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San Diego Gas & Electric Co. v. San Diego

450 U.S. 621 (1981)

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 11, 1981

RE: No. 79-678, San Diego Gas & Electric Co.
v. City of San Diego

Dear Harry:

I believe that I can join, and I may have a few small suggestions following, none of which should give you any problems.

Regards,

WEB
by jca

Mr. Justice Blackmun

Copies to the Conference

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U.S. DEPARTMENT OF JUSTICE

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

CHAMBERS OF
THE CHIEF JUSTICE

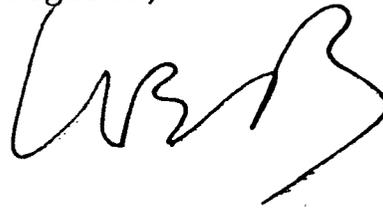
March 19, 1981

Re: No. 79-678 - San Diego Gas & Electric
v. City of San Diego

Dear Harry:

I join.

Regards,



Justice Blackmun

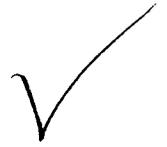
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U.S. DEPARTMENT OF JUSTICE

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



CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 15, 1980

RE: No. 79-678 San Diego Gas and Electric Co. v.
City of San Diego

Dear Potter, Lewis & Bill

The four of us were to reverse in the above.
I'll be happy to try my hand in preparing a dissent.
I contemplate reaching the merits on the inverse
condemnation issue.

Sincerely,

A handwritten signature, likely "Bill", is written in cursive below the word "Sincerely,".

Mr. Justice Stewart
Mr. Justice Powell
Mr. Justice Rehnquist

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 6, 1981

RE: No. 79-678 San Diego Gas & Electric Co. v.
City of San Diego

Dear Harry:

In due course I shall circulate a dissent from
the dismissal and shall also reach the merits.

Sincerely,

Bill

Mr. Justice Blackmun

cc: The Conference

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MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

TO: the Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: MAR 6 1981

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-678

San Diego Gas & Electric Company, Appellant,
v.
City of San Diego et al. } On Appeal from the Court of Appeal of California for the Fourth Appellate District.

[March —, 1981]

JUSTICE BRENNAN, dissenting.

Title 28 U. S. C. § 1257 limits this Court's jurisdiction to review judgments of state courts to "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had." The Court today dismisses this appeal on the ground that the Court of Appeal of California, Fourth District, failed to decide the federal question whether a "taking" of appellant's property had occurred, and therefore had not entered a final judgment or decree on that question appealable under § 1257. Because the Court's conclusion fundamentally mischaracterizes the holding and judgment of the Court of Appeal, I respectfully dissent from the Court's dismissal and reach the merits of appellant's claim.

I

In 1966, appellant assembled a 412-acre parcel of land as a potential site for a nuclear power plant. At that time, approximately 116 acres of the property were zoned for industrial use, with most of the balance zoned in an agricultural holding category. In 1967, appellee adopted its General Plan for San Diego, designating most of appellant's property for industrial use. In 1973, the city took three critical actions which together form the predicate of the instant litigation: it down-zoned some of appellant's property from industrial to agricultural; it incorporated a new open

WSB

[Handwritten notes and scribbles]

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 11, 1981

MEMORANDUM TO THE CONFERENCE

Re: San Diego Gas & Electric Co. v. City of San Diego
No. 79-678

I am adding the following sentence to the dissent, at the end of footnote 7 on page 8:

Therefore, the Court's belief that the "disputed fact issues" involve appellant's failure to apply for a permit, ante, at 9-10, n.12, is beside the point, since under no factual circumstances may the California courts find a Fifth Amendment "taking."

Sincerely,

Bul

The Conference

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

From: Mr. Justice Brennan

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Circulated: _____
13 1981
Recirculated: _____

No. 79-678

San Diego Gas & Electric Company, Appellant,
v.
City of San Diego et al. } On Appeal from the Court of Appeal of California for the Fourth Appellate District.

[March —, 1981]

JUSTICE BRENNAN, with whom JUSTICE STEWART, JUSTICE MARSHALL, and JUSTICE POWELL join, dissenting.

