

The Burger Court Opinion Writing Database

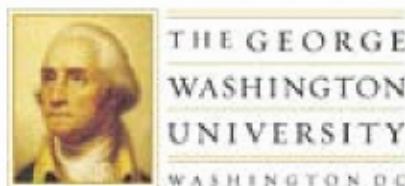
Vermont v. New York

406 U.S. 186 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

April 20, 1972

Re: No. 50 Orig. - Vermont v. New York, et al.

Dear Bill:

I think your dissent has persuaded me we
ought to take this case and dispose of it.

Regards,

WES

Mr. Justice Rehnquist

cc: The Conference

*Please file in the
2nd DRAFT*

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

3/20/72
No. 50, Orig.

State of Vermont,
Plaintiff,
v.
State of New York et al. } On Motion for Leave to File
Bill of Complaint.

[March —, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a motion by Vermont for leave to file a complaint invoking our original jurisdiction against New York and against International Paper Company, a New York corporation doing business in New York, and seeking to abate a public nuisance caused by a long-term discharge of wastes and sewage into Lake Champlain by way of Ticonderoga Creek.

It is alleged that New York is the owner of the bed of Lake Champlain to the deepest point in the channel which marks the New York-Vermont boundary. See *Massachusetts v. New York*, 271 U. S. 65, 89.

It is alleged that the discharge of wastes and sewage into the lake by International Paper has continued for approximately 45 years and has created a sludge bed on the bottom of the lake covering approximately 300 acres and containing 802,000 cubic feet of wood chips, cinders, and organic material in state of anaerobic (septic) decay, the sludge bed being up to 12 feet in depth. It is alleged that the pollution has rendered Vermont waters in the lake unfit for drinking, fishing, swimming, boating, and all other reasonable uses. It is also alleged that the presence of the sludge bed unlawfully alters the boundary between the two States.

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 27, 1972

No. 50 Orig., Vermont v. New York

Dear Hubbs,

I agree with your dissent in this case
and should appreciate your adding my name to
your opinion.

Sincerely yours,

OS
↓

Mr. Justice Rehnquist

Copies to the Conference

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 50, Orig.

State of Vermont,
Plaintiff,
v.
State of New York et al. } On Motion for Leave to File
Bill of Complaint.

[April 24, 1972]

PER CURIAM.

The motion by Vermont for leave to file a complaint invoking our original jurisdiction against New York and against International Paper Company, a New York corporation doing business in New York, is granted. New York and International Paper Co. are given until June 19, 1972, to answer the complaint.

So ordered.

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AM
1st DRAFT

to: The C.
Mr. Justice Clark
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

SUPREME COURT OF THE UNITED STATES

From: Rehnquist, J.

No. 50, Orig.

Circulated: 3/27/72

State of Vermont,
Plaintiff, } Recirculated:
v. } On Motion for Leave to File
State of New York et al. } Bill of Complaint.

[April —, 1972]

MR. JUSTICE REHNQUIST, dissenting.

Had Vermont sought leave to file only against International Paper, I would have no doubt that the Court's denial of leave to file was proper. Our jurisdiction of such an action is not exclusive, and an adequate alternative forum is available for prosecution of such a claim. *Ohio v. Wyandotte Chemical Co.*, 401 U. S. 496 (1971); *Illinois v. City of Milwaukee*, — U. S. — (1972).

However, Vermont has sought leave to file not only against International Paper Company but against the State of New York. The Court appears to concede that Vermont has stated a separate but substantial claim against New York, and of course our jurisdiction of such an action is exclusive; Vermont must litigate her claim against New York before this Court or not at all. While the Court does not finally refuse leave to Vermont with respect to the claim against New York, Vermont is told that for the present she must sue another defendant in another court and see how she fares in that litigation. Presumably, if several years hence she is dissatisfied with the result of that case, this Court will be willing to reconsider her motion. I do not believe this extreme form of judicial abstention, whereby the plaintiff is remitted not only to an alternate forum but to an alternate defendant, is either justified by our prior cases or warranted by the constitutional provision conferring original juris-

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To: Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Burger
Mr. Justice Souter
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Rehnquist, J.

No. 50. Orig.

Carried over:

State of Vermont,
Plaintiff, } On Motion for ^{Recalculated:} Leave to File
v. } Bill of Complaint.
State of New York et al.

[April —, 1972]

MR. JUSTICE REHNQUIST, dissenting.

Had Vermont sought leave to file only against International Paper, I would have no doubt that the Court's denial of leave to file was proper. Our jurisdiction of such an action is not exclusive, and an adequate alternative forum is available for prosecution of such a claim. *Ohio v. Wyandotte Chemical Co.*, 401 U. S. 496 (1971); *Illinois v. City of Milwaukee*, — U. S. — (1972).

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