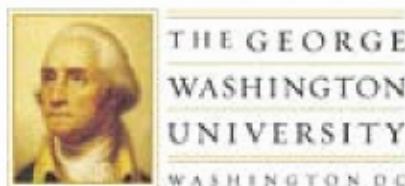


The Burger Court Opinion Writing Database

Jones v. Rath Packing Co.
430 U.S. 519 (1977)

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

March 24, 1977

Re: 75-1053 Jones v. Rath Packing Company

Dear Thurgood:

I join.

Regards,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

March 25, 1977

MEMORANDUM TO THE CONFERENCE:

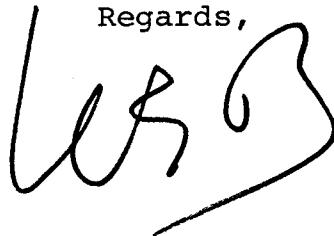
As agreed at Conference, the following opinion
will be announced next week:

Tuesday, March 29, 1977

75-1053 - Jones v. Rath Packing Co. - TM

Absent dissent, we will proceed.

Regards,

A handwritten signature consisting of the letters "W" and "G" joined together in a cursive style.

cc: Mr. Cornio

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 14, 1977

RE: No. 75-1053 Jones v. Rath Packing Co., et al.

Dear Thurgood:

I agree.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

✓

March 14, 1977

Re: No. 75-1053, Jones v. Rath Packing Co.

Dear Thurgood,

My tentative view at our Conference was that California's standards with respect to bacon were pre-empted by federal law, and that its standards with respect to flour were not. That is precisely the result your proposed opinion would reach if it ended on page 19. For the reasons expressed on pages 19-22 of your opinion, however, you conclude that the state standards covering flour are also preempted. I find these reasons rather unpersuasive since they are based on speculations and inferences hardly based on the record, and impossible for me to assess. But this is not a case in which I can work up much excitement, and I shall, accordingly, acquiesce in your opinion for the Court unless somebody else writes in partial dissent.

Sincerely yours,

PS.
J

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 24, 1977

No. 75-1053, Jones v. Rath Packing Company

Dear Bill,

Please add my name to your separate
opinion in this case.

Sincerely yours,

P. S.
P.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 15, 1977

Re: 75-1053 - Jones v. Rath Packing Co.

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to Conference

P. 5/11

MAR 14 1977

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1053

Joseph W. Jones, as Director of the
County of Riverside, California,
Department of Weights and
Measures, Petitioner,
v.

The Rath Packing Company et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Ninth Circuit.

[March —, 1977]

MR. JUSTICE MARSHALL delivered the opinion of the Court.
Petitioner Jones is Director of the Department of Weights and Measures in Riverside County, Cal.¹ In that capacity he ordered removed from sale bacon packaged by respondent The Rath Packing Co. and flour packaged by three millers, respondents General Mills, Inc., The Pillsbury Co., and Seaboard Allied Milling Corp. (the "millers"). Jones acted after determining, by means of procedures set forth in 4 Cal. Administrative Code c. 8, subch. 2, Art. 5, that the packages were contained in lots² whose average net weight was less than the net weight stated on the packages. The removal orders were authorized by Cal. Bus. & Prof. Code § 12211.³

¹ The title "director of weights and measures" is a statutory alternative to the title "county sealer." Cal. Bus. & Prof. Code § 12006. The office of county sealer is established and its duties prescribed by *id.*, §§ 12200-12214.

² "Lot" means the total number of packages of a single item of merchandise in a single size at one location and may contain two or more "sub-lots."

³ "One location" shall be construed to mean "one display" or "one grouping," and does not, for example, mean all items of the same brand and size stored or kept for sale in one establishment." 4 Cal. Admin. Code § 2931.3.

³ "Each sealer shall, from time to time, weigh or measure packages, con-

P. 2D

MAR 24 1977

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1053

Joseph W. Jones, as Director of the
County of Riverside, California,
Department of Weights and
Measures, Petitioner,
v.

The Rath Packing Company et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Ninth Circuit.

[March —, 1977]

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¹ The title "director of weights and measures" is a statutory alternative to the title "county sealer." Cal. Bus. & Prof. Code § 12006. The office of county sealer is established and its duties prescribed by *id.*, §§ 12200-12214.

² "Lot" means the total number of packages of a single item of merchandise in a single size at one location and may contain two or more "sub-lots."

"One location" shall be construed to mean "one display" or "one grouping," and does not, for example, mean all items of the same brand and size stored or kept for sale in one establishment." 4 Cal. Admin. Code § 2931.3.

