

The Burger Court Opinion Writing Database

Askew v. American Waterways Operators, Inc.

411 U.S. 325 (1973)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

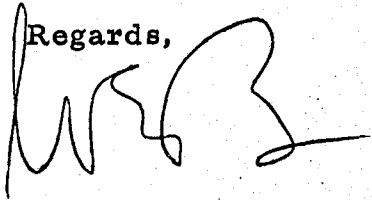
January 11, 1973

Re: No. 71-1082 - Askew v. American Waterways Operators

Dear Bill:

This is one of those cases that must await final writing, but I believe your memo has sufficient acceptance to warrant an assignment now.

Will you take on the development of an opinion in the above case?

Regards,


Mr. Justice Douglas

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT

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

CHAMBERS OF
THE CHIEF JUSTICE

April 10, 1973

Re: No. 71-1082 - Reubin O'D. Askew, et al v. The
American Waterways Operators,
Inc., et al

Dear Bill:

Please join me in your opinion.

This case is a good illustration of what can be accomplished to reconcile differences of viewpoint that turn out to be more apparent than real.

It is important that in this area we produce a unanimous opinion and you have accomplished this in your excellent piece of work.

Regards,
WRB

Mr. Justice Douglas

Copies to the Conference

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U.S. DEPARTMENT OF CONGRESS

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1082

From: Douglas, J.

Circulated: 12-5-72

Reubin O'D. Askew et al.,
Appellants,
v.
The American Waterways
Operators, Inc., et al.

On Appeal from Recirculated:
States District Court for
the Middle District of
Florida.

[December —, 1972]

Memorandum from MR. JUSTICE DOUGLAS.

I

I think in light of the burgeoning power of the Federal Government and the crushing effect its policies are having on States' Rights that it is time to remember the mandate of the Tenth Amendment, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

With all deference to the opposed view I cannot say that what Florida proposes to do about the ravages of oil pollution is "prohibited" by the Tenth Amendment. The only powers granted Congress and relevant here are

"(1) Power 'to define and punish piracies and felonies committed on the high seas and offenses against the law of nations.' Art. I, § 8, Cl. 10.

"(2) Power to create inferior courts exercising the 'judicial power' defined in Art. III of the Constitution, a judicial power that extends 'to all cases of admiralty and maritime jurisdiction.'" Art. III, § 2.

File

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 11, 1972

Dear Byron:

I have your Memorandum of December 11 relating to No. 71-1082 - Askew v. American Waterways Operators.

I have no disagreement at all with the views you express, and I would be very happy to make any changes or modifications in the Memorandum which I circulated earlier that you think necessary to meet your requirements.

If I had to decide now I would say that so far as vessels are concerned, the Limitation of Liability Act prevails under the Supremacy Clause but not as respects liability of shore facilities.

I also think with you that as respects "ship design, safety apparatus and equipment and precautions to be taken at sea" should be subject to a uniform set of coherent requirements and as, if, and when the Coast Guard regulations come out they may fill that present void and displace state law.

W. O. D *all*

Mr. Justice White

cc: Conference

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RECEIVED NOV 20 1972

37
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

January 24, 1973

MEMORANDUM TO THE CONFERENCE:

Re: No. 71-1082 - Askew v. American Waterways

The Florida Regulations - which do not,
as I read them, touch on containment gear - are
in our Library in case you want to see them.

The Coast Guard Regulations on containment
gear were issued on December 21, 1972.

WOD
W. O. D.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

SECRET NO. 100-441111

*Wait for
BJW opinion*

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. 71-1082

Circulated: 1/24/73

Recirculated: _____

| | |
|---------------------------|-----------------------------|
| Reubin O'D. Askew et al., | } On Appeal from the United |
| Appellants, | |
| v. | |
| The American Waterways | |
| Operators, Inc., et al. | } the Middle District of |
| | } Florida. |

[February —, 1973]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This action was brought by merchant shippers, world shipping associations, members of the Florida coastal barge and towing industry, and owners and operators of oil terminal facilities and heavy industries located in Florida, to enjoin application of the Florida Oil-Spill Prevention and Pollution Control Act, L. Fla. 1970, c. 70-244 (hereafter referred to as the Florida Act). Officials responsible for enforcing the Florida Act were named as defendants, but the State of Florida intervened as a party defendant, asserting that her interests were much broader than those of the named defendants. A three-judge court was convened pursuant to 28 U. S. C. § 2281.

