

# The Burger Court Opinion Writing Database

## *Bonelli Cattle Co. v. Arizona*

414 U.S. 313 (1973)

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

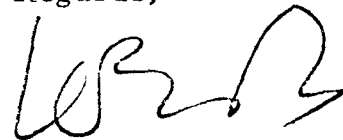
November 29, 1973

Re: No. 72-397 - Bonelli Cattle Co. v. Arizona

Dear Thurgood:

Please join me.

Regards,

A handwritten signature in dark ink, appearing to be "W. E. Burger", written in a cursive style.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

November 26, 1973

Dear Thurgood:

Please join me in your opinion  
in 72-397, Bonelli Cattle Co. v. Arizona,  
et al.

W O D

William O. Douglas

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.


November 26, 1973

RE: No. 72-397 Bonelli Cattle v. Arizona

Dear Thurgood:

I agree.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill", with a small mark below it.

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

November 28, 1973

MEMORANDUM TO THE CONFERENCE

Re: 72-397, Bonelli Cattle Co. v. Arizona

In due course I plan to circulate a  
dissenting opinion in this case.

  
P. S.

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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

SUPREME COURT OF THE UNITED STATES

No. 72-397

DEC 11 1973

Bonelli Cattle Company }  
et al., Petitioners, } On Writ of Certiorari to the  
v. } Supreme Court of Arizona.  
State of Arizona et al. }

[December —, 1973]

MR. JUSTICE STEWART, dissenting.

The Court in this case holds that federal common law governs the resolution of conflicting claims to the exposed bed of a navigable river between Arizona as the owner of the river bed and a riparian landowner.<sup>1</sup> I think this ruling emasculates the equal footing doctrine, under which this Court has long held "that the new States since admitted have the same rights, sovereignty and jurisdiction . . . as the original States possess within their respective borders." *Mumford v. Wardwell*, 73 U. S. (6 Wall.) 423, 436 (1868).

<sup>1</sup> The Court emphasizes the fact that it is the State that holds the title to the river bed property. The nature of the title held by the State, however, is such that it could be conveyed to a private owner. ("[T]he settled law of this country [is] that the ownership of and dominion and sovereignty over lands covered by tide water, or navigable [rivers], within the limits of the several States, belong to the respective States within which they are found, with the consequent right to use or dispose of any portion thereof. . . ." *Shively v. Bowlby*, 152 U. S. 1, 47 (1894); *Illinois Central R. Co. v. Illinois*, 146 U. S. 387, 435 (1892); *United States v. Holt Bank*, 270 U. S. 49, 54-55 (1926)). Since the State could hardly convey more title than it held, it would appear from the Court's opinion that federal law would also govern the resolution of conflicting claims to the exposed riverbed as between a private owner of the bed and a private riparian owner.

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

1st DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 11/26/73

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

No. 72-397

Bonelli Cattle Company  
et al., Petitioners,  
v.  
State of Arizona et al. } On Writ of Certiorari to the  
Supreme Court of Arizona.

[December —, 1973]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The question for decision is whether title to land abandoned by the stream of the Colorado River as a result of a federal rechanneling projects vests in the State, as owner of the beds of navigable streams within its borders, or in petitioner, as the owner of land riparian to the river at the time of its rechanneling.

The circumstances that give rise to this case are as follows. In 1910, the subject land was conveyed by federal patent, as part of a larger parcel, to the Santa Fe Pacific Railroad Company. A survey conducted in 1905 and 1906, and approved by the Surveyor General of the United States in 1906, indicates that as of the date of the patent, the Santa Fe parcel abutted the east bank of the Colorado River.<sup>1</sup> Upon admission to the Union

<sup>1</sup> The federal patent to the Santa Fe Railroad conveyed a parcel of land in township 19 North of Range 22 West, described as follows:

"The lots one, two, three, four, five, six, the south half of the northeast quarter, the south half of the northwest quarter, the northeast quarter of the southwest quarter, and the southwest quarter of

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 27, 1973

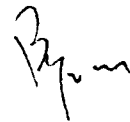
Re: No. 72-397 - Bonelli Cattle Company v.  
State of Arizona

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Dear Thurgood:

Please join me. But I could do without the last paragraph of footnote 28 insofar as it implies that federal law would or might govern the situations discussed there. That may be the case but I am not so sure.

Sincerely,



Mr. Justice Marshall

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 27, 1973

Re: No. 72-397 - Bonelli Cattle Co., et al.  
v. Arizona

Dear Thurgood:

I am glad to join your opinion proposed  
for this case.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

November 28, 1973

No. 72-397 Bonelli Cattle Co. v. Arizona

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

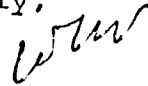
November 28, 1973

Re: No. 72-397 - Bonelli Cattle Co. v. Arizona

Dear Thurgood:

Would you please note at the bottom of the Court's opinion that I took no part in the consideration or decision of the case.

Sincerely,



Mr. Justice Marshall

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