

# 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,

WSB

Mr. Justice Powell

Copies to Conference

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.

*cc: W.O.D.*  
William O. Douglas

Mr. Justice Brennan

CC: The Conference

Pls. file your ms

To: The Chief Justice  
Mr. Justice [unclear]  
Mr. Justice [unclear]  
Mr. Justice [unclear]  
✓ Mr. Justice [unclear]  
Mr. Justice [unclear]  
Mr. Justice [unclear]  
Mr. Justice [unclear]

From: [unclear]

Circulation

4-12-72

Recirculation

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-422

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

[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.

*Slight changes*  
Pp. 1, 2, 6-8 ✓ ✓

*joined*

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

Circulated: \_\_\_\_\_

No. 71-422

Recirculated: 5-22-72

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

*B*  
*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.*  
*P.J.*

Mr. Justice Brennan

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33  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

file

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

Copies to the Conference

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,



Mr. Justice Brennan

Copies to Conference

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

by  
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

From: Blackmun, J.

Circulated: 4/18/72

No. 71-422

Recirculated: \_\_\_\_\_

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

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. 71-422

Recirculated: 5/19/73

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

*B-201*  
*4/13*  
*Original copy*

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

From: Powell, J.

Circulated: MAY 15 1972

SUPREME COURT OF THE UNITED STATES

No. 71-422

Lake Carriers' Association et al., Appellants  
v.  
Ralph A. MacMullan et al.

On Appeal from the United States District Court for the Eastern District of Michigan.

Recirculated:

[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

Recirculated:

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.

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 general disagreement with the trial court on the major issues, its judgment is now affirmed.

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Supreme Court of the United States  
Washington, D. C. 20543CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

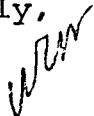
May 18, 1972

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

Dear Harry:

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

Sincerely,



Mr. Justice Blackmun

Copies to the Conference