

The Burger Court Opinion Writing Database

Texas v. Louisiana

426 U.S. 465 (1976)

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



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

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CHAMBERS OF
THE CHIEF JUSTICE

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May 10, 1976

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Re: 36 Original - Texas v. Louisiana

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MEMORANDUM TO THE CONFERENCE:

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I took the responsibility for developing a disposition for the above case and with substantive aid from Mr. Ginty, the enclosed has evolved.

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I will defer printing until there are four votes.

Regards,

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No. 36 Orig. - Texas v. LouisianaWork Draft
~~CONFIDENTIAL~~

5/10/76

*Per Curiam:**have already*We ~~earlier~~ decided, 410 U.S. 702 (1973), that the

To: Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice ~~W~~illiam J. ~~W~~right

From: The Chief Justice
 MAY 11 1976
 Circulated: _____
 Recirculated: _____

relevant boundary between the States of Texas and Louisiana is the geographic middle of Sabine Pass, Sabine Lake, and Sabine River from the mouth of the Sabine in the Gulf of Mexico to the thirty-second degree of north latitude. We also ~~then~~ held that all islands in the east half of the Sabine River when Louisiana was admitted as a State in 1812, or thereafter formed, belonged to Louisiana. Delimitation of the boundary and decision as to ownership of the islands in the west half of the Sabine was deferred pending further proceedings before the Special Master in which the United States was invited to participate.

410 U.S. at 712-14.

The litigation subsequently was enlarged upon the motion of Louisiana to include a determination of the lateral seaward boundary between Texas and Louisiana, and Texas and the United States extending into the Gulf of Mexico. 414 U.S. 904 (1973).*/

*/We held in United States v. Louisiana, 363 U.S. 1 (1960), that under the Submerged Lands Act, 43 U.S.C. §1301 *et seq.*, Texas as against the United States was entitled to the natural resources of the seabed and subsoil extending three marine leagues from its coastline into the Gulf, but that Louisiana may claim such rights only for a distance of three geographical miles from its coastline. Thus, for three geographical miles Texas and Louisiana are in dispute as to the location of their boundary. The remaining boundary area out to three marine leagues is in dispute between Texas and the United States.

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

CHAMBERS OF
THE CHIEF JUSTICE

June 9, 1976

Re: 36 Orig. - Texas v. Louisiana

MEMORANDUM TO THE CONFERENCE:

The enclosed per curiam has been expanded to accommodate
the views of Potter and John.

It is at the printer.

Regards,

URB

No. 36 Orig. - Texas v. Louisiana

6/7/76

Per Curiam:

To: Mr. Justice [redacted]
Mr. Justice [redacted]
Mr. Justice [redacted]

Recirculated: [redacted]

Circulated: [redacted]

Recirculated: [redacted]

We have already decided that the relevant boundary between the States of Texas and Louisiana is the geographic middle of Sabine Pass, Sabine Lake, and Sabine River from the mouth of the Sabine in the Gulf of Mexico to the thirty-second degree of north latitude. 410 U.S. 702 (1973). We also held that all islands in the east half of the Sabine River when Louisiana was admitted as a State in 1812, or thereafter formed, belonged to Louisiana. Delimitation of the boundary and decision as to ownership of the islands in the west half of the Sabine were deferred pending further proceedings before the Special Master in which the United States was invited to participate.

410 U.S. at 712-14.

The litigation subsequently was enlarged upon the motion of Louisiana to include a determination of the lateral seaward boundary between Texas and Louisiana, and Texas and the United States extending into the Gulf of Mexico. 414 U.S. 904 (1973).^{1/} Pleadings relating

^{1/}We held in United States v. Louisiana, 363 U.S. 1 (1960), that under the Submerged Lands Act, 43 U.S.C. §1301 *et seq.*, Texas as against the United States was entitled to the natural resources of the seabed and sub-soil extending three marine leagues from its coastline into the Gulf, but that Louisiana may claim such rights only for a distance of three geographical miles from its coastline. Thus, for three geographical miles Texas and Louisiana are in dispute as to the location of their boundary. The remaining boundary area out to three

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall

Circled

Printed Recirculated: 75
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 36, Orig.

State of Texas, Plaintiff,
v.
State of Louisiana. } On Bill of Complaint.

[June —, 1976]

PER CURIAM.

