

The Burger Court Opinion Writing Database

United States v. 50 Acres of Land

469 U.S. 24 (1984)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



⑦

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

CHAMBERS OF
THE CHIEF JUSTICE

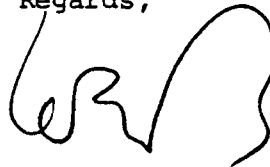
November 13, 1984

Re: 83-1170 - United States v. 50 Acres of Land

Dear John:

I join.

Regards,



Justice Stevens

Copies to the Conference

5

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 13, 1984

No. 83-1170

United States v. 50 Acres of Land,
etc, et al.

Dear John,

Please join me.

Sincerely,

WJB:ne

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 21, 1984

No. 83-1274

Metropolitan Life Insurance Company
v. Ward

Dear Sandra,

Having now been apprised of the changes that occurred in my absence, I understand that Thurgood, Bill Rehnquist, you and I are in dissent in the above. Would you be willing to try your hand at the dissent?

Sincerely,

Bill

Justice O'Connor

Copies to Justice Marshall
Justice Rehnquist

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 13, 1984

Re: 83-1170 -

United States v. 50 Acres of Land

Dear John,

I agree.

Sincerely,



Justice Stevens

Copies to the Conference

8: 11: 12

6

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 13, 1984

Re: No. 83-1170-U.S. v. 50 Acres of Land

Dear John:

Please join me.

Sincerely,

J.M.
T.M.

Justice Stevens

cc: The Conference

17
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 13, 1984

Re: No. 83-1170, United States v. 50 Acres of Land

Dear John:

Please join me.

My conference notes indicate that a majority did not wish to direct the reinstatement of the District Court's judgment. Perhaps my notes are wrong.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 16, 1984

Re: No. 83-1170, United States v. 50 Acres of Land

Dear John:

Thank you for your note of November 14. I am entirely happy with leaving to you the discretion about directions to reenter judgment. My notes were so positive that I merely wanted to call them to your attention.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 11, 1984

Re: No. 83-1274, Metropolitan Life Ins. Life Co. v. Ward

Dear Lewis:

I have one problem with the opinion now circulating.

You hold that the two purposes asserted here do not legitimate the Alabama tax. I agree. But, for me, it does not follow, as is asserted on page 12 of the second draft, that as applied to appellants the tax therefore violates the Equal Protection Clause. One or more of the other 15 asserted purposes may save it. Do you not agree?

Of course, the briefs here addressed the 17 asserted purposes and there is enough in the record for this Court to rule on them, even though the courts below adjudicated only two. In light of their rulings, with which we disagree, this for them was all that was necessary. I am willing to leave it to you whether to remand or to pass upon the other reasons.

Sincerely,



Justice Powell

cc: The Conference

34 11 84

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 12, 1984

Re: No. 83-1274, Metropolitan Life Ins. Co. v. Ward

Dear Lewis:

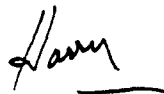
Your suggested change in the last paragraph, plus the addition of a footnote similar to the old n. 5, alleviates my concern, and I join your opinion.

I might be a little happier if the last paragraph would read as follows:

"We conclude that neither of the two purposes furthered by the preference tax statute addressed by the Circuit Court for Montgomery County, see supra at 3, is legitimate under the Equal Protection Clause. The judgment of the Alabama Supreme Court accordingly is reversed, and the case is remanded for further proceedings not inconsistent with this opinion."

My joinder is firm, in any event.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 13, 1984

83-1170 United States v. 50 Acres of Land

Dear John:

Please join me.

Sincerely,

L. F. Powell

Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 28, 1984

83-1170 United States v. 50 Acres of Land

Dear Sandra:

Please add my name to your concurring opinion.

Sincerely,

Lewis

Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 11, 1984

83-1274 Metropolitan Life v. Ward

Dear Harry:

Thank you for your letter of December 11. I think you have a good point, and I will be glad to make the remand in this case more specific.

What would you think of changing the last paragraph to read as follows:

We conclude that the Alabama domestic preference tax statute, as measured by the two purposes found to be legitimate by the Circuit Court for Montgomery County, see supra, at 3, violates the Equal Protection Clause as applied to appellants. The judgment of the Alabama Supreme Court accordingly is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

I then would add a footnote similar to n. 5 that was in my first circulated draft to state that some fifteen additional purposes were advanced by the state. As none of these was addressed by the courts below we express no opinion with respect to any of them.

Sincerely,

97 

Justice Blackmun

Copies to the Conference
LFP/vde

December 18, 1984

83-1266 United States v. Boyle

Dear Chief:

When I wrote on December 14, joining your opinion, I commented that it was not as explicit as I would have liked with respect to the concerns I expressed in my letter of November 19 to you.

