

The Burger Court Opinion Writing Database

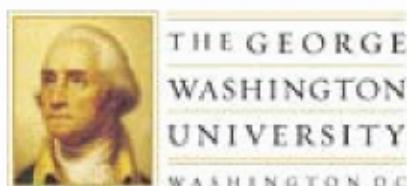
Chandler v. Judicial Council of Tenth Circuit

398 U.S. 74 (1970)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



JH ONLY

FEB 12 1970

No. 2 Misc. - Stephen S. Chandler, United States District Judge for
the Western District of Oklahoma v. Judicial Council
of the Tenth Circuit

MR. CHIEF JUSTICE BURGER delivered the opinion of the
Court.

Petitioner, a United States District Judge, filed motion for
leave to file a petition for a writ of mandamus or alternatively a writ
of prohibition addressed to the Judicial Council of the 10th Circuit. His
petition seeks resolution of questions of first impression concerning,
inter alia, the scope and constitutionality of the powers of the Judicial
Councils under 28 U.S.C. §§ 137 and 332. ^{1/} The Judicial Council of

1/

28 U.S.C. § 137, 62 Stat. 897.

"137. Division of business among district judges

"The business of a court having more than one judge shall
be divided among the judges as provided by the rules and
orders of the court.

"The chief judge of the district court shall be responsible
for the observance of such rules and orders, and shall divide
the business and assign the cases so far as such rules and
orders do not otherwise prescribe.

"If the district judges in any district are unable to agree
upon the adoption of rules or orders for that purpose the
judicial council of the circuit shall make the necessary orders.

"332. Judicial Councils

"The chief judge of each circuit shall call, at least twice
in each year and at such places as he may designate, a

[cont'd on next page]

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

CHAMBERS OF
THE CHIEF JUSTICE

March 27, 1970

Re: No. 2 Misc - Chandler v. Judicial Council of
10th Circuit of U. S.

MEMORANDUM TO THE CONFERENCE:

Enclosed is proposed draft of opinion disposing
of the above on the narrowest basis I can see as valid.
I invite your comment.

W.E.B.

W. E. B.

No. 2 Misc. - Stephen S. Chandler, United States District Judge for the Western District of Oklahoma v. Judicial Council of the Tenth Circuit

To: Mr. Justice Black
 Mr. Justice Douglas
 Mr. Justice Harlan
 Mr. Justice Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
~~Mr. Justice Fortas~~
 Mr. Justice Marshall

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

From: The Chief Justice

Circulated: 3/27/70

Petitioner, a United States District Judge, filed motion for Recirculated:

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SUPREME COURT OF THE UNITED STATES

No. 2, Misc.—OCTOBER TERM, 1969

Stephen S. Chandler, United
States District Judge for
the Western District of
Oklahoma, Petitioner,
v.

Judicial Council of the Tenth
Circuit of the United
States.

On Motion for Leave to
File Petition for Writ
of Prohibition and/or
Mandamus.

[May —, 1970]

MR. CHIEF JUSTICE BURGER delivered the opinion of
the Court.

Petitioner, a United States District Judge, filed motion
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To: Mr. Justice Black
 Mr. Justice Douglas
 Mr. Justice Harlan
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Fortas
 Mr. Justice Marshall

P11

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

No. 2, Misc.—OCTOBER TERM, 1969

Recirculated: 5/15/70

Stephen S. Chandler, United
 States District Judge for
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v.

Judicial Council of the Tenth
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On Motion for Leave to
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12, 14

To: Mr. Justice Black
 Mr. Justice Douglas
 Mr. Justice Harlan
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
~~Mr. Justice Fortas~~
 Mr. Justice Marshall

4

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES:

No. 2, Misc.—OCTOBER TERM, 1969, ~~as circulated~~: MAY 19 1970

Stephen S. Chandler, United States District Judge for the Western District of Oklahoma, Petitioner, <i>v.</i> Judicial Council of the Tenth Circuit of the United States.	On Motion for Leave to File Petition for Writ of Prohibition and/or Mandamus.
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Oklahoma, Petitioner,
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Judicial Council of the Tenth
Circuit of the United
States.

On Motion for Leave to
File Petition for Writ
of Prohibition and/or
mandamus.

[January —, 1970]

MR. JUSTICE DOUGLAS, dissenting.

