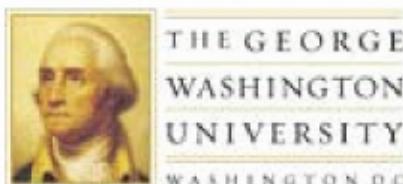


The Burger Court Opinion Writing Database

Massachusetts v. Westcott
431 U.S. 322 (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

February 11, 1977

Re: 75-1775 - Massachusetts v. Westcott

Dear Thurgood:

I can "live with" either alternative
slightly
but I lean to the first.

Regards,

WSB

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

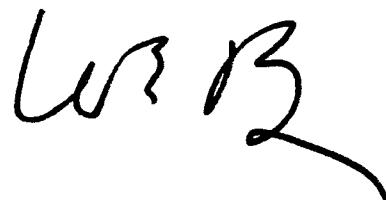
March 3, 1977

Re: 75-1775 Massachusetts v. Westcott

Dear Thurgood:

I agree with your March 1 suggestion in this case.

Regards,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

May 11, 1977

RE: 75-1775 - Massachusetts v. Westcott

Dear Thurgood:

I join.

I am quite happy with the footnote.

As to DIGing, I could do that quite as well. I do not think we can appropriately put a quota on DIG's. We should do it twenty times a year if each one is proper or none if that is proper.

Regards,

W.B.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

2
February 11, 1977

RE: No. 75-1775 Massachusetts v. Westcott

Dear Thurgood:

Now that you have found that Westcott has a federal license, I see no alternative but to decide the case in that context.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 2, 1977

RE: No. 75-1775 Massachusetts v. Westcott

Dear Thurgood:

I agree with your proposed request to be parties.

Sincerely,

Brennan

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 14, 1977

(1)

RE: No. 75-1775 Massachusetts v. Westcott

Dear Thurgood:

I agree.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

①

b

February 10, 1977

No. 75-1235 - Massachusetts v. Westcott

Dear Thurgood,

For the reasons expressed at our Conference discussion, I should much prefer the first alternative route described in your memorandum of today.

Sincerely yours,

P. S.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 1, 1977

Re: No. 75-1775, Massachusetts v. Westcott

Dear Thurgood,

Your proposed form of the request for supplemental briefs seems fine to me. I agree that a letter along these lines, rather than a formal order, is appropriate.

Sincerely yours,

P. S.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

(23)

April 14, 1977

75-1775, Massachusetts v. Westcott

Dear Thurgood,

I agree with the Per Curiam you have
circulated in this case.

Sincerely yours,

P.S.
1/

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 21, 1977

Re: 75-1775, Massachusetts v. Westcott

Dear Thurgood,

My vote would be to add your proposed footnote to the present Per Curiam, rather than to dismiss the writ as improvidently granted.

Sincerely yours,

P. S.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 19, 1977

Re: No. 75-1775, Massachusetts v. Westcott

Dear Thurgood,

The more I have thought about this case, the more I have become persuaded that Byron's proposed disposition is the preferable one. If there were a majority for Byron's view, it would avoid deciding a fairly important jurisdictional issue. I think it could be embodied in your present Per Curiam by making only a few verbal changes. Perhaps we can discuss the matter at the Conference this morning.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 19, 1977

No. 75-1775 - Massachusetts v. Westcott

Dear Thurgood,

Your revised Per Curiam, circulated today, seems entirely satisfactory to me.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 14, 1977

Re: No. 75-1775 - Massachusetts v. Westcott

Dear Thurgood:

Although my response to your memorandum of February 10 is perhaps beside the point at this moment, I would prefer deciding the case on the privileges and immunities basis.

Sincerely,



Mr. Justice Marshall

Copies to Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 18, 1977

Re: No. 75-1775 - Massachusetts v. Westcott

Dear Thurgood:

In this case, shouldn't you make some mention of how it is that the Court may decide the case on the basis you now suggest? See Cardinale v. Louisiana, 394 U.S. 437, and other cases of that kind.

Sincerely,



Mr. Justice Marshall

Copies to Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 18, 1977

Re: No. 75-1775 - Massachusetts v. Westcott

Dear Thurgood:

I have sent the attached dissent to the printer. I am sorry to have held you up, if I have.

