

# The Burger Court Opinion Writing Database

## *Block v. North Dakota ex rel. Board of University and School Lands*

461 U.S. 273 (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

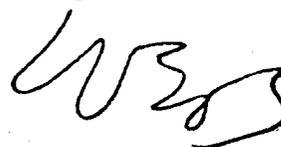
April 13, 1983

Re: No. 81-2337, Block v. North Dakota Ex Rel. Bd. of  
University and Schools Lands

Dear Byron:

I join.

Regards,

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

Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 5, 1983

Re: Block v. North Dakota, Nos. 81-2337 and 82-132

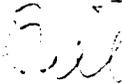
Dear Byron:

As my accompanying letter says, I join your fine opinion in this case. However, there is one small point on which I have reservations.

Your discussion of the nullum tempus rule, pp. 13-15, quite correctly notes that the rule is merely one of statutory construction, subject to rejection in the face of contrary indicia of legislative intent, such as are present in this case. However, your discussion suggests that the rule would be applicable and, perhaps, controlling if the intent of Congress were less clear than it is here. Frankly, I doubt whether the rule ought ever to apply in a situation where a state is attempting to escape the effect of a federal statute of limitations. In Guaranty Trust v. New York, 304 U.S. 126 (1938), we noted that the primary rationale of the rule is that the entire nation, including a defendant citizen, benefits by relieving the state of time bars to suit. Hence, a sovereign should not be assumed to have subjected itself to its own time limitation. That policy, however, has no apparent application when one sovereign is being subjected to a statute of limitations imposed by some other sovereign. In Guaranty Trust, therefore, we held that the nullum tempus rule did not exempt the Soviet Union from a New York statute of limitations. Granted, the people of North Dakota are more deserving of federal consideration than the people of a foreign state, but they are still something less than the whole citizenry of the United States. Of course, Congress might well choose to exempt state governments from a federal statute of limitations; but I would be reluctant to apply a general presumption that it has done so.

I wonder if you would be willing to include a footnote or some other change, if not to reflect my view of nullum tempus, at least to reserve the question of its applicability to federal/state problems.

Sincerely,



WJB, Jr.

Justice White

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 5, 1983

Re: Block v. North Dakota, Nos. 81-2337 and 81-132

Dear Byron:

I agree.

Sincerely,



WJB, Jr.

Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 12, 1983

Re: Block v. North Dakota, Nos. 81-2337 and 82-132

Dear Byron:

As I said at Conference, I agree with Harry's view that North Dakota's suit was barred by sovereign immunity before the passage of the Quiet Title Act. I joined your opinion, although it did not reach that issue, because I saw no pressing need to reach it in your analysis of the case.

I confess, however, that Harry's circulation causes me second thoughts. He presents an argument that we do, after all, have to reach the sovereign immunity issue, in order to avoid a Texaco v. Short problem. His point may be well taken, at least as a matter of general principle.

There may be an intermediate way out, however. Harry's argument is that, but for sovereign immunity, Congress would have been required to provide for some "reasonable time" after 1972 during which pre-1960 causes of action might be brought. This suit, however, was not brought until 1978. However long the "reasonable time" would have to be, it clearly would not have to be six years. Hence, while North Dakota might have had a constitutional right to bring its suit within a short time after enactment of the QTA, it should not be allowed to sue six years later, solely by right of the QTA's failure to provide for the Texaco "reasonable time".

I have not looked into this aspect of the case deeply, and there may turn out to be some fatal flaw in my suggestion. For the present, however, would you consider incorporating either Harry's view or the above "escape route" into your opinion?

Sincerely,



WJB, Jr.

Justice White

Justice Brennan  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: **Justice White**

Circulated: APR 4 1983

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*ERW*  
*13-1-1983*

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 81-2337 AND 82-132

JOHN R. BLOCK, SECRETARY OF AGRICULTURE, ET AL., PETITIONERS

81-2337

*v.*

NORTH DAKOTA, EX REL. BOARD OF UNIVERSITY AND SCHOOL LANDS

NORTH DAKOTA, EX REL. BOARD OF UNIVERSITY AND SCHOOL LANDS, PETITIONER

82-132

*v.*

JOHN R. BLOCK, SECRETARY OF AGRICULTURE, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[April —, 1983]

JUSTICE WHITE delivered the opinion of the Court.

