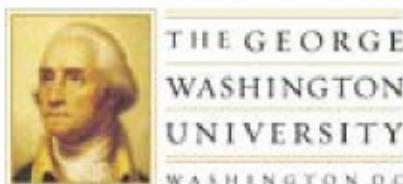


The Burger Court Opinion Writing Database

*Department of Revenue of Washington v.
Association of Washington Stevedoring
Cos.*

435 U.S. 734 (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

April 12, 1978

RE: 76-1706 - Dept. of Revenue of Washington
v. Association of Washington
Stevedoring Companies

Dear Harry:

I join.

Regards,

W. B.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 12, 1978

Re: No. 76-1706 - Washington Revenue Dept.
v. Stevedoring Assn.

Dear Harry,

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

Sincerely yours,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 13, 1978

Re: 76-1706 - Department of Revenue of the
State of Washington v.
Association of Washington
Stevedoring Companies

Dear Harry,

I agree.

Sincerely yours,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 23, 1978

MEMORANDUM TO THE CONFERENCE

Re: No. 76-1706, Dep't of Revenue of the State of Washington v.
Ass'n of Washington Stevedoring Cos.

I tentatively vote to reverse. I am inclined to believe that Washington's tax on stevedoring activities does not violate the Commerce Clause. Under the analysis adopted by the Court in Complete Auto Transit, the fact that stevedoring is part of interstate commerce is not controlling. Moreover, the Washington tax on the privilege of doing business appears to have been applied to stevedoring in a nondiscriminatory fashion and does not present any danger of multiple taxation.

I find the Import-Export issue somewhat more troubling. There is strong support in our cases for the notion that the Import-Export Clause exempts from state taxation all activities that take place beyond the water's edge. Furthermore, unlike the goods involved in the Michelin Tire case, which had come to rest within the taxing state, the goods handled by the stevedores are still moving in the Import-Export stream. Nevertheless, I am tentatively of the view that the tax at issue here is not an "impost" or "duty" and is therefore not barred by the Import-Export Clause.

T.M.
T.M.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 11, 1978

Re: No. 76-1706 - Dept. of Revenue of the State of Washington
v. Asso. of Wash. Stevedoring Companies

Dear Harry:

.. Please join me.

Sincerely,



T. M.

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 7, 1978

Re: No. 76-1706 - Dept. of Revenue of the State of Washington
v. Assn. of Washington Stevedoring Companies

Dear Bill:

I have sent to the Printer a proposed opinion in the above case. The case was heard in January when you were away.

I realize that this is an imposition upon you, but I hope that you can give the opinion, when it reaches you, at least a passing glance. The reason I presume to ask this is that the Washington tax in question is challenged under both the Commerce Clause and the Import-Export Clause. As a consequence, so far as the latter is concerned, the opinion bears directly on your work in Michelin and, in fact, because it must, carries us beyond Michelin. I go into your opinion pretty thoroughly. I wish to be sure that I do not describe it in any improper or incomplete way. Thus, I presume to impose.

Sincerely,

Harry

—

Mr. Justice Brennan

Brennan 77

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: 4/10/78

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1706

Department of Revenue of the
State of Washington,
Petitioner,
v.
Association of Washington
Stevedoring Companies
et al.

On Writ of Certiorari to the
Supreme Court of Wash-
ington.

[April —, 1978]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

For the second time in this century, the State of Washington would apply its business and occupation tax to stevedoring. The State's first application of the tax to stevedoring was unsuccessful, for it was held to be unconstitutional as violative of the Commerce Clause¹ of the United States Constitution. *Puget Sound Stevedoring Co. v. State Tax Comm'n*, 302 U. S. 90 (1937). The Court now faces the question whether Washington's second attempt violates either the Commerce Clause or the Import-Export Clause.²

¹ "The Congress shall have Power . . .

"To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. . . ." U. S. Const., Art. I, § 8, cl. 3.

² "No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress." U. S. Const., Art. I, § 10, cl. 2.

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 20, 1978

MEMORANDUM TO THE CONFERENCE

Re: No. 76-1706 - Department of Revenue v. Association
of Washington Stevedoring Companies

In view of Lewis' concurring opinion, I am adding the following to footnote 23 on page 22 of my opinion.

