

# The Burger Court Opinion Writing Database

## *Garcia v. San Antonio Metropolitan Transit Authority*

469 U.S. 528 (1985)

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

March 31, 1984

Re: Nos. 82-1913, Garcia v. San Antonio Metropolitan Transit Authority  
82-1951, Donovan v. San Antonio Metropolitan Transit Authority

MEMORANDUM TO THE CONFERENCE:

I have concluded to affirm in this case.

Regards,

Handwritten signature in cursive, appearing to be "WRB".

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

June 11, 1984

CHAMBERS OF  
THE CHIEF JUSTICE

Re: 82-1913 - Garcia v. San Antonio Metro. Transit Auth.  
82-1951 - Donovan v. San Antonio Metro. Transit Auth.

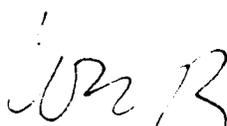
Dear Harry:

I have your draft opinion in this case in which you suggest the possibility for (1) reassignment; (2) carry over for reargument.

At this stage - almost mid-June - a 30 page opinion coming out contrary to the Conference vote on a very important issue places those who may dissent in a difficult position.

I think we should set the case over for reargument and so move.

Regards,



Justice Blackmun

Copies to the Conference

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE BLACKMUN

'84 JUN 11 P2:01

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 2, 1984

Nos. 82-1913 & 82-1951

Garcia v. San Antonio Metropolitan  
Transit Authority, etc.

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Dear Byron, Thurgood and John,

We four are in dissent in the  
above. I'll be happy to try my hand at  
the dissent.

Sincerely,

*Bill*

Justice White

Justice Marshall

Justice Stevens

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 11, 1984

No. 82-1913) Garcia v. San Antonio Metropolitan  
              ) Transit Authority  
              )  
              ) Donovan v. San Antonio Metropolitan  
No. 82-1951) Transit Authority

Dear Harry,

I agree and I see no necessity for  
reargument.

Sincerely,

*Bill*

Justice Blackmun

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84 JUN 11 P2:01

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE HARSHALL

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

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 13, 1984

'84 JUN 13 11:38

Re: 82-1913 - Garcia v. San Antonio Metropolitan  
Transit Authority

82-1951 - Donovan v. San Antonio Metropolitan  
Transit Authority

---

Dear Harry,

As would be indicated by my vote in previous cases such as Maryland v. Wirtz and National League of Cities, I am much taken with your opinion and could join it if the case is not to be reargued. If there is to be a reargument, however, I would prefer not voting on the merits at this time. As for the reargument, I shall await the discussion but would be inclined to follow your lead.

Sincerely,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

July 3, 1984

Re: 82-1913 - Garcia v. San Antonio Metro.  
Transit Authority  
82-1951 - Donovan v. San Antonio Metro.  
Transit Authority

---

Dear Lewis,

The proposed order on reargument is all  
right with me.

Sincerely yours,



Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 12, 1984

Re: Nos. 82-1913 & 1951-Garcia v. San Antonio  
Met. Transit Authority, etc.

Dear Harry:

I, too, do not favor reargument in this case.

Sincerely,

*Jm.*

T.M.

Justice Blackmun

cc: The Conference

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

June 11, 1984

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

MEMORANDUM TO THE CONFERENCE

Re: No. 82-1913, Garcia v. San Antonio Metro. Transit Auth.  
No. 82-1951, Donovan v. San Antonio Metro. Transit Auth.

You will recall that the conference vote in these cases was 5-4 to affirm, with my own vote shaky on the affirming side. I assume that it is because of this that the Chief Justice assigned the cases to me, on his frequently stated reference to the "least persuaded."

I have spent a lot of time on these cases. I have finally decided to come down on the side of reversal. I have been able to find no principled way in which to affirm. It seems to me that our customary reliance on the "historical" and the "traditional" is misplaced and that something more fundamental is required to eliminate the widespread confusion in the area. The enclosed draft of a proposed opinion reflects my views.