Title 28 U. S. C. § 1257 limits this Court's jurisdiction to review judgments of state courts to "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had." The Court today dismisses this appeal on the ground that the Court of Appeal of California, Fourth District, failed to decide the federal question whether a "taking" of appellant's property had occurred, and therefore had not entered a final judgment or decree on that question appealable under § 1257. Because the Court's conclusion fundamentally mischaracterizes the holding and judgment of the Court of Appeal, I respectfully dissent from the Court's dismissal and reach the merits of appellant's claim.

I

In 1966, appellant assembled a 412-acre parcel of land as a potential site for a nuclear power plant. At that time, approximately 116 acres of the property were zoned for industrial use, with most of the balance zoned in an agricultural holding category. In 1967, appellee adopted its General Plan for San Diego, designating most of appellant's property for industrial use. In 1973, the city took three critical actions which together form the predicate of the instant litigation: it down-zoned some of appellant's property from industrial to agricultural; it incorporated a new open

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 18, 1981

MEMORANDUM TO THE CONFERENCE

RE: San Diego Gas & Electric Co. v. San Diego
No. 79-678

I am inserting the following footnote at the end of the first full paragraph on page 9. I will circulate a printed draft as soon as the printer has finished.

Sincerely,

Bill

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In his concurring opinion, my Brother REHNQUIST, who dissented in Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975), writes:

"I am not sure under how many of the four exceptions of Cox Justice Brennan may view this case as falling, but it seems to me that this case illustrates the problems which arise from a less than literal reading of the language 'final judgment or decree.'" Ante, at ____.

Then, he assumes that I agree with the Court that further proceedings will occur on remand to the Superior Court, and he concludes that this appeal is therefore not final within the literal language of 28 U.S.C. §1257, even if it may be treated as final under Cox. Ante, at ____.

With all respect, my Brother REHNQUIST misreads my view. I view the judgment as final within the literal meaning of §1257, and therefore do not find it necessary to rely on any "exception" to the finality rule. Appellant alleged and proved a "taking" of its property without just compensation under the Just Compensation Clause of the Fifth Amendment. On review, the California Court of Appeal reversed, holding as a matter of federal law that there was no "taking." Since that time, appellant has continued to press its federal Just Compensation claim, in a petition for rehearing before the Court of Appeal, a petition for hearing before the California Supreme Court, and an appeal to this Court. The Court of Appeal did not direct further proceedings in Superior Court on appellant's claim. What the Court of Appeal indicated was that appellant was not precluded from "elect[ing] to retry the case" on an alternative

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constitutional theory not based on the Just Compensation Clause. In other words, the Court of Appeal refused to recognize an alleged and proven constitutional violation and proposed that appellant try another and different constitutional theory. But obviously the judgment is final as to the rejected constitutional theory under even the strictest reading of §1257. I can see no possible reason for refusing to decide appellant's claim solely on the basis that the Court of Appeal proposed its own constitutional theory and strategy for retrying the case.

In sum, the accurate statement of my view is that appellant has received a final judgment. That judgment is "subject to no further review or correction in any other state tribunal; it [is] final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. It [is] the final word of a final court." Market Street Ry. Co. v. Railroad Commission, 324 U.S. 548, 551 (1945).

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6, 9-10, 17, 18, 21, 23, 24

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

From: Mr. Justice Brennan

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-678

San Diego Gas & Electric Company, Appellant,
v.
City of San Diego et al. } On Appeal from the Court of Appeal of California for the Fourth Appellate District.

[March —, 1981]

JUSTICE BRENNAN, with whom JUSTICE STEWART, JUSTICE MARSHALL, and JUSTICE POWELL join, dissenting.

Title 28 U. S. C. § 1257 limits this Court's jurisdiction to review judgments of state courts to "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had." The Court today dismisses this appeal on the ground that the Court of Appeal of California, Fourth District, failed to decide the federal question whether a "taking" of appellant's property had occurred, and therefore had not entered a final judgment or decree on that question appealable under § 1257. Because the Court's conclusion fundamentally mischaracterizes the holding and judgment of the Court of Appeal, I respectfully dissent from the Court's dismissal and reach the merits of appellant's claim.