I think Bill Brennan covers these more explicitly, but also joins your opinion and judgment. Accordingly, I also am joining his concurrence.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 13, 1984

Re: 83-1170 United States v. 50 Acres of Land

Dear John,

Please join me.

Sincerely,


Justice Stevens

cc: The Conference

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

From: **Justice Stevens**

Circulated: NOV 9 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1170

UNITED STATES, PETITIONER *v.* 50 ACRES OF
LAND, ETC., ET AL.

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

[November —, 1984]

JUSTICE STEVENS delivered the opinion of the Court.

The Fifth Amendment requires that the United States pay "just compensation"—normally measured by fair market value¹—whenever it takes private property for public use.² This case involves the condemnation of property owned by a municipality. The question is whether a public condemnee is entitled to compensation measured by the cost of acquiring a substitute facility if it has a duty to replace the condemned facility. We hold that this measure of compensation is not required when the market value of the condemned property is ascertainable.

I

In 1978, as part of a flood control project, the United States condemned approximately 50 acres of land owned by the City of Duncanville, Texas.³ The site had been used

¹*Miller v. United States*, 317 U. S. 369, 374 (1943) ("what a willing buyer would pay in cash to a willing seller").

²"[N]or shall private property be taken for public use, without just compensation." U. S. Const. Amdt. V.

³The United States initiated the condemnation proceedings by filing a declaration of taking under 40 U. S. C. § 258a (1976). Under that procedure the government deposits the estimated value of the land in the registry of the court. "Title and right to possession thereupon vest immediately in the United States. In subsequent judicial proceedings, the exact value of the land (on the date the declaration of taking was filed) is determined, and the owner is awarded the difference (if any) between the ad-

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 14, 1984

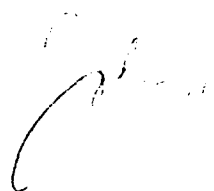
Re: 83-1170 - United States v. 50 Acres
of Land

Dear Harry:

Your notes are correct, but my impression was that the Conference left it to the opinion writer to reconsider the matter in preparing the opinion.

The issue that could be left open is the proper rate of interest on the award. After reviewing the record, I concluded that the City has waived any right to reopen that question since it failed to present any evidence on the issue at trial. Of course, if a majority disagrees with the disposition, I am willing to reconsider.

Respectfully,



Justice Blackmun

Copies to the Conference

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

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 7-6

From: Justice Stevens

Circulated: _____

Recirculated: _____ NOV 30 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1170

UNITED STATES, PETITIONER *v.* 50 ACRES OF
LAND, ETC., ET AL.

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

[November —, 1984]

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² “[N]or shall private property be taken for public use, without just compensation.” U. S. Const., Amdt. 5.

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

From: **Justice O'Connor**

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1170

UNITED STATES, PETITIONER *v.* 50 ACRES OF
LAND, ETC., ET AL.

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

[November —, 1984]

O'CONNOR, J., concurring

I concur in the Court's opinion and judgment that, on the facts of this case, the City of Duncanville is justly compensated by the payment of the market value for the sanitary landfill that was condemned by the Government. I write separately to note that I do not read the Court's opinion to preclude a municipality or other local governmental entity from establishing that payment of market value in a particular case is manifestly unjust and therefore inconsistent with the Just Compensation Clause. See *ante*, at 5. When a local governmental entity can prove that the market value of its property deviates significantly from the make whole remedy intended by the Just Compensation Clause and that a substitute facility must be acquired to continue to provide an essential service, limiting compensation to the fair market value in my view would be manifestly unjust. Because the City of Duncanville did not establish that the market value in this case deviated significantly from the indemnity principle, I agree that the decision of the Court of Appeals should be reversed.

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

From: **Justice O'Connor**

Circulated: _____

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1170

UNITED STATES, PETITIONER *v.* 50 ACRES OF
LAND, ETC., ET AL.

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

[December —, 1984]

JUSTICE O'CONNOR, with whom JUSTICE POWELL joins,
concurring.

I concur in the Court's opinion and judgment that, on the facts of this case, the city of Duncanville is justly compensated by the payment of the market value for the sanitary landfill that was condemned by the Government. I write separately to note that I do not read the Court's opinion to preclude a municipality or other local governmental entity from establishing that payment of market value in a particular case is manifestly unjust and therefore inconsistent with the Just Compensation Clause. See *ante*, at 5. When a local governmental entity can prove that the market value of its property deviates significantly from the make-whole remedy intended by the Just Compensation Clause and that a substitute facility must be acquired to continue to provide an essential service, limiting compensation to the fair market value in my view would be manifestly unjust. Because the city of Duncanville did not establish that the market value in this case deviated significantly from the indemnity principle, I agree that the decision of the Court of Appeals should be reversed.