I realize that this means (1) that the cases should be reassigned and (2) that some of you may feel the cases should go over for reargument. Perhaps this can be discussed at conference.

*H.A.B.*

RECEIVED  
SUPREME COURT U.S.  
JUSTICE HARRY A. BLACKMUN  
84 JUN 11 AM 5:53

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

From: **Justice Blackmun**

Circulated: JUN 11 1984

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 82-1913 AND 82-1951

82-1913  
JOE G. GARCIA  
*v.*  
SAN ANTONIO METROPOLITAN TRANSIT  
AUTHORITY ET AL.

82-1951  
RAYMOND J. DONOVAN, SECRETARY OF LABOR  
*v.*  
SAN ANTONIO METROPOLITAN TRANSIT  
AUTHORITY ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF TEXAS

[June —, 1984]

JUSTICE BLACKMUN delivered the opinion of the Court.

In *National League of Cities v. Usery*, 426 U. S. 833 (1976), this Court held that the Commerce Clause does not empower Congress to enforce the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) against States "in areas of traditional governmental functions." *Id.*, at 852. Although *National League of Cities* provided examples of "traditional governmental functions," it did not offer a more general explanation of how "traditional" functions were to be distinguished from "nontraditional" ones. Since then, federal and state courts have devoted considerable effort to the task of identifying traditional functions for purposes of state immunity under the Commerce Clause. In this case, a Federal District Court concluded that municipal ownership and operation of a mass-transit system is a traditional governmental function and hence is exempt from the obligations of the FLSA under *National League of Cities*. Faced with the identical question, three Federal Courts of

June 12, 1984

Dear John:

Re: No. 82-1913) Garcia v. San Antonio Metro. Transit Auth.  
No. 82-1951) Donovan v. San Antonio Metro. Transit Auth.

I shall be glad to make the change in paragraph 18 that you suggest in your letter of today. This will appear in the next draft.

Sincerely,

HAB

Justice Stevens

STYLISTIC CHANGES

4 p. 18

RECEIVED  
SUPREME COURT U.S.  
JUSTICE MARSHALL

'84 JUN 13 AM 1:38

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

From: **Justice Blackmun**

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

Recirculated: JUN 13 1984

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 82-1913 AND 82-1951

JOE G. GARCIA

82-1913

v.

SAN ANTONIO METROPOLITAN TRANSIT  
AUTHORITY ET AL.

RAYMOND J. DONOVAN, SECRETARY OF LABOR

82-1951

v.

SAN ANTONIO METROPOLITAN TRANSIT  
AUTHORITY ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF TEXAS

[June —, 1984]

JUSTICE BLACKMUN delivered the opinion of the Court.

In *National League of Cities v. Usery*, 426 U. S. 833 (1976), this Court held that the Commerce Clause does not empower Congress to enforce the minimum-wage and overtime provisions of the Fair Labor Standards Act (FLSA) against States "in areas of traditional governmental functions." *Id.*, at 852. Although *National League of Cities* provided examples of "traditional governmental functions," it did not offer a more general explanation of how "traditional" functions were to be distinguished from "nontraditional" ones. Since then, federal and state courts have devoted considerable effort to the task of identifying traditional functions for purposes of state immunity under the Commerce Clause. In this case, a Federal District Court concluded that municipal ownership and operation of a mass-transit system is a traditional governmental function and hence is exempt from the obligations of the FLSA under *National League of Cities*. Faced with the identical question, three Federal Courts of

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

July 3, 1984

88-19 8-11 184

Re: No. 82-1913, Garcia v. San Antonio Metro. Transit Authority  
No. 82-1951, Donovan v. San Antonio Metro. Transit Authority

Dear Lewis:

Because I voted against reargument of these cases, I have no standing to suggest changes in the proposed form of order. I venture to say, however, that if the question is to be presented, National League of Cities just might end up being overruled. In the opinion I prepared this Term, and as to which some took umbrage, it was not overruled.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

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SUPREME COURT, U.S.  
JUSTICE MARSHALL

'84 JUN 12 P1:49

June 12, 1984

82-1913 Garcia v. San Antonio  
82-1951 Donovan v. San Antonio

Dear Harry:

In view of the approaching end of the Term (one hopes), I prefer the reargument suggestion.

