

The Burger Court Opinion Writing Database

Mountain States Telephone & Telegraph Co. v. Pueblo of Santa Ana

472 U.S. 237 (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

February 26, 1985

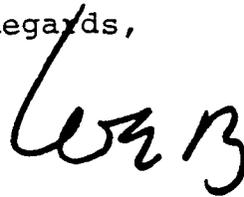
Re: No. 84-262 - Mountain States Telephone and Telegraph
Co. v. Pueblo of Santa Ana

Dear Byron,

On this case, I voted tentatively to affirm, but I suggested you assign. I added "maybe I will join" a reversal.

I've gone over it again and I conclude I will go with a reversal. If you reached a choice for the assignment, that choice will be entirely acceptable to me. Let me know so I can take it into account.

Regards,



Justice White

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

CHAMBERS OF
THE CHIEF JUSTICE

May 16, 1985

Re: No. 84-262 - Mountain States Telephone v. Pueblo
of Santa Ana

Dear John:

I join.

Regards,

Justice Stevens

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 4, 1985

No. 84-262

Mountain States Telephone
v. Pueblo of Santa Ana

No. 83-2148

Oregon Department of Fish
& Wildlife v. Klamath Indian Tribe

Dear Thurgood,

You and I are the only dissenters in the above two cases. They are happy, happy Indian cases. Suppose I take the dissent in Mountain States Telephone and you take the dissent in Klamath Indian Tribe. D'accord?

Sincerely,

Justice Marshall

WF
OK I will [unclear] as above
PM

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



CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 10, 1985

No. 84-262

Mountain States Telephone
and Telegraph Company
v. Pueblo of Santa Ana

Dear John,

I'll circulate a dissent in due course in the above. It may take me the better part of a week or two, but I'll get at it as soon as I can.

Sincerely,

Justice Stevens

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

From: **Justice Brennan**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-262

**MOUNTAIN STATES TELEPHONE AND TELEGRAPH
COMPANY, PETITIONER v. PUEBLO OF
SANTA ANA**

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

[May —, 1985]

JUSTICE BRENNAN, dissenting.

Section 17 of the Pueblo Lands Act of 1924, 43 Stat. 641-642, provides in full:

“No right, title, or interest in or to the lands of the Pueblo Indians of New Mexico to which their title has not been extinguished as hereinbefore determined shall hereafter be acquired or initiated by virtue of the laws of the State of New Mexico, or in any other manner except as may hereafter be provided by Congress, and no sale, grant, lease of any character, or other conveyance of lands, or any title or claim thereto, made by any pueblo as a community, or any Pueblo Indian living in a community of Pueblo Indians, in the State of New Mexico, shall be of any validity in law or in equity unless the same be first approved by the Secretary of the Interior.”

This awkward and obscure provision is a striking illustration of the fact that statutory phraseology sometimes is “the consequence of a legislative *accident*, perhaps caused by nothing more than the unfortunate fact that Congress is too busy to do all of its work as carefully as it should.” *Delaware Tribal Business Committee v. Weeks*, 430 U. S. 73, 97 (1977) (STEVENS, J., dissenting) (emphasis added). Section 17’s opaque language has given rise to not just two conflicting interpreta-

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



OFFICE OF THE CLERK OF THE SUPREME COURT
SEE PAGE 1, 14, 26

From: Justice Brennan

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Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 84-262

MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, PETITIONER *v.* PUEBLO OF SANTA ANA

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

[June 10, 1985]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL and
JUSTICE BLACKMUN join, dissenting.

Section 17 of the Pueblo Lands Act of 1924, 43 Stat.
641-642, provides in full:

“No right, title, or interest in or to the lands of the Pueblo Indians of New Mexico to which their title has not been extinguished as hereinbefore determined shall hereafter be acquired or initiated by virtue of the laws of the State of New Mexico, or in any other manner except as may hereafter be provided by Congress, and no sale, grant, lease of any character, or other conveyance of lands, or any title or claim thereto, made by any pueblo as a community, or any Pueblo Indian living in a community of Pueblo Indians, in the State of New Mexico, shall be of any validity in law or in equity unless the same be first approved by the Secretary of the Interior.”

This awkward and obscure provision is a striking illustration of the fact that statutory phraseology sometimes is “the consequence of a legislative *accident*, perhaps caused by nothing more than the unfortunate fact that Congress is too busy to do all of its work as carefully as it should.” *Delaware Tribal Business Committee v. Weeks*, 430 U. S. 73, 97 (1977) (STEVENS, J., dissenting) (emphasis added). Section 17’s opaque



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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 13, 1985

88-262 - Mountain States Telephone
v. Pueblo of Santa Ana

Dear John,

I agree.

Sincerely,

Justice Stevens

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 13, 1985

Re: No. 84-262 - Mountain States Telephone v.
Pueblo of Santa Ana

Dear John:

I await the dissent.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 5, 1985

Re: No. 84-262-Mountain States Telephone &
Telegraph Co. v. Pueblo of
Santa Ana

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.

T.M.

Justice Brennan

cc: The Conference

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 5, 1985

Re: No. 84-262, Mountain States Telephone
v. Pueblo of Santa Ana

Dear Bill:

Please join me in your dissent.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 10, 1985

84-262 Mountain States Telephone v. Pueblo of Santa Ana

Dear John:

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 Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 14, 1985

Re: 84-262 - Mountain States Telephone & Telegraph
Co. v. Pueblo of Santa Ana

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: MAY 10 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-262

**MOUNTAIN STATES TELEPHONE AND TELEGRAPH
COMPANY, PETITIONER *v.* PUEBLO OF
SANTA ANA**

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

[May —, 1985]

JUSTICE STEVENS delivered the opinion for the Court.

In 1928, Mountain States Telephone and Telegraph Company purchased an easement from the Pueblo of Santa Ana for a telephone line. Mountain States contends that the conveyance of this easement was valid under § 17 of the Pueblo Lands Act of 1924, 43 Stat. 641, because it was "first approved by the Secretary of the Interior."¹ The Pueblo contends that § 17 only authorizes such transfers "as may hereafter be provided by Congress," and that Congress never provided legislation authorizing the conveyance of Pueblo lands with the approval of the Secretary. Both constructions find some support in the language of § 17.

I

Congress enacted the 1924 legislation "to provide for the final adjudication and settlement of a very complicated and difficult series of conflicting titles affecting lands claimed by the Pueblo Indians of New Mexico."² The Committee Reports review the unique and "interesting history of the

¹43 Stat. 641. See *infra*, at — for the complete text of § 17.

²S. Rep. 492, 68th Cong. 1st Sess., 3 (1924).

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

STYLING CHANGES THROUGHOUT.
SEE PAGES.

From: **Justice Stevens**

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Recirculated: MAY 28 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-262

MOUNTAIN STATES TELEPHONE AND TELEGRAPH
COMPANY, PETITIONER *v.* PUEBLO OF
SANTA ANA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
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²S. Rep. No. 492, 68th Cong., 1st Sess., 3 (1924).

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Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: _____

Recirculated: JUN 6 1985

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 13, 15, 16

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-262

MOUNTAIN STATES TELEPHONE AND TELEGRAPH
COMPANY, PETITIONER *v.* PUEBLO OF
SANTA ANA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
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¹43 Stat. 641. See *infra*, at 8 for the complete text of § 17.

²S. Rep. No. 492, 68th Cong., 1st Sess., 3 (1924).

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CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

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

May 10, 1985

No. 84-262 Mountain States Telephone and
Telegraph Co. v. Pueblo of Santa Ana

Dear John,

Please join me.

Sincerely,

Justice Stevens

Copies to the Conference

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