

The Burger Court Opinion Writing Database

United States v. Sotelo

436 U.S. 268 (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

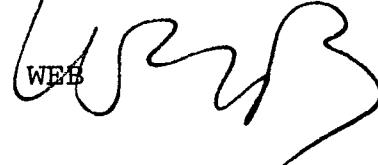
April 8, 1978

Dear Thurgood:

Re: 76-1800 United States v. Sotelo

I join.

Regards,

A handwritten signature in black ink, appearing to read "W. E. B. DuBois". The signature is fluid and cursive, with "W. E. B." in a smaller, more formal script above a larger, more flowing "DuBois".

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE W.H. J. BRENNAN, JR.

April 13, 1978

RE: No. 76-1800 United States v. Sotelo

Dear Bill:

Please join me in the dissenting opinion you
have prepared in the above.

Sincerely,

Bill

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 10, 1978

Re: No. 76-1800, United States v. Sotelo

Dear Thurgood,

I was of the other view in this case and shall, accordingly, await Bill Rehnquist's dissenting opinion.

Sincerely yours,

P. S.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 13, 1978

No. 76-1800, United States v. Sotelo

Dear Bill,

Please add my name to your dissenting opinion.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 3, 1978

Re: 76-1800 - United States
v. Sotelo

Dear Thurgood,

I expect to join your opinion
but am awaiting the circulation in Slodov,
#76-1835.

Sincerely yours,



Mr. Justice Marshall
Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 10, 1978

Re: 76-1800 - U. S. v. Sotelo

Dear Thurgood,

I am with you in your opinion in
this case.

Sincerely yours,

Byron.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 9, 1978

Re: No. 76-1800, United States v. Sotelo

Dear Bill:

Thanks for your memorandum. Go ahead. I might
join it and not have to write at all.

Sincerely,

JM

T. M.

Mr. Justice Rehnquist

cc: The Conference

30 MAR 1978

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1800

United States, Petitioner, }
v. } On Writ of Certiorari to the United
Onofre J. Sotelo and } States Court of Appeals for the
Naomi Sotelo. } Seventh Circuit.

[April —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case involves the interaction of sections of the Internal Revenue Code and the Bankruptcy Act. Respondent Onofre J. Sotelo was found personally liable to the Government for his failure to pay over taxes withheld from employees of the corporation in which he was the principal officer. The question presented is whether this liability is dischargeable in bankruptcy.

I

In mid-1973, respondents Onofre J. and Naomi Sotelo were adjudicated bankrupts, as was their corporation, O. J. Sotelo and Sons Masonry, Inc. The individual bankruptcy proceedings of the two Sotelos were consolidated. In November 1973, the Internal Revenue Service filed against respondents' estate a claim in the amount of \$40,751.16 "for internal revenue taxes" that had been collected from the corporation's employees but not paid over to the Government. Respondents were alleged to be personally liable for these taxes under Internal Revenue Code § 6672, 26 U. S. C. § 6672, as corporate officers who had a duty "to collect, truthfully account for, and pay over" the taxes and who had "willfully fail[ed]" to make the

Pp. 7-9

8 APR 1978

Recirculation

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1800

United States, Petitioner,
v.
Onofre J. Sotelo and
Naomi Sotelo. } On Writ of Certiorari to the United
States Court of Appeals for the
Seventh Circuit.

[April —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case involves the interaction of sections of the Internal Revenue Code and the Bankruptcy Act. Respondent Onofre J. Sotelo was found personally liable to the Government for his failure to pay over taxes withheld from employees of the corporation in which he was the principal officer. The question presented is whether this liability is dischargeable in bankruptcy.

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✓
Rp. 11 + 12

10 APR 1978

Recirculation

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1800

United States, Petitioner,
v.
Onofre J. Sotelo and
Naomi Sotelo. } On Writ of Certiorari to the United
States Court of Appeals for the
Seventh Circuit.

[April —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court. This case involves the interaction of sections of the Internal Revenue Code and the Bankruptcy Act. Respondent Onofre J. Sotelo was found personally liable to the Government for his failure to pay over taxes withheld from employees of the corporation in which he was the principal officer. The question presented is whether this liability is dischargeable in bankruptcy.