Sincerely,



Mr. Justice Marshall

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: 5-18-77

Recirculated: _____

No. 75-1775 - Massachusetts v. Westcott

Mr. Justice White, dissenting.

The Massachusetts Supreme Judicial Court declared the State's statutory limitation on nonresident fishing rights unconstitutional under the Privileges and Immunities Clause, U. S. Const. art. IV, § 3, cl. 2. Without deciding whether the state court's ruling was right or wrong, the Court strikes down the Massachusetts statute on a wholly different ground--that the statute conflicts with federal law and is therefore unconstitutional under the Supremacy Clause, U. S. Const. art. VI, cl. 2--even though that ground was neither presented to nor passed upon by the court below. I do not agree that this Court's prior cases permit it to consider the preemption question in the first instance without first affording the state court an opportunity to construe its statute in light of that constitutional provision. Accordingly, I respectfully dissent.

In McGoldrick v. Compagnie Generale Transatlantique, 309 U.S. 430 (1940), a state court invalidated a city sales tax solely on the ground that it imposed an impermissible burden on interstate commerce, U. S. Const. art. I, § 8, cl. 3. This Court reversed, holding that the statute was not invalid under the Commerce Clause. It expressly declined to rule on respondent's claim, proffered in support of the state court judgment, that the tax was an unconstitutional impost or duty on imports and exports, U. S. Const. art. I, § 10, cl. 2, finding that this ground of attack had not been raised or considered below:

"In cases coming here from state courts in which a state statute is assailed as unconstitutional, there are reasons of peculiar force which should lead us to refrain from deciding questions not presented or decided in the highest court of the state whose judicial action we are called upon to review. Apart from the reluctance with which every court should proceed to set aside legislation as unconstitutional on grounds not properly

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 19, 1977

Re: No. 75-1775 - Massachusetts v. Westcott

Dear Thurgood:

I suggest that you simply cite McGoldrick
v. Compagnie Generale Transatlantique, 309 U. S.
430 (1940), at the end of your per curiam, and
with that addition I am content to join.

Sincerely,



Mr. Justice Marshall

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 10, 1977

MEMORANDUM TO THE CONFERENCE

1775
Re: No. 75-~~1255~~, Massachusetts v. Westcott

In the course of drafting an opinion in Massachusetts v. Westcott, I asked the library to see if there were a quick way to ascertain through public records whether Westcott had a federal license for his vessel, The Suzanne. With apparent ease, it was discovered that the Merchant Vessel Documentation Division of the Coast Guard had such information readily available and that the vessel is, in fact, licensed for the mackerel fisheries. A license for the mackerel fisheries is the catch-all category that covers essentially all but cod and whale, 46 CFR §67.07-13, and thus presumably covers Mr. Westcott's fish, scup and fluke. It is the same license that appellees in the Virginia case hold (Douglas v. Seacoast Products, Inc.) and that will control that case. While I am aware of the fact that Potter suggested that we remand for a determination as to whether Westcott has a federal license and that the conference decided instead to go ahead and decide on the basis of the privileges and immunity clause, I, nevertheless, thought the conference should be aware of the fact that the information was more easily ascertained than was perhaps expected and that we now know that he does have the identical license.

As I see it, we have essentially two choices. We can take judicial notice of the fact that respondent is federally enrolled and licensed and then decide the case on the basis of the Virginia case which will hold that vessels with a federal license for fisheries cannot be precluded from fishing in State waters on the same basis as state residents. The new federal rules of evidence allow us to take judicial notice sua sponte of facts "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Rule 201 (b) and (c). Since the fact of being enrolled and licensed is a matter of public record available for the asking, we should be able to take notice.

- 2 -

In view of the rule's provision that "a party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed," Rule 201(e), I think that if we decide to take this route, we should allow the parties to file supplemental briefs addressed to the question of the propriety of taking notice and perhaps to the import of the license. This latter issue, however, may not be necessary in view of the full briefing in the Virginia case.

