The Burger Court Opinion Writing Database

Sierra Club v. Morton

405 U.S. 727 (1972)

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

B

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

CHAMBERS OF
THE CHIEF JUSTICE

March 10, 1972

Re: No. 70-34 - Sierra Club v. Morton

Dear Potter:

Please join me in the above.

Regards,

WEB

Mr. Justice Stewart

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

3

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

From: Douglas, J.

Circulated: 2/14/72

Recirculated: _____

8th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70–34

Sierra Club, Petitioner,
v.
Rogers C. B. Morton, Individually, and as Secretary of the Interior of the United States, et al.

On Writ of Certiorari to the United States Court of Appeals to the Ninth Circuit.

[January —, 1972]

MR. JUSTICE DOUGLAS.

The Court quite properly holds here, as we have on other occasions, that the critical question of "standing" involves the requirement of case or controversy [1] as those words are used in Art. III of the Constitution.

That problem would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of the inanimate object about to be despoiled, defaced, or invaded by roads and bulldozers and where injury is the subject of public outrage. This suit would therefore be more properly labeled as *Mineral King* v. *Morton*.

Inanimate objects are sometimes parties in litigation. A ship has a legal personality, a fiction found useful for maritime purposes.[2] The corporation sole—a creature of

[1] *E. g., Data Processing Service* v. *Camp*, 397 U. S. 150 (1970); *Barlow* v. *Collins*, 397 U. S. 159 (1970); *Flast* v. *Cohen*, 392 U. S. 83 (1968). See also MR. JUSTICE BRENNAN's concurring opinion in *Barlow* v. *Collins*, *supra*, at 167. The issue of standing aside, no doubt exists that "injury in fact" to "aesthetic" and "conservational" interests is here sufficiently threatened to satisfy the case or controversy clause. *Data Processing Service* v. *Camp*, *supra*, at 154.

[2] *In rem* actions brought to adjudicate libellants' interests in vessels are well known in admiralty. Gilmore & Black, The Law

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1, 9, 11

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

9th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-34

Circulated:

Recirculated: 2/16/72

Sierra Club, Petitioner,
v.
Rogers C. B. Morton, Individually, and as Secretary of the Interior of the United States, et al.

On Writ of Certiorari to the United States Court of Appeals to the Ninth Circuit.

[January —, 1972]

MR. JUSTICE DOUGLAS.

The critical question of "standing" [1] would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of the inanimate object about to be dispoiled, defaced, or invaded by roads and bulldozers and where injury is the subject of public outrage. This suit would therefore be more properly labeled as *Mineral King* v. *Morton*.

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[1] *E. g., Data Processing Service* v. *Camp*, 397 U. S. 150 (1970); *Barlow* v. *Collins*, 397 U. S. 159 (1970); *Flast* v. *Cohen*, 392 U. S. 83 (1968). See also MR. JUSTICE BRENNAN's concurring opinion in *Barlow* v. *Collins, supra*, at 167. The issue of standing aside, no doubt exists that "injury in fact" to "aesthetic" and "conservational" interests is here sufficiently threatened to satisfy the case or controversy clause. *Data Processing Service* v. *Camp, supra*, at 154.

[2] *In rem* actions brought to adjudicate libellants' interests in vessels are well known in admiralty. Gilmore & Black, The Law of Admiralty 31 (1957). But admiralty also permits a salvage action to be brought in the name of the rescuing vessel. *The Comanche,*

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1, 2, 4 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

10th DRAFT

SUPREME COURT OF THE UNITED STATES

Circulated:

No. 70-34

Recirculated: 2-22

Sierra Club, Petitioner,
v.
Rogers C. B. Morton, Individually, and as Secretary of the Interior of the United States, et al.

On Writ of Certiorari to the United States Court of Appeals to the Ninth Circuit.

[January —, 1972]

MR. JUSTICE DOUGLAS.

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[1] See generally *Data Processing Service* v. *Camp*, 397 U. S. 150 (1970); *Barlow* v. *Collins*, 397 U. S. 159 (1970); *Flast* v. *Cohen*, 392 U. S. 83 (1968). See also MR. JUSTICE BRENNAN'S concurring opinion in *Barlow* v. *Collins*, *supra*, at 167. The issue of statutory standing aside, no doubt exists that "injury in fact" to "aesthetic" and "conservational" interests is here sufficiently threatened to satisfy the case or controversy clause. *Data Processing Service* v. *Camp*, *supra*, at 154.