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In mid-1973, respondents Onofre J. and Naomi Sotelo were adjudicated bankrupts, as was their corporation, O. J. Sotelo and Sons Masonry, Inc. The individual bankruptcy proceedings of the two Sotelos were consolidated. In November 1973, the Internal Revenue Service filed against respondents' estate a claim in the amount of \$40,751.16 "for internal revenue taxes" that had been collected from the corporation's employees but not paid over to the Government. Respondents were alleged to be personally liable for these taxes under Internal Revenue Code § 6672, 26 U. S. C. § 6672, as corporate officers who had a duty "to collect, truthfully account for, and pay over" the taxes and who had "willfully fail[ed]" to make the

Pp. 11-13

20 APR 1978

Recirculation

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1800

United States, Petitioner,
v.
Onofre J. Sotelo and
Naomi Sotelo. } On Writ of Certiorari to the United
States Court of Appeals for the
Seventh Circuit.

[April —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case involves the interaction of sections of the Internal Revenue Code and the Bankruptcy Act. Respondent Onofre J. Sotelo was found personally liable to the Government for his failure to pay over taxes withheld from employees of the corporation in which he was the principal officer. The question presented is whether this liability is dischargeable in bankruptcy.

I

In mid-1973, respondents Onofre J. and Naomi Sotelo were adjudicated bankrupts, as was their corporation, O. J. Sotelo and Sons Masonry, Inc. The individual bankruptcy proceedings of the two Sotelos were consolidated. In November 1973, the Internal Revenue Service filed against respondents' estate a claim in the amount of \$40,751.16 "for internal revenue taxes" that had been collected from the corporation's employees but not paid over to the Government. Respondents were alleged to be personally liable for these taxes under Internal Revenue Code § 6672, 26 U. S. C. § 6672, as corporate officers who had a duty "to collect, truthfully account for, and pay over" the taxes and who had "willfully fail[ed]" to make the

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 10, 1978

Re: No. 76-1800, United States v. Sotelo

MEMORANDUM TO THE CONFERENCE

The footnotes added to Bill Rehnquist's dissent in the draft circulated today necessitate two minor changes in my opinion, which is otherwise ready to issue. The following changes have been sent to the printer today:

Add new paragraph at end of footnote 13:

The dissenting opinion as much as concedes, moreover, that there is no responsible corporate officer who can be said to reap "none of the fruits of entrepreneurial success," since all employees are dependent on the corporation for "their continued employment." Post, at 10 n.3 (emphasis added). The "continued employment" of a corporate officer is obviously a benefit of considerable significance to that officer and is generally dependent upon the success of the corporate enterprise. Hence an officer has a stake in "the fruits of entrepreneurial success" and, like a shareholder, may be tempted illegally to divert to the corporation those funds withheld from corporate employees for tax purposes.

Revised first two sentences of footnote 16:

¹⁶ The dissenting opinion at one point recognizes, post, at 4 n.1, Congress' unquestioned concern about eliminating corporations' "unfair" advantage over individual entrepreneurs. H.R. Rep. No. 372, supra, at 2; S. Rep. No. 114, supra, at 2-3. But elsewhere our Brother Rehnquist seems to assume that all "bankrupts" were fungible in Congress' view; he states that the "1966 amendment to the Bankruptcy Act . . . was intended to ameliorate the lot of the bankrupt." Post, at 1. [Footnote continues as previously circulated.]

Sincerely,

J.M.
T.M.

PP. 12/13

11 MAY 1978

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1800

United States, Petitioner,
v.
Onofre J. Sotelo and
Naomi Sotelo. } On Writ of Certiorari to the United
States Court of Appeals for the
Seventh Circuit.

[April —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case involves the interaction of sections of the Internal Revenue Code and the Bankruptcy Act. Respondent Onofre J. Sotelo was found personally liable to the Government for his failure to pay over taxes withheld from employees of the corporation in which he was the principal officer. The question presented is whether this liability is dischargeable in bankruptcy.

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In mid-1973, respondents Onofre J. and Naomi Sotelo were adjudicated bankrupts, as was their corporation, O. J. Sotelo and Sons Masonry, Inc. The individual bankruptcy proceedings of the two Sotelos were consolidated. In November 1973, the Internal Revenue Service filed against respondents' estate a claim in the amount of \$40,751.16 "for internal revenue taxes" that had been collected from the corporation's employees but not paid over to the Government. Respondents were alleged to be personally liable for these taxes under Internal Revenue Code § 6672, 26 U. S. C. § 6672, as corporate officers who had a duty "to collect, truthfully account for, and pay over" the taxes and who had "willfully fail[ed]" to make the

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 11, 1978

Re: No. 76-1800, United States v. Sotelo

MEMORANDUM TO THE CONFERENCE

Bill Rehnquist's latest changes in this case did not reach my chambers until after we had decided that this case could issue next week. In light of his changes, I must make further changes in my opinion that preclude issuance of this case on Monday.

