The Burger Court Opinion Writing Database

Andrus v. Utah

446 U.S. 500 (1980)

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

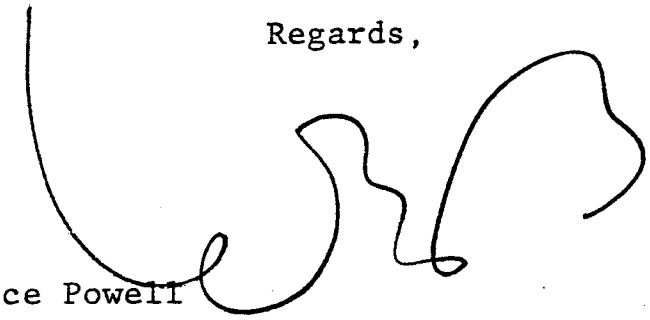
May 12, 1980

Re: 78-1522 - Andrus v. Utah

Dear Lewis:

Please show me joining your dissent.

Regards,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 8, 1980

RE: No. 78-1522 Andrus v. Utah

Dear John:

I agree.

Sincerely,

Bill

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 9, 1980

Re: No. 78-1522, Andrus v. Utah

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

May 6, 1980

Re: 78-1522 - Andrus v. State of Utah

Dear John,

Please join me.

Sincerely yours,

Mr. Justice Stevens

Copies to the Conference

cmc

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 14, 1980

Re: No. 78-1522 - Andrus v. Utah

Dear John:

Please join me.

Sincerely,

T.M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 24, 1980

Re: No. 78-1522 - Andrus v. Utah

Dear Bill:

This is in response to Lewis' note of today to you. The Chief Justice, of course, has not yet assigned the dissent for writing. I am quite content to have Lewis undertake this if he wishes to do so, and if the Chief approves.

Sincerely,

Harry

Mr. Justice Rehnquist

cc: The Chief Justice
Mr. Justice Powell

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 12, 1980

Re: No. 78-1522 - Andrus v. Utah

Dear Lewis:

Please join me in your powerful and, in my view, unanswered dissent in this case.

Sincerely,

H.A.B.

Mr. Justice Powell

cc: The Conference

January 18, 1980

78-1522 Andrus v. Utah
78-1455 U.S. v. Gillock

Dear Chief:

I write concerning initial responsibility for drafting dissents in these two cases. According to my notes, you, Bill Rehnquist, Harry and I were in dissent in Andrus. In U. S. v. Gillock (privilege of state legislators in Tennessee) I believe that only Bill Rehnquist and I were in dissent.

Unless you have a different thought, I will draft a dissent in Andrus, and perhaps Bill will be willing to take on the Gillock dissent.

The three of us also are together in 78-1874 Massachusetts v. Meehan (the case involving validity of the confession and admissibility of bloody bluejeans obtained in a search). I will write a short dissent addressed solely to the admissiblity of the bluejeans, as there was abundant probable cause for the search. The defect was in the warrant. My understanding is that you and Bill believe the confession also should have been admitted. I may not reach that question. I would hold that the spontaneous declaration to the mother is admissible.

In sum, I will do a full dissent for all of us in Andrus, and a bobtail dissent on the one issue in Meehan. Perhaps Bill will be willing to do Gillock and also the full dissent in Meehan. You might let us know whether this meets with your approval.

Sincerely,

Mr. Justice Rehnquist

lfp/ss
cc: Mr. Justice Rehnquist

January 23, 1980

78-1522 Andrus v. Utah

Dear Bill:

Referring to our discussion of the dissent in this case, I will be glad to undertake it unless either the Chief or Harry wishes to write it.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

cc: The Chief Justice
Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 6, 1980

78-1522 Andrus v. Utah

Dear John:

I will circulate a dissent in this case, I hope in the fairly near future.

Sincerely,

L. Lewis

Mr. Justice Stevens

lfp/ss

cc: The Conference

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: MAY 8 1980

Recirculated: _____

5-8-80

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1522

Cecil D. Andrus, Secretary of the Interior, Petitioner, *v.* State of Utah. | On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

[April —, 1980]

MR. JUSTICE POWELL, dissenting.

Since the early days of the Republic, the Federal Government's compact with each new State has granted the State land for the support of education and allowed the State to select land of equal acreage as indemnity for deficiencies in the original grant. Today, the Court holds that the Taylor Grazing Act abrogated those compacts by approving selection requirements completely at odds with the equal acreage principle. Nothing in the Court's opinion persuades me that Congress meant so lightly to breach compacts that it has respected and enforced throughout our Nation's history. I therefore dissent.

