

The Burger Court Opinion Writing Database

Exxon Corp. v. Hunt

475 U.S. 355 (1986)

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



B

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

CHAMBERS OF
THE CHIEF JUSTICE

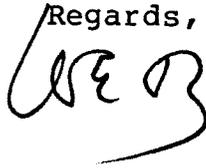
March 5, 1986

RE: 84-978 - Exxon Corporation, et al. v. Robert Hunt,
Administrator of New Jersey Spill Compensation Fund

Dear Thurgood:

I join.

Regards,



Justice Marshall

Copies to Conference

MB-2 VI 31

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 20, 1986

No. 84-978

Exxon v. Hunt

Dear Thurgood,

You will recall that I voted the other way at Conference and I think I should wait to see what John circulates. But you have written a really splendid opinion and I confidently expect that I will be joining it.

Sincerely,

Bill

Justice Marshall

BR FEB 20 1986

W

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 26, 1986

No. 84-978

Exxon v. Hunt

Dear Thurgood,

While I voted the other way at
Conference, I am persuaded by your
opinion. Please join me.

Sincerely,

Gill

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 31, 1985

Re: 84-978 - Exxon v. Hunt

Dear Thurgood,

This is not an easy case, and John has made the argument for the other side as tellingly as could be. But, as presently advised, I adhere to the Conference vote.

It would make little sense for Congress to preempt funds that had as their sole purpose the payment of Superfund compensation but leave wholly unaffected those funds having as one major purpose the payment of such compensation. Otherwise, a state could sidestep the entire preemption provision by creating multipurpose funds such as New Jersey's. And, as I see it, the Conference vote adheres more faithfully to the statutory language.

Sincerely yours,



Justice Marshall

Copies to the Conference

①

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 20, 1986

84-978 - Exxon Corporation v. Hunt

Dear Thurgood,

Please join me.

Sincerely yours,



Justice Marshall

Copies to the Conference

OR FEB 20 1986

BYRON R. WHITE

PP. 7, 16

Justice Brennan
 Justice White
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Marshall**

Circulated: FEB 18 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-978

EXXON CORPORATION, ET AL., APPELLANTS v. ROBERT HUNT, ADMINISTRATOR OF NEW JERSEY SPILL COMPENSATION FUND ET AL

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

[February —, 1986]

JUSTICE MARSHALL delivered the opinion of the Court.

The question for our determination is whether section 114(c) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U. S. C. § 9614(c) (1982) ("CERCLA"), preempts the New Jersey Spill Compensation and Control Act, N. J.S.A. § 58:10-23.11 to -23.11z (1982 & Supp. 1985) ("Spill Act"). We conclude that the Spill Act is preempted in part.

I

A

In 1977 the New Jersey legislature enacted the Spill Act to respond to the problem of hazardous substance release. Finding that oil spills threatened the health and beauty of the State's natural resources, and that leaks of hazardous chemicals from disposal sites presented a great risk to the public, the legislature intended the Spill Act to protect the citizens and environment of New Jersey through prevention and cleanup of spills and other releases. Those efforts are financed by an excise tax levied upon major petroleum and chemical facilities within the State. The money collected goes into a permanent fund known as the "Spill Fund." The Spill Fund may spend money to clean up releases of hazardous substances, to compensate third parties for certain eco-

STYLISTIC CHANGES THROUGHOUT

+ P. 19

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

From: Justice Marshall

Circulated: _____

Recirculated: FEB 26 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-978

EXXON CORPORATION, ET AL., APPELLANTS v. ROBERT HUNT, ADMINISTRATOR OF NEW JERSEY SPILL COMPENSATION FUND ET AL

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

[February —, 1986]

JUSTICE MARSHALL delivered the opinion of the Court.

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pp. 14, 20 &
 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 7 1986**

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-978

EXXON CORPORATION, ET AL., APPELLANTS v. ROBERT HUNT, ADMINISTRATOR OF NEW JERSEY SPILL COMPENSATION FUND ET AL

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

[March —, 1986]

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 6, 1986

Re: No. 84-978, Exxon v. Hunt

Dear Thurgood:

Please join me.

Sincerely,
H.A.B.

Justice Marshall

cc: The Conference

22 NOV -2 11:31

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 9, 1985

84-978 Exxon v. Hunt

Dear Chief:

It came to my attention only today that I may have a recusal problem in this case. The appendix to Exxon's brief lists its "affiliates", as required by the amendment to our Rules adopted a few years ago. Its list of affiliates includes about 450 companies.

We own no Exxon securities, or indeed the securities of any American oil or gas company. We do have a rather small holding in Dome Petroleum, Ltd., a Canadian company that is primarily a production rather than a distribution company in Canada. The list of Exxon affiliates includes two companies (I had never heard of either of them) that also are affiliates of Dome.

A computer will now give one the list of affiliates of any listed corporation. Of course, the definition of an affiliate is open ended, and I have no idea as to the extent of the interest of either Exxon or Dome in these two affiliates. It is not unusual in the oil and gas business for a number of the large companies to share interests in smaller producers.