Sincerely,



Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

July 3, 1984

82-1913 Garcia v. San Antonio Metro. Transit Authority  
82-1951 Donovan v. San Antonio Metro. Transit Authority

MEMORANDUM TO THE CONFERENCE:

Sandra and I suggest the following form of order:

"This case is restored to the calendar for reargument. In addition to the questions presented in the petition for writ of certiorari and previously briefed and argued, the parties are requested to brief and argue the following question:

"Whether or not the principles of the Tenth Amendment as set forth in National League of Cities v. Usery, 426 U.S. 833 (1976), should be reconsidered?"

L. F. P.

L.F. P., Jr.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

July 3, 1984

82-1913 Garcia v. San Antonio Metro. Transit Authority  
82-1951 Donovan v. San Antonio Metro. Transit Authority

Dear Harry:

Sandra and I thought, in view of your opinion critical of National League of Cities, that it was desirable to focus the attention of the parties broadly on the principles followed by the Court in that case.

I am sure I speak also for Sandra in saying that we would, of course, consider a different framing of the question.

Sincerely,

Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

'84 JUN 12 10:48

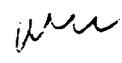
June 11, 1984

Re: Nos. 82-1913 & 82-1951 Garcia v. San Antonio Met.  
Transit Authority

Dear Harry:

I, too, favor reargument in this case.

Sincerely,



Justice Blackmun

cc: The Conference

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

(Scott has a copy.  
wam)

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 12, 1984

Re: 82-1913 - Garcia v. San Antonio  
Metropolitan Transit Authority  
82-1951 - Donovan v. San Antonio  
Metropolitan Transit Authority

Dear Harry:

As I told you over the phone yesterday, I think you have written a powerful opinion which identifies the correct principle for limiting the outermost reach of Congress' power under the Commerce Clause. I think your use of the Frankfurter-Rutledge standard in New York v. United States is exactly right and may well be dictated by the position the Court has taken in the tax area.

As I indicated in our conversation, I have some misgivings about the reference to my separate opinion in EEOC v. Wyoming in the first paragraph of Part III on page 18. On reflection, I have decided that I can join your opinion as written. I would like to suggest for your consideration, however, the following possible redraft of that paragraph:

"The central principle of National League of Cities is that the States occupy a special position in our constitutional system and that the scope of Congress' authority under the Commerce Clause must reflect that position. It is true that the Commerce Clause by its terms does not provide any special limitation on Congress' actions with respect to the States. See EEOC v. Wyoming, 460 U.S. \_\_\_\_\_, \_\_\_\_\_ (1983) (STEVENS, J., concurring) (slip op. 5). It is equally true, however, that the text of the Constitution provides the beginning rather than the final answer to every inquiry into

questions of federalism. 'Behind the words of the constitutional provisions are postulates which limit and control.' Monaco v. Mississippi, 292 U.S. 313, 322 (1934). National League of Cities reflects the general conviction that 'the National Government [cannot] devour the essentials of state sovereignty", Maryland v. Wirtz, 392 U.S. 183, 205 (Douglas, J., dissenting). In order to be faithful to the underlying federal premises of the Constitution, courts must look for the 'postulates which limit and control.'"

As I say, even if you retain the present paragraph I will join you, but I will be grateful if you consider this suggestion.

Respectfully,



Justice Blackmun

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

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JUSTICE MARSHAL

84 JUN 12 P3:36

June 12, 1984

Re: 82-1913 - Garcia v. San Antonio  
Metropolitan Transit Authority  
82-1951 - Donovan v. San Antonio  
Metropolitan Transit Authority

Dear Harry:

Please join me.