The Congress, which created the lower federal courts, also created a Judicial Council for each circuit composed "of the circuit judges for the circuit in regular active service." 28 U. S. C. § 332. The Council "shall make all necessary orders for the effective and expeditious administration of the business of the courts within its circuit." *Ibid.* And Congress directed that "The district judges shall promptly carry into effect all orders of the judicial council." *Ibid.*

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through - X
will add a
few words -
I concur in
the
Jan 3-69 HJD*

To: The Chief Justice
 Mr. Justice Douglas
 Mr. Justice Harlan
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Fortas
 Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

No. 2, Misc.—OCTOBER TERM, 1969

From: Black, J. APR 1 1970

Circulated:

Recirculated:

Stephen S. Chandler, United States District Judge for the Western District of Oklahoma, Petitioner,
v.
 Judicial Council of the Tenth Circuit of the United States.

On Motion for Leave to File Petition for Writ of prohibition and/or mandamus.

[April —, 1970]

MR. JUSTICE BLACK, dissenting.

Fully concurring in the dissent of my Brother DOUGLAS in this case, I wish to add a few words to emphasize once again¹ the gravity of the unconstitutional wrong the Court is inflicting upon United States District Judge Stephen Chandler, and more importantly on our system of government and the Constitution itself. The preparation and adoption of that great document was a turning point in the history of this country and of the world. Our Constitution gave new hopes and dreams for freedom and equal justice to citizens of this country and signaled to the suffering and oppressed people everywhere that government could be humane. One of the many factors which spawned these new dreams and hopes was our constitutional plan for a more independent judicial system than had ever before existed. Judges in our system were to hold their offices during "good behavior," their compensation was not to be "diminished during their continuance in office,"² and they were to be removed only after impeachment and trial by the United States

¹ See *Chandler v. Judicial Council*, 382 U. S. 1003, 1004 (1966) (dissenting opinion).

² Art. III, § 1.

STYLISTIC CHANGES THROUGHOUT.

3

To: The Chief Justice
 Mr. Justice Douglas
 Mr. Justice Harlan
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

No. 2, Misc.—OCTOBER TERM, 1969

From: Black, J.

Circulated:

Recirculated: MAY 28 1970

Stephen S. Chandler, United
 States District Judge for
 the Western District of
 Oklahoma, Petitioner,
 v.

Judicial Council of the Tenth
 Circuit of the United
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On Motion for Leave to
 File Petition for Writ
 of prohibition and/or
 mandamus.

[June 1, 1970]

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² Art. III, § 1.

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 31, 1969

Dear Hugo:

Re: No. 2-Misc. - Chandler v.
Judicial Council

Many thanks for your suggestions
in the above case.

I have reworked it in light of
your suggestions and enclose herewith a
copy for your consideration.

It would of course, as usual,
be very congenial with me should you be
moved to write an additional opinion on
the same matter.

Yours faithfully,

W. Douglas

Mr. Justice Black
12331 S. W. 60th Court
Miami, Florida 33156

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
~~Mr. Justice Fortas~~
Mr. Justice Marshall

3

SUPREME COURT OF THE UNITED STATES

No. 2, Misc.—OCTOBER TERM, 1969

Stephen S. Chandler, United States District Judge for the Western District of Oklahoma, Petitioner,
v.

Judicial Council of the Tenth Circuit of the United States.

On Motion for Leave to File Petition for Writ of Prohibition and/or mandamus.

From: Douglas, J.

Circulated: 2-2d

Recirculated:

[April —, 1970]

MR. JUSTICE DOUGLAS, dissenting.

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Petitioner, Stephen S. Chandler, is a federal district judge of the Tenth Circuit. On December 13, 1965, the Council, composed of five judges of the Court of Appeals, entered an order that "until the further order of the Judicial Council, the Honorable Stephen S. Chandler shall take no action whatsoever in any case or proceeding now or hereafter pending in the United States District Court for the Western District of Oklahoma; that all cases and proceedings now assigned to or pending before him shall be reassigned to and among the other judges of said court; and that until the further

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
~~Mr. Justice F. M. Marshall~~
Mr. Justice Marshall

4

p 1
SUPREME COURT OF THE UNITED STATES

No. 2, Misc.—OCTOBER TERM, 1969

Douglas, J.
Circulated:

Recirculated: *f-1*

Stephen S. Chandler, United
States District Judge for
the Western District of
Oklahoma, Petitioner,
v.

Judicial Council of the Tenth
Circuit of the United
States.

