The Burger Court Opinion Writing Database

Lake Country Estates, Inc. v. Tahoe Regional Planning Agency

440 U.S. 391 (1979)

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

February 14, 1979

Re: 77-1327 - Lake Country Estates v. Tahoe Regional Planning Agency

Dear John:

I join.

Regards,

WEB

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 31, 1979

RE: No. 77-1327 Lake Country Estates v. Tahoe Regional Planning Agency

Dear John:

My recollection is that you expressed some reservation at Conference about extending absolute immunity for legislative acts to members of bodies like the TRPA. Considering your opinion for the Court has stimulated some perhaps belated uneasiness on my part in this regard as well. While I am not yet certain that this uneasiness will result in specific suggestions for your opinion, my initia concerns are along the following lines:

Since this is the first opinion extending absolute immunity for "legislative acts" to members of a body other than Congress or a state legislature, would it not be useful to spell out in some more specific detail the factors the court below should consider when determining whether a member of TRPA is "acting in a capacity comparable to that of members of a state legislature."?

How should the characteristics of the governmental body involved affect the definition of what constitutes "acting in a legislative capacity?" For example, should a member of TRPA be absolutely immune (e.g., the investigation and public statements involved in Tenney v. Brandhove)? Should the definition of a "legislative act" as applied to members of a particular body depend on the extent to which that body shares the characteristics that have traditionally justified absolute immunity for Congress and state legislatures?

Are there any real grounds for distinguishing "regional bodies from "local" ones?

Doubtless it's not fair to ask questions without suggesting possible answers. At this stage, however, I have none and perhaps may not think of any. In that case I'll likely join your opinion as it now stands.

Sincerely,

Bill

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

14 February 1979

Re: Lake Country Estates v. Tahoe Regional Planning Agency, No. 77-1327

Dear Harry,

I would appreciate the addition of the following at the foot of your opinion dissenting in part in the above. Is that agreeable?

MR. JUSTICE BRENNAN, dissenting in part.

I join Part I of Mr. Justice Blackmun's opinion dissenting in part. In addition I would not reach the question, which the Court discusses in dicta, Maj. op. at 9, whether compacting States can create an agency protected by Eleventh Amendment immunity. In all other respects I join the Court's opinion.

Sincerely,

Bill

Mr. Justice Blackmun

cc: The Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1327

Lake Country Estates, Inc., et al., Petitioners, *v.* Tahoe Regional Planning Agency, etc., et al.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[February —, 1979]

MR. JUSTICE BRENNAN, dissenting in part.

I join Part I of MR. JUSTICE BLACKMUN's opinion dissenting in part. In addition I would not reach the question, which the Court discusses in dicta, maj. op., at 9, whether compacting States can create an agency protected by Eleventh Amendment immunity. In all other respects I join the Court's opinion.

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 9, 1979

Re: No. 77-1327, Lake Country Estates v. Tahoe Regional Planning Agency

Dear John,

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 8, 1979

Re: 77-1327 - Lake Country Estates, Inc. v. Tahoe Regional Planning Agency

Dear John,

I agree.

Sincerely yours,

Mr. Justice Stevens

Copies to the Conference

cmc

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1327

Lake Country Estates, Inc., et al., Petitioners, v. Tahoe Regional Planning Agency, etc. et al. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[February —, 1979]

MR. JUSTICE MARSHALL, dissenting in part.

The Court today extends absolute immunity to nonelected regional officials for their legislative acts. Because extension of such extraordinary protection is without support in either precedent or policy, I cannot join Part III of the Court's opinion.

In *Tenney* v. *Brandhove*, 341 U. S. 367 (1951), this Court declined to construe 42 U. S. C. § 1983 as abrogating state legislators' unqualified immunity from suits that arise out of their legislative activity. Underlying the decision in *Tenney* was a recognition of the unique status of the legislative privilege, maintained for several centuries at common law and enshrined in the Federal Constitution, Art. I, § 6, as well as in all but seven of the States' constitutions. 341 U. S., at 372–375. Absent evidence of explicit congressional intent, the Court was unwilling to strip state legislators of a protection so long enjoyed when there remained power in the voters to "discourag[e] or correc[t]" abuses by their elected representatives. *Id.*, at 378.