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To: The Chief Justice
Mr. [illegible]
Mr. [illegible]
Mr. [illegible]
Mr. [illegible]
Mr. [illegible]
Mr. Justice Powell
Mr. Justice Rehnquist

From: [illegible]

Circulated: 3/15/72

11th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70–34

Sierra Club, Petitioner, *v.* Rogers C. B. Morton, Individually, and as Secretary of the Interior of the United States, et al. | On Writ of Certiorari to the United States Court of Appeals to the Ninth Circuit.

[January —, 1972]

MR. JUSTICE DOUGLAS.

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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

12th DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 70–34

Recirculated: 1-10

Sierra Club, Petitioner,
v.
Rogers C. B. Morton, Individually, and as Secretary of the Interior of the United States, et al.

On Writ of Certiorari to the United States Court of Appeals to the Ninth Circuit.

[January —, 1972]

MR. JUSTICE DOUGLAS, dissenting.

I share the views my Brother BLACKMUN and would reverse the judgment below.

The critical question of "standing" [1] would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of the inanimate object about to be dispoiled, defaced, or invaded by roads and bulldozers and where injury is the subject of public outrage. Contemporary public concern for protecting nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation. See Stone, Should Trees Have Standing? Toward Legal Rights for Natural Objects, 45 S. Cal. L. Rev. 450 (1972). This suit would therefore be more properly labeled as *Mineral King* v. *Morton*.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 15, 1972

RE: No. 70-34 - Sierra Club v. Morton

Dear Potter:

In due course I shall prepare a dissent in the above.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

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To: The Chief
Mr. Justice
Mr. Justice
Mr. Justice
✓ Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice

2nd DRAFT

From: Bre

Circulated: 3-30-72

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 70–34

Sierra Club, Petitioner, *v.* Rogers C. B. Morton, Individually, and as Secretary of the Interior of the United States, et al. | On Writ of Certiorari to the United States Court of Appeals to the Ninth Circuit.

[April —, 1972]

MR. JUSTICE BRENNAN, dissenting.

In my view this case should have been dismissed as improvidently granted.

The standing issue is presented to us in broad terms. The complaint alleges that the Sierra Club "has exhibited a special interest in the conservation and sound maintenance of the national parks, game refuges and forests of this country, regularly serving as a responsible representative of persons similarly situated" and that one of the Club's "principal purposes . . . is to protect and conserve the national resources of the Sierra Nevada Mountains." The Court construes this as an allegation of "a mere 'interest in a problem,' " *ante,* at 12, which if sufficient to establish injury in fact would, in the Court's view, provide standing for those "who seek to do no more than vindicate their own value preferences through the judicial process," *id.,* at 13. To avoid that supposed danger, the Court holds that injury in fact will be felt only by users of Mineral King, "for whom the aesthetic and recreational values of the area will be lessened by the highway and ski resort." *Id.,* at 8. Under that test, the Court concludes, the Sierra Club lacks standing because it did not allege that it or its members use Mineral King. *Ibid.*

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(D)

1.3

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

3rd DRAFT

From: Brennan

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 70–34

Recirculated: 3-31-72

Sierra Club, Petitioner,
v.
Rogers C. B. Morton, Individually, and as Secretary of the Interior of the United States, et al.

On Writ of Certiorari to the United States Court of Appeals to the Ninth Circuit.

[April —, 1972]

MR. JUSTICE BRENNAN, dissenting.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 11, 1972

MEMORANDUM TO THE CONFERENCE

RE: No. 34 - Sierra Club v. Rogers C. B. Morton

This will replace the dissent previously circulated.

W.J.B. Jr.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

attached to prev. Memo

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

4th DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Recirculated: 4-11-72

No. 70-34

Sierra Club, Petitioner,
v.
Rogers C. B. Morton, Individually, and as Secretary of the Interior of the United States, et al.

On Writ of Certiorari to the United States Court of Appeals to the Ninth Circuit.

[April —, 1972]

MR. JUSTICE BRENNAN, dissenting.

I agree that the Sierra Club has standing for the reasons stated by my Brother BLACKMUN in Alternative No. 2 of his dissent. I therefore would reach the merits. Since the Court does not do so, however, I simply note agreement with my Brother BLACKMUN that the merits are substantial.

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

1st DRAFT

From: Stewart, J.

Circulated: FEB 14 1972

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 70–34

Sierra Club, Petitioner,
v.
Rogers C. B. Morton, Individually, and as Secretary of the Interior of the United States, et al.