The Court's decision rests on three fundamental misconceptions. First, the Court reasons from the accepted proposition that indemnity lands compensate the States for gaps in the original grants to the dubious conclusion that the States have no right to lands of equal acreage. *Ante*, at 7–10. This argument ignores the clear meaning of statutes spanning about two centuries in which Congress specifically adopted an equal acreage principle as the standard for making compensation. Second, the Court believes that the establishment of grazing districts under the Taylor Grazing Act has the same effect as a withdrawal of lands under the Pickett Act. *Id.*, at 13–19. This belief manifests a serious misunderstanding of both the history of federal land management and the language of the Taylor Grazing Act. Third, the Court assumes—without

Footnotes Renumbered
pp. 1, 8, 11, 12, 13, 14, 15, 19

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

From: Mr. Justice Powell

5-13-80

Circulated: _____

2nd DRAFT

Recirculated: MAY 13 1980

SUPREME COURT OF THE UNITED STATES

No. 78-1522

Cecil D. Andrus, Secretary of the Interior, Petitioner, *v.* State of Utah. | On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

[April —, 1980]

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

Since the early days of the Republic, the Federal Government's compact with each new State has granted the State land for the support of education and allowed the State to select land of equal acreage as indemnity for deficiencies in the original grant. Today, the Court holds that the Taylor Grazing Act abrogated those compacts by approving selection requirements completely at odds with the equal acreage principle. Nothing in the Court's opinion persuades me that Congress meant so lightly to breach compacts that it has respected and enforced throughout our Nation's history. I therefore dissent.

The Court's decision rests on three fundamental misconceptions. First, the Court reasons from the accepted proposition that indemnity lands compensate the States for gaps in the original grants to the mistaken conclusion that the States have no right to lands of equal acreage. *Ante*, at 7–10. This argument ignores the clear meaning of statutes spanning about two centuries in which Congress specifically adopted an equal acreage principle as the standard for making compensation. Second, the Court believes that the establishment of grazing districts under the Taylor Grazing Act has the same effect as a withdrawal of lands under the Pickett Act. *Id.*, at 13–19. This belief manifests a serious misunderstanding of both the

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 21, 1980

Re: Nos. 78-1522 Andrus v. Utah & 78-1455 United States v. Gillock

Dear Lewis:

I think I have confused the decision as to the responsibility for the dissent in Andrus v. Utah by my failure to respond other than orally to the Chief's letter to me of December 17, asking me to take on the dissent in that case. Needless to say, I heartily concur in the suggestion of your letter that you do a full dissent for all of us in Andrus, and am quite willing to do the dissent in Gillock (in which the Chief is writing the opinion for the Court).

Sincerely,

WEM

Mr. Justice Powell

cc: The Chief Justice

P.S. (To Justice Powell Only)

O.K. In Gillock I had given some thought to suggesting to you, Lewis, that the two of us simply state that "for the reasons stated by Chief Judge Edwards in his opinion for the Court of Appeals for the Sixth Circuit" we would dissent. This would both simplify the process for us, since I think he did a pretty good job in his opinion, and also show that notwithstanding Columbus and Dayton last Term we have not wholly lost our professional respect for him. What do you think of this as an idea; if you would prefer a regular dissent, I will be happy to undertake it.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 9, 1980

Re: No. 78-1522 Andrus v. Utah

Dear Lewis:

Please join me in your dissent in this case.

Sincerely,

WHR

Mr. Justice Powell

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

pp. 7, 13, 16, 20

From: Mr. Justice Stevens

Circulated: MAY 5 '80

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–1522

Cecil D. Andrus, Secretary of the Interior, Petitioner, *v.* State of Utah. | On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

[May —, 1980]

MR. JUSTICE STEVENS delivered the opinion of the Court.

The State of Utah claims the right to select extremely valuable oil shale lands located within federal grazing districts in lieu of and as indemnification for original school land grants of significantly lesser value that were frustrated by federal pre-emption, or private entry, prior to survey. The question presented is whether the Secretary of the Interior is obliged to accept Utah's selections of substitute tracts of the same size as the originally designated sections even though there is a gross disparity between the value of the original grants and the selected substitutes. We hold that the Secretary's "grossly disparate value" policy is a lawful exercise of the broad discretion vested in him by § 7 of the Taylor Grazing Act of 1934, 48 Stat. 1272, as amended in 1936, 49 Stat. 1976, 43 U. S. C. § 315f, and is a valid ground for refusing to accept Utah's selections.

Utah became a State in 1896. In the Utah Enabling Act of 1894, Congress granted Utah, upon admission, four numbered sections in each township for the support of public schools. The statute provided that if the designated sections had already "been sold or otherwise disposed of" pursuant to another act of Congress, "other lands equivalent thereto . . . are hereby granted." The substitute grants, denominated "indemnity lands" were "to be selected within [the] State in

P. 6, 7, 13, 15, 18, 19, 20

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: _____

Recirculated: MAY 9 '80

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–1522

Cecil D. Andrus, Secretary of the Interior, Petitioner, *v.* State of Utah. | On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

[May —, 1980]

MR. JUSTICE STEVENS delivered the opinion of the Court.

The State of Utah claims the right to select extremely valuable oil shale lands located within federal grazing districts in lieu of and as indemnification for original school land grants of significantly lesser value that were frustrated by federal pre-emption, or private entry, prior to survey. The question presented is whether the Secretary of the Interior is obliged to accept Utah's selections of substitute tracts of the same size as the originally designated sections even though there is a gross disparity between the value of the original grants and the selected substitutes. We hold that the Secretary's "grossly disparate value" policy is a lawful exercise of the broad discretion vested in him by § 7 of the Taylor Grazing Act of 1934, 48 Stat. 1272, as amended in 1936, 49 Stat. 1976, 43 U. S. C. § 315f, and is a valid ground for refusing to accept Utah's selections.

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