

The Burger Court Opinion Writing Database

Franchise Tax Board of California v. Postal Service

467 U.S. 512 (1984)

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

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JUSTICE MARSHALL

CHAMBERS OF
THE CHIEF JUSTICE

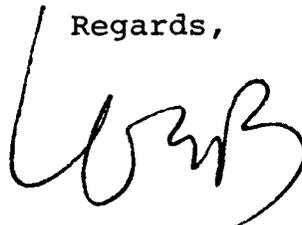
May 30, 1984 ⁸⁴ MAY 30 P4:08

Re: 83-372 - Franchise Tax Board v. U.S. Postal Service

Dear John:

I join.

Regards,

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

Justice Stevens

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1

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

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JUSTICE MARSHALL

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

84 MAY 23 NO 27

May 23, 1984

No. 83-372

Franchise Tax Board of California
v. United States Postal Service

Dear John,

I agree.

Sincerely,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 25, 1984

Re: 83-372 - Franchise Tax Board
of California v. USPS

Dear John,

With the changes indicated in your note
of today, I join.

Sincerely yours,



Justice Stevens

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84 MAY 25 P1121

Supreme Court of the United States
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JUSTICE MARSHALL

CHAMBERS OF
JUSTICE BYRON R. WHITE

91 MW 25 M1 34

May 25, 1984

Re: 83-372 - Franchise Tax Board
of California v. USPS

Dear John,

I agree with your opinion subject to the following:

1. I could do without the part of footnote 14 beginning with the word "indeed" in line 7. I would prefer not to invite litigation about Buchanan v. Alexander.
2. The last sentence of footnote 19 seems to strike a note contrary to the "no defense is permitted" language on page 10.

Sincerely yours,



Justice Stevens

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cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 4, 1984

Re: No. 83-372-Franchise Tax Board of California v.
United States Postal Service

Dear John:

Please join me.

Sincerely,

Jm.

T.M.

Justice Stevens

cc: The Conference

W

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 29, 1984

Re: No. 83-372 - Franchise Tax Board of California
v. U. S. Postal Service

Dear John:

With the changes indicated in your letter of May 25 to Byron, I join your opinion.

Sincerely,



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JUSTICE MARSHALL

'84 MAY 29 AM 13

Justice Stevens

cc: The Conference

May 25, 1984

83-372 Franchise Tax Board v. U.S. Postal Service

Dear John:

I agree with your opinion and expect to join it.

It would help me, however, if you took a second look at footnote 14, p. 8. It does not seem right to me. For reasons you and I in particular understand, I hesitate to mention Pennhurst. But the Court did say in that case that neither a state nor "one of its agencies or departments" may be named as a defendant "regardless of the nature of the relief sought". Pennhurst, slip op., at 9-10. I have thought that when an agency of the federal government is a named party, it makes no difference whether the judgment will be paid from the federal treasury. In this case, appellee is a federal agency. Thus, if I am right, it could not properly be sued in a garnishment action or any other action in the absence of a waiver of sovereign immunity.

For this reason, I doubt that Buchanan is really relevant to the present case. Nor do I see any reason to doubt the validity of the rule that Buchanan announced. It applied the test you attribute to "subsequent developments", and concluded that a garnishment suit required that payments be made from the federal treasury even though the government was a stakeholder. See 45 U.S., at 20-21.

If you should agree with me, you simply could omit all of n. 14 after the first two sentences.

Sincerely,

Justice Stevens

lfp/ss

6

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Washington, D. C. 20543

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CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

84 MAY 29 P3:18

May 29, 1984

83-372 Franchise Tax Board v. U.S. Postal Service

Dear John:

Please join me.

Sincerely,



Justice Stevens

lfp/ss

cc: The Conference



CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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

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SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 MAY 30 12:55

May 30, 1984

Re: No. 83-372 Franchise Tax Bd. of Cal. v. United
States Postal Service

Dear John:

Please join me.

Sincerely,

Justice Stevens

cc: The Conference

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 MAY 22 AM 10

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

From: Justice Stevens

Circulated: MAY 22 1984

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-372

FRANCHISE TAX BOARD OF CALIFORNIA,
APPELLANT *v.* UNITED STATES
POSTAL SERVICE

ND

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

[May —, 1984]

JUSTICE STEVENS delivered the opinion of the Court.

Appellant California Franchise Tax Board determined that four employees of appellee United States Postal Service were delinquent in the payment of their state income taxes. The Board served process on the Postal Service directing it to withhold the amounts of the delinquencies from the employees' wages, pursuant to § 18817 of the California Revenue and Taxation Code, which authorizes the Board to require any employer to withhold delinquent taxes from an employee's salary and transfer those funds to the Board.¹ The question presented is whether the Postal Service was obligated to honor these "orders to withhold."