Under the Quiet Title Act of 1972 (QTA),<sup>1</sup> the United States, subject to certain exceptions, has waived its sover-

<sup>1</sup> Act of Oct. 25, 1972, Pub. L. No. 92-562, 86 Stat. 1176, codified at 28 U. S. C. § 2409a, 28 U. S. C. § 1346(f), and 28 U. S. C. § 1402(d).

The provision relevant to the present case, 28 U. S. C. § 2409a, state:

(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title, sections 7424, 7425, or 7426 of the Internal Revenue Code of 1954, as amended (26

Justice Brennan  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: **Justice White**

pp. 3, 13-15 and  
 - stylistic changes throughout -

Circulated: \_\_\_\_\_

Recirculated: APR 8 1983

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 81-2337 AND 82-132

JOHN R. BLOCK, SECRETARY OF AGRICULTURE, ET  
 AL., PETITIONERS

81-2337

*v.*

NORTH DAKOTA, EX REL. BOARD OF UNIVERSITY  
 AND SCHOOL LANDS

NORTH DAKOTA, EX REL. BOARD OF UNIVERSITY  
 AND SCHOOL LANDS, PETITIONER

82-132

*v.*

JOHN R. BLOCK, SECRETARY OF AGRICULTURE,  
 ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE EIGHTH CIRCUIT

[April —, 1983]

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 26, 1983

Re: 81-2337 - Block v. North Dakota  
81-132 - North Dakota v. Block

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Dear Bill,

I am recirculating in this case incorporating your suggested answer to Harry's circulation. It seems tenable to me and preferable to Harry's resolution, which would be good for only this case.

Sincerely,



Justice Brennan

cpm

Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: **Justice White**

pp. 12, 15-16 and stylistic

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_ APR 27 1983

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 81-2337 AND 82-132

JOHN R. BLOCK, SECRETARY OF AGRICULTURE, ET  
 AL., PETITIONERS

81-2337

*v.*

NORTH DAKOTA, EX REL. BOARD OF UNIVERSITY  
 AND SCHOOL LANDS

NORTH DAKOTA, EX REL. BOARD OF UNIVERSITY  
 AND SCHOOL LANDS, PETITIONER

82-132

*v.*

JOHN R. BLOCK, SECRETARY OF AGRICULTURE,  
 ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE EIGHTH CIRCUIT

[April —, 1983]

JUSTICE WHITE delivered the opinion of the Court.

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<sup>1</sup> Act of Oct. 25, 1972, Pub. L. No. 92-562, 86 Stat. 1176, codified at 28 U. S. C. § 2409a, 28 U. S. C. § 1346(f), and 28 U. S. C. § 1402(d).

The provision relevant to the present case, 28 U. S. C. § 2409a, states: (a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title, sections 7424, 7425, or 7426 of the Internal Revenue Code of 1954, as amended (26

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 4, 1983

Re: No. 81-2337 - Block v. North Dakota  
No. 82-132 - North Dakota v. Block

Dear Byron:

Please join me.

Sincerely,

*JM.*

T.M.

Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 11, 1983

Re: No. 81-2337, Block v. North Dakota  
No. 82-132, North Dakota v. Block

Dear Byron:

Although I am with you on the result of these cases, I have some difficulty with the reasoning in Part II of your opinion. At conference, I took the position that sovereign immunity would have barred a suit by North Dakota prior to the enactment of the QTA. Your opinion does not address this issue; instead, you conclude that even if North Dakota could have sued prior to 1972, the QTA and its statute of limitations cut off that right for any cause of action accruing more than 12 years earlier.

