

The Burger Court Opinion Writing Database

Illinois v. Milwaukee

406 U.S. 91 (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

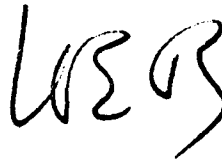
Re: No. 49 Orig. - Illinois v. City of Milwaukee

Dear Bill:

Please join me in your opinion as modified by
your March 29 memorandum.

I will be adding about eight lines that will be
off the presses shortly. Nothing in it should give anyone
concern.

Regards,



Mr. Justice Douglas

cc: The Conference

no

Please file me
TM

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

3rd DRAFT

3/20/72

SUPREME COURT OF THE UNITED STATES

No. 49, Orig.

State of Illinois
v.
City of Milwaukee, Wisconsin, 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 Illinois to file a complaint under our original jurisdiction against four cities of Wisconsin, the Sewerage Commission of the City of Milwaukee, and the Metropolitan Sewerage Commission of the County of Milwaukee. The cause of action alleged is pollution by the defendants of Lake Michigan, a body of interstate water. 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 that the defendants do not take such actions. Plaintiff asks that we abate this public nuisance.

I

Article III, § 2, cl. 2, of the Constitution provides: "In all Cases . . . in which a State shall be a party, the Supreme Court shall have original jurisdiction." Congress has provided in 28 U. S. C. § 1251 (a)(1) that "The Supreme Court shall have original and exclusive jurisdiction of: All controversies between two or more States"

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

March 29, 1972

MEMORANDUM TO THE CONFERENCE:

Re No. 49-Orig. - Illinois v. City of Milwaukee

After talking with some of the Brethren, I thought we might add the following to footnote 2, page 10 of the present draft of the opinion. This is a matter we might discuss in Friday's Conference.

The proposed addition would read:

No. 49-Orig. Rider 10

It is appropriate to add that where interstate waters are involved, the federal common law which governs the instant controversy applies, whether the suit is brought in a state or federal forum. Here, as in Teamsters Local v. Lucas Flour Co., 369 U.S. 95, 102-105, the state courts would apply federal law. Here, as in cases involving Textile Workers Union v. Lincoln Mills, 353 U.S. 448, we deal with interstate waters over which the federal interest is paramount. When federal law controls, there will not be any conflict between what may be confining local law governing nuisances and the federal common law designed in light of the evolving system of Congressional controls. See Friendly, In Praise of Erie - And of the New Federal Common Law, 39 N.Y.U. L.Rev., 383 (1964).

(W. O. D.)
W. O. D.

Wm. Brennan
Oct 71

34-8

4th DRAFT

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

SUPREME COURT OF THE UNITED STATES

No. 49, Orig.

State of Illinois
v.
City of Milwaukee, Wisconsin, et al.

On Motion for Leave to File
Bill of Complaint.

[March —, 1972]

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changes
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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

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 49, Orig.

3/30/72

State of Illinois	}	On Motion for Leave to File Bill of Complaint.
v.		
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[March —, 1972]

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To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Rehnquist
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Stevens
Mr. Justice Souter
Mr. Justice Ginsburg
Mr. Justice Breyer
Mr. Justice Alito
Mr. Justice Kagan
Mr. Justice Sotomayor
Mr. Justice Thomas
Mr. Justice Kennedy
Mr. Justice Scalia
Mr. Justice O'Connor
Mr. Justice Marshall
Mr. Justice Brandeis
Mr. Justice Cardozo
Mr. Justice Hughes
Mr. Justice Taft
Mr. Justice Brandeis
Mr. Justice Cardozo
Mr. Justice Hughes
Mr. Justice Taft

6th DRAFT

SUPREME COURT OF THE UNITED STATES

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[March —, 1972]

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44
Joined

7, 8, 9, 16

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Burger
Mr. Justice Harlan

7th DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Recirculated: 4-11

No. 49, Orig.

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City of Milwaukee, Wis-		
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6
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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

March 27, 1972

49 Orig., Illinois v. Milwaukee

Dear Bill,

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

Sincerely yours,

P.S.
✓

Mr. Justice Douglas

Copies to the Conference

CG 121
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

March 29, 1972

No. 49 Orig., Illinois v. Milwaukee

Dear Bill,

I am opposed to the addition of the
footnote you propose. As you suggest, we can
discuss the matter at Friday's Conference.

Sincerely yours,

PS,
1.

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 29, 1972

Re: No. 49 Orig. - Illinois v. Milwaukee, et al.

Dear Bill:

May I be presumptuous about one thing in your opinion for this case? You have cited Texas v. Pankey at least three times and have quoted from it in footnote 8. I think Pankey is a forward-looking opinion. It was written by my former chief, Harvey M. Johnsen. I have always felt that when a judge does a particularly good job and is quoted, he deserves personal mention just as you have mentioned Ed Lumbard on page 8. You may not agree. I dare to be presumptuous because I regard Harvey Johnsen to be one of the most able judges in the federal hierarchy.

Sincerely,



Mr. Justice Douglas

Oct 71

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11
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 29, 1972

Re: No. 49 Orig. - Illinois v. Milwaukee, et al.

Dear Bill:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Douglas

cc: The Conference

61
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 25, 1972

Re: No. 49 Orig. Illinois v. Milwaukee, et al
No. 50 Orig. Vermont v. New York, et al

Dear Bill:

Please join me in your opinions circulated March 20.

Sincerely,

Lewis

Mr. Justice Douglas

lfp/ss

cc: The Conference