I

In 1966, appellant assembled a 412-acre parcel of land as a potential site for a nuclear power plant. At that time, approximately 116 acres of the property were zoned for industrial use, with most of the balance zoned in an agricultural holding category. In 1967, appellee adopted its General Plan for San Diego, designating most of appellant's property for industrial use. In 1973, the city took three critical actions which together form the predicate of the instant litigation: it down-zoned some of appellant's property from industrial to agricultural; it incorporated a new open

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 6, 1981

Re: 79-678 - San Diego Gas & Electric Co.
v. San Diego

Dear Harry,

I shall await the dissenting opinion.

Sincerely yours,

P.S.
/

Justice Blackmun

Copies to the Conference

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NATIONAL ARCHIVES MANUSCRIPT DIVISION

U.S. DEPARTMENT OF COMMERCE

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 9, 1981

Re: No. 79-678, San Diego Gas & Electric Co.
v. San Diego

Dear Bill,

Please add my name to your dissenting
opinion.

Sincerely yours,

P.S.
/

Justice Brennan

Copies to the Conference

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U.S. SUPREME COURT LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 7, 1981

Re: 79-678 - San Diego Gas &
Electric Company v. City
of San Diego

Dear Harry,

Please join me.

Sincerely yours,



Mr. Justice Blackmun

Copies to the Conference

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THE MANUSCRIPT DIVISION

U.S. SUPREME COURT ADVISORY BOARD

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 8, 1981

Re: No. 79-678 - San Diego Gas & Electric Co. v.
City of San Diego et al.

Dear Harry:

I await the dissent.

Sincerely,

T.M.

T.M.

Justice Blackmun

cc: The Conference

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THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF CONGRESS

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 10, 1981

Re: No. 79-678 - San Diego Gas & Electric Co. v.
City of San Diego et al.

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.
T.M.

Justice Brennan

cc: The Conference

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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: JAN 6 1981

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-678

San Diego Gas & Electric Company, Appellant,
v,
City of San Diego et al. } On Appeal from the Court of Appeal of California for the Fourth Appellate District.

[January —, 1981]

JUSTICE BLACKMUN delivered the opinion of the Court.

In this case, appellant San Diego Gas & Electric Company, a California corporation, asks this Court to rule that a State must provide a monetary remedy to a landowner whose property allegedly has been "taken" by a regulatory ordinance claimed to violate the Just Compensation Clause of the Fifth Amendment.¹ This question was left open last Term in *Agins v. City of Tiburon*, 447 U. S. —, — (1980) (slip op. 7). Because we conclude that we lack jurisdiction in this case, we again must leave the issue undecided.

WB
Director

I

Appellant owns a 412-acre parcel of land in Sorrento Valley, an area in the northwest part of the city of San Diego, Cal. It assembled and acquired the acreage in 1966, at a cost of about \$1,770,000, as a possible site for a nuclear power plant to be constructed in the 1980's. Approximately 214 acres of the parcel lie within or near an estuary known as the Los

¹ "[N]or shall private property be taken for public use, without just compensation."

The Fifth Amendment's prohibition applies against the States through the Fourteenth Amendment. *Chicago, B., & Q. R. Co. v. Chicago*, 166 U. S. 226, 239 (1897); *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, — U. S. —, — (1980).

[Handwritten notes and signatures]

Only corrections heretofore marked

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice [unclear]
Mr. Justice [unclear]
Mr. Justice [unclear]

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: JAN 7 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-678

San Diego Gas & Electric Company, Appellant,
v.
City of San Diego et al. } On Appeal from the Court of Appeal of California for the Fourth Appellate District.

[January —, 1981]

JUSTICE BLACKMUN delivered the opinion of the Court.
In this case, appellant San Diego Gas & Electric Company, a California corporation, asks this Court to rule that a State must provide a monetary remedy to a landowner whose property allegedly has been "taken" by a regulatory ordinance claimed to violate the Just Compensation Clause of the Fifth Amendment.¹ This question was left open last Term in *Agins v. City of Tiburon*, 447 U. S. —, — (1980) (slip op. 7). Because we conclude that we lack jurisdiction in this case, we again must leave the issue undecided.

I

Appellant owns a 412-acre parcel of land in Sorrento Valley, an area in the northwest part of the city of San Diego, Cal. It assembled and acquired the acreage in 1966, at a cost of about \$1,770,000, as a possible site for a nuclear power plant to be constructed in the 1980's. Approximately 214 acres of the parcel lie within or near an estuary known as the Los

¹"[N]or shall private property be taken for public use, without just compensation."