The Florida Act imposes strict liability for any damage incurred by the State or private persons as a result of an oil spill in the State's territorial waters from any waterfront facility used for drilling oil or handling the transfer or storage of oil ("terminal facility") and from any ship destined for or leaving such facility. Each owner or operator of a terminal facility or ship subject to the Act must establish evidence of financial re-

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U. S. DEPARTMENT OF JUSTICE

10, 11, 18

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

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1082

Circulated: _____

Recirculated: FEB 16 1973

Reubin O'D. Askew et al.,
Appellants,
v.
The American Waterways
Operators, Inc., et al.

On Appeal from the United
States District Court for
the Middle District of
Florida.

[February —, 1973]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This action was brought by merchant shippers, world shipping associations, members of the Florida coastal barge and towing industry, and owners and operators of oil terminal facilities and heavy industries located in Florida, to enjoin application of the Florida Oil-Spill Prevention and Pollution Control Act, L. Fla. 1970, c. 70-244 (hereafter referred to as the Florida Act). Officials responsible for enforcing the Florida Act were named as defendants, but the State of Florida intervened as a party defendant, asserting that her interests were much broader than those of the named defendants. A three-judge court was convened pursuant to 28 U. S. C. § 2281.

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3 — 17, 19

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

7th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

Circulated: _____

No. 71-1082

Recirculated: **FEB 19 1973**

Reubin O'D. Askew et al.,
Appellants,
v.
The American Waterways
Operators, Inc., et al. } On Appeal from the United
States District Court for
the Middle District of
Florida.

[February —, 1973]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This action was brought by merchant shippers, world shipping associations, members of the Florida coastal barge and towing industry, and owners and operators of oil terminal facilities and heavy industries located in Florida, to enjoin application of the Florida Oil-Spill Prevention and Pollution Control Act, L. Fla. 1970, c. 70-244 (hereafter referred to as the Florida Act). Officials responsible for enforcing the Florida Act were named as defendants, but the State of Florida intervened as a party defendant, asserting that her interests were much broader than those of the named defendants. A three-judge court was convened pursuant to 28 U. S. C. § 2281.

The Florida Act imposes strict liability for any damage incurred by the State or private persons as a result of an oil spill in the State's territorial waters from any waterfront facility used for drilling oil or handling the transfer or storage of oil ("terminal facility") and from any ship destined for or leaving such facility. Each owner or operator of a terminal facility or ship subject to the Act must establish evidence of financial re-

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OFFICE OF THE CLERK OF THE SUPREME COURT

5 11, 17, 18

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

8th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 71-1082

Circulated: _____
 Recirculated: 2-26-73

| | | |
|---|---|--|
| Reubin O'D. Askew et al., Appellants, v. The American Waterways Operators, Inc., et al. | } | On Appeal from the United States District Court for the Middle District of Florida. |
|---|---|--|

[February —, 1973]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This action was brought by merchant shippers, world shipping associations, members of the Florida coastal barge and towing industry, and owners and operators of oil terminal facilities and heavy industries located in Florida, to enjoin application of the Florida Oil-Spill Prevention and Pollution Control Act, L. Fla. 1970, c. 70-244 (hereafter referred to as the Florida Act). Officials responsible for enforcing the Florida Act were named as defendants, but the State of Florida intervened as a party defendant, asserting that her interests were much broader than those of the named defendants. A three-judge court was convened pursuant to 28 U. S. C. § 2281.

The Florida Act imposes strict liability for any damage incurred by the State or private persons as a result of an oil spill in the State's territorial waters from any waterfront facility used for drilling oil or handling the transfer or storage of oil ("terminal facility") and from any ship destined for or leaving such facility. Each owner or operator of a terminal facility or ship subject to the Act must establish evidence of financial re-

Stylistic Changes
Don't put in me
Don't put in me

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

9th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

Circulated: _____

No. 71-1082

Recirculated: 3-19-73

| | | |
|--|---|---|
| Reubin O'D. Askew et al., | } | On Appeal from the United States District Court for the Middle District of Florida. |
| Appellants, | | |
| v. | | |
| The American Waterways Operators, Inc., et al. | | |

[February —, 1973]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This action was brought by merchant shippers, world shipping associations, members of the Florida coastal barge and towing industry, and owners and operators of oil terminal facilities and heavy industries located in Florida, to enjoin application of the Florida Oil-Spill Prevention and Pollution Control Act, L. Fla. 1970, c. 70-244 (hereafter referred to as the Florida Act). Officials responsible for enforcing the Florida Act were named as defendants, but the State of Florida intervened as a party defendant, asserting that her interests were much broader than those of the named defendants. A three-judge court was convened pursuant to 28 U. S. C. § 2281.