My problem with this approach is that I believe it fails to address a long line of cases holding that a statute of limitations may not bar a pre-existing cause of action, unless suit may be brought on the pre-existing cause of action for some reasonable period after the statute goes into effect. See, e.g., Ochoa v. Hernandez, 230 U.S. 139, 161-162 (1913); Wilson v. Iseminger, 185 U.S. 55, 62 (1902); Turner v. New York, 168 U.S. 90, 94 (1897); Terry v. Anderson, 95 U.S. 628, 632-633 (1877). John quoted approvingly from several of these cases just last Term in his opinion for the Court in Texaco, Inc. v. Short, 454 U.S. 516, 527, n.21 (1982), which you did not join. In a somewhat different context, we have noted that cutting off a pre-existing cause of action may constitute a compensable taking. Dames & Moore v. Regan, 453 U.S. 654, 688-689 (1981). If North Dakota's suit had not been barred by sovereign immunity prior to 1972, I have difficulty reconciling the QTA with this line of cases.

The sounder approach, it seems to me, is to hold that sovereign immunity would have barred North Dakota's suit prior to 1972. Your opinion correctly points out that the "officer's suit" doctrine was severely limited by Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682 (1949), and Malone v. Bowdoin, 369 U.S. 643 (1962); as I read those cases, North Dakota could not bring an "officer's suit" to challenge the United States' assertion of title over the Little Missouri River. If I am right about this, enactment of the QTA created a limited right to sue; it did not cut off any pre-existing rights.

Please join me, therefore, in Parts I, III, IV, and V of your opinion. I shall circulate a brief separate writing setting forth my views as to Part II.

Sincerely,

Justice White

cc: The Conference



Justice White  
Justice Marshall  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Blackmun**

Circulated: APR 11 1983

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 81-2337 AND 82-132

JOHN R. BLOCK, SECRETARY OF AGRICULTURE,  
ET AL., PETITIONERS  
81-2337 *v.*  
NORTH DAKOTA, EX REL. BOARD OF UNIVERSITY  
AND SCHOOL LANDS

NORTH DAKOTA, EX REL. BOARD OF UNIVERSITY  
AND SCHOOL LANDS, PETITIONER  
82-132 *v.*  
JOHN R. BLOCK, SECRETARY OF AGRICULTURE,  
ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE EIGHTH CIRCUIT

[April —, 1983]

JUSTICE BLACKMUN, concurring in part and concurring in  
the judgment.

Although I agree with the Court's interpretation of the  
Quiet Title Act of 1972 (QTA) and its holding that North Da-  
kota's suit is time-barred, I do not join Part II of the Court's  
opinion. In Part II, the Court declines to reach the question  
whether, prior to enactment of the QTA in 1972, North Da-  
kota could have brought an "officer's suit" to dispossess the  
federal officials now exercising privileges of ownership upon  
the bed of the Little Missouri River. The Court concludes  
that because Congress intended the QTA to be the sole route  
for bringing a suit of this sort, enactment of the QTA would  
have extinguished any pre-existing right to bring suit.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 28, 1983

Re: No. 81-2337 - Block v. North Dakota  
No. 82-132 - North Dakota v. Block

Dear Byron:

In view of the addition of your footnote 23 to your opinion, as circulated in its third draft, there is no longer much point in my separate concurrence. I therefore am withdrawing that concurrence and hereby join your opinion in its entirety.

This, of course, will require Sandra to make a change in the first sentence of her dissent and in the last sentence of her first footnote.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 6, 1983

81-2337 Block v. North Dakota  
81-132 North Dakota v. Block

Dear Byron:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lewis".

Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 26, 1983

Re: Nos. 81-2337 & 82-132 Block v. North Dakota

Dear Byron:

Please join me in your opinion for the Court.

Sincerely,

*WW*

Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 5, 1983

Re: 81-2337 - Block v. North Dakota  
82-132 - North Dakota v. Block

Dear Byron:

Please join me.

Respectfully,

A handwritten signature in cursive script, appearing to be 'JW', written in dark ink.

Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

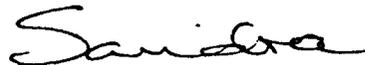
April 7, 1983

No. 81-2337 Block v. North Dakota

Dear Byron,

Although your opinion reaches the salutary conclusion that the state is not deprived of its title, I am still concerned that we should not interpret the Quiet Title Act as being applicable to the states. I will try to draft a partial dissent and circulate it in due course.