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REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION OF THE SUPREME COURT OF THE UNITED STATES

January 22, 1981

Re: No. 79-678 - San Diego Gas & Electric Company
v. City of San Diego

Dear Bill:

After we had discussed your inquiry about Cox while we were on the bench yesterday, I asked my clerk, John Dean, to check into it more specifically. I enclose for your consideration a copy of a memorandum he gave me. He will be a little embarrassed by the presence of the personal references, but I told him you would not mind at all. Byron's prompt joinder indicates to me that he feels Cox is not implicated.

Sincerely,

HAB

Mr. Justice Rehnquist

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 9, 1981

MEMORANDUM TO THE CONFERENCE

Re: No. 79-678 - San Diego Gas & Electric Company
v. City of San Diego

I am sending to the Printer today some responsive footnotes to the dissent. The new run should be around very shortly.

H.A.B.

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CONFERENCE

Stylistic changes; pp. 6-7, 9-10;
and footnotes 9-13 renumbered

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

From: Mr. Justice Blackmun

Circulated: _____

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-678

San Diego Gas & Electric
Company, Appellant,
v.
City of San Diego et al. } On Appeal from the Court of
Appeal of California for the
Fourth Appellate District.

[January —, 1981]

JUSTICE BLACKMUN delivered the opinion of the Court.

Appellant San Diego Gas & Electric Company, a California corporation, asks this Court to rule that a State must provide a monetary remedy to a landowner whose property allegedly has been "taken" by a regulatory ordinance claimed to violate the Just Compensation Clause of the Fifth Amendment.¹ This question was left open last Term in *Agins v. City of Tiburon*, 447 U. S. 225, 263 (1980) (slip op. 7). Because we conclude that we lack jurisdiction in this case, we again must leave the issue undecided.

I

Appellant owns a 412-acre parcel of land in Sorrento Valley, an area in the northwest part of the city of San Diego, Cal. It assembled and acquired the acreage in 1966, at a cost of about \$1,770,000, as a possible site for a nuclear power plant to be constructed in the 1980's. Approximately 214 acres of the parcel lie within or near an estuary known as the Los

¹"[N]or shall private property be taken for public use, without just compensation."

The Fifth Amendment's prohibition applies against the States through the Fourteenth Amendment. *Chicago, B., & Q. R. Co. v. Chicago*, 166 U. S. 226, 239 (1897); *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, — U. S. —, — (1980).

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 24, 1981

MEMORANDUM TO THE CONFERENCE

Re: Holds for 79-678 - San Diego Gas and Electric Co.
v. City of San Diego

There is one hold for San Diego. It is No. 79-2010, Mark-Garner Associates, Inc. v. Bensalem Township.

Petitioner seeks review of CA3's decision that a township's rezoning of its property did not violate the Due Process, Equal Protection, or Just Compensation Clauses. Petitioner is a real estate developer which planned to build 557 residential condominiums on a 50 acre parcel. After it had received initial approval for this project and had built 106 of the units (along with numerous common area improvements), the respondent township amended its zoning ordinance, lowering the permissible density for petitioner's property. The new ordinance will permit the building of a total of only 200 units.

This action arose when a group of condominium owners in the development sued petitioner, along with the township and some of its officials, to compel completion of the full 557 units. Petitioner cross-claimed against the other defendants, alleging that the rezoning was unconstitutional. The District Court dismissed the complaint and the cross-claim. Petitioner was the only party to appeal, and the CA affirmed. It held that the reduction in density levels violated neither the Due Process nor the Equal Protection Clauses, because it was a rational means of accomplishing the legitimate goal of limiting population growth. It also rejected petitioner's argument under the Just Compensation Clause, noting the ordinance does not deprive petitioner of all beneficial use of its land.

The CA's rejection of the due process and equal protection claims is a common application of the rational relation test, and I see no need for further review. Its decision on the "taking" question is consistent with Agins v. City of Tiburon, 447 U.S. 255 (1980), since the zoning ordinance permits residential development of petitioner's property. As in Agins, there is no need to consider what remedy would have been available to petitioner if it had succeeded in establishing a taking. Therefore, I shall vote to deny cert in this case.

