

The Burger Court Opinion Writing Database

Arizona Public Service Co. v. Snead
441 U.S. 141 (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

March 29, 1979

Dear Potter:

Re: 77-1810 Arizona Public Service Co., v.
Arthur B. Snead, etc.

I join.

Regards,

WRB

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 5, 1979

RE: No. 77-1810 Arizona Public Service Co. v. Snead

Dear Bill:

You, Byron and I voted in dissent at conference. I understand, however, that the Court will probably go off on the statute without reaching the constitutional question. If that should be the case I doubt that I would want to dissent. In the circumstances would you take it on?

Sincerely,



Mr. Justice Rehnquist

cc: Mr. Justice White

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

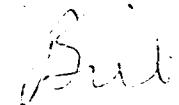
April 3, 1979

Re: No. 77-1810 - Arizona Public Service Co. v. Snead

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart
cc: The Conference

Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

~~PS~~
~~Please give me~~
~~AM~~

From: Mr. Justice Stewart
21 MAR 1979

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

77-1810

Arizona Public Service Company
et al., Appellants
v.
Arthur B. Snead, Etc., et al. } On Appeal from the Su-
preme Court of New
Mexico.

[April —, 1979]

MR. JUSTICE STEWART delivered the opinion of the Court.

New Mexico has imposed a tax on the privilege of generating electricity within its borders. The question in this case is whether that tax conflicts with federal law, statutory or constitutional.

I

The Four Corners power plants, located in New Mexico's desert northwest, are owned by the appellants, five public utilities companies.¹ Most of the electricity generated at the plants is ultimately sold to out-of-state consumers.² New

¹ The five appellants are Arizona Public Service Co., El Paso Electric Co., Salt River Project Agricultural Improvement & Power Dist., Southern California Edison Co., and Tucson Gas & Electric Co. Each appellant owns an undivided interest in the Four Corners Power Plant. Tucson Gas & Electric is an equal co-owner with Public Service Company of New Mexico of units of the San Juan Generating Station. El Paso Electric Co. owns and operates the Rio Grande Generating Station near the town of Anapra, N. M.

² Arizona Public Service Co. makes some minor retail sales of electricity in New Mexico. El Paso Electric makes retail sales in a significant portion of southern New Mexico and is the only one of the appellants regulated by New Mexico as a public utility. El Paso Electric also sells electricity at wholesale in the Republic of Mexico. In 1975 the five appellants generated nearly a billion kilowatt hours of electricity in New Mexico.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 6, 1979

Re: No. 77-1810 - Arizona Public Service
Company v. Snead, etc.

Dear Bill,

Please add my name to your dissent.

Sincerely yours,



Mr. Justice Rehnquist
Copies to the Conference
cmc

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 6, 1979

Re: No. 77-1810 — Arizona Public Service
Company v. Snead, etc.

Dear Bill:

Freudian slip. I meant to join your
concurring opinion.

Sincerely yours,



Mr. Justice Rehnquist
Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 9, 1979

Re: No. 77-1810 - Arizona Public Service Co. v.
Arthur B. Snead

Dear Potter:

Please join me.

Sincerely,

J.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

March 22, 1979

Re: No. 77-1810 - Arizona Public Service Co.
v. Snead

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 29, 1979

No. 77-1810 Arizona Public Service Co. v. Snead

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

LFP/lab

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 6, 1979

Re: No. 77-1810 - Arizona Public Service Co. v. Sneed

Dear Bill:

I will be happy to take on the dissent in this case. My conviction that the New Mexico taxing scheme did not violate the Constitution was somewhat more firmly grounded than my conviction that it did not violate the statute, and so I will do a little more work on the statute to make sure that a dissent is justified if the Court does go off on that ground.

Sincerely,



Mr. Justice Brennan

Copy to Mr. Justice White

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: 2 APR 1979

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1810

Arizona Public Service Company et al., Appellants,
v.
Arthur B. Snead, Etc., et al. } On Appeal from the Supreme Court of New Mexico.

[April —, 1979]

MR. JUSTICE REHNQUIST, concurring in the judgment.

I concur in the judgment of the Court because I agree that the tax imposed by New Mexico's Electrical Energy Tax Act on the generation of electricity within its borders is forbidden by § 212 (a) of the Tax Reform Act of 1976, codified at 15 U. S. C. § 391.

I think that the statutory question is somewhat closer than the Court intimates, both as to the meaning of the actual language of § 391 and as to its legislative history. As the Court indicates and as appellees concede, the debate on the floor of the Senate makes it clear that the original version of § 391 was aimed at New Mexico's energy tax. See *ante*, at 6; Brief of Appellees 14. New Mexico argues here that the original provision was redrafted in conference in order to "save" somewhat similar tax statutes in other States and that as redrafted, § 391 is */sterile* legislation: It accomplishes no more than the Commerce Clause of the Constitution would accomplish of its own force. See *ante*, at 7; Brief of Appellees 11, 16, 24. Congress is vested with the legislative power of the United States, and not the judicial power, and therefore it may be unrealistic to assume automatically that Congress never passes a "sterile" law, in the sense that the provision does no more than the Constitution would have done had Congress never enacted the law. But in my view the laws enacted by Congress certainly are entitled to a presumption

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

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Recirculated: 6 APR 1973

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1810

Arizona Public Service Company
et al., Appellants,
v.
Arthur B. Snead, Etc., et al. } On Appeal from the Su-
preme Court of New
Mexico.

[April —, 1979]

MR. JUSTICE REHNQUIST, with whom MR. JUSTICE WHITE joins, concurring in the judgment.

I concur in the judgment of the Court because I agree that the tax imposed by New Mexico's Electrical Energy Tax Act on the generation of electricity within its borders is forbidden by § 212(a) of the Tax Reform Act of 1976, codified at 15 U. S. C. § 391.

I think that the statutory question is somewhat closer than the Court intimates, both as to the meaning of the actual language of § 391 and as to its legislative history. As the Court indicates and as appellees concede, the debate on the floor of the Senate makes it clear that the original version of § 391 was aimed at New Mexico's energy tax. See *ante*, at 6; Brief of Appellees 14. New Mexico argues here that the original provision was redrafted in conference in order to "save" somewhat similar tax statutes in other States and that as redrafted, § 391 is "sterile" legislation: It accomplishes no more than the Commerce Clause of the Constitution would accomplish of its own force. See *ante*, at 7; Brief of Appellees 11, 16, 24. Congress is vested with the legislative power of the United States, and not the judicial power, and therefore it may be unrealistic to assume automatically that Congress never passes a "sterile" law, in the sense that the provision does no more than the Constitution would have done had Congress never enacted the law. But in my view the laws

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 22, 1979

Re: 77-1810 - Arizona Public Sv. Co.
v. Snead

Dear Potter:

Please join me.

Respectfully,



Mr. Justice Stewart

Copies to the Conference