

The Burger Court Opinion Writing Database

United States v. James

478 U.S. 597 (1986)

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

June 7, 1986

Re: No. 85-434 - United States v. James

Dear Lewis,

I join.

Regards,

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 29, 1986

No. 85-434

United States v. James

Dear Lewis,

I agree.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 2, 1986

85-434 - United States v. James

Dear Lewis,

Please join me.

Sincerely yours,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 30, 1986

Re: No. 85-434 - United States v. James

Dear John:

Please join me in your dissent.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 2, 1986

Re: No. 85-434, United States v. James

Dear Lewis:

I have one trivial suggestion about your opinion in this case. Judge Gee in dissent is mentioned twice, on page 5 and again on page 7. Without checking my file, my initial reaction was that he was in solitary dissent. In fact, the Fifth Circuit divided, I believe, 9 to 6. I think it is worth pointing out that there were other judges in dissent and that Judge Gee is merely writing for most of the others.

You may well disagree with me, but I have generally followed a policy of not naming judges below who wrote. It, of course, delights the one who is named, but, from my decade on the Court of Appeals, it also tends to foster a little resentment on the part of the others who are not named.

Sincerely,



Justice Powell

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

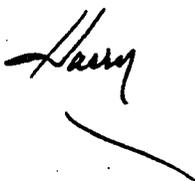
June 2, 1986

Re: No. 85-434, United States v. James

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

cc: The Conference

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

From: Justice Powell

Circulated: May 28, 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-434

UNITED STATES, PETITIONER *v.*
CHARLOTTE JAMES ET AL.

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

[June —, 1986]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether the immunity provision in 33 U. S. C. § 702c, which states that “[n]o liability of any kind shall attach to or rest upon the United States for any damage from or by floods or flood waters at any place,” bars recovery where the Federal Government would otherwise be liable under the Federal Tort Claims Act, 28 U. S. C. § 2671 *et seq.*, for personal injury caused by the Federal Government’s negligent failure to warn of the dangers from the release of flood waters from federal flood control projects.

Handwritten marks: a large bracket on the right side of the page, and the initials "JPS" written vertically.

I

The present case arose from serious accidents at flood control projects in Arkansas and Louisiana. In both accidents, recreational users of the reservoirs were swept through retaining structures when those structures were opened to release waters in order to control flooding.

A

The project in Arkansas, Millwood Dam, was dedicated in 1966 and is located in the southwestern corner of the State. The Millwood Reservoir behind the structure is used for fishing, swimming, boating, and water-skiing. This reservoir has marinas and launching areas for small boats. The United States Government Printing Office has printed

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 29, 1986

Re: 85-434 - United States v. James

Dear Lewis:

Please join me.

Sincerely,

wm

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 28, 1986

Re: 85-434 - United States v. James

Dear Lewis:

As soon as I can get to it, I shall prepare a
brief dissent.

Respectfully,



Justice Powell

Copies to the Conference

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

From: **Justice Stevens**

Circulated: 6/28/86

Recirculated: _____

PS
Please join me in your dissent.
JAS

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-434

UNITED STATES, PETITIONER *v.*
CHARLOTTE JAMES ET AL.

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

[June —, 1986]

JUSTICE STEVENS, dissenting.

As a part of the major undertaking authorized by the Mississippi Flood Control Act of 1928, Congress directed the Secretary of War and the Chief of Engineers to take special steps to acquire lands that were subject to "overflow damage" along the banks of the Mississippi River where it was impracticable to construct levees. In the section of the Act containing that specific direction concerning the acquisition of "lands so subject to overflow damage," there is a sentence stating that "[n]o liability of any kind shall attach to or rest upon the United States for any damage from or by floods or flood waters at any place."¹

¹ Section 3 of the statute, which is now codified as 33 U. S. C. § 702c, reads in full as follows:

"Sec. 3. Except when authorized by the Secretary of War upon the recommendation of the Chief of Engineers, no money appropriated under authority of this Act shall be expended on the construction of any item of the project until the States or levee districts have given assurances satisfactory to the Secretary of War that they will (a) maintain all flood-control works after their completion, except controlling and regulating spillway structures, including special relief levees; maintenance includes normally such matters as cutting grass, removal of weeds, local drainage, and minor repairs of main river levees; (b) agree to accept land turned over to them under the provisions of section 4; (c) provide without cost to the United States, all rights of way for levee foundations and levees on the main stem

NO

To: The Chief Justice
Justice T. Brand
Justice White
Justice Marshall
Justice Brennan
Justice Stevens
Justice O'Connor

Justice Stevens
1986

STAMPED THROUGHOUT
SEE PAGES:

SUPREME COURT OF THE UNITED STATES

No. 85-434

UNITED STATES, PETITIONER *v.*
CHARLOTTE JAMES ET AL.

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

[July 2, 1986]

JUSTICE STEVENS, with whom JUSTICE MARSHALL and
JUSTICE O'CONNOR join, dissenting.

As a part of the major undertaking authorized by the Mississippi Flood Control Act of 1928, Congress directed the Secretary of War and the Chief of Engineers to take special steps to acquire lands that were subject to "overflow and damage" along the banks of the Mississippi River where it was impracticable to construct levees. In the section of the Act containing that specific direction concerning the acquisition of "lands so subjected to overflow and damage," there is a sentence stating that "[n]o liability of any kind shall attach to or rest upon the United States for any damage from or by floods or flood waters at any place."¹

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 30, 1986

No. 85-434 United States v. James

Dear John,

Please join me in your dissenting opinion.

Sincerely,



Justice Stevens

Copies to the Conference

20 JUN 30 11 52 AM

U.S. SUPREME COURT
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