On Motion for Leave to
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2, 4, 10, 11

To: The Chief Justice
 Mr. Justice Black
 Mr. Justice Harlan
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
~~Mr. Justice Clark~~
 Mr. Justice Marshall

5

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 2, Misc.—OCTOBER TERM, 1969

Circulated:

Recirculated: *4-29*

Stephen S. Chandler, United
 States District Judge for
 the Western District of
 Oklahoma, Petitioner,
v.

Judicial Council of the Tenth
 Circuit of the United
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On Motion for Leave to
 File Petition for Writ
 of Prohibition and/or
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[May —, 1970]

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
~~Mr. Justice Clark~~
Mr. Justice Marshall

6

P 10

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 2, Misc.—OCTOBER TERM, 1969

Circulated:

Recirculated: 5-11

Stephen S. Chandler, United
States District Judge for
the Western District of
Oklahoma, Petitioner,
v.

Judicial Council of the Tenth
Circuit of the United
States.

On Motion for Leave to
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Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

7

SUPREME COURT OF THE UNITED STATES

No. 2, Misc.—OCTOBER TERM, 1969

From: Douglas, J.

Circulated:

Dated: 5/19/70

Stephen S. Chandler, United States District Judge for the Western District of Oklahoma, Petitioner,
v.
Judicial Council of the Tenth Circuit of the United States.

On Motion for Leave to File Petition for Writ of Prohibition and/or Mandamus.

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Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
~~Mr. Justice Black~~

3, 4
8

SUPREME COURT OF THE UNITED STATES

No. 2, Misc.—OCTOBER TERM, 1969

Circulated:

Recirculated: 5-28

Stephen S. Chandler, United States District Judge for the Western District of Oklahoma, Petitioner, <i>v.</i>	On Motion for Leave to File Petition for Writ of Prohibition and/or Mandamus.
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The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

4, 5, 9, 10, 11

9

From: Douglas, J.

circulated:

SUPREME COURT OF THE UNITED STATES

No. 2, Misc.—OCTOBER TERM, 1969

Recirculated: 5-30

To:

Stephen S. Chandler, United
States District Judge for
the Western District of
Oklahoma, Petitioner,
v.

Judicial Council of the Tenth
Circuit of the United
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On Motion for Leave to
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Mandamus.

[June 1, 1970]

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March 31, 1970

Re: No. 2 Misc. - Chandler v. Judicial Council of the Tenth Circuit.

2000 College

I very much regret to find myself unable to join
your session because I am not able to get time to speak. I
plan to circulate, as soon as I can, a written opinion holding the
view that (1) the state is not bound (2) we do not need your resolution
to have a constitution (3) it is not in the best interest of the
unitary of the state to have one (4) it is not in the best interest
of the state to have one (5) it is not in the best interest of the
state to have one (6) it is not in the best interest of the

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

3

SUPREME COURT OF THE UNITED STATES

From: Harlan, J.

APR 14 1970

Circulated:

No. 2, Misc.—OCTOBER TERM, 1969

Recirculated:

Stephen S. Chandler, United
States District Judge for
the Western District of
Oklahoma, Petitioner,
v.

Judicial Council of the Tenth
Circuit of the United
States.

On Motion for Leave to
File Petition for Writ
of Prohibition and/or
Mandamus.

[April —, 1970]

Opinion of MR. JUSTICE HARLAN.

This opinion sets forth my reasons for concluding (1) that the subsisting Order of the Judicial Council of February 4, 1966, presents issues which are still alive and which should be decided by this Court; (2) that this Court does have jurisdiction to pass upon such issues; and (3) that promulgation and effectuation of the Order of February 4, 1966, are within the Council's authority, and hence this petition for an extraordinary writ should be denied. The novelty and unusual character of these questions requires, regrettably, an opinion of inordinate length.

I

At the outset it should be observed that neither the parties nor the United States as *amicus curiae* suggests that the case is moot.

It is clear, as the opinion of THE CHIEF JUSTICE states, that the Council's Order of December 13, 1965, having been expressly revoked by the subsequent Order of February 4, 1966, is no longer directly before us. More than

Pp. 1-14, 16, 20, 21, 25,
31, 33, 35, 39, 40

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

from: Harlan, J.

No. 2, Misc.—OCTOBER TERM, 1969

Circulated:

MAY 27 1970

Recirculated:

Stephen S. Chandler, United
States District Judge for
the Western District of
Oklahoma, Petitioner,
v.

Judicial Council of the Tenth
Circuit of the United
States.

On Motion for Leave to
File Petition for Writ
of Prohibition and/or
Mandamus.

[June —, 1970]

MR. JUSTICE HARLAN, concurring in the denial of an Extraordinary Writ.