Neither of the premises on which *Tenney* rested can sustain today's holding. Immunity for appointed regional officials is without common-law antecedents or state constitutional status. Even the compact does not purport to confer immunity on TRPA officials, and neither California nor Nevada

No. 77-1327 - Lake Country Estates v. Tahoe Regional Planning Agency

MR. JUSTICE BLACKMUN, dissenting in part.

I cannot conclude so easily, as the Court does, ante, pp. 13-14, that the members of TRPA are absolutely immune from liability from federal claims for what ultimately may be determined to be legislative acts. Nor do I know what the Court means by a "regional legislator" -- other than its conclusion that members of TRPA are such -- or where the line is now to be drawn between a "regional legislator" and a member of a public body somewhat farther down the scale of entities in our varied political structures.

I have difficulty in associating the members of TRPA with federal or state legislators. Their duties are not solely legislative; they possess

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

Mr. Justice Blackmun

Circulated: 13 FEB 1979

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1327

Lake Country Estates, Inc., et al., Petitioners, v. Tahoe Regional Planning Agency, etc., et al. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[February —, 1979]

MR. JUSTICE BLACKMUN, dissenting in part.

I

I cannot conclude so easily, as the Court does, *ante*, pp. 13–14, that the members of TRPA are absolutely immune from liability from federal claims for what ultimately may be determined to be legislative acts. Nor do I know what the Court means by a "regional legislator"—other than its conclusion that members of TRPA are such—or where the line is now to be drawn between a "regional legislator" and a member of a public body somewhat farther down the scale of entities in our varied political structures.

I have difficulty in associating the members of TRPA with federal or state legislators. Their duties are not solely legislative; they possess some executive powers. They are not in equipoise with other branches of government, and the concept of separation of powers has no relevance to them. They are not subject to the responsibility and the brake of the electoral process. And there is no provision for discipline within the body, as the Houses of Congress and the state legislatures possess.

I therefore am not now prepared to agree that the members of TRPA enjoy absolute immunity, against federal claims, for their "legislative" acts. I think they are entitled to qualified immunity within the limitations outlined in *Scheuer* v.

p. 2 and STYLISTIC CHANGES

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: 15 FEB

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1327

Lake Country Estates, Inc., et al., Petitioners, *v.* Tahoe Regional Planning Agency, etc., et al. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[February —, 1979]

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It is difficult for me to associate the members of TRPA with federal or state legislators. Their duties are not solely legislative; they possess some executive powers. They are not in equipoise with other branches of government, and the concept of separation of powers has no relevance to them. They are not subject to the responsibility and the brake of the electoral process. And there is no provision for discipline within the body, as the Houses of Congress and the state legislatures possess.

I therefore am not now prepared to agree that the members of TRPA enjoy absolute immunity, against federal claims, for their "legislative" acts. I think they are entitled to qualified immunity within the limitations outlined in *Scheuer* v.

February 5, 1979

No. 77-1327 Lake Country Estates v. Tahoe

Dear John:

Although I am glad to join your opinion, as indicated in my separate letter, I have one suggestion that may be worth considering.

On page 9, second full paragraph, you refer to the "intent" of the compacting states. Although it comes out about the same in the end, I would prefer to focus on what the states actually did. The relevant inquiry is whether the interstate agency satisfies the test laid down in cases such as Edelman and therefore enjoys the same immunity as the states.

Minor changes could be made at the beginning of the second full paragraph on page 9 along the following lines:

> "If an interstate compact discloses that the compacting states created an agency comparable to a county or municipality, which has no Eleventh Amendment immunity, there is no reason for conferring immunity on such an entity. Unless there is good reason to believe that the states structured the new agency so that it would enjoy the special constitutional protection of the states themselves, ..."