Respectfully,



Justice Blackmun

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

'84 JUN 13 A9:44

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 12, 1984

Re: 82-1913 - Garcia v. San Antonio  
Metropolitan Transit Authority  
82-1951 - Donovan v. San Antonio  
Metropolitan Transit Authority

Dear Chief:

Your motion to reargue this case prompts me to suggest that perhaps it would be useful to have a conference discussion of the standard that should be applied to such motions. I think our recent discussion of the standards to be applied to a dismissal of a writ as having been improvidently granted when there are four justices who want to decide the case on the merits was constructive and that we might profit by focusing our attention on the reargument situation in an orderly way.

It occurs to me that there are four alternative grounds for reargument:

(1) If five justices are unable to agree on the proper disposition of a case before the end of June, reargument is certainly appropriate. That was the justification for the reargument in Pennhurst and Sony last year. I suppose there is some possibility that that problem may justify a reargument in Segura and in Palmer v. Hudson, although I gather that you remain optimistic about your ability to circulate in the near future a proposed Court opinion on which five people can agree.

(2) If the circulation of the majority opinion comes so late that there is not adequate time in which to prepare a

dissent, a reargument may be justified. I would suppose, however, that we could hold up adjournment for two or three days in order to avoid setting a case over. Two examples of this problem come to mind: Last Term I did not circulate my proposed majority opinion in Ruckelshaus v. Sierra Club, 82-242, until June 6; Bill Rehnquist circulated his dissent on June 20 and on the following day you changed your vote. Bill then circulated his draft opinion for the Court on June 27 and thereafter I converted my majority into a dissent.

There was a similar sequence of events in Buffalo Forge in the 1975 Term. I circulated my proposed majority on June 18, 1976, Byron circulated his dissent on June 21, and on June 25, you switched your vote making it necessary for Byron to prepare a majority which he was able to do on June 28, and I then circulated my dissent.

In the case under discussion now, I find it difficult to believe that the four Justices who have supported the motion to reargue do not have the capacity to prepare a dissent in the time which remains this month. The various status reports that have been circulated have led me to believe that all four offices were quite current in their work.

(3) The third possible basis for reargument might be that a Member of the Court is not certain as to his vote. It would not seem to me, however, that this would justify reargument unless the vote became critical to the disposition.

(4) Another possibility, of course, is the thought that the membership in the Court might change over the summer and thereby produce a different outcome. In my

view, this would not be a proper ground for reargument.

Accordingly, unless someone advances a persuasive reason for reargument that has not yet been identified, I plan to vote against your motion.

Respectfully,



The Chief Justice

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

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JUSTICE MARSHALL

'84 JUN 11 P12:54

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 11, 1984

No. 82-1913 Garcia v. San Antonio MTA  
No. 82-1951 Donovan v. San Antonio MTA

MEMORANDUM TO THE CONFERENCE

Needless to say, Harry's circulation today supporting a reversal of the judgment below and offering a significant change in our approach to the Tenth Amendment question is unexpected. Because our summer recess is right around the corner, I, for one, would prefer that the case be reargued rather than reassigned.

Sincerely,



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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

July 3, 1984

*I reviewed this.  
See my memo  
to Conference*

Re: 82-1913) Garcia v. San Antonio Metro. Transit Authority  
82-1951) Donovan v. San Antonio Metro. Transit Authority

Dear Lewis,

The following is a possible form of order on the reargument of this case:

"This case is restored to the calendar for reargument. In addition to the questions presented in the petition for writ of certiorari and previously briefed and argued, the parties are requested to address and brief the following question:

Whether [or not the framework of analysis of Tenth Amendment questions as set forth in] National League of Cities v. Usery, 426 U.S. 833 (1976), should be reconsidered?"

Sincerely,

*Sandra*

Justice Powell

- 1) the approach to Tenth Amendment questions set forth in
- 2) the Tenth Amendment principles set forth in
- 3)

*One wants to err on the side of having too broad a question, rather than to narrow, in order to get briefing touching all the questions raised by HAB's opinion, and to alert State AGs.*