This opinion sets forth my reasons for concluding (1) that the subsisting Order of the Judicial Council of February 4, 1966, presents issues which are adequately presented to this Court and should be faced by it; (2) that this Court does have jurisdiction to pass upon them; and (3) that promulgation and effectuation of the Order of February 4, 1966, are within the Council's authority, and hence this petition for an extraordinary writ should be denied. The novelty and unusual character of these questions require, regrettably, an opinion of some length.

I

I am perplexed by the Court's explanation for its failure to reach the issues presented by Judge Chandler's petition. As the Court states, the issues are whether this Court has jurisdiction to review the orders of the Judicial Council, and, if so, whether those orders are invalid because beyond the statutory and constitutional bounds of the Council's authority. The Court says, cor-

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 1, 1970

RE: No. 2 Misc. - Chandler v. Judicial Council of Tenth Circuit

Dear Chief:

May I make the following comments on your proposed opinion in the Chandler case.

First, I have difficulty attributing to Chandler an "express agreement" to the Order of February 4, 1966. That finding necessarily rests on his letter to his colleagues of January 24, 1966, but I have trouble inferring from its contents any intent to give anticipatory concurrence to the Order later issued. That letter was written as part of a "strategy" to avoid creating a situation of disagreement with his colleagues to which §137 would be applicable. Chandler misjudged the situation since he apparently overlooked the possibility that the Order might be based, as it was, on the inability of the District Judges to agree on the reassignment of cases assigned to Chandler before December 28, 1965. On this state of the record, it is therefore hard for me to say that Chandler "eliminated whatever case or controversy theretofore existed." Moreover, his tenacity in pursuing his case here for several years seems quite inconsistent with any conduct indicating acquiescence.

Second, haven't we foreclosed a finding of mootness by our denial of the Solicitor General's suggestion of mootness of February 9, 1966? Wasn't that suggestion based on the same facts? And would not a mootness holding based on a Chandler agreement implicitly undermine the basic premise of the February 4 Order that there was disagreement among the District Judges?

I am still of the view that we ought forthrightly to hold that we have no jurisdiction to review the actions of the Council because those actions are not of a judicial character but of administrative

action

- 2 -

nature taken by an administrative agency. Such actions, if reviewable at all, are reviewable in the District Court under 28 U.S.C. § 1361. I think Professor Wright's argument in his brief in this respect is sound. It is true that the Judges comprising the Council could not hear any appeal from the District Court judgment, 28 U.S.C. § 455, but you as Chief Justice could create a court under 28 U.S.C. § 291(a) or this Court could grant certiorari prior to judgment under 28 U.S.C. § 1254(1).

Sincerely,

The Chief Justice

May 18, 1970

RE: No. 2 Misc. - Chandler v. Judicial Council of the Tenth Circuit

Dear Chief:

The following are suggestions along the lines we discussed.
I suggest the following as a substitute for the last paragraph of
your opinion:

"Whether the Council's action was administrative action
not reviewable in this Court, or be regarded as reviewable here,
plainly petitioner has not made a case for the extraordinary relief
of mandamus or prohibition. The motion for leave to file the peti-
tion is therefore denied."

The other suggestion is as follows:

"We have no doubt that Congress may constitutionally create
the Circuit Council as an administrative body having authority to
make necessary orders for the effective and expeditious admini-
stration of the business of the courts within its Circuit."

Sincerely,

The Chief Justice

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 19, 1970

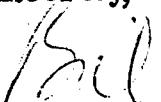
RE: No. 2 Misc. - Chandler v. Judicial Council
of the Tenth Circuit

Dear Chief:

I am happy to join your No. 4 circulation
in the above.

Thank you for your consideration of my
suggestions.

Sincerely,



W. J. B. Jr.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 30, 1970

Re: No. 2 Misc. -- Chandler v. Judicial
Council of 10th Circuit

Dear Chief,

I am glad to join your opinion
for the Court in this case.

Sincerely yours,

P.S.
✓

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 19, 1970

No. 2 Misc., Chandler v. Judicial Council

Dear Chief,

I agree with your opinion for the Court as revised and recirculated today.

Sincerely yours,

P.S.
J.

The Chief Justice

Copies to the Conference

March 30, 1970

Re: No. 2 Misc. - Chandler v. Judicial
Council of the Tenth Circuit

Dear Chief:

Please join me.

Sincerely,

B.R.W.

The Chief Justice

cc: The Conference

On
Tues
C.D.W.