I will be entirely content with your opinion whether or not you make the foregoing change.

Sincerely,

Mr. Justice Stevens

LFP/lab

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 5, 1979

No. 77-1327 Lake Country Estates v. Tahoe

Dear John:

Please join me.

Sincerely,

Lewis

Mr. Justice Stevens

Copies to the Conference

LFP/lab

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 5, 1979

Re: No. 77-1327 - Lake Country Estates v. Tahoe Regional Planning Agency

Dear John:

Please join me.

Sincerely,

WHR

Mr. Justice Stevens

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

From: Mr. Justice Stevens

JAN 30 '79

Circulated: _____

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1327

Lake Country Estates, Inc., et al., Petitioners, *v.* Tahoe Regional Planning Agency, etc., et al. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[February —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

We granted certiorari to decide whether the Tahoe Regional Planning Agency, an entity created by compact between California and Nevada, is entitled to the immunity that the Eleventh Amendment provides to the compacting States themselves.[1] The case also presents the question whether the individual members of the Agency's governing body are entitled to absolute immunity from federal damage claims when acting in a legislative capacity.

Lake Tahoe, a unique mountain lake, is located partly in California and partly in Nevada. The Lake Tahoe Basin, an area comprising 500 square miles, is a popular resort area that has grown rapidly in recent years.[2]

[1] See *Edelman* v. *Jordan*, 415 U. S. 651 (1974). The Eleventh Amendment provides:

"The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

[2] The Senate Report on the Compact describes the Lake and its background as follows:

"Lake Tahoe, a High Sierra Mountain lake, is famed for its scenic beauty and pristine clarity. Of recent geologic origin, the 190-square-

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 8, 1979

Re: 77-1327 - Lake Country Estates v. Tahoe Regional Planning Agency

Dear Bill:

Thank you for your letter of January 31. You are entirely correct in recalling that I expressed some reservation about absolute immunity for legislative acts of members of bodies like TRPA. In fact, when I was working on the opinion, I gave some thought to suggesting that we DIG as to that issue, but I came to the conclusion that the Court of Appeals' holding required us to decide the issue.

I agree that it would be useful to spell out some guidelines, but I am afraid that if we attempt to do so we may find that we have decided some questions that may well turn out to be hypothetical after the evidence has been received. I am afraid that we may find it difficult to agree on the guidelines without knowing more about the specific conduct that is challenged in this case. I would prefer to leave our holding as narrow as possible at this juncture, and await further developments before trying to answer the questions you suggested in your letter.

Respectfully,

JPS

Mr. Justice Brennan

Copies to the Conference

P.9

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

From: Mr. Justice Stevens

Circulated: FEB 5 79

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1327

Lake Country Estates, Inc., et al., Petitioners, v. Tahoe Regional Planning Agency, etc., et al. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[February —, 1979]

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 15, 1979

MEMORANDUM TO THE CONFERENCE

Re: 77-1327 - Lake Country Estates v. Tahoe Regional Planning Agency

Although I do not propose to change my opinion in response to Bill's and Harry's circulations, I have these comments:

First, I really do not understand Bill's concern about the suggestion that some other interstate agency created by compact may receive Eleventh Amendment immunity. No compact can become effective without the consent of Congress and surely Congress has the power to deprive the federal courts of jurisdiction over actions against such defendants.

Second, in Part II of his dissent Harry seems to suggest that the Speech or Debate Clause of the Federal Constitution might one day be construed to apply to state legislatures. This is indeed a novel suggestion.

As I read them, none of the cases cited by Harry in fact stands for the proposition that any court has held this Clause applicable to state legislatures. Rather, the point is that the Speech or Debate Clause of the Federal

Constitution, like similar clauses incorporated in the constitutions of many of the states, reflects the strongly established common law immunity of legislators from suits. It is this common law immunity, embodied in both federal and state common law, as well as in the Speech and Debate Clause, which the courts have invoked to protect state legislators from suit.