The second route is to go ahead and decide the case on the basis of the privileges and immunities clause. I believe this to be a defensible route in view of the fact that that was the only defense raised by petitioner in the courts below and was the sole ground of decision in the Supreme Judicial Court, that the issue was fully briefed and argued, and that it was that issue on which we granted cert. I will be happy to write the case in this manner if a majority still believes this the better route.* Of course, the opinion will still have to reflect the fact that respondent has a license.



T. M.

* I am willing to write the opinion in either of these two ways.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 1, 1977

MEMORANDUM TO THE CONFERENCE

Re: No. 75-1775, Massachusetts v. Westcott

Attached is the proposed request for supplemental briefs. I have discussed the matter with Mike Rodak who suggests that we make the request informally by letter rather than with a formal order. I have no objection to such a procedure but am open to any suggestions on either substance or procedure of the request.

I apologize for the delay in sending this but I wanted to see a copy of the license before committing us and the Merchant Vessel Documentation Division of the Coast Guard is, unfortunately, not a model of efficiency.

TM

T. M.

The parties are hereby invited to submit supplemental briefs on the propriety of this Court's taking judicial notice of the records of the Merchant Vessel Documentation Division of the Coast Guard insofar as those records reveal that Mr. Westcott's vessel, Suzanne, has, since February 9, 1971, been federally enrolled and licensed "to be employed in carrying on the mackerel fishery." 46 USC §§ 251, 263. These briefs are to be submitted by [two weeks from date of this letter].

APR 12 1977

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1775

Commonwealth of Massachusetts,
Petitioner, } On Writ of Certiorari to
v. } the Supreme Judicial
Jack B. Westcott. } Court of Massachusetts,

[April —, 1977]

PER CURIAM.

Respondent Westcott was charged with violating a Massachusetts statute that prohibits nonresidents of the Commonwealth of Massachusetts from dragging for fish by beam or otter trawl during July, August, September in Vineyard Sound.¹ After respondent was found guilty, the Massachusetts Supreme Judicial Court granted direct appellate review and ordered the complaint dismissed on the ground that the statute violated the privileges and immunities clause of the United States Constitution. Art. IV, § 3, cl. 2. We granted certiorari. — U. S. — (1976).

In light of our decision today in *Douglas v. Seacoast*

¹•The Act of February 20, 1923, Ch. 35, 1923 Mass. Acts and Resolves 17, as amended by the Act of March 13, 1962, Ch. 219, 1962 Mass. Acts and Resolves 107:

“•It shall be unlawful during the months of July, August and September for any person who has not been a legal resident of this commonwealth during the preceding year to use beam or otter trawls to drag for fish in that part of the waters of Vineyard Sound lying in the towns of Chilmark, Gay Head and Gosnold, and included between an imaginary line running from the extreme western point of Gay Head to the extreme western point of Nashawena Island and another imaginary line running from Cape Higgon to Tarpaulin Cove Light. Violation of this act shall be punished by a fine of not less than five hundred nor more than one thousand dollars.”

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 21, 1977

Re: No. 75-1775 - Massachusetts v. Westcott

Dear Byron:

In response to your suggestion, I propose that we add the following footnote at the end of the Per Curiam:

Although the statutory issue was not presented in the petition for certiorari or the courts below, we are not prevented from considering it, Boynton v. Virginia, 364 US 454, 457 (1960); Terminiello v. Chicago, 337 US 1, 5 (1949); Wuchter v. Pizzutti, 276 US 13 (1928); cf. Vachon v. New Hampshire, 414 US 478, 479, n. 3 (1974), once our jurisdiction has been properly invoked, Cardinale v. Louisiana, 394 US 437 (1969); McGoldrick v. Gulf Oil Corp., 309 US 414, 434 (1940). Ordinarily, of course, we will refuse to adjudicate an issue not presented below out of respect for the proper division of roles between the State courts and this Court. Cardinale, supra. McGoldrick, supra. Here, however, the dispositive fact identified by today's decision in Douglas can be ascertained without difficulty or dispute from public records, and the highest court of the State has already determined that the State statute discriminates against nonresidents. No interest of Massachusetts would be served by our refusal to apply the law established in Douglas to this case.

