

The Burger Court Opinion Writing Database

New Hampshire v. Maine

426 U.S. 363 (1976)

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 9, 1976

Re: No. 64 Orig. - New Hampshire v. Maine

Dear Bill:

This has turned out to be not easy, but I join your
proposed opinion.

Regards,

WEB

Mr. Justice Brennan

Copies to the Conference

SUPREME COURT OF THE UNITED STATES

No. 64 Original

TO: The Chief Justice
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice O'Connor

NEW HAMPSHIRE v. MAINE

Mr. Justice [Signature]
 Mr. Justice [Signature]

Stipulated

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Both New Hampshire and Maine have filed Exceptions to the Report of the Special Master, Mr. Justice Clark, retired, in this original action brought by New Hampshire against Maine, 414 U.S. 810, 996 (1975), to locate the lateral marine boundary separating the States between the mouth of Portsmouth Harbor and the entrance to Gosport Harbor in the Isles of Shoals. ^{1/} Prior to trial the Attorneys General of New Hampshire and Maine agreed upon a settlement and jointly filed a "motion for entry of judgment by consent of plaintiff and defendant", together with a proposed consent decree, based on ^{2/} a stipulated record. The Special Master thereafter without further hearing but with supplemental briefs declared the entire case, including the proposed consent decree, to be under submission.

The Special Master "concluded that the proposed consent decree should be submitted to the Court for its consideration." Special Master's Rept. 3, but expressed the view that rejection of the entry must be recommended as not permissible under the principle of Vermont v. New York, 417 U.S. 270, 277 (1974) that "mere settlements by the parties acting under compulsions and motives that have no relation to performance

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Brennan
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

STYLISTIC CHANGES

1976-06-22

6/22/76

6/22/76

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 64 Orig.

State of New Hampshire,
Plaintiff,
v.
State of Maine. } On Bill of Complaint,

[June —, 1976]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Both New Hampshire and Maine have filed Exceptions to the Report of the Special Master, Mr. Justice Clark, retired, in this original action brought by New Hampshire against Maine, 414 U. S. 810, 996 (1975), to locate the lateral marine boundary separating the States between the mouth of Portsmouth Harbor and the entrance to Gosport Harbor in the Isles of Shoals.¹ Prior to trial the Attorneys General of New Hampshire and Maine agreed upon a settlement and jointly filed a "motion for entry of judgment by consent of plaintiff and defendant," together with a proposed consent decree, based on a stip-

¹ The controversy arose out of a dispute over lobster fishing in the seabed. Maine's regulatory laws, if applicable, are more restrictive than those of New Hampshire. For example, Maine requires a license, available only to Maine residents, for the taking of lobsters in Maine waters. Me. Rev. Stat. Ann. tit. 12, § 4404. Maine also imposes stricter minimum- and maximum-size requirements. Compare Me. Rev. Stat. Ann. tit. 12, § 4451, with N. H. Rev. Stat. Ann. c. 211, § 27. Before the original action was filed, efforts to settle the dispute failed, and violence over lobster fishing rights in the area was threatened.

Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 64, Orig.

State of New Hampshire,
Plaintiff,
v.
State of Maine. } On Bill of Complaint.

[June —, 1976]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Both New Hampshire and Maine have filed Exceptions to the Report of the Special Master in this original action brought by New Hampshire against Maine, 414 U. S. 810, 996 (1975), to locate the lateral marine boundary separating the States between the mouth of Portsmouth Harbor and the entrance to Gosport Harbor in the Isles of Shoals.¹ Prior to trial the Attorneys General of New Hampshire and Maine agreed upon a settlement and jointly filed a "motion for entry of judgment by consent of plaintiff and defendant," together with a proposed consent decree, based on a stip-

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 26, 1976

No. 64 Original, N. H. v. Maine

Dear Bill,

I am glad to join your opinion
for the Court in this case.

Sincerely yours,

Mr. Justice Brennan

Copies to the Conference

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

✓
✓

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 27, 1976

Re: No. 64 Original - New Hampshire v. Maine

Dear Bill:

I shall write a few words in this case.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

From: Mr. Justice White

Circulated: June 8 1976

Recirculated: _____

No. 64, Orig. - New Hampshire v. Maine

Mr. Justice White, dissenting.

I find unacceptable the Court's cursory conclusion that the Special Master and ourselves are bound to accept the agreement of the parties as to the meaning of the words "middle of the river" and related phrases which were used in the 1740 document to describe the Maine-New Hampshire boundaries, as well as their agreement as to where that line lies on the face of the earth.

The parties interpret "middle of the river" as meaning the thalweg, which they understood to be the middle of the main channel of navigation. The States then fashioned their mutually agreed boundary in the river and the harbor on this basis, their boundary in the ocean being a straight line between the points at which the main navigation channels crossed the closing lines of Portsmouth and Gosport Harbors. No inquiry is made, however, by either the Court or the parties as to whether the "middle of the river" has, or had, any commonly understood meaning in the law. The Special Master concluded that these words, when used in 1740, intended to describe the geographic middle of the river--a

Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackman
Mr. Justice Powell
Mr. Justice Ochsner
Mr. Justice Stevens

From: Mr. Justice White

1st DRAFT

Circulated:

Recirculated: 6-11-76

SUPREME COURT OF THE UNITED STATES

No. 64, Orig.

State of New Hampshire,
Plaintiff,
v.
State of Maine. } On Bill of Complaint.

[June —, 1976]

MR. JUSTICE WHITE, with whom MR. JUSTICE BLACKMUN and MR. JUSTICE STEVENS join, dissenting.

I find unacceptable the Court's cursory conclusion that the Special Master and ourselves are bound to accept the agreement of the parties as to the meaning of the words "middle of the river" and related phrases which were used in the 1740 document to describe the Maine-New Hampshire boundaries, as well as their agreement as to where that line lies on the face of the earth.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 1, 1976

Re: No. 64 Original -- State of New Hampshire v.
State of Maine

Dear Bill:

Please join me.

Sincerely,

T.M.

T. M.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 9, 1976

Re: No. 64 Orig. - New Hampshire v. Maine

Dear Byron:

Please join me in your dissent.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 2, 1976

No. 64 Orig. New Hampshire v. Maine

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 9, 1976

Re: No. 64 - Original - New Hampshire v. Maine

Dear Bill:

Please join me.

Sincerely,

WRW

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 9, 1976

Re: 64 Original - New Hampshire v. Maine

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White
Copies to the Conference