The case cited by Harry directly in support of the contrary proposition is Eslinger v. Thomas, 476 F.2d 225, 228 (CA3 1973). At the point cited, the Court simply says: "the protection of the Speech or Debate Clause of the Constitution of the United States has been extended to state legislators. Tenney v. Brandhove, 341 U.S. 367." In fact, Tenney does not hold that the Speech or Debate Clause itself applies to the state legislators, but rather that Congress in enacting § 1983 did not intend to abrogate the well-established common law protection of legislators.

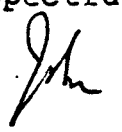
Harry also cites the decisions in In Re Grand Jury Proceedings and United States v. Craig. In the former, 563 F.2d 577, 583 (CA3 1977), the court noted that the public policy which led to inclusion of the Speech or Debate Clause in the Constitution is a strong one with deep historical roots. But most of the states, including Pennsylvania, have similar clauses in their Constitutions, and the policy reasons supporting a privilege apply to state legislators as well. The opinion is clearly based on federal common law, not an application of the Speech or Debate Clause of the United States Constitution to local legislatures. The same seems true with United States v. Craig, 528 F.2d 773, 776-777 (CA7 1976) although that case does use a Speech or Debate Clause-style analysis in dealing with the privileges of state legislators.

Finally, Harry's cite to United States v. Gillock, 587 F.2d 284, 285-286 (CA6 1978), is perhaps most questionable. In its opinion, the Sixth Circuit states that all parties concede that the Speech or Debate Clause of the Federal Constitution is not directly applicable to the instant prosecution, noting that: "of course, the United States Constitution provision does not apply directly, since appellee is not a member of either House of the United States Congress." The question remaining, in the court's view, was "whether a federal common

law privilege for state legislators essentially equivalent to the provisions contained in the English Bill of Rights in the United States and Tennessee Constitutions should be recognized by the federal courts in admitting evidence in a Hobbs Act case." This case hardly seems to support even the suggestion that the Speech or Debate Clause of the Federal Constitution is applicable to state legislators.

Finally, on the more important question whether there is any principled basis for distinguishing a regional legislature from a more local rulemaking body, perhaps nothing stronger than the difference between a six-person jury and a five-person jury is available. Until the question is argued, however, I see no reason to decide it.

Respectfully,



— P. 13

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

From: Mr. Justice Stevens

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1327

Lake Country Estates, Inc., et al., Petitioners, v. Tahoe Regional Planning Agency, etc., et al.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[March —, 1979]

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 14, 1979

MEMORANDUM TO THE CONFERENCE

RE: Case Held For Lake Country Estates v. Tahoe Regional Planning Agency, No. 77-1327

Only one case was held for Lake Country Estates. That case was the decision of the California Court of Appeal, Third District in No. 78-221, Sierra Terreno v. Tahoe Regional Planning Agency. I would recommend that certiorari in that case now be denied.

The petitioners in the Sierra Terreno case are owners of unimproved lots within the Lake Tahoe region. They brought separate actions for inverse condemnation against the Tahoe Regional Planning Agency, claiming that that agency's adoption of the land use ordinance and the reclassification of their land had substantially reduced the value of their property, and that they were entitled to damages under a theory of inverse condemnation. The complaint was dismissed by the trial court, and the California Court of Appeal affirmed. In doing so, the California court relied on the decision of its Supreme Court in HFH, Limited v. Superior Court, 15 Cal. 3d 508 (1975), cert denied, 425 U.S. 904, which held that the mere diminution in value of property due to the rezoning of that property for less intensive uses does not give rise to an action in inverse condemnation. Finding this case to be squarely within the principle of the HFH, Limited decision, the Court of Appeal held that the dismissal of the action was appropriate. The California Supreme Court denied review.