The Florida Act imposes strict liability for any damage incurred by the State or private persons as a result of an oil spill in the State's territorial waters from any waterfront facility used for drilling oil or handling the transfer or storage of oil ("terminal facility") and from any ship destined for or leaving such facility. Each owner or operator of a terminal facility or ship subject to the Act must establish evidence of financial re-

WOD
rec'd.
4-13-73

10th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1082

Reubin O'D. Askew et al.,
Appellants,
v.
The American Waterways
Operators, Inc., et al.

On Appeal from the United
States District Court for
the Middle District of
Florida.

[February —, 1973]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This action was brought by merchant shippers, world shipping associations, members of the Florida coastal barge and towing industry, and owners and operators of oil terminal facilities and heavy industries located in Florida, to enjoin application of the Florida Oil Spill Prevention and Pollution Control Act, L. Fla. 1970, c. 70-244 (hereafter referred to as the Florida Act). Officials responsible for enforcing the Florida Act were named as defendants, but the State of Florida intervened as a party defendant, asserting that her interests were much broader than those of the named defendants. A three-judge court was convened pursuant to 28 U. S. C. § 2281.

The Florida Act imposes strict liability for any damage incurred by the State or private persons as a result of an oil spill in the State's territorial waters from any waterfront facility used for drilling oil or handling the transfer or storage of oil ("terminal facility") and from any ship destined for or leaving such facility. Each owner or operator of a terminal facility or ship subject to the Act must establish evidence of financial re-

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WOD

70
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 15, 1973

RE: No. 71-1082 Askew v. American
Waterways Operators, Inc., et al.

Dear Byron:

Please join me in your concurring
opinion in the above.

Sincerely,

Mr. Justice White

cc: The Conference

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27
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 19, 1973

RE: No. 71-1082 Askew v. American Waterways
Operators, Inc.

Dear Bill:

Confirming what I said at conference Friday
last, Byron's note to you of March 17 in the above
also speaks for me.

Sincerely,

Bill

Mr. Justice Douglas

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

B
joined 2/14

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 16, 1973

No. 71-1082, Askew v. The American Waterways Operators

Dear Bill,

I am glad to join your opinion for the Court in this case. I regret my long delay in responding.

Sincerely yours,

P.S.

Mr. Justice Douglas

Copies to the Conference

3 /

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 11, 1972

Re: No. 71-1082 - Askew v. American Waterways Operators

Dear Bill:

I agree that the applicability of maritime law to sea-to-shore injury does not oust state law, at least where and to the extent that Congress purports to save state law. But neither do I think this conclusion calls for reexamination of the proposition that maritime law is exclusive on the seaward side of the Jensen-gangplank line.

Historically, this Court denied the applicability of maritime law to shoreside injuries even when caused by ships on navigable waters. See, e.g., Martin v. West, 222 U.S. 191 (1911) (steamer striking a drawbridge). The same was true of structures part of or affixed at the seabed unless they were navigation aids. See, e.g., The Troy, 208 U.S. 321 (steamer striking bridge support); The Blackheath, 195 U.S. 361 (1904) (vessel striking moored channel lights). Absent the Extension Act, therefore, there would be ample room for state law to redress damage to beach and territorial seabed caused by oil spillage at sea.

The Extension Act, of course, exists and has long been enforced by the courts, including this one. But judicial acquiescence in legislative extension of the maritime law, permitted but not required by the Constitution, does not necessarily oust state law in the extended area. Indeed, it seems to me that our own cases, decided since the passage of the Extension Act, have not moved the Jensen line shoreward and have for some purposes recognized the applicability of state law to accidents that would be within the exclusive jurisdiction of maritime law had they occurred seaward of the gangplank. See Victory Carriers, Inc. v. Law, 404 U.S. 202 (1971) (longshoreman injured by forklift on pier); Nacirema Operating Co., Inc. v. Johnson,

396 U.S. 212 (1969) (longshoreman on pier injured by ship's crane). In any event, it would be odd to recognize congressional power to extend maritime law to shoreside torts but deny it power to preserve complementary state law, which if Congress did not expressly do in the Extension Act, it has done in the Water Quality Act with respect to oil spillage.

