

The Burger Court Opinion Writing Database

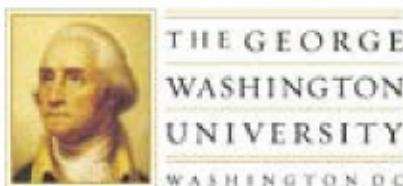
Illinois v. Milwaukee

406 U.S. 91 (April 24, 1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



3rd DRAFT

File
Rec'd
4/7/71

SUPREME COURT OF THE UNITED STATES

No. 49, Orig.—OCTOBER TERM, 1970

State of Illinois, Plaintiff,
v.
City of Milwaukee,
Wisconsin, et al. } Motion for Leave to File
Bill of Complaint.

[April —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

Plaintiff moves to file a complaint alleging defendants are allowing raw sewage to be discharged into Lake Michigan. According to Plaintiff some 200 million gallons of raw or inadequately treated sewage and other waste materials are discharged *daily* into the lake in the Milwaukee area alone. Plaintiff alleges that it and its subdivisions prohibit and prevent such discharges, but the State of Wisconsin does not take such actions and when it does it extends the compliance deadlines again and again. Plaintiff asks that we abate this public nuisance. See *Missouri v. Illinois*, 200 U. S. 496; *Georgia v. Tennessee Copper Co.*, 206 U. S. 230; *New Jersey v. New York City*, 283 U. S. 473.

The defendants urge us not exercise our jurisdiction in this case because of simultaneous administrative proceedings under the Federal Water Pollution Control Act. In late 1967 the Governor of Illinois and the Secretary of the Interior initiated an interstate conference concerning pollution of Lake Michigan. Participants are the Federal Government and the States of Indiana, Illinois, Michigan, and Wisconsin. The conference was initiated pursuant to § 10 (d) of the Act. 33 U. S. C. § 1160 (d). That section provides that when "pollution of waters . . . is endangering the health and welfare of persons in a State other than that in which the discharge or discharges . . . originate" the Governor or appropriate body

Oct 71 - Douglas - ^{to file?}
This seems not to have been like on our

June
Reed
4-12

4th DRAFT

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50 orig

Supreme Court of the United States
Washington, D. C. 20542CHAMBERS OF
JUSTICE BYRON R. WHITE

April 14, 1971

Mo v. WI v. the Saw Case
18045 205, 242 of the 249

Dear Bill:

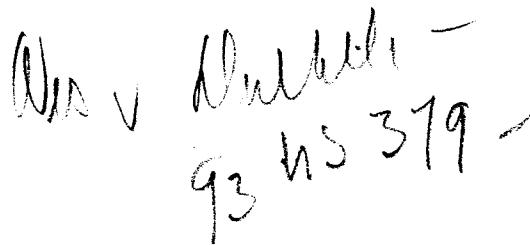
With respect to the original jurisdiction cases we talked about this morning, particularly the one against the Wisconsin cities, see New York v. New Jersey, 256 U.S. 296, 320; Hunter v. Pittsburgh, 207 U.S. 161, 178; Commonwealth of Kentucky v. Dennison, 65 U.S. 66, 97-98; and New Jersey v. New York City, 283 U.S. 73. Even from this sampling of the cases, it could be easily argued that Illinois could sue Wisconsin and its cities and that such a suit would lie within the exclusive jurisdiction of this Court under 28 U.S.C. § 1251. Note also that in New Jersey v. New York City it was argued that the courts of both New Jersey and New York had always held they had no jurisdiction over cases like that case. 283 U.S., at 475.

I shall look around a little more.

Sincerely,



Mr. Justice Brennan



Mo. v. S. 20015496 519-521

Allyn; Sust 3/11/522, 27 50 orig

11 Mar 1. 1952
in Court Recd -

For New Mex 282 MS 67

Bill -

Re Governing Law, see also:

Hart + Wechsler 243-5
Note on Bankruptcy Law 21 HLR 132 (62)

prn

W. N.Y

Bill -

Apparently, there is some
basis for distinguishing
state vs state + state vs citizen
in so far as the governing law
is concerned.

So says Stanford anyway

Box