"Our Brother Powell, as his concurring opinion indicates, obviously would prefer to reach the issue today, even though the facts of the present case, as he agrees, do not present a case of a tax on goods in transit. As in Michelin, decided less than three years ago, we prefer to defer decision until a case with pertinent facts is presented. At that time, with full agreement, the issue with all its ramifications may be decided."

HAB.

23
22
pp.

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: APR 21 1978

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1706

Department of Revenue of the
State of Washington,
Petitioner,
v.
Association of Washington
Stevedoring Companies
et al. } On Writ of Certiorari to the
Supreme Court of Wash-
ington.

[April —, 1978]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

For the second time in this century, the State of Washington would apply its business and occupation tax to stevedoring. The State's first application of the tax to stevedoring was unsuccessful, for it was held to be unconstitutional as violative of the Commerce Clause¹ of the United States Constitution. *Puget Sound Stevedoring Co. v. State Tax Comm'n*, 302 U. S. 90 (1937). The Court now faces the question whether Washington's second attempt violates either the Commerce Clause or the Import-Export Clause.²

¹ "The Congress shall have Power . . .

"To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. . . ." U. S. Const., Art. I, § 8, cl. 3.

² "No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress." U. S. Const., Art. I, § 10, cl. 2.

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

From: Mr. Justice Powell
Circulated: 19 APR 1978

1st DRAFT

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 76-1706

Department of Revenue of the
State of Washington,
Petitioner,
v.
Association of Washington
Stevedoring Companies
et al.

On Writ of Certiorari to the
Supreme Court of Wash-
ington.

[April —, 1978]

MR. JUSTICE POWELL, concurring in part and concurring in the result.

I join the opinion of the Court with the exception of Part III-B. As that section of the Court's opinion appears to resurrect the discarded "direct-indirect" test, I cannot join it.

In *Michelin Tire Corp. v. Wages*, 423 U. S. 276 (1976), this Court abandoned the traditional, formalistic methods of determining the validity of state levies under the Import-Export Clause and applied a functional analysis based on the exaction's relationship to the three policies that underlie the Clause: (i) preservation of uniform federal regulation of foreign relations; (ii) protection of federal revenue derived from imports; and (iii) maintenance of harmony among the inland States and the seaboard States. The nondiscriminatory *ad valorem* property tax in *Michelin* was held not to violate any of those policies, but the Court suggested that even a nondiscriminatory tax on goods merely in transit through the State might run afoul of the Import-Export Clause.

The question the Court addresses today in Part III-B is whether the business tax at issue here is such a tax upon goods in transit. The Court gives a negative answer, apparently for two reasons. The first is that *Canton R. Co. v. Rogan*, 340

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

From: Mr. Justice Powell

Circulated: _____

Recirculated: 21 APR 1978

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1706

Department of Revenue of the
State of Washington,
Petitioner,
v.
Association of Washington
Stevedoring Companies
et al. } On Writ of Certiorari to the
Supreme Court of Wash-
ington.

[April —, 1978]

MR. JUSTICE POWELL, concurring in part and concurring in the result.

I join the opinion of the Court with the exception of Part III-B. As that section of the Court's opinion appears to resurrect the discarded "direct-indirect" test, I cannot join it.

In *Michelin Tire Corp. v. Wages*, 423 U. S. 276 (1976), this Court abandoned the traditional, formalistic methods of determining the validity of state levies under the Import-Export Clause and applied a functional analysis based on the excise tax's relationship to the three policies that underlie the Clause: (i) preservation of uniform federal regulation of foreign relations; (ii) protection of federal revenue derived from imports; and (iii) maintenance of harmony among the inland States and the seaboard States. The nondiscriminatory *ad valorem* property tax in *Michelin* was held not to violate any of those policies, but the Court suggested that even a nondiscriminatory tax on goods merely in transit through the State might run afoul of the Import-Export Clause.

The question the Court addresses today in Part III-B is whether the business tax at issue here is such a tax upon goods in transit. The Court gives a negative answer, apparently for two reasons. The first is that *Canton R. Co. v. Rogan*, 340 U. S. 511 (1951), indicates that this is a tax "not on the goods

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 19, 1978

Re: No. 76-1706 - State of Washington v. Washington
Stevedoring

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 11, 1978

Re: 76-1706 - Dept. of Revenue of the State
of Washington v. Association of Washington
Stevedoring Companies

Dear Harry:

Please join me.

Respectfully,



Mr. Justice Blackmun
Copies to the Conference