

The Burger Court Opinion Writing Database

American Pipe & Construction Co. v. Utah
414 U.S. 538 (1974)

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. 20530

CHAMBERS OF
THE CHIEF JUSTICE

January 3, 1974

Re: No. 72-1195 - American Pipe and Construction Co.
v. State of Utah

Dear Potter:

I am in general agreement with your proposed opinion but I may have a small suggestion for your consideration. I will try to "write this out."

Regards,

WSB

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

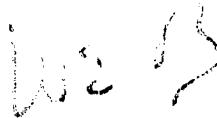
January 10, 1974

Re: 72-1195 - American Pipe and Construction Co.
v. State of Utah

Dear Potter:

Please join me.

Regards,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 26, 1973

Dear Potter:

Please join me in your opinion
in 72-1195, American Pipe & Construction
Co. v. UTAH.

WD

WILLIAM O. DOUGLAS

Mr. Justice Stewart
cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 28, 1973

Re: No. 72-1195 American Pipe and Construction Co. v. State of Utah

Dear Potter:

Please join me.

Sincerely,

W. J. B.

Mr. Justice Stewart

cc: The Conference

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

2nd DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

Dated: DEC 26 1973

No. 72-1195

circulated: _____

American Pipe and Construc- } On Writ of Certiorari to
tion Co. et al., Petitioners. } the United States Court
v. } of Appeals for the
State of Utah et al. } Ninth Circuit.

[January —, 1973]

MR. JUSTICE STEWART delivered the opinion of the Court.

This case involves an aspect of the relationship between a statute of limitations and the provisions of Fed. Rule Civ. Proc. 23 regulating class actions in the federal courts. While the question presented is a limited one, the details of the complex proceedings, originating almost a decade ago, must be briefly recounted.

On March 10, 1964, a federal grand jury returned indictments charging a number of individuals and companies, including the petitioners here, with criminal violations of § 1 of the Sherman Act, 15 U. S. C. § 1. The indictments alleged that the defendants combined and conspired together in restraint of trade in steel and concrete pipe by submitting collusive and rigged bids for the sale of such pipe and by dividing and allocating business among themselves. Shortly thereafter, on June 19, 1964, pleas of *nolo contendere* were accepted and judgments of guilt were entered. Four days later, on June 23, 1964, the United States filed civil complaints in the United States District Court for the Central District of California against the same companies, which complaints, as subsequently amended, sought to restrain

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 2, 1974

Re: No. 72-1195 - American Pipe and Construction
Co. v. Utah

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 3, 1974

Re: No. 72-1195 -- American Pipe and Construction Co.
v. State of Utah et al.

Dear Potter:

Please join me in your opinion in this case.

Sincerely,

T. M.
T. M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 28, 1973

Dear Potter:

Re: No. 72-1195 - American Pipe and Construction Co.
v. Utah

I am joining your opinion. I am, however, writing a short concurrence. This will be around as soon as possible next week.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

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.,

No. 72-1195

Circulated: 1/2/74

American Pipe and Construc- } On Writ of Certiorari to
 tion Co. et al., Petitioners, } the United States Court
 v. } of Appeals for the
 State of Utah et al. } Ninth Circuit.

[January —, 1974]

MR. JUSTICE BLACKMUN, concurring.

I join the Court's opinion and concur in its judgment. Our decision, however, must not be regarded as encouragement to lawyers in a case of this kind to frame their pleadings as a class action, intentionally, to attract and save members of the purported class who have slept on their rights. Nor does it necessarily guarantee intervention for all members of the purported class.

As the Court has indicated, the purpose of statutes of limitations is to prevent surprises "through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Order of Railroad Telegraphers v. Railway Express Agency, Inc.*, 321 U. S. 342, 348-349 (1944). Under our decision today, intervenors as of right will be permitted to press their claims subject only to the requirement that they have an interest relating to the property or transaction and be impaired or impeded in their ability to protect that interest. Fed. Rule Civ. Proc. 24 (a). Such claims, therefore, invariably will concern the same evidence, memories, and witnesses as the subject matter of the original class suit, and the defendant will not be prejudiced by later intervention, should class relief be denied. Permissive intervenors may be barred, however, if the District Judge, in his

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 28, 1973

No. 72-1195 American Pipe and Construction Co. v. Utah

Dear Potter:

Although I voted at the Conference to remand on the "reliance" theory, I am now persuaded by your excellent opinion and am glad to join you.

Sincerely,

Mr. Justice Stewart

CC: The Conference

LFP/gg

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 27, 1973

Re: No. 72-1195 - American Pipe v. Utah

Dear Potter:

Please join me in your opinion for the Court in this case.

Sincerely,



Mr. Justice Stewart

Copies to the Conference