³ "Each sealer shall, from time to time, weigh or measure packages, cen-

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 29, 1977

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 75-1053, Jones v. The Rath Packing Co.

The only case held for Jones is No. 75-1052, Wallace v. The Rath Packing Co. This petition, filed by the Director of Weights and Measures of Los Angeles County and the Director of Food and Agriculture for California, challenges the same judgment affirmed in Jones.

In addition to the arguments rejected in Jones, petitioners contend that the District Court should have abstained in deference to suits for injunctive relief and civil penalties against Rath filed in state court by the county attorneys of Los Angeles and Riverside Counties. (This argument was not made by petitioner in Jones.) Although this position has been strengthened by the decision in Juidice v. Vail, No. 75-1397, and the Conference vote in Trainor v. Hernandez, No. 75-1407, there is no point in vacating and remanding since Jones resolved the substantive issues in the State and Federal cases. I will vote to deny. ✓

OK.


T.M.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 16, 1977

Re: No. 75-1053 - Jones, Director v. Rath Packing Co., et al.

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 15, 1977

No. 75-1053 Jones v. Rath Packing Company

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

March 17, 1977

Re: No. 75-1053, Jones v. Rath Packing Co.

Dear Thurgood:

In due course I shall circulate a partial dissent in this case, covering the portion of your opinion Potter discussed in his March 14 letter.

Sincerely,

WW

Mr. Justice Marshall

Copies to the Conference

V.T

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

MAR 23 1977

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1053

Joseph W. Jones, as Director of the
County of Riverside, California,
Department of Weights and
Measures, Petitioner,
v.
The Rath Packing Company et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Ninth Circuit.

[March —, 1977]

MR. JUSTICE REHNQUIST, concurring in part and dissenting
in part.

I agree that with respect to Rath's packaged bacon, § 12211 and Art. 5 of the California Business and Professions Code are pre-empted by the express pre-emptive provision of the Wholesome Meat Act, 21 U. S. C. § 678. I also agree that with respect to General Mill's flour, § 12211 and Art. 5 are not pre-empted by the express pre-emptive provision of the Fair Packaging and Labeling Act (FPLA), 15 U. S. C. § 1461. I am unable to agree, however, with the implicit pre-emption the Court finds with respect to the flour. This latter pre-emption is founded in unwarranted speculations that hardly rise to that clear demonstration of conflict that must exist before the mere existence of a federal law may be said to pre-empt state law operating in the same field.

With respect to labeling requirements for flour under the scheme contemplated by the FPLA in conjunction with the Food, Drug, and Cosmetic Act, the Court determines that the state law labeling requirements are neither "less stringent than" nor inconsistent with those federal requirements. This conclusion quite properly dictates the Court's holding that Congress has not expressly prohibited state regulation in this field. The remaining inquiry, then, is whether the two statu-

P.5

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

From: Mr. Justice Rehnquist

Circulated: _____

Recirculated: MAR 25 1977

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1053

Joseph W. Jones, as Director of the
County of Riverside, California,
Department of Weights and
Measures, Petitioner,
v.

The Rath Packing Company et al.

On Writ of Certiorari
to the United States
Court of Appeals for
the Ninth Circuit.

[March —, 1977]

MR. JUSTICE REHNQUIST, with whom MR. JUSTICE STEWART joins, concurring in part and dissenting in part,

I agree that with respect to Rath's packaged bacon, § 12211 and Art. 5 of the California Business and Professions Code are pre-empted by the express pre-emptive provision of the Wholesome Meat Act, 21 U. S. C. § 678. I also agree that with respect to General Mill's flour, § 12211 and Art. 5 are not pre-empted by the express pre-emptive provision of the Fair Packaging and Labeling Act (FPLA), 15 U. S. C. § 1461. I am unable to agree, however, with the implicit pre-emption the Court finds with respect to the flour. This latter pre-emption is founded in unwarranted speculations that hardly rise to that clear demonstration of conflict that must exist before the mere existence of a federal law may be said to pre-empt state law operating in the same field.

With respect to labeling requirements for flour under the scheme contemplated by the FPLA in conjunction with the Food, Drug, and Cosmetic Act, the Court determines that the state law labeling requirements are neither "less stringent than" nor inconsistent with those federal requirements. This conclusion quite properly dictates the Court's holding that Congress has not expressly prohibited state regulation in this field. The remaining inquiry, then, is whether the two statu-

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 14, 1977

Re: 75-1053 - Jones v. Rath Packing Co.

Dear Thurgood:

Please join me.

Respectfully,



Mr. Justice Marshall

Copies to the Conference