

The Burger Court Opinion Writing Database

Lake Carriers Association v. MacMullan

406 U.S. 498 (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

May 26, 1972

CHAMBERS OF
THE CHIEF JUSTICE

Re. No. 71-422 -- Lake Carriers' Association
v. MacMullan

Dear Lewis:

Please join me in your dissent.

Regards,

WBS

Mr. Justice Powell

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7

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

April 14, 1972

Dear Bill:

In No. 71-422 - Lake Carriers v.
MacMullan, please join me in your
opinion.

Will
William O. Douglas

Mr. Justice Brennan

CC: The Conference

0/1

Please for me
M

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

From: L.

1st DRAFT

Circulated 4-12-72
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SUPREME COURT OF THE UNITED STATES

No. 71-422

Lake Carriers' Association } On Appeal from the United
et al., Appellants, } States District Court for
v. } the Eastern District of
Ralph A. MacMullan et al. } Michigan.

[April —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This is an appeal from the judgment of a three-judge District Court, convened under 28 U. S. C. §§ 2281, 2284, dismissing a complaint to have the Michigan Watercraft Pollution Control Act of 1970, C. L. '48, § 323.331, declared invalid and its enforcement enjoined. — F. Supp. — (1971). We noted probable jurisdiction, 404 U. S. 982 (1971), and affirm the District Court's determination to abstain from decision pending state court proceedings.

The Michigan statute, effective January 1, 1971, provides in pertinent part:

"Sec. 3. (1) A person [defined in § 2 (i) to mean "an individual, partnership, firm, corporation, association or other entity"] shall not place, throw, deposit, discharge or cause to be discharged into or onto the waters of this state, any . . . sewage [defined in § 2 (d) to mean "all human body wastes, treated or untreated"] . . . which [renders] the water unsightly, noxious or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment of the water for recreational purposes.

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Slighter change
Pp. 1, 2, 6-8 & 12

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

2nd DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

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No. 71-422

Recirculated: 5-22-72

Lake Carriers' Association } On Appeal from the United
et al., Appellants, } States District Court for
v. } the Eastern District of
Ralph A. MacMullan et al. } Michigan.

[May —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This is an appeal from the judgment of a three-judge District Court, convened under 28 U. S. C. §§ 2281, 2284, dismissing a complaint to have the Michigan Watercraft Pollution Control Act of 1970, Mich. Comp. Laws § 323.331 (Supp. 1972), declared invalid and its enforcement enjoined. 336 F. Supp. 248 (1971). We noted probable jurisdiction, 404 U. S. 982 (1971), and affirm the District Court's determination to abstain from decision pending state court proceedings.

The Michigan statute, effective January 1, 1971, provides in pertinent part:

"Sec. 3. (1) A person [defined in § 2 (i) to mean "an individual, partnership, firm, corporation, association or other entity"] shall not place, throw, deposit, discharge or cause to be discharged into or onto the waters of this state, any . . . sewage [defined in § 2 (d) to mean "all human body wastes, treated or untreated"] . . . or other liquid or solid materials which render the water unsightly, noxious or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment of the water for recreational purposes.

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U. S. DEPARTMENT OF COMMERCE

S
M

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 12, 1972

71-422, Lake Carriers' Assn.
v. MacMullan

Dear Bill,

I had conceived of this case as presenting a question of "ripeness," rather than abstention. In any event, I think the basic question is conceptually very close to that in No. 70-21, Socialist Labor Party v. Gilligan, in which the opinion has been assigned to Bill Rehnquist. I shall, therefore, await his opinion in that case before finally responding to you in this case.

Sincerely yours,

P.S.
✓

Mr. Justice Brennan

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file

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 18, 1972

71-422 - Lake Carriers' Assn v. MacMullan

Dear Bill,

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

Sincerely yours,

P.S.
✓

Mr. Justice Brennan

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SSSBCNOC EO ADVI L IN

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 13, 1972

Re: No. 71-422 - Lake Carriers'
Association v. MacMullan

Dear Bill:

Please join me.

Sincerely,

Byron

Mr. Justice Brennan

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U.S. DEPARTMENT OF JUSTICE

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 13, 1972

Re: No. 71-422 - Lake Carriers' v. MacMullan

Dear Bill:

Please join me.

Sincerely,


T.M.

Mr. Justice Brennan

cc: The Conference

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U.S. SUPREME COURT RECORDS

2

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

From: Blackmun, J.

No. 71-422

Circulated: 4/18/72

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Lake Carriers' Association } On Appeal from the United
et al., Appellants, } States District Court for
v. } the Eastern District of
Ralph A. MacMullan et al. } Michigan.

[April —, 1972]

MR. JUSTICE BLACKMUN, concurring in the result.

I agree that the complaint presents an actual controversy and that the District Court properly abstained pending publication of proposed federal standards. I therefore concur in the result and join the judgment of the Court.

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U.S. SUPREME COURT

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

SUPREME COURT OF THE UNITED STATES

From: Blackmun, J.

Circulated: _____

No. 71-422

Recirculated: 5/19/72

Lake Carriers' Association } On Appeal from the United
et al., Appellants, } States District Court for
v. } the Eastern District of
Ralph A. MacMullan et al. } Michigan.

[April —, 1972]

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE REHNQUIST joins, concurring in the result.

I agree that the complaint presents an actual controversy and that the District Court properly abstained. I therefore concur in the result and join the judgment of the Court.

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Conjoined c/f 3 4/13

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-422

From: Powell, J.

Circulated: MAY 15 1972

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Lake Carriers' Association } On Appeal from the United
 et al., Appellants, } States District Court for
 v. } the Eastern District of
 Ralph A. MacMullan et al. } Michigan.

[May —, 1972]

MR. JUSTICE POWELL, dissenting.

The three-judge court below assigned two grounds for dismissing appellant's complaint: (i) there was no "justiciable controversy" warranting a declaratory judgment; and (ii) this was an appropriate case for "abstention" by the federal courts until the Michigan Act is construed by its courts. — F. Supp. — (1971). This Court today affirms the judgment below, despite rejecting virtually all of the premises upon which it was based.

The opinion of this Court concludes, contrary to the holding below, that the controversy is justiciable and that a case for declaratory judgment relief was stated. The Court also concluded that "abstention was not proper on the majority of the grounds given by the district court." Nevertheless, and despite its general disagreement with the trial court on the major issues, its judgment is now affirmed.

As it seems to me that the central thrust of the Court's reasoning (with which I agree) requires reversal rather than affirmance, I file this dissent.

There is indeed a serious present controversy, involving important federal issues, and posing for the Lake Carriers an immediate choice between the possibility of criminal prosecution or the expenditure of substantial sums of money for antipollution devices and equipment which may not be compatible with the federal regula-

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

No. 71-422

Circulated:

MAY 29 1972

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Lake Carriers' Association } On Appeal from the United
et al., Appellants, } States District Court for
v. } the Eastern District of
Ralph A. MacMullan et al. } Michigan.

[May 30, 1972]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE joins, dissenting.

The three-judge court below assigned two grounds for dismissing appellant's complaint: (i) there was no justiciable controversy warranting a declaratory judgment; and (ii) this was an appropriate case for abstention by the federal courts until the Michigan Act is construed by its courts. — F. Supp. — (1971). This Court today affirms the judgment below, despite rejecting virtually all of the premises upon which it was based.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 18, 1972

Re: No. 71-422 - Lake Carriers' Association
v. MacMullan

Dear Harry:

Please join me in your concurrence in the above-
entitled case.

Sincerely,
WHR

Mr. Justice Blackmun

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U.S. DEPARTMENT OF JUSTICE