We have already decided that the relevant boundary between the States of Texas and Louisiana is the geographic middle of Sabine Pass, Sabine Lake, and Sabine River from the mouth of the Sabine in the Gulf of Mexico to the thirty-second degree of north latitude. 410 U. S. 702 (1973). We also held that all islands in the east half of the Sabine River when Louisiana was admitted as a State in 1812, or thereafter formed, belonged to Louisiana. Delimitation of the boundary and decision as to ownership of the islands in the west half of the Sabine were deferred pending further proceedings before the Special Master in which the United States was invited to participate. 410 U. S., at 712-714.

The litigation subsequently was enlarged upon the motion of Louisiana to include a determination of the lateral seaward boundary between Texas and Louisiana, and Texas and the United States extending into the Gulf of Mexico. 414 U. S. 904 (1973).¹ Pleadings re-

¹ We held in *United States v. Louisiana*, 363 U. S. 1 (1960), that under the Submerged Lands Act, 43 U. S. C. § 1301 *et seq.*, Texas as against the United States was entitled to the natural resources of the seabed and subsoil extending three marine leagues from its coastline into the Gulf, but that Louisiana may claim such rights

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 12, 1976

No. 36 Original Texas v. Louisiana

Dear Chief:

I agree with the Per Curiam you have prepared
in the above.

Sincerely,



The Chief Justice
cc: The Conference

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

CHAMBLRS OF
JUSTICE WM. J. BRENNAN, JR.

June 10, 1976

RE: No. 36 Orig. Texas v. Louisiana

Dear Chief:

I agree with the Per Curiam you have prepared
in the above.

Sincerely,

Bill

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 12, 1976

Re: No. 36 Original, Texas v. Louisiana

Dear Chief,

Although I would prefer that some minimal identification of the issues raised by the parties' exceptions be included in this Per Curiam, I am willing to join it in its present form.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 10, 1976

No. 36 Orig., Texas v. Louisiana

Dear Chief,

I agree with your proposed Per
Curiam as recirculated on June 9.

Should not the word "criteria"
in the 5th line from the bottom of page 3
be "criterion"?

Sincerely yours,

P. S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 14, 1976

Re: No. 36 Original, Texas v. Louisiana

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20542

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 12, 1976

Re: 36 Original -- Texas v. Louisiana

Dear Chief:

I agree with your Per Curiam.

Sincerely,

T.M.
T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 11, 1976

Re: No. 36, Orig. -- Texas v. Louisiana

Dear Chief:

I agree with your Per Curiam.

Sincerely,

T.M.

T.M.

Mr. Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 13, 1976

Re: No. 36 Orig. - Texas v. Louisiana

Dear Chief:

The proposed per curiam is all right with me.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 13, 1976

No. 36 Orig. Texas v. Louisiana

Dear Chief:

Please join me in your Per Curiam.

Sincerely,

L. F. Powell

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 14, 1976

Re: No. 36 Orig. - Texas v. Louisiana

Dear Chief:

Please join me.

Sincerely,

Wm

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 11, 1976

Re: No. 36 Orig. - Texas v. Louisiana

Dear Chief:

Please join me in your revised circulation.

Sincerely,

Wm

The Chief Justice

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 13, 1976

PERSONAL

Re: 36 Original - Texas v. Louisiana

Dear Chief:

With deference, I would like to suggest that the Per Curiam be revised to include a brief description of the principal objection made by each of the states, and a brief statement of reasons why the objections are insufficient.

As you know, there is currently a split among the circuits on the question whether courts of appeal should dispose of even the most routine cases without any statement of reasons. The Report of the Hruska Commission makes a rather strong recommendation that courts uniformly follow the practice of giving reasons for their actions. In the Seventh Circuit, we felt that the Bar greatly appreciated the fact that we adhered to this point of view.

I mention this background because I really think it quite important that this Court set a good example in its disposition of cases which are of sufficient importance to have merited full briefing and argument. I am afraid that if we merely adopt the recommendations of the Master without any discussion at all of the contentions of the parties, that this may be taken as an approval of the practice so widely followed in the Fifth and Third Circuits of merely affirming without any explanation at all. I infer from his note that Potter may share my concern about this draft.

Respectfully,



The Chief Justice

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 10, 1976

Re: 36 Original - Texas v. Louisiana

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference