

# The Burger Court Opinion Writing Database

*United States v. Alaska*

422 U.S. 184 (1975)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

June 16, 1975

Re: 73-1888 - U. S. v. Alaska

Dear Harry:

Please join me in your circulation of June 13.

Regards,

WSR

Mr. Justice Blackmun

Copies to the Conference

P.S. I almost dissented because  
I think we ought to see  
the Bay before deciding!

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

June 19, 1975

MEMORANDUM TO THE CONFERENCE

I have been doing further work on United States v. Alaska, No. 73-1888. This is a case which requires in-depth analysis of the facts, and our decision will be criticized regardless of the outcome.

At this point I am prepared to take no action on the case other than to request that it be re-argued.

Sincerely,

WILLIAM O. DOUGLAS

Wm. Douglas  
6/19/75

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 15, 1975

RE: No. 73-1888 United States v. Alaska

Dear Harry:

I agree.

Sincerely,

*Bill*

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 16, 1975

Re: No. 73-1888, United States v. Alaska

Dear Harry,

Bill Rehnquist and I would appreciate your adding the following at the foot of your opinion for the Court in this case:

MR. JUSTICE STEWART and MR. JUSTICE REHNQUIST would affirm the judgment, believing that the findings of fact made by the District Court and adopted by the Court of Appeals were not clearly erroneous, and that both of those courts applied the correct legal criteria in ruling that Cook Inlet is an historic bay.

Sincerely yours,

*P.S.*

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 17, 1975

Re: No. 73-1888 - U. S. v. State of Alaska

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 16, 1975

Re: 73-1888 - United States v. State of Alaska

Dear Harry:

Please join me.

Sincerely,

*T. M.*

T. M.

Mr. Justice Blackmun

cc: The Conference

Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Biao, C. C.

Circulated:

12/4/74

UNITED STATES v. STATE OF ALASKA

Recirculated:

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 73-1888 Decided December —, 1974

MR. JUSTICE BLACKMUN, dissenting.

The United States and the State of Alaska are in dispute as to whether Alaska possesses sovereignty over the land beneath the waters of the lower, or seaward, portion of the Cook Inlet<sup>1</sup> and thereby has the concomitant right to effect oil and gas leases of that underwater area.

In early 1967 Alaska offered 2,500 acres of submerged lands in lower Cook Inlet for a competitive oil and gas lease sale. The tract in question is more than three geographical miles from the shore of the Inlet and is seaward more than three miles from a line across the Inlet at Kalgin Island, where the headlands are about 24 miles apart, as contrasted with 47 miles at the natural entrance at Cape Douglas. In the view of the United States, the Kalgin Island line plus three miles marks the limit of the portion of the Inlet that qualifies as inland waters. The United States, contending the lower inlet to be high seas, brought suit in the United States District Court for the District of Alaska to quiet title and for injunctive relief against the State. Alaska defended on the ground that the Inlet in its entirety was within the accepted definition of an "historic" bay and thus was inland waters properly subject to state sovereignty.

<sup>1</sup> Cook Inlet extends northeastward well over 150 miles into the Alaskan land mass, with the Kenai Peninsula to the east and the Chigmit Mountains to the west. The city of Anchorage is near the head of the Inlet. The upper, or inner, portion of the Inlet is not in dispute here, for that part is conceded to be inland waters subject to Alaska's sovereignty.

(Handwritten)

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

## 1st DRAFT

From: Blackmun, J.

## SUPREME COURT OF THE UNITED STATES

Dated: 6/13/75

No. 73-1888

Recirculated:

United States, Petitioner, v. State of Alaska. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1975]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

The issue here is whether the body of water known as Cook Inlet is an historic bay.<sup>1</sup> The inlet extends northeastward well over 150 miles into the Alaskan land mass, with Kenai Peninsula to the southeast and the Chigmit Mountains to the northwest. The city of Anchorage is near the head of the inlet. The upper, or inner portion, of the inlet is not in dispute, for that part is conceded to be inland waters subject to Alaska's sovereignty.

If the inlet is an historic bay, the State of Alaska possesses sovereignty over the land beneath the waters of the lower, or seaward, portion of the inlet. If the inlet is not an historic bay, the United States as against the State, has paramount rights to the subsurface lands in question.

## I

In early 1967 the State of Alaska offered 2,500 acres of submerged lands in lower Cook Inlet for a competitive

<sup>1</sup> Cook Inlet is larger than Great Salt Lake and Lake Ontario. It is about the same size as Lake Erie. It dwarfs Chesapeake Bay, Delaware Bay, and Long Island Sound, all of which the United States has claimed as historic bays.

148-10

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

From: Blackmun, J.

Circulated: \_\_\_\_\_

Recirculated: 6/17/75

pp. 17, 20  
STYLISTIC CHANGES

**2nd DRAFT**

**SUPREME COURT OF THE UNITED STATES**

**No. 73-1888**

United States, Petitioner, } On Writ of Certiorari to the United  
v. State of Alaska. } States Court of Appeals for the  
Ninth Circuit.

[June —, 1975]

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M

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

October 9, 1974

No. 73-1888 U.S. v. Alaska

Dear Chief:

I have reconsidered my vote to grant the above case in light of the discussion and further reflection, and now wish to change my vote to "Deny".

Sincerely,

Lewis

The Chief Justice

1fp/ss

cc: The Conference

Wm. Donker  
10/10/74

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

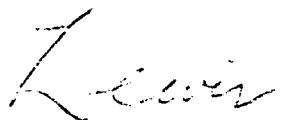
June 16, 1975

No. 73-1888 United States v. Alaska

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

lfp/ss

cc: The Conference