This case thus reduces itself to determining whether there are irreconcilable conflicts between the Florida statute and the Water Quality Act, where the latter expressly negatives any intent to preempt state law and saves state law not in conflict with the federal act. In this respect, my present thinking is not too different from yours and is as follows:

1. With respect to the extent of liability, I see nothing on the face of the Water Quality Act precluding supplemental remedies under state law. At least final resolution of the matter can be deferred. The same is true with respect to the Limitation of the Liability Act, although I have some difficulty in thinking that the Water Quality Act repealed the Liability Act with respect to state damage awards even if it did with respect to clean-up costs recoverable against a ship under the federal act.

2. Likewise, with respect to the standard of liability, the Water Quality Act seems to preserve state substantive law insofar as it does not interfere with the operation of the federal scheme. It may be that conflicts will emerge as concrete situations arise and are aired in the courts but we need not anticipate them now.

3. With respect to ship design, safety apparatus and equipment and precautions to be taken at sea, it seems to me, as a practical matter, that ships in commerce should be subject to a uniform set of coherent requirements. Hopefully, existing or upcoming federal regulations will fill that bill.

Sincerely,

Byron

Mr. Justice Douglas

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8

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 31, 1973

Re: No. 71-1082 - Askew v. The American
Waterways Operators, Inc.

Dear Bill:

I am inclined to join Part I of your
opinion but not Part II. I shall file a
concurring opinion.

Sincerely,

Byron

Mr. Justice Douglas

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5

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

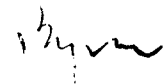
February 14, 1973

Re: No. 71-1082 - Askew, et al.
v. The American Waterways Operators, Inc., et al.

Dear Bill:

I simply saw no need in this case to cut up Jensen. As a matter of fact, I don't see much wrong with that case beyond the gangplank. But that needn't oust state law in shore-side injury cases.

Sincerely,



Mr. Justice Douglas

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WD

B
M
you waited
for this

Lee
WAD
Please join me
JHL

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

No. 71-1082

Circulated: 2-14-73

Recirculated:

Reubin O'D. Askew et al.,
Appellants,
v.
The American Waterways
Operators, Inc., et al. } On Appeal from the United
States District Court for
the Middle District of
Florida.

[February —, 1973]

MR. JUSTICE WHITE, concurring.

I join Part I of the Court's opinion. I also agree that maritime law does not oust the substantive and remedial law of Florida with respect to oil-spillage damage caused by ships at sea.

Historically, maritime law did not reach shore-side damage caused by ships on navigable waters. *The Plymouth*, 70 U. S. (3 Wall.) 20 (1865). Nor did admiralty law govern collision of ships with structures part of or affixed to the seabed, unless they were navigation aids. See, e. g., *Martin v. West*, 222 U. S. 191 (1911) (steamer striking a drawbridge); *The Troy*, 208 U. S. 321 (1908) (steamer striking bridge support); *The Blackheath*, 195 U. S. 361 (1904) (vessel striking moored channel lights). Thus, absent the Admiralty Extension Act, there would not only be ample room for state law to redress damage to beach and territorial seabed caused by oil spillage at sea, but there being no applicable federal law, *only* state law would apply.

The Extension Act, of course, exists and has long been enforced by the courts, including this one, but legislative extension of maritime law to reach ship-to-shore injuries does not necessarily mean that the *Jensen* line and the exclusivity of maritime law also move shoreward, so as to oust state law from any situations involving shore-

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U.S. DEPARTMENT OF JUSTICE

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U.S. SUPREME COURT RECORDS

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Justice White, J.

No. 71-1082

Circulated: _____

Recirculated: 2-16-73

| | | |
|---|---|--|
| Reubin O'D. Askew et al., Appellants, v. The American Waterways Operators, Inc., et al. | } | On Appeal from the United States District Court for the Middle District of Florida. |
|---|---|--|

[February —, 1973]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN joins, concurring.

I join Part I of the Court's opinion. I also agree that maritime law does not oust the substantive and remedial law of Florida with respect to oil-spillage damage caused by ships at sea.