While I am content with this addition, I am also willing, if a majority prefers, to change the opinion to a dismissal of the writ as improvidently granted. This would require simply substituting the following for the lines beginning on line 10 of page 2 of the Per Curiam:

In accordance with our longstanding principle of only deciding constitutional questions when necessary, Hagans v. Lavine, 415 U.S. 528, 543 (1974); Ashwarder v. Tennessee Valley Authority, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring), we decline to decide the privileges and immunities question and dismiss the writ as improvidently granted. Cichos v. Indiana, 385 U.S. 76 (1966); The Minrosa v. Carbon Black, Inc., 359 U.S. 180 (1959).

While I think we have "DIGGED" enough this year, I will abide by a show of hands.

Sincerely,


T.M.

Mr. Justice White

cc: The Conference

—
↓
MAY 13 1977

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

—
No. 75-1775
—

Commonwealth of Massachusetts, Petitioner, v. Jack B. Westcott. } On Writ of Certiorari to the Supreme Judicial Court of Massachusetts.

[April —, 1977]

PER CURIAM.

Respondent Westcott was arrested for violating a Massachusetts statute that prohibits nonresidents of the Commonwealth of Massachusetts from dragging for fish by beam or otter trawl in Vineyard Sound¹ during July, August, September.¹ After he was found guilty, he pursued his right to *de novo* review and filed a motion to dismiss the complaint. The Massachusetts Supreme Judicial Court granted direct appellate review and ordered the complaint dismissed on the ground that the statute violated the privileges and immunities clause of the United States Constitution, Art. IV, § 3, cl. 2. We granted certiorari. — U. S. — (1976).

¹ The Act of February 20, 1923, Ch. 35, 1923 Mass. Acts and Resolves 17, as amended by the Act of March 13, 1962, Ch. 219, 1962 Mass. Acts and Resolves 107:

"It shall be unlawful during the months of July, August and September for any person who has not been a legal resident of this commonwealth during the preceding year to use beam or otter trawls to drag for fish in that part of the waters of Vineyard Sound lying in the towns of Chilmark, Gay Head and Gosnold, and included between an imaginary line running from the extreme western point of Gay Head to the extreme western point of Nashawena Island and another imaginary line running from Cape Higgon to Tarpaulin Cove Light. Violation of this act shall be punished by a fine of not less than five hundred nor more than one thousand dollars."

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 19, 1977

MEMORANDUM TO THE CONFERENCE

Re: No. 75-1775, Massachusetts v. Westcott

Attached are the proposed modifications to the per curiam so that we will be remanding the case instead of affirming it. The attached page is to be substituted for pages 2 and 3 of the second draft of the per curiam, circulated May 13, 1977.

T.M.
T.M.

100-1000-1000

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 75-1775

Commonwealth of Massachusetts, Petitioner,
v.
Jack B. Westcott. } On Writ of Certiorari to
the Supreme Judicial Court of Massachusetts.

[May 23, 1977]

PER CURIAM.

Respondent Westcott was arrested for violating a Massachusetts statute that prohibits nonresidents of the Commonwealth of Massachusetts from dragging for fish by beam or otter trawl in Vineyard Sound during July, August, September.¹ After he was found guilty, he pursued his right to *de novo* review and filed a motion to dismiss the complaint. The Massachusetts Supreme Judicial Court granted direct appellate review and ordered the complaint dismissed on the ground that the statute violated the privileges and immunities clause of the United States Constitution, Art. IV, § 3, cl. 2. We granted certiorari. — U. S. — (1976).

¹ The Act of February 20, 1923, Ch. 35, 1923 Mass. Acts and Resolves 17, as amended by the Act of March 13, 1962, Ch. 219, 1962 Mass. Acts and Resolves 107:

"It shall be unlawful during the months of July, August and September for any person who has not been a legal resident of this commonwealth during the preceding year to use beam or otter trawls to drag for fish in that part of the waters of Vineyard Sound lying in the towns of Chilmark, Gay Head and Gosnold, and included between an imaginary line running from the extreme western point of Gay Head to the extreme western point of Nashawena Island and another imaginary line running from Cape Higgon to Tarpaulin Cove Light. Violation of this act shall be punished by a fine of not less than five hundred nor more than one thousand dollars."