I

When the Postal Service refused to comply with the four orders to withhold, the Board filed this action in the United

¹The statute provides in pertinent part:

"The Franchise Tax Board may by notice, served personally or by first-class mail, require any employer . . . having in [its] possession, or under [its] control, any credits or other personal property or things of value, belonging to a taxpayer . . . to withhold, from such credits or other personal property or things of value, the amount of any tax, interest, or penalties due from the taxpayer . . . and to transmit the amount withheld to the Franchise Tax Board at such times as it may designate. . . ." Cal. Rev. & Tax. Code Ann. § 18817 (West 1983).

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

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 10-11

From: Justice Stevens

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-372

**FRANCHISE TAX BOARD OF CALIFORNIA v.
UNITED STATES POSTAL SERVICE**

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

[May —, 1984]

JUSTICE STEVENS delivered the opinion of the Court.

Appellant, the Franchise Tax Board of California determined that four employees of appellee United States Postal Service were delinquent in the payment of their state income taxes. The Board served process on the Postal Service directing it to withhold the amounts of the delinquencies from the employees' wages, pursuant to § 18817 of the California Revenue and Taxation Code, which authorizes the Board to require any employer to withhold delinquent taxes from an employee's salary and transfer those funds to the Board.¹ The question presented is whether the Postal Service was obligated to honor these "orders to withhold."

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

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JUSTICE MARSHALL

84 MAY 25 12:14

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 25, 1984

Re: 83-372 - Franchise Tax Board v. USPS

Dear Byron:

Thanks for your note. I think both of your points are well taken.

With respect to footnote 14 on page 8, I propose to take out everything beginning with the word "Indeed," except that I think it would be appropriate to retain this one thought: "It should be noted that the Postal Service cannot be held liable for honoring the orders to withhold, see Cal. Tax. & Rev. Code Ann. §18819 (West 1983)."

With respect to footnote 19 on page 12, it seems to me that we can remove the tension by revising the last sentence to read this way: "If the Service feels it has a meritorious defense to the order to withhold--though it is difficult to see how it could, see page 10, supra--it remains free to refuse to honor the order and force the Board to file suit against it, as it did here, or else it can initiate its own lawsuit against the Board under §409(a)."

If you don't think these changes are adequate, please let me know.

Respectfully,



Justice White

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SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 MAY 29 11:09
7p 8, 11

To: The Chief Justice
Justice Brennan
Justice White
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Justice O'Connor

From: Justice Stevens

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-372

FRANCHISE TAX BOARD OF CALIFORNIA *v.*
UNITED STATES POSTAL SERVICE

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

[May —, 1984]

JUSTICE STEVENS delivered the opinion of the Court.

Appellant, the Franchise Tax Board of California, determined that four employees of appellee United States Postal Service were delinquent in the payment of their state income taxes. The Board served process on the Postal Service directing it to withhold the amounts of the delinquencies from the employees' wages, pursuant to § 18817 of the California Revenue and Taxation Code, which authorizes the Board to require any employer to withhold delinquent taxes from an employee's salary and transfer those funds to the Board.¹ The question presented is whether the Postal Service was obligated to honor these "orders to withhold."

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84 JUN -4 11:30 AM PAGES:

To: The Chief Justice
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Justice O'Connor

From: Justice Stevens

Circulated: _____

Recirculated: JUN 4 1984

LFA
Please from me
ml

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-372

**FRANCHISE TAX BOARD OF CALIFORNIA v.
UNITED STATES POSTAL SERVICE**

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

[June —, 1984]

JUSTICE STEVENS delivered the opinion of the Court.

Appellant, the Franchise Tax Board of California, determined that four employees of appellee United States Postal Service were delinquent in the payment of their state income taxes. The Board served process on the Postal Service directing it to withhold the amounts of the delinquencies from the employees' wages, pursuant to §18817 of the California Revenue and Taxation Code, which authorizes the Board to require any employer to withhold delinquent taxes from an employee's salary and transfer those funds to the Board.¹ The question presented is whether the Postal Service was obligated to honor these "orders to withhold."

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Cal. Rev. & Tax. Code Ann. § 18817 (West 1983).



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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

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JUSTICE MARSHALL

84 MAY 23 11:49

May 22, 1984

No. 83-372 Franchise Tax Board of
California v. U. S. Postal Service

Dear John,

Please join me.

Sincerely,

Justice Stevens

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