title were already excepted by the previous language in § 5 (a). The reference to claims of right was critical for the United States' stake in submerged lands, since *United States v. California*, 332 U. S. 19, 804 (1947), did not actually vest the United States with title to the submerged lands. While specifically denying California title, the Court fell short of declaring title in the United States, recognizing instead the federal "paramount rights" in the lands. 332 U. S., at 805.

Section 5 (a) was added at the suggestion of the Attorney General. His purpose was to guarantee "that all installations and acquisitions of the Federal Government within such area [as was to be ceded] belong to it."<sup>2</sup> Senator Holland's original Joint Resolution No. 13 had provided:

"There is excepted from the operation of section 3 of

<sup>1</sup> 43 U. S. C. § 1313 (a).

<sup>2</sup> Letter of Attorney General Brownell, Hearings before the Senate Committee on Interior and Insular Affairs on S. J. Res. 13, S. 294, S. 107, S. 107 Amendment, and S. J. Res. 18, 83d Cong., 1st Sess., p. 935 (1953).

Mr. Justice Brennan  
Mr. Justice Stewart  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

P. 1

From: Mr. Justice White

Circulated: \_\_\_\_\_

Recirculated: 5/9

2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 5, Orig.

United States, Plaintiff,

v.

State of California.

On Bill in Equity.

[May —, 1978]

MR. JUSTICE WHITE, with whom THE CHIEF JUSTICE and MR. JUSTICE BLACKMUN join, dissenting.

Although the majority lucidly states the issue in this case, it plainly errs in deciding it.

Section 5 (a) of the Submerged Lands Act excepted from its general cession of land to the States those "rights the United States has in lands presently and actually occupied by the United States under claim of right."<sup>1</sup> Actual title to the lands was not required; lands to which the United States held title were already excepted by the previous language in § 5 (a). The reference to claims of right was critical for the United States' stake in submerged lands, since *United States v. California*, 332 U. S. 19, 804 (1947), did not actually vest the United States with title to the submerged lands. While specifically denying California title, the Court fell short of declaring title in the United States, recognizing instead the federal "paramount rights" in the lands. 332 U. S., at 805.

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<sup>2</sup> Letter of Attorney General Brownell, Hearings before the Senate Committee on Interior and Insular Affairs on S. J. Res. 13, S. 294, S. 107, S. 107 Amendment, and S. J. Res. 18, 83d Cong., 1st Sess., p. 935 (1953).

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 19, 1978

Re: No. 5, Orig. - U.S. v. State of California

Dear Potter:

Will you please add at the end of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

*T.M.*

T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 17, 1978

Re: No. 5 Orig. - United States v. California

Dear Potter:

I shall await Byron's dissent in this case.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

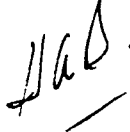
May 4, 1978

Re: No. 5 Original - United States v. California

Dear Byron:

I shall be pleased to have you join me in your dissenting opinion.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 17, 1978

No. 5 Orig. U.S. v. California

Dear Potter:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

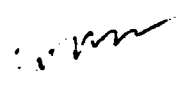
April 17, 1978

Re: No. 5, Orig. - United States v. California

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 14, 1978

Re: 5 Original - United States v. California

Dear Potter:

Please join me.

Respectfully,



Mr. Justice Stewart

Copies to the Conference