

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,

WES

Mr. Justice Douglas

cc: The Conference

Please give me
P.M.

To: The Chief Justice
Mr. Justice Warren
Mr. Justice Brandeis
Mr. Justice Holmes
Mr. Justice Harlan
Mr. Justice Taft
Mr. Justice Sutherland
Mr. Justice Holmes
Mr. Justice Harlan
Mr. Justice Holmes

3rd DRAFT

3/20/17 ✓

SUPREME COURT OF THE UNITED STATES

No. 49, Orig.

[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.

1

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 . . ."

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).

(b)(6)
W. O. D.

Wm. Breuer
Oct 71

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 49, Orig.

State of Illinois }
v. } On Motion for Leave to File
City of Milwaukee, Wis- } Bill of Complaint.
consin, et al. }

[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"

B
Stylistic
Change

Re: 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.

$$3 \overline{)30} \rightarrow 2$$

[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.

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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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To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Black
Mr. Justice Blackmun
Mr. Justice Marshall
Mr. Justice O'Connor
Mr. Justice Powell
Mr. Justice Rehnquist

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 49, Orig.

Planned: 4/3/72
Recirculated: 4/3/72

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.

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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 . . ."

To: The Chief Justice
Mr. Justice Branigan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Holmes
Mr. Justice Taft
Mr. Justice Cardozo

7, 8, 9, 16

7th DRAFT

FROM THE EDITOR

SUPREME COURT OF THE UNITED STATES

Recirculated: 4-11

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.

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52
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,

PS,
i/

Mr. Justice Douglas

Copies to the Conference

CG
NY
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,

P. S.
1/1

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

Harry

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,

Ha B.

Mr. Justice Douglas

cc: The Conference

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