Historically, maritime law did not reach shore-side damage caused by ships on navigable waters. *The Plymouth*, 70 U. S. (3 Wall.) 20 (1865). Nor did admiralty law govern collision of ships with structures part of or affixed to the seabed, unless they were navigation aids. See, e. g., *Martin v. West*, 222 U. S. 191 (1911) (steamer striking a drawbridge); *The Troy*, 208 U. S. 321 (1908) (steamer striking bridge support); *The Blackheath*, 195 U. S. 361 (1904) (vessel striking moored channel lights). Thus, absent the Admiralty Extension Act, there would not only be ample room for state law to redress damage to beach and territorial seabed caused by oil spillage at sea, but there being no applicable federal law, *only* state law would apply.

The Extension Act, of course, exists and has long been enforced by the courts, including this one, but legislative extension of maritime law to reach ship-to-shore injuries does not necessarily mean that the *Jensen* line and the exclusivity of maritime law also move shoreward, so as

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 17, 1973

Dear Bill:

Confirming my statements in Conference,
I have withdrawn my separate opinion in Askew,
No. 71-1082, and join your opinion for the
Court.

Sincerely,



Mr. Justice Douglas

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 14, 1973

Re: No. 71-1082 - Askew v. American Waterways

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Douglas

cc: Conference

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SECTION OF ADVANCE

Handwritten notes: "you just need WED 2/14" and "H.A.B."

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 5, 1978

Re: No. 71-1082 - Askew v. The American Waterways
Operators, Inc.

Dear Byron:

Please join me in your concurring opinion for this case.

Sincerely,

H. A. B.

Mr. Justice White

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

SECTION OF ADVANCE

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 19, 1973

Re: No. 71-1082 - Askew v. American Waterways
Operators, Inc.

Dear Bill:

Now that Byron White has withdrawn his separate opinion, in which I had concurred, I would like to join him in joining your opinion for the Court.

Sincerely,

H. A. B.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 11, 1972

Re: No. 71-1082 Askew v. American Waterways

Dear Bill:

Although your draft memorandum is a most helpful contribution to my thinking, I was generally in accord with the type of analysis expressed by Bill Brennan which - as I understood it - would examine the viability of each of the major provisions of the Florida law in light of federal legislation and our prior decisions. The resulting opinion would identify which provisions, if any, of the Florida law could be sustained.

I will, therefore, await further circulations and Conference discussion before coming to rest.

Sincerely,

Lewis

Mr. Justice Douglas

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

5
my
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 9, 1973

Re: No. 71-1082 Askew v. The American
Waterways Operators, Inc.

Dear Bill:

I will join Part I of your opinion, but will await Byron's
circulation before deciding where I will come to rest as to Part II.

Sincerely,

Lewis

Mr. Justice Douglas

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

SECTION OF ADVANCE

17
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 16, 1973

Re: No. 71-1082 Askew v. The American
Waterways Operators

Dear Bill

Please join me.

Sincerely,

L. F. P.

Mr. Justice Douglas

cc: The Conference

March 16, 1973

Re: No. 71-1082 Askew v. The American
Waterways Operators

Dear Bill

Please join me.

Sincerely,

Mr. Justice Douglas

cc: The Conference

Bill: As Potter noted in his "joinletter", I also apologize for my long delay. There was a possibility of his doing some writing at one time which I wanted to see.

L. F. P., Jr.

2
M

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 7, 1972

Re: No. 71-1082 - Askew v. American Waterways

Dear Bill:

I agree with the substance of the preliminary draft
which you have circulated.

Sincerely,

WR

Mr. Justice Douglas

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT MANUSCRIPTS

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

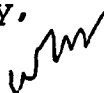
February 5, 1973

Re: No. 71-1082 - Askew v. American Waterways

Dear Bill:

I will join Part I of your opinion. I certainly agree with the result reached by Part II, but will wait and see what Byron circulates in order to decide whether to join your Part II or separately concur.

Sincerely,



Mr. Justice Douglas

Copies to the Conference

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CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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

February 14, 1973

Re: No. 71-1082 - Askew v. American Waterways

Dear Bill:

I would be inclined to join Part II of your opinion, as well as Part I, if you would make a couple of changes; I don't mind at all kicking Jensen and Knickerbocker Ice once or twice, but I draw back a little at the repeated pummelling which they take in your Part II. The changes I would suggest are these:

(1) Page 11, last paragraph beginning "But those decisions were aberrations from the main stream of admiralty; . . ." substitute for that sentence something to the effect that "Those decisions have been limited by subsequent holdings of this Court".

(2) Page 18, last paragraph beginning "Jensen thus has some vitality left . . ." delete the phrase "a near derelict in the law".

Sincerely,
Bill

Mr. Justice Douglas

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