On Writ of Certiorari to the United States Court of Appeals to the Ninth Circuit.

[February —, 1972]

MR. JUSTICE STEWART delivered the opinion of the Court.

I

The Mineral King Valley is an area of great natural beauty nestled in the Sierra Nevada Mountains in Tulare County, California, adjacent to Sequoia National Park. It has been part of the Sequoia National Forest since 1926, and is designated as a National Game Refuge by special Act of Congress.[1] Though once the site of extensive mining activity, Mineral King is now used almost exclusively for recreational purposes. Its relative inaccessibility and lack of development have limited the number of visitors each year, and at the same time have preserved the valley's quality as a quasi-wilderness area largely uncluttered by the products of civilization.

The United States Forest Service, which is entrusted with the maintenance and administration of national forests, began in the late 1940's to give consideration to Mineral King as a potential site for recreational de-

[1] Act of July 3, 1926, 44 Stat. 821, 16 U. S. C. § 688.

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pp 12, 14, and minor changes throughout

Please join me

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

From: Stewart, J.

2nd DRAFT

Circulated: _____

Recirculated: FEB 16 1972

SUPREME COURT OF THE UNITED STATES

No. 70-34

Sierra Club, Petitioner, *v.* Rogers C. B. Morton, Individually, and as Secretary of the Interior of the United States, et al. | On Writ of Certiorari to the United States Court of Appeals to the Ninth Circuit.

[February —, 1972]

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3

1st stylistic changes pp 2, 3, 11

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

3rd DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 70-34

Recirculated: MAR 31 1972

Sierra Club, Petitioner,
v.
Rogers C. B. Morton, Individually, and as Secretary of the Interior of the United States, et al.

On Writ of Certiorari to the United States Court of Appeals to the Ninth Circuit.

[April —, 1972]

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(3)

pp 8, 14 joined

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

4th DRAFT

From: Stewart, J.

Circulated: _____

Recirculated: APR 19 1972

SUPREME COURT OF THE UNITED STATES

No. 70–34

Sierra Club, Petitioner,
v.
Rogers C. B. Morton, Individually, and as Secretary of the Interior of the United States, et al.

On Writ of Certiorari to the United States Court of Appeals to the Ninth Circuit.

[April —, 1972]

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April 1, 1972

Re: No. 70-34 - Sierra Club v. Morton

Dear Potter:

Please join me.

Sincerely,

B.R.W.

Mr. Justice Stewart

cc: Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 17, 1972

Re: No. 70-34 - Sierra Club v. Morton

Dear Potter:

Please join me.

Sincerely,

T.M.

Mr. Justice Stewart

cc: The Conference

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Blackmun, J.

No. 70–34

Circulated: 4/7/72

Recirculated: _____

Sierra Club, Petitioner,
v.
Rogers C. B. Morton, Individually, and as Secretary of the Interior of the United States, et al.

On Writ of Certiorari to the United States Court of Appeals to the Ninth Circuit.

[April —, 1972]

MR. JUSTICE BLACKMUN, dissenting.

The Court's opinion is a practical one espousing and adhering to traditional notions of standing as somewhat modernized by *Association of Data Processing Service Organizations, Inc.* v. *Camp,* 397 U. S. 150 (1970); *Barlow* v. *Collins,* 397 U. S. 159 (1970); and *Flast* v. *Cohen,* 392 U. S. 83 (1968). If this were an ordinary case, I would join the opinion and the Court's judgment and be quite content.

But this is not ordinary, run-of-the-mill litigation. The case poses—if only we choose to acknowledge and reach them—significant aspects of a wide, growing and disturbing problem, that is, the Nation's and the world's deteriorating environment with its resulting ecological disturbances. Must our law be so rigid and our procedural concepts so inflexible that we render ourselves helpless when the existing methods and the traditional concepts do not quite fit and do not prove to be entirely adequate for new issues?

The ultimate result of the Court's decision today, I fear, and sadly so, is that the 35.3-million-dollar complex, over 10 times greater than the Forest Service's suggested minimum, will now hastily proceed to completion; that serious opposition to it will recede in discouragement; and that Mineral King, the "area of great natural beauty

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

2nd DRAFT

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 70-34

Recirculated: 4/12/72

Sierra Club, Petitioner, *v.* Rogers C. B. Morton, Individually, and as Secretary of the Interior of the United States, et al. | On Writ of Certiorari to the United States Court of Appeals to the Ninth Circuit.

[April —, 1972]

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