

The Burger Court Opinion Writing Database

Washington v. United States

460 U.S. 536 (1983)

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, 1982

Re: 81-969 - Washington v. United States

Dear Bill:

I now join your dissent as recirculated May 7.

This provides a 4th vote to Note Probable
Jurisdiction.

Regards,



Justice Rehnquist

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May 6, 1982

81-969 Washington v. United States

Dear Bill:

Although my votes in this case have ranged from one end of the spectrum to the other, your dissent has persuaded me that the issue is important and the decision of CA 9 probably incorrect.

Accordingly, please add my name to your dissent.

Sincerely,

Justice Rehnquist

Copies to the Conference

LFP/vde

pp. 2.4

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

From: **Justice Rehnquist**

Circulated: MAY 3 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

WASHINGTON ET AL. v. UNITED STATES

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 81-969. Decided May —, 1982

JUSTICE REHNQUIST, dissenting

In this case, the Court of Appeals for the Ninth Circuit held that Washington's sales and use tax statutes are invalid under the Supremacy Clause as applied to prime contractors for construction work performed on federally owned land. 654 F. 2d 570 (1981). According to the Court of Appeals, these statutes discriminate against those who contract with the Federal Government because Washington does not tax non-federal contractors. Today the Court summarily affirms the judgment of the Court of Appeals. I would note probable jurisdiction of this appeal.

Washington imposes a sales and use tax on every retail sale, or use, of tangible personal property within the State. Wash. Rev. Code §§ 82.04, 82.08, 82.12. These taxes are imposed on the "consumer." With respect to construction projects, the contractor's purchase of material incorporated into the project is not subject to the sales and use tax. Instead, the transaction under the contract between the contractor and the owner of the realty constitutes the retail sale that is subject to the tax. The contractor is required to collect the tax from the owner of the project.¹

Because a State may not impose a sales tax on the United States, the taxing scheme is altered somewhat when the Federal Government is the project owner. In such a case, Washington treats the contractor's purchase of materials to

¹The tax base, therefore, is the contract price for the construction project rather than the cost of materials to the contractor.

*9 in
written
Bill
a
"Join"
note
5/6*

You may wish to Join, having voted earlier to Note. A strong dissent - though these cases may be inherently fact-specific, depending on whether taxes in fact are equal in effect.

p. 1 & stylistic change

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

From: **Justice Rehnquist**

Circulated: _____

Recirculated: **MAY 7 1982**

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

WASHINGTON ET AL. v. UNITED STATES

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 81-969. Decided May —, 1982

JUSTICE REHNQUIST, with whom JUSTICE POWELL and JUSTICE O'CONNOR join, dissenting.

In this case, the Court of Appeals for the Ninth Circuit held that Washington's sales and use tax statutes are invalid under the Supremacy Clause as applied to prime contractors for construction work performed on federally owned land. 654 F. 2d 570 (1981). According to the Court of Appeals, these statutes discriminate against those who contract with the Federal Government because Washington does not tax non-federal contractors. Today the Court summarily affirms the judgment of the Court of Appeals. I would note probable jurisdiction of this appeal.

Washington imposes a sales and use tax on every retail sale, or use, of tangible personal property within the State. Wash. Rev. Code §§ 82.04, 82.08, 82.12. These taxes are imposed on the "consumer." With respect to construction projects, the contractor's purchase of material incorporated into the project is not subject to the sales and use tax. Instead, the transaction under the contract between the contractor and the owner of the realty constitutes the retail sale that is subject to the tax. The contractor is required to collect the tax from the owner of the project.¹

Because a State may not impose a sales tax on the United States, the taxing scheme is altered somewhat when the Federal Government is the project owner. In such a case,

¹The tax base, therefore, is the contract price for the construction project rather than the cost of materials to the contractor.

You have joined.

RF

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 4, 1982

Re: 81-969 Washington v. United States

Dear Bill,

Please join me in your dissent.

Sincerely,



Justice Rehnquist

Copies to the Conference