

The Burger Court Opinion Writing Database

United States v. New Mexico

455 U.S. 720 (1982)

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 26, 1982

Re: No. 80-702 - U.S. v. New Mexico

Dear Harry,

I join.

Regards,

A handwritten signature in black ink, appearing to be 'W. B.', written in a cursive style.

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 14, 1981

RE: No. 80-702 United States v. New Mexico

Dear Byron and Thurgood:

I voted with you to reverse in the above case because at that time I wasn't sure I could agree with the majority of six that Boyd substantially overruled Kern and King and Boozer. I'll await the writing, but don't believe I should undertake now to say I'll do a dissent. Would either of you care to do so?

Sincerely,



Justice White

Justice Marshall

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 16, 1982

RE: No. 80-702 United States v. New Mexico

Dear Harry:

I voted the other way at Conference primarily because I thought Kern-Limerick required invalidation of the New Mexico tax. I'm content, however, with your analysis of the case law, including Kern-Limerick.

May I however offer one suggestion? It may be already implicit in your treatment of Congress' role at the first sentence of the full paragraph on page 16, and in the concluding paragraph of the opinion but I'd feel more comfortable if you spelled out the thought by the addition, for example, of the following to the sentence at page 16: "by so expressly providing as respects contracts in a particular form, or contracts under particular programs."

Sincerely,

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 16, 1982

RE: No. 80-702 United States v. New Mexico

Dear Harry:

Thanks for your response to my suggestion. Please
join me.

Sincerely,

Bill

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 14, 1981

RE: 80-702 - United States v. New Mexico

Dear Bill:

I voted to reverse because I thought affirmance would substantially narrow the immunity available to the United States under prior cases and because I preferred, at least for now, to leave that kind of change to Congress, particularly since that body has been responsive in this area. But I am sympathetic with the result the majority reaches, and I may join it. Like you, therefore, I'll wait and see.

Sincerely,



Justice Brennan

Copy to Justice Marshall

bkh

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 3, 1982

Re: 80-702 - United States v. New Mexico

Dear Harry,

I have decided not to write separately
and need not be shown in dissent.

Sincerely yours,



Justice Blackmun

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

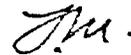
February 17, 1982

Re: No. 80-702 - United States v. New Mexico

Dear Harry:

Please join me.

Sincerely,



T.M.

Justice Blackmun

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Blackmun
Justice Stevens
Justice O'Connor

From: Justice Blackmun

Circulated: Feb 12 1982

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-702

UNITED STATES, PETITIONER *v.*
NEW MEXICO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT

[February —, 1982]

JUSTICE BLACKMUN delivered the opinion of the Court.

We are presented here with a recurring problem: to what extent may a State impose taxes on contractors that conduct business with the Federal Government?

I
A

This case concerns the contractual relationships between three private entities and the United States. The three agreements involved are typical in most respects of management contracts devised by the Atomic Energy Commission (AEC), now the Department of Energy (DOE).¹ Like many of the Government's contractual undertakings, DOE management contracts generally provide the private contractor with its costs plus a fixed fee. But in several ways DOE agreements are a unique species of contract, designed to facilitate long-term private management of government-owned re-

¹ Responsibility for the Nation's nuclear program was transferred from the AEC to the Energy Research and Development Administration in 1975, and to the Department of Energy in 1977. See Energy Reorganization Act of 1974, Pub. L. 93-438, 88 Stat. 1233, 42 U. S. C. § 5801 *et seq.*; Exec. Order No. 11834, 3 CFR 943 (1971-1975 Comp.); Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565, 42 U. S. C. § 7101 *et seq.* (1976 ed., Supp. III).

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 16, 19

Re: No. 80-702 - United States v. New Mexico

Dear Bill:

I shall be happy to add the words you suggest in your letter of today at the end of the first sentence of the first paragraph on page 16.

Sincerely,



Justice Brennan

cc: The Conference

4. 16

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Blackmun

Circulated: _____

Recirculated: FEB 19 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-702

UNITED STATES, PETITIONER *v.*
NEW MEXICO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 24, 1982

MEMORANDUM TO THE CONFERENCE

Re: Holds for No. 80-702, United States v. New Mexico

There are two holds for New Mexico:

1. No. 81-969, State of Washington v. United States. Washington assesses a sales and use tax, which is imposed on the buyer or consumer of goods. Prior to 1975, neither tax was imposed on construction contractors when the goods were to be incorporated into a construction project; instead, the owner of the realty was statutorily defined as the buyer or consumer and therefore was liable for the tax. In 1975 the State amended the statute so that, with respect to construction on federally-owned land, the prime contractor came to be treated as the buyer or user, and thus became directly liable for the taxes on material used in the construction project. Prime contractors on non-federal projects were not made liable. The Ninth Circuit invalidated this tax as having a discriminatory effect on contractors dealing with the Federal Government. The State has appealed.

I would affirm. As the Ninth Circuit noted, the Washington tax expressly imposes a burden on federal contractors that is not shared by other, similarly situated contractors. Unlike the tax at issue in New Mexico or in United States v. County of Fresno, 429 U.S. 452 (1977), the levy here expressly discriminates against those dealing with the Federal Government. While the contractors may pass the burden on to the Government, that would not cure the discriminatory effect.

2. No. 81-1000, California State Board of Equalization v. United States. This involves a California tax on the sale or lease of personal property. The retailer or lessor is statutorily responsible for paying the tax on his total gross receipts. There is an exception, however: the retailer or lessor may expressly collect the tax from the purchaser or lessee, in which case the amount of the tax paid is deducted from the lessor's total taxable gross receipts. The Ninth Circuit held the tax unconstitutional as applied to federal leases. The court acknowledged that the statutory scheme made the retailer or lessor responsible for payment of the tax. But the court noted that the lessor maximizes his profit if he separately states and collects the tax from the lessee. This economic incentive "all but compels the lessor to collect the tax from

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 17, 1982

80-702 United States v. New Mexico

Dear Harry:

Please join me.

Sincerely,



Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

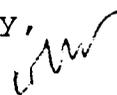
February 17, 1982

Re: No. 80-702 United States v. New Mexico

Dear Harry:

Please join me in your opinion for the Court.

Sincerely,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 16, 1982

Re: 80-702 - United States v. New Mexico

Dear Harry:

Please join me.

Respectfully,



Justice Blackmun

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 16, 1982

No. 80-702 United States v. New Mexico

Dear Harry,

Please join me in your opinion in the
referenced case.

Sincerely,



Justice Blackmun

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