

# The Burger Court Opinion Writing Database

*United States v. Whiting Pools, Inc.*

462 U.S. 198 (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

June 1, 1983

Re: No. 82-215, U.S. v. Whiting Pools, Inc.

Dear Harry:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'L. Blackmun', 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.

May 25, 1983

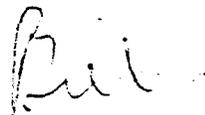
Re: No. 82-215

United States  
v. Whiting Pools, Inc.

Dear Harry,

I agree.

Sincerely,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 27, 1983

Re: No. 82-215

United States  
v. Whiting Pools, Inc.

Dear Harry,

Thank you for your indulgence of  
the whims of the "author." Your  
suggested changes relieve all my hurt  
feelings.

Sincerely,



Justice Blackmun

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 26, 1983

Re: 82-215 -  
United States v. Whiting Pools, Inc.

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference

cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 25, 1983

Re: No. 82-215-U.S. v. Whiting Pools, Inc.

Dear Harry:

Please join me.

Sincerely,



T.M.

Justice Blackmun

cc: The Conference

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

From: **Justice Blackmun**

Circulated: MAY 24 1983

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

*Handwritten scribbles and a large diagonal line.*

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-215

UNITED STATES, PETITIONER *v.*  
WHITING POOLS, INC.

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

[May —, 1983]

JUSTICE BLACKMUN delivered the opinion of the Court.

Promptly after the Internal Revenue Service (IRS or Service) seized respondent's property to satisfy a tax lien, respondent filed a petition for reorganization under the Bankruptcy Reform Act of 1978, hereinafter referred to as the "Bankruptcy Code." The issue before us is whether § 542(a) of that Code authorized the Bankruptcy Court to subject the IRS to a turnover order with respect to the seized property.

I

A

Respondent Whiting Pools, Inc., a corporation, sells, installs, and services swimming pools and related equipment and supplies. As of January 1981, Whiting owed approximately \$92,000 in Federal Insurance Contribution Act taxes and federal taxes withheld from its employees, but had failed to respond to assessments and demands for payment by the IRS. As a consequence, a tax lien in that amount attached to all of Whiting's property.<sup>1</sup>

<sup>1</sup>Section 6321 of the Internal Revenue Code of 1954, 26 U. S. C. § 6321, provides:

"If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount . . . shall be a lien in favor of the United States

7115  
May 26, 1983

Dear Bill:

Re: No. 82-215 - United States v. Whiting Pools, Inc.

I appreciate your joinder in this case and have reflected upon your suggestion as to the change of language in the second full sentence on page 6. I have concluded that I would much prefer to limit the opinion as closely as possible to a discussion of the effect of § 542(a) on a secured creditor's possessory interest. I am quite content to let it stand on that narrow basis. I hope that this does not suggest affirmatively that other nonbankruptcy remedies survive the filing of a petition.

Sincerely,

HAB

Justice Rehnquist

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 26, 1983

Re: No. 82-215 - United States v. Whiting Pools, Inc.

Dear Bill:

I certainly did participate in Phelps. That shows how my memory is fading.

What do you think of my eliminating the last sentence of footnote 18? I also would change the last phrase of the preceding sentence to read "this latter statement perhaps was unnecessary to our decision." I thereby include myself.

Sincerely,



Justice Brennan

Dear Harry  
Re US v Whiting Pools Inc  
82-215

Thank you for your understanding of the  
whimsy of the "author". Your suggested  
changes relieve all my hurt feelings.  
Sincerely

STYLISTIC CHANGES  
P. 12

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

From: **Justice Blackmun**

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

Recirculated:         JUN 2 1983        

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

          
No. 82-215  
        

UNITED STATES, PETITIONER *v.*  
WHITING POOLS, INC.

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

[June —, 1983]

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 25, 1983

82-215 United States v. Whiting Pools, Inc.

Dear Harry:

Please join me.

Sincerely,

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

Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 25, 1983

Re: No. 82-215 United States v. Whiting Pools, Inc.

Dear Harry:

Please join me.

Sincerely,  
*WHR*

Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 26, 1983

Re: 82-215 - United States v. Whiting  
Pools, Inc.

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

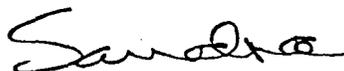
June 2, 1983

No. 82-215 U. S. v. Whiting Pools, Inc.

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 2, 1983

No. 82-215 U. S. v. Whiting Pools, Inc.

Dear Harry,

Please join me.

Sincerely,

*Sandra*

Justice Blackmun

Copies to the Conference

*P.S. I had intended to join  
this earlier. Somehow it  
slipped past my "checkpoint."  
It is very well written.  
S.*