Sincerely,

JM.

T.M.

cc: Mr. Cornio

Pp. 12, 13

~~SECRET~~

15 MAY 1978

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1800

United States, Petitioner,
v.
Onofre J. Sotelo and
Naomi Sotelo. } On Writ of Certiorari to the United
States Court of Appeals for the
Seventh Circuit.

[April —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case involves the interaction of sections of the Internal Revenue Code and the Bankruptcy Act. Respondent Onofre J. Sotelo was found personally liable to the Government for his failure to pay over taxes withheld from employees of the corporation in which he was the principal officer. The question presented is whether this liability is dischargeable in bankruptcy.

I

In mid-1973, respondents Onofre J. and Naomi Sotelo were adjudicated bankrupts, as was their corporation, O. J. Sotelo and Sons Masonry, Inc. The individual bankruptcy proceedings of the two Sotelos were consolidated. In November 1973, the Internal Revenue Service filed against respondents' estate a claim in the amount of \$40,751.16 "for internal revenue taxes" that had been collected from the corporation's employees but not paid over to the Government. Respondents were alleged to be personally liable for these taxes under Internal Revenue Code § 6672, 26 U. S. C. § 6672, as corporate officers who had a duty "to collect, truthfully account for, and pay over" the taxes and who had "willfully fail[ed]" to make the

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 4, 1978

Re: No. 76-1800 - United States v. Sotelo

Dear Thurgood:

Please join me in your recirculation of April 3.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 3, 1978

No. 76-1800 United States v. Sotelo

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 7, 1978

Re: No. 76-1800 - United States v. Sotelo

Dear Thurgood:

Bill Brennan has asked me to undertake the dissent in this case, and I have agreed to do so.

Sincerely,

WHR

Mr. Justice Marshall

Copies to the Conference

WHR
why ~~we~~ ~~should~~ ~~not~~ ~~do~~ ~~it~~
but ~~we~~ ~~should~~ ~~not~~ ~~do~~ ~~it~~
I ~~want~~ ~~you~~ ~~want~~ ~~to~~ ~~go~~ ~~ahead~~
I ~~want~~ ~~you~~ ~~want~~ ~~to~~ ~~walk~~ ~~at~~ ~~all~~
I ~~want~~ ~~you~~ ~~want~~ ~~to~~ ~~do~~ ~~it~~ ~~and~~ ~~it~~ ~~can~~ ~~not~~ ~~be~~ ~~done~~
I ~~want~~ ~~you~~ ~~want~~ ~~to~~ ~~do~~ ~~it~~ ~~and~~ ~~it~~ ~~can~~ ~~not~~ ~~be~~ ~~done~~

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice

Circulated: APR 1 1978

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1800

United States, Petitioner,
v.
Onofre J. Sotelo and
Naomi Sotelo. } On Writ of Certiorari to the United
States Court of Appeals for the
Seventh Circuit.

[April —, 1978]

MR. JUSTICE REHNQUIST, dissenting.

The Government undoubtedly needs the revenues it receives from taxes, but great as that need may be I cannot join the Court's thrice twisted analysis of this particular statute to gratify it. The issue involved is the dischargeability in the corporate officer's bankruptcy proceedings of taxes which the corporation is obligated to collect and pay over to the Government. In order to conclude that the corporate officer remains liable for this corporate obligation the Court turns to an unlikely source indeed: a 1966 amendment to the Bankruptcy Act which was intended to ameliorate the lot of the bankrupt. The Court then proceeds to slog its way to what is apparently a predetermined conclusion by reading a proviso obviously intended to *limit* dischargeability of the debts of a bankrupt so as to *expand* that category of debts. It then attempts to bolster this inexplicable interpretation by construing not the legislation which Congress enacted, but a letter from the Assistant Secretary of the Treasury not unnaturally opposing any expansion of the dischargeability in bankruptcy of tax-related liabilities. The net result of this perverse approach to an amendment to the Bankruptcy Act is to make nondischargeable a liability which might well have been dischargeable before Congress stepped in to alleviate some of the hardships resulting from the making of the debts of a bankrupt nondischargeable. In the background of this remarkable decision

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

From Mr. Justice Rehnquist

2nd DRAFT

Circulated:

SUPREME COURT OF THE UNITED STATES

Recirculated: APR 4 4 1978

No. 76-1800

United States, Petitioner, }
v. } On Writ of Certiorari to the United
Onofre J. Sotelo and } States Court of Appeals for the
Naomi Sotelo. } Seventh Circuit.