Sincerely,



Justice White

Copies to the Conference

To: The Chief Justice  
 Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens

From: **Justice O'Connor**

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Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 81-2337 AND 82-132

JOHN R. BLOCK, SECRETARY OF AGRICULTURE, ET  
 AL., PETITIONERS

81-2337

v.

NORTH DAKOTA, EX REL. BOARD OF UNIVERSITY  
 AND SCHOOL LANDS

NORTH DAKOTA, EX REL. BOARD OF UNIVERSITY  
 AND SCHOOL LANDS, PETITIONER

82-132

v.

JOHN R. BLOCK, SECRETARY OF AGRICULTURE,  
 ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE EIGHTH CIRCUIT

[April —, 1983]

JUSTICE O'CONNOR, dissenting.

I agree with JUSTICE BLACKMUN that the sovereign immunity of the United States would have barred this action by North Dakota before the waiver of immunity in the Quiet Title Act. Having concluded that Congress has now permitted such suits, though, I would not reject the usual rule that statutes of limitation do not bar a sovereign, a rule that is especially appropriate in the context of this case. Consequently, I dissent.

Since the Quiet Title Act is the sole relief available to North Dakota, we confront the question whether Congress intended the statute of limitations to bar actions by States. The Court resolves the question by invocation of the principle that waivers of sovereign immunity are to be strictly construed. See *ante*, at 12.<sup>1</sup> The question is not that simple.

<sup>1</sup>The Court's reliance on this principle is surprising, since it expressly

Stylistic Changes Throughout

pp. 5

To: The Chief Justice  
 Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens

From: Justice O'Connor

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_ 1128

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-2337 AND 82-132

JOHN R. BLOCK, SECRETARY OF AGRICULTURE, ET AL., PETITIONERS

81-2337

v.

NORTH DAKOTA, EX REL. BOARD OF UNIVERSITY AND SCHOOL LANDS

NORTH DAKOTA, EX REL. BOARD OF UNIVERSITY AND SCHOOL LANDS, PETITIONER

82-132

v.

JOHN R. BLOCK, SECRETARY OF AGRICULTURE, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[May —, 1983]

JUSTICE O'CONNOR, dissenting.

I agree with JUSTICE BLACKMUN that the sovereign immunity of the United States would have barred this action by North Dakota before the waiver of immunity in the Quiet Title Act. Having concluded that Congress has now permitted such suits, though, I would not reject the usual rule that statutes of limitation do not bar a sovereign, a rule that is especially appropriate in the context of this case. Consequently, I dissent.

Since the Quiet Title Act is the sole relief available to North Dakota, we confront the question whether Congress intended the statute of limitations to bar actions by States. The Court resolves the question by invocation of the principle that waivers of sovereign immunity are to be strictly construed. See *ante*, at 12.<sup>1</sup> The question is not that simple.

<sup>1</sup>The Court's reliance on this principle is surprising, since it expressly

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

From: **Justice O'Connor**

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Pp 1, 2

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 81-2337 AND 82-132

JOHN R. BLOCK, SECRETARY OF AGRICULTURE, ET AL., PETITIONERS

81-2337

v.

NORTH DAKOTA, EX REL. BOARD OF UNIVERSITY AND SCHOOL LANDS

NORTH DAKOTA, EX REL. BOARD OF UNIVERSITY AND SCHOOL LANDS, PETITIONER

82-132

v.

JOHN R. BLOCK, SECRETARY OF AGRICULTURE, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[May —, 1983]

JUSTICE O'CONNOR, dissenting.

I agree with the Court that the sole remedy available to North Dakota is an action under the Quiet Title Act. Having concluded that Congress has permitted such suits, though, I would not reject the usual rule that statutes of limitation do not bar a sovereign, a rule that is especially appropriate in the context of this case. Consequently, I dissent.

Since the Quiet Title Act is the sole relief available to North Dakota, we confront the question whether Congress intended the statute of limitations to bar actions by States. The Court resolves the question by invocation of the principle that waivers of sovereign immunity are to be strictly construed. See *ante*, at 12.<sup>1</sup> The question is not that simple.

<sup>1</sup>The Court's reliance on this principle is surprising, since it expressly declines to decide whether, without the Quiet Title Act, sovereign immu-