75-1255

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 11, 1977

Re: No. 75-1775 - Massachusetts v. Westcott

Dear Thurgood:

I would prefer the second route of deciding this case on the Privileges and Immunities ground. I think McCready should be overruled as well. I have the impression that this case should be easier than the Virginia case because Massachusetts totally excludes nonresidents, and the suit is brought by a nonresident individual rather than by a corporation.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 1, 1977

Re: No. 75-1775 - Massachusetts v. Westcott

Dear Thurgood:

Your proposed request certainly has my approval.

Sincerely,



Mr. Justice Marshall

cc: The Conference

✓
Supreme Court of the United States
Washington, D. C. 20543
②

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 14, 1977

Re: No. 75-1775 - Massachusetts v. Westcott

Dear Thurgood:

Please join me in your proposed per curiam.

Sincerely,

H. A. B.

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 22, 1977

Re: No. 75-1775 - Massachusetts v. Westcott

Dear Thurgood:

I prefer the first alternative suggested in your letter
of April 21.

Sincerely,

H. B.

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 19, 1977

Re: No. 75-1775 - Massachusetts v. Westcott

Dear Thurgood:

I shall go along.

Sincerely,
HAB.

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

①

✓
✓
)

February 11, 1977

1775
No. 75-1255 Massachusetts v. Westcott

Dear Thurgood:

My preference is for the first alternative outlined in your memo of February 10. I am not entirely sure I could accept the other alternative.

I commend your resourcefulness in obtaining the licensing information.

Sincerely,

Lewis

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 3, 1977

No. 75-1775 Massachusetts v. Wescott

Dear Thurgood:

Your proposed form of request for supplemental briefs seems fine to me. I agree that a letter, rather than a formal order, is appropriate.

Sincerely,

Lewis

Mr. Justice Marshall

1fp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 18, 1977

No. 75-1775 Massachusetts v. Westcott

Dear Thurgood:

Please join me in your Per Curiam for the Court.

Sincerely,

Lewis

Mr. Justice Marshall

1fp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 22, 1977

No. 75-1775 Massachusetts v. Westcott

Dear Thurgood:

I would prefer to add your proposed footnote rather than DIG this case.

Sincerely,

Lewis

Mr. Justice Marshall

1fp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 14, 1977

Re: No. 75-1775 - Massachusetts v. Westcott

Dear Thurgood:

As I recall, I was the sole dissenter in Conference from the result reached in this case, as well as in the Douglas case. If there is a majority for one of your proposed options or the other without my vote, therefore, I would think my preference would be immaterial. If for some reason or other those who voted to affirm in this case should split four to four as between your proposed alternatives, I could probably join an opinion in this case which affirmed on the authority of the opinion in Douglas, even though I anticipate dissenting in Douglas.

Sincerely,

W.W.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 3, 1977

Re: No. 75-1775 - Massachusetts v. Wescott

Dear Thurgood:

I agree that the procedure of using a letter such as you propose is a good one.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

Re: 75-1775 *Mass. v. Westcott* May 11, 1977

Dear Thurgood:

Would you please add at the end of your opinion
"Justice Rehnquist concurs in the judgment on the
authority of Douglas v. Seacoast Products." (75-1775)

Sincerely,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 14, 1977

Re: 75-1775 - Massachusetts v. Westcott

Dear Thurgood:

For the reasons expressed at conference,
I can join the second alternative but not the
first.

Respectfully,



Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 3, 1977

Re: 75-1775 - Massachusetts v. Westcott

Dear Thurgood:

Perhaps I have no standing to comment, but I think future scholars may wonder how this issue ever got into the case unless an order of some kind appears in the Journal.

Respectfully,



Mr. Justice Marshall

Copies to the Conference

✓
Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 13, 1977

RE: 75-1775 - Commonwealth of Massachusetts v. Westcott

Dear Thurgood:

Please join me.

Respectfully,



Mr. Justice Marshall

Copies to the Conference