Thus, the situation is that we have no interest in Exxon or in these two affiliates except possibly as a result of Dome's interest. One could speculate that if Exxon loses this case (involving a New Jersey tax) the affiliates in which Dome has an interest may suffer in some way.

I will be interested in whether other Justices have had this question and what you have done. In the past, with the assistance of my clerks and secretaries (who have the lists of what we own including subsidiaries and affiliates), I have recused even when an affiliate is listed. The interest if any is remote, and "once removed" as Dome is not in this case. But there is the question of appearances and I know we are sensitive as to these.

Sincerely,

82 DEC 10 10:18

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 30, 1985

84-978 Exxon v. Hunt

Dear John:

Please add at the end of your memorandum that I took no part in the decision of this case.

Sincerely,

Lewis

Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 18, 1986

84-978 Exxon v. Hunt

Dear Thurgood:

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

Sincerely,



Justice Marshall

lfp/ss

cc: The Conference

80 FEB 22 10:35



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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 20, 1986

Re: 84-978 - Exxon Corp. v. Hunt

Dear Thurgood:

Please join me.

Sincerely,

Justice Marshall

cc: The Conference

RECEIVED
FEB 20 1986

RECEIVED
FEB 20 1986

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

'85 DEC 27 10:48

December 27, 1985

MEMORANDUM TO THE CONFERENCE

Re: 84-978 - Exxon Corporation, et al. v.
Hunt

Because several members of the Court acknowledge that the views expressed at Conference were quite tentative, and because I have great difficulty understanding how the New Jersey tax could be partially preempted, I prepared the attached memorandum, which can readily be converted into a dissent if the majority adheres to its initial vote.

Respectfully,

John Paul Stevens / spm

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

From: Justice Stevens

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-978

EXXON CORPORATION, ET AL., APPELLANTS *v.* ROBERT HUNT, ADMINISTRATOR OF NEW JERSEY SPILL COMPENSATION FUND, ET AL.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

[December —, 1985]

Memorandum of JUSTICE STEVENS.

The purposes of the "Spill Fund" Act passed by the New Jersey Legislature in 1977,¹ and the "Superfund" legislation enacted by the Congress of the United States in 1980² overlap partially but not entirely. In the area of overlap, both statutes create funds to defray the costs of responding to environmental damage caused by the disposal of certain hazardous substances. Even in this area, however, the State and federal funds are not identical, for § 114(c) of the federal statute provides that no person may be required to contribute to any state fund if "the purpose" of the fund is to pay "compensation for claims for any costs of response or damages or claims which may be compensated under" the federal fund.³ The question presented by this case is whether the

¹New Jersey Spill Compensation and Control Act (Spill Fund), N. J. S. A. 58:10-23.11 to -23.11z.

²Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund or CERCLA), Pub. L. 96-510, 94 Stat. 2767, codified at 42 U. S. C. §§ 9601-9657.

³Section 114(c) of Superfund states in full:

"Except as provided in this Act, no person may be required to contribute to any fund, *the purpose* of which is to pay compensation for claims for any costs of response or damages or claims which may be compensated under this title. Nothing in this section shall preclude any State from using general revenues for such a fund, or from imposing a tax or fee upon any persons or upon any substance in order to finance the purchase or

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 21, 1986

Re: 84-978 - Exxon Corp. v. Hunt

Dear Thurgood:

As soon as I can get to it I will convert my memorandum into a dissent.

Respectfully,



Justice Marshall

Copies to the Conference

*PART II substantially revised
from December memorandum.*

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

From: **Justice Stevens**

Circulated: FEB 25 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-978

EXXON CORPORATION, ET AL., APPELLANTS *v.* ROBERT HUNT, ADMINISTRATOR OF NEW JERSEY SPILL COMPENSATION FUND, ET AL.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

[February —, 1986]

JUSTICE STEVENS, dissenting.

The purposes of the "Spill Fund" Act passed by the New Jersey Legislature in 1977,¹ and the "Superfund" legislation enacted by the Congress of the United States in 1980² overlap partially but not entirely. In the area of overlap, both statutes create funds to defray the costs of responding to environmental damage caused by the disposal of certain hazardous substances. Even in this area, however, the state and federal funds are not identical, for § 114(c) of the federal statute provides that no person may be required to contribute to any state fund if "the purpose" of the fund is to pay "compensation for claims for any costs of response or damages or claims which may be compensated under" the federal fund.³ The question presented by this case is whether the

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² Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund or CERCLA), '94 Stat. 2767, codified at 42 U. S. C. §§ 9601-9657.

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 30, 1985

No. 84-978 Exxon Corporation v. Hunt

Dear John,

I do not believe I can join an opinion along the lines you have proposed. I am inclined to think the New Jersey Spill Fund tax is preempted to the extent it is for a prohibited purpose.

Sincerely,

Sandra

Justice Stevens

Copies to the Conference

H

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 26, 1986

No. 84-978 Exxon Corp. v. Hunt

Dear Thurgood,

Please join me.

Sincerely,



Justice Marshall

Copies to the Conference