

The Burger Court Opinion Writing Database

United States v. Miller

471 U.S. 130 (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 28, 1985

Re: No. 83-1750 - United States v. Miller

Dear Thurgood:

I join.

Regards,



Justice Marshall

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 28, 1985

No. 83-1750

United States v. Miller

Dear Thurgood,

I agree.

Sincerely,

Justice Marshall

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 27, 1985

83-1750 - United States v. Miller

Dear Thurgood,

Please join me.

Sincerely yours,



Justice Marshall

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

From: **Justice Marshall**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1750

UNITED STATES, PETITIONER *v.* JAMES
RUAL MILLER

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

[March —, 1985]

JUSTICE MARSHALL delivered the opinion of the Court.

The issue presented is whether the Fifth Amendment's grand jury guarantee¹ is violated when a defendant is tried under an indictment that alleges a certain fraudulent scheme but is convicted based on trial proof that supports only a significantly narrower and more limited, though included, fraudulent scheme.

A grand jury in the Northern District of California returned an indictment charging respondent Miller with three counts of mail fraud in violation of 18 U. S. C. § 1341. After the Government moved to dismiss the third count, Miller was tried before a jury and convicted of the remaining two. He appealed asserting that there had been a fatal variance between the "scheme and artifice" to defraud charged in the indictment and that which the Government proved at trial. The Court of Appeals for the Ninth Circuit agreed and vacated the judgment of conviction. *Miller v. United States*, 715 F. 2d 1360 (1983), modified, 728 F. 2d 1269 (1984). We granted certiorari, — U. S. — (1984), and reverse.

¹The grand jury clause reads: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury."

STYLISTIC CHANGES THROUGHOUT

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

From: **Justice Marshall**

Circulated: _____

Recirculated: MAR 27 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1750

UNITED STATES, PETITIONER *v.* JAMES
RUAL MILLER

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¹The Grand Jury Clause reads: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury."

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

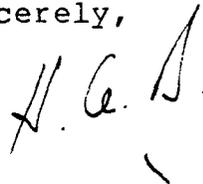
March 27, 1985

Re: No. 83-1750, United States v. Miller

Dear Thurgood:

Please join me.

Sincerely,

A handwritten signature in dark ink, appearing to be the initials 'H. C. B.' with a small flourish underneath.

Justice Marshall

cc: The Conference

file

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

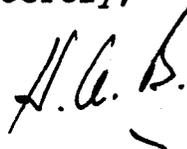
CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 12, 1985

Dear Chief:

I had thought that No. 83-1748, Allis-Chalmers v. Lueck, was ready for announcement next week. It does not appear, however, on your list of cases that are ready. No one has informed me of any reason why it has been held over.

Sincerely,



The Chief Justice
cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 17, 1985

Memorandum to the Conference

Re: Holdings for No. 83-1748, Allis-Chalmers Corp. v. Lueck

Three cases have been held for the decision in Lueck:

1. No. 83-1952, Pan American World Airways, Inc. v. Puchert. The appellant/employer asserted that an employee's state-law claim that he was unlawfully discharged because of work injuries is pre-empted by the Railway Labor Act. Appellee sustained a work-related injury and was discharged by his employer as a result of his physical problems. His union grieved the discharge, and the arbitrator changed the dismissal into a six-month leave of absence. In order to return to work, appellee had to obtain a medical report from a physician and get a workmen's compensation rating permitting heavy work. After six months appellee still had not recovered, and he filed a complaint with the Hawaii Department of Labor and Industrial Relations alleging that he had been discharged from employment in violation of a state law that makes it unlawful to dismiss an employee solely because he suffered a work-related injury compensable under the State's workmen's compensation program. Haw. Rev. Stat. §378-32(2). Appellee subsequently was dismissed because he had not complied with the terms of the arbitration decision.

The Haw. Sup. Ct. reversed the agency and lower courts' determinations that the complaint was untimely. It also rejected the assertion that the claim was pre-empted by the RLA. The RLA requires compulsory arbitration to settle "minor disputes," disputes arising out of and remedied by a collective bargaining agreement. Because appellee's claim arose out of independent state law, it was not a minor dispute that had to be addressed only by an arbitrator. The court relied on cases that held that where the complaint is based on a federal statutory right, the court is not denied jurisdiction merely because a collective-bargaining agreement exists which provides for grievance and arbitration procedures to remedy similar violations. See, e.g., Alexander v. Gardner-Denver Co., 415 U.S. 36 (1973). It reasoned that, analogously, a claim based on a state statute should be similarly treated. The court also rejected the argument that the claim should be pre-empted in order to protect the jurisdiction of the Adjustment Board, since workers' compensation is only a peripheral concern of the federal statute and is deeply rooted in local feeling and responsibility.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 26, 1985

83-1750 United States v. Miller

Dear Thurgood:

Please add at the end of the next draft of your opinion that I took no part in the consideration or decision of the above case.

Sincerely,



Justice Marshall

lfp/ss

cc: The Conference



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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 27, 1985

Re: No. 83-1750 United States v. Miller

Dear Thurgood,

Please join me.

Sincerely,

Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

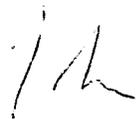
March 26, 1985

Re: 83-1750 - United States v. Miller

Dear Thurgood:

Please join me.

Respectfully,



Justice Marshall

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 26, 1985

No. 83-1750 United States v. Miller

Dear Thurgood,

Please join me.

Sincerely,

Sandra

Justice Marshall

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