

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

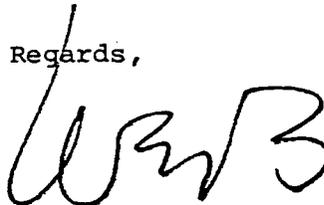
February 18, 1983

Re: 81-969 - Washington v. United States

Dear Bill:

I join.

Regards,

A handwritten signature in dark ink, appearing to be 'WRB', written over the typed word 'Regards,'.

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 15, 1983

RE: No. 81-969 Washington v. United States

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 10, 1983

Re: 81-969 - Washington v. U.S.

Dear Harry,

If you are still disposed to affirm in
this case and invalidate the state tax, would
you mind undertaking the dissent?

Sincerely,



Justice Blackmun

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 11, 1983

Re: 81-969 - Washington v. United States

Dear Harry,

I agree.

Sincerely,



Justice Blackmun

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 10, 1983

Re: No. 81-969 - Washington v. U.S.

Dear Harry:

Please join me in your dissent.

Sincerely,

T.M.
T.M.

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 10, 1983

Re: No. 81-969 - Washington v. United States

Dear Bill:

In due course, I shall undertake a dissent in this case.

Sincerely,



Justice Rehnquist

cc: The Conference

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

From: **Justice Blackmun**

Circulated: MAR 9 1983

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-969

WASHINGTON, ET AL., APPELLANTS *v.*
UNITED STATES

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

[March —, 1983]

JUSTICE BLACKMUN, dissenting.

The Court by its ruling in this case continues its recent tendency¹ to be sympathetic with States in their urgent quest for new taxes. In my view, however, the Court now oversteps the important and significant boundary that separates appropriate state taxation, that has only an incidental effect on federal operations, from inappropriate state taxation that is imposed directly or indirectly upon the United States and is therefore invalid under the Supremacy Clause, Art. VI, cl. 2, of the United States Constitution. The State of Washington has sought to circumvent the United States' absolute constitutional immunity from state taxation. The District Court and the Court of Appeals in this litigation upheld the Federal Government's protest against the incursion and granted the United States declaratory and injunctive relief. This Court, by reversing that considered judgment, upholds Washington's circumvention.

I

The Supremacy Clause, of course, is the foundation of *M'Culloch v. Maryland*, 4 Wheat. 316 (1819), where the

¹See, e. g., *United States v. County of Fresno*, 429 U. S. 452 (1977); *United States v. New Mexico*, 455 U. S. 720 (1982). But compare *Minneapolis Star v. Minnesota Comm'r of Revenue*, *post.*, at —.

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7
March 10, 1983

Dear John:

Re: No. 81-969 - Washington v. United States

Of course, I shall be glad to make the change you suggest. I should have had it read this way in the first instance.

Sincerely,

HAB

Justice Stevens

STYLISTIC CHANGES

4 p. 10

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

From: **Justice Blackmun**

Circulated: _____

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-969

WASHINGTON, ET AL., APPELLANTS v.
UNITED STATES

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

[March —, 1983]

JUSTICE BLACKMUN, dissenting.

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March 11, 1983

Dear Byron:

Re: No. 81-969, Washington v. United States

I shall change that word "it" which bothers you at the end of the dissent to "this measure of state taxation of the Federal Government."

Sincerely,

HAB

Justice White

pp. 1 and 10

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

From: **Justice Blackmun**

Circulated: _____

Recirculated: MAR 14 1983

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-969

**WASHINGTON, ET AL., APPELLANTS v.
UNITED STATES**

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

[March —, 1983]

JUSTICE BLACKMUN, with whom JUSTICE WHITE, JUSTICE MARSHALL, and JUSTICE STEVENS join, dissenting.

The Court by its ruling in this case continues its recent tendency¹ to be sympathetic with States in their urgent quest for new taxes. In my view, however, the Court now oversteps the important and significant boundary that separates appropriate state taxation, having only an incidental effect on federal operations, from inappropriate state taxation that is imposed directly or indirectly upon the United States and is therefore invalid under the Supremacy Clause, Art. VI, cl. 2, of the United States Constitution. The State of Washington has sought to circumvent the United States' absolute constitutional immunity from state taxation. The District Court and the Court of Appeals in this litigation upheld the Federal Government's protest against the incursion and granted the United States declaratory and injunctive relief. This Court, by reversing that considered judgment, upholds Washington's circumvention.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 10, 1983

81-969 WASHINGTON v. UNITED STATES

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist

Copies to the Conference

LFP/vde

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

From: **Justice Rehnquist**

FEB 9 1983

Circulated: _____

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-969

WASHINGTON, ET AL., APPELLANTS *v.*
UNITED STATES

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

[February —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

The State of Washington's principal source of revenue is a sales and use tax imposed on the buyer or consumer in all retail sales and consumer uses of tangible personal property.¹ In this case the United States contends that one aspect of that tax statute—its application to building construction—is invalid under the Supremacy Clause of the United States Constitution. The statutory provisions are most easily understood in light of their history.

Before 1941, building contractors were treated as consumers for sales tax purposes. All sales of tangible personal property, such as construction materials, to contractors were subject to the sales tax. The legal incidence of this tax was on the contractor; the tax was collected by suppliers who sold to contractors, and remitted by them to the state.

In 1941, Washington changed the sales tax system it applied to contractors by defining the landowner who purchases construction work from the contractor, rather than the contractor, as the "consumer." The legal incidence of the tax

¹ The sales tax is imposed by Chapters 82.04, 82.08 and 82.14 of the Revised Code of Washington. The use tax is imposed by Chapters 82.12 and 82.14. The terms "buyer" and "consumer" are quite broadly defined in Wash. Rev. Code. §§ 82.08.010, 82.04.190.

STYLISTIC CHANGES THROUGHOUT

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

From: **Justice Rehnquist**

Circulated: _____

MAR 15 1983

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-969

WASHINGTON, ET AL., APPELLANTS *v.*
UNITED STATES

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

[March —, 1983]

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 18, 1983

Re: 81-969 - Washington v. United States

Dear Bill:

I shall await the dissenting opinion in this case.

Respectfully,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 10, 1983

Re: 81-969 - Washington v. United States

Dear Harry:

Although I would very much like to join your persuasive dissent, I have one slight problem that I hope you can accommodate. On page 10, in your discussion of the Fresno case, you state: "There was no discrimination" In my lonely dissent in Fresno I came to a different conclusion. I wonder if you could therefore revise the sentence to read something like this: "The Court concluded, however, that there was no discrimination"

If you can accommodate me, I will join you.

Respectfully,



Justice Blackmun

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 10, 1983

Re: 81-969 - Washington v. United States

Dear Harry:

Please join me.

Respectfully,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 10, 1983

No. 81-969 Washington v. United States

Dear Bill,

Please join me.

Sincerely,



Justice Rehnquist

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