HAB.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 6, 1981

79-678 San Diego Gas & Electric v. City of San Diego

Dear Harry:

I will await Bill Brennan's dissent.

Sincerely,

Lewis

Mr. Justice Blackmun

lfp/ss

cc: The Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION OF THE SUPREME COURT OF THE UNITED STATES

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 9, 1981

79-678 San Diego Gas & Electric v. City of San Diego

Dear Bill:

Please join me in your fine dissent.

Sincerely,



Mr. Justice Brennan

lfp/ss

cc: The Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION OF THE LIBRARY OF CONGRESS

79-678

1/21/81

Supreme Court of the United States
Memorandum

Harris - _____, 1981

In your Calif condemnation
case opinion, you DFWJ -
do not cite Cox - were it
not for Cox, I would not
hesitate to give you, and I
don't think Cox is a correct
interpretation of §1257. I voted
the other way at conference be-
cause I thought as long as
Cox was to follow Cox, Cal CA
was incorrect in some of the dicta-

Do you think your opinion
cuts both ways or not?
If this is an unfair question,
you will not offend me by
frowning. Mine is the honesty (not)
with

Mr. 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: MAR 16 1981

Re: No. 79-678 San Diego Gas & Electric Co. v. San Diego

Recirculated: _____

JUSTICE REHNQUIST, concurring.

If I were satisfied that this appeal was from a "final judgment or decree" of the California Court of Appeal, as that term is used in 28 U.S.C. §1257, I would have little difficulty in agreeing with much of what is said in the dissenting opinion of Justice Brennan. Indeed, the Court's opinion notes "that the federal constitutional aspects of that issue are not to be cast aside lightly...." Ante, p. 11.

But "the judicial Power of the United States" which is vested in this Court by Article III of the Constitution is divided by that article into original jurisdiction and appellate jurisdiction. With respect to appellate jurisdiction, Article III provides:

"In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both

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U.S. DEPARTMENT OF JUSTICE

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

Printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

MAR 18 1981

No. 79-678

San Diego Gas & Electric Company, Appellant,
v.
City of San Diego et al. { On Appeal from the Court of Appeal of California for the Fourth Appellate District.

[March —, 1981]

JUSTICE REHNQUIST, concurring.

If I were satisfied that this appeal was from a "final judgment or decree" of the California Court of Appeal, as that term is used in 28 U. S. C. § 1257, I would have little difficulty in agreeing with much of what is said in the dissenting opinion of JUSTICE BRENNAN. Indeed, the Court's opinion notes "that the federal constitutional aspects of that issue are not to be cast aside lightly. . . ." *Ante*, p. 11.

But "the judicial Power of the United States" which is vested in this Court by Art. III of the Constitution is divided by that article into original jurisdiction and appellate jurisdiction. With respect to appellate jurisdiction, Art. III provides:

"In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

The particular "regulation" of our appellate jurisdiction here relevant is found in § 1257 of Title 28 U. S. C. which provides:

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

"(2) By appeal, where it is drawn in question the

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 6, 1981

Re: 79-678 - San Diego Gas & Electric
Co. v. City of San Diego

Dear Harry:

Please join me.

Respectfully,



Justice Blackmun

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U.S. SENATE LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 10, 1981

Re: 79-678 - San Diego Gas v. City of
San Diego

Dear Harry:

Before I had the benefit of Bill Brennan's opinion, I joined you. After reading it, I am even more firmly convinced that your analysis is correct. Indeed, in addition to the fact that the taking question remains open and therefore deprives the State judgment of finality, I think it is also significant that we do not know what relief may be awarded by the State courts. It is entirely possible--given the rise in real estate values since 1973--that this litigation has produced a substantial net benefit for the power company and that there is not even a colorable basis for awarding it any monetary relief at all.

I also would note a certain irony in our colleagues' interest in leaping to the defense of the power company's property interests when they were so ready to conclude that an issue involving the termination of parental rights was not "properly presented." Your position in the two cases is of course consistent, but I do not understand how one can consider the issue presented by this case ripe for review when the burden of proof issue was saved for another day.

Respectfully,



Justice Blackmun

Copies to the Conference

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MANUSCRIPT DIVISION

U.S. SUPREME COURT