[April —, 1978]

MR. JUSTICE REHNQUIST, with whom MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE STEVENS join, dissenting.

The Government undoubtedly needs the revenues it receives from taxes, but great as that need may be I cannot join the Court's thrice twisted analysis of this particular statute to gratify it. The issue involved is the dischargeability in the corporate officer's bankruptcy proceedings of taxes which the corporation is obligated to collect and pay over to the Government. In order to conclude that the corporate officer remains liable for this corporate obligation the Court turns to an unlikely source indeed: a 1966 amendment to the Bankruptcy Act which was intended to ameliorate the lot of the bankrupt. The Court then proceeds to slog its way to its illogical conclusion by reading a proviso obviously intended to *limit* dischargeability of the debts of a bankrupt so as to *expand* that category of debts. It then attempts to bolster this inexplicable interpretation by construing not the legislation which Congress enacted, but a letter from the Assistant Secretary of the Treasury not unnaturally opposing any expansion of the dischargeability in bankruptcy of tax-related liabilities. The net result of this perverse approach to an amendment to the Bankruptcy Act is to make nondischargeable a liability which might well have been dischargeable before Congress stepped in to alleviate some of the hardships resulting from the making of the debts of a bankrupt non-

✓
Pp at, 10

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

From: Mr. Justice Rehnquist

Circulated: _____

3rd DRAFT

Recirculated: MAY 10 1978

SUPREME COURT OF THE UNITED STATES

No. 76-1800

United States, Petitioner,
v.
Onofre J. Sotelo and
Naomi Sotelo. } On Writ of Certiorari to the United
States Court of Appeals for the
Seventh Circuit.

[April —, 1978]

MR. JUSTICE REHNQUIST, with whom MR. JUSTICE BRENNAN,
MR. JUSTICE STEWART, and MR. JUSTICE STEVENS join,
dissenting.

The Government undoubtedly needs the revenues it receives from taxes, but great as that need may be I cannot join the Court's thrice twisted analysis of this particular statute to gratify it. The issue involved is the dischargeability in the corporate officer's bankruptcy proceedings of taxes which the corporation is obligated to collect and pay over to the Government. In order to conclude that the corporate officer remains liable for this corporate obligation the Court turns to an unlikely source indeed: a 1966 amendment to the Bankruptcy Act which was intended to ameliorate the lot of the bankrupt. The Court then proceeds to slog its way to its illogical conclusion by reading a proviso obviously intended to *limit* dischargeability of the debts of a bankrupt so as to *expand* that category of debts. It then attempts to bolster this inexplicable interpretation by construing not the legislation which Congress enacted, but a letter from the Assistant Secretary of the Treasury not unnaturally opposing any expansion of the dischargeability in bankruptcy of tax-related liabilities. The net result of this perverse approach to an amendment to the Bankruptcy Act is to make nondischargeable a liability which might well have been dischargeable before Congress stepped in to alleviate some of the hardships resulting from the making of the debts of a bankrupt non-

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 11, 1978

MEMORANDUM TO THE CONFERENCE

Re: No. 76-1800 United States v. Sotelo

Thurgood's changes prompted a few of my own. They are as follows:

Page 1, 10 lines down -- The phrase following the colon will now read:

"a 1966 amendment to the Bankruptcy Act, the only apparent purpose of which was to ameliorate the lot of at least some bankrupts. See pp. 3-4 & n. 1, infra."

Page 3, in the fourth line of the first full paragraph I will insert the phrase "at least some" before the word bankrupts, and in the 16th line down in that same paragraph the phrase "at least some bankrupts" for the words "the bankrupt".

Page 9, 4 lines from the bottom I will insert at the end of the sentence "other than continued employment in the corporation, and in some cases possibly not even that, see n. 3, infra."

Sincerely,

WR

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice

4th DRAFT

Circulated:

MAY 15 1978

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 76-1800

United States, Petitioner,
v.
Onofre J. Sotelo and
Naomi Sotelo. } On Writ of Certiorari to the United
States Court of Appeals for the
Seventh Circuit.

[April —, 1978]

MR. JUSTICE REHNQUIST, with whom MR. JUSTICE BRENNAN,
MR. JUSTICE STEWART, and MR. JUSTICE STEVENS join,
dissenting.

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Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 31, 1978

Re: 76-1800 - United States v. Sotelo

Dear Thurgood:

I will await Bill Rehnquist's dissent.

Respectfully,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 13, 1978

Re: 76-1800 - United States v. Sotelo

Dear Bill:

Please join me in your dissenting opinion.

Respectfully,



Mr. Justice Rehnquist

Copies to the Conference