

The Burger Court Opinion Writing Database

Oregon ex rel. State Land Board v. Corvallis Sand & Gravel Co.

429 U.S. 363 (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

December 16, 1976

Re: (75-567 - Oregon v. Corvallis Sand and Gravel Company
(
(75-577 - Corvallis Sand and Gravel Company v. Oregon

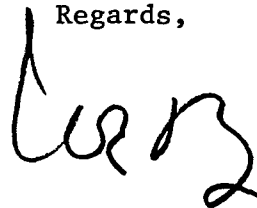
Dear Bill:

There is something to be said for a reargument to require the parties to focus on what the Amici emphasized. However, perhaps this prolongs the "agony."

I agree with much of Thurgood's expressions about stare decisis but we have a range of exceptions, e.g., the obscenity cases and the capital cases.

You may show me joining.

Regards,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 16, 1976

MEMORANDUM TO THE CONFERENCE

RE: Nos. 75-567 and 75-577 Oregon ex rel. State Land
Board v. Corvallis Sand and Gravel Co.

I have sent to the printer the following in the
above:

MR. JUSTICE BRENNAN, dissenting.

I would not overrule Bonelli Cattle Co. v. Arizona, 414 U.S. 313 (1973) and would therefore affirm the judgment of the Oregon Supreme Court.

W.J.B. Jr.

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

From Mr. Justice Brennan

Circulated: 12/16/76

Recirculated: ...

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75-567 AND 75-577

Oregon ex rel. State Land
 Board, Petitioner,

75-567 v.

Corvallis Sand and
 Gravel Company.

Corvallis Sand and Gravel
 Company, Petitioner,

75-577 v.

Oregon ex rel. State
 Land Board.

On Writs of Certiorari to the
 Supreme Court of Oregon.

[January —, 1977]

MR. JUSTICE BRENNAN, dissenting.

I would not overrule *Bonelli Cattle Co. v. Arizona*, 414
 U. S. 313 (1973), and would therefore affirm the judgment
 of the Oregon Supreme Court.

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 29, 1976

Re: No. 75-567 & 75-577, Oregon v.
Corvallis Sand & Gravel Co.

Dear Bill,

I am glad to join your opinion for the Court
in these cases.

Sincerely yours,

PS
✓

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 16, 1976

Re: No. 75-567 & No. 75-577 - Oregon ex rel.
State Land Board v. Corvallis
Sand & Gravel Co.

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 24, 1976

Re: Nos. 75-567 and 75-577, Oregon v. Corvallis Sand & Gravel Co.

Dear Bill:

In due course I shall circulate a dissent.

Sincerely,

JM.

T.M.

Mr. Justice Rehnquist

cc: The Conference

12/15/76

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75-567 AND 75-577

Oregon ex rel. State Land
Board, Petitioner,

75-567 v.

Corvallis Sand and
Gravel Company.Corvallis Sand and Gravel
Company, Petitioner,

75-577 v.

Oregon ex rel. State
Land Board.On Writs of Certiorari to the
Supreme Court of Oregon.

[January —, 1977]

MR. JUSTICE MARSHALL, dissenting.

The Court today overrules a three-year-old decision, *Bonnelli Cattle Co. v. Arizona*, 414 U. S. 313 (1973), in which seven of the eight participating Justices joined. In addition, as the Court is certain to announce when the occasion arises, cf. *Hudgens v. NLRB*, 424 U. S. 507, 518 (1976), today's holding also overrules *Hughes v. Washington*, 389 U. S. 290 (1967), a nine-year-old decision also joined by all but one of the participating Justices.¹ It is surprising, to say the

¹ Although the Court rejects the reasoning on which *Hughes* is based, it refrains from formally overruling *Hughes* on the ground that that case was not relied on in *Bonnelli* and not cited by the Oregon courts below. *Ante*, at 12 n. 5. In *Bonnelli*, the Solicitor General urged the Court to find federal law controlling because riparian lands patented by the United States were involved and, under *Hughes*, federal common law therefore controlled the riparian rights of the landowner. Memorandum of the United States as *Amicus Curiae*, at 3-4, filed Jan. 2, 1973, Memorandum of the United States as *Amicus Curiae*, at 2-3, filed Sept. 20, 1973,

13, 9, 10

DEC 28 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75-567 AND 75-577

Oregon ex rel. State Land
Board, Petitioner,
75-567 v.

Corvallis Sand and
Gravel Company.

Corvallis Sand and Gravel
Company, Petitioner,
75-577 v.

Oregon ex rel. State
Land Board.

On Writs of Certiorari to the
Supreme Court of Oregon.

[January —, 1977]

|| MR. JUSTICE MARSHALL, with whom MR. JUSTICE WHITE
joins, dissenting.

The Court today overrules a three-year-old decision, *Bonelli Cattle Co. v. Arizona*, 414 U. S. 313 (1973), in which seven of the eight participating Justices joined. In addition, as the Court is certain to announce when the occasion arises, today's holding also overrules *Hughes v. Washington*, 389 U. S. 290 (1967), a nine-year-old decision also joined by all but one of the participating Justices.¹ It is surprising, to say

deletion

¹ Although the Court rejects the reasoning on which *Hughes* is based, it refrains from formally overruling *Hughes* on the ground that that case was not relied on in *Bonelli* and not cited by the Oregon courts below. *Ante*, at 12 n. 5. In *Bonelli*, the Solicitor General urged the Court to find federal law controlling because riparian lands patented by the United States were involved and, under *Hughes*, federal common law therefore controlled the riparian rights of the landowner. Memorandum of the United States as *Amicus Curiae*, at 3-4, filed Jan. 2, 1973, Memorandum of the United States as *Amicus Curiae*, at 2-3, filed Sept. 20, 1973.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 29, 1976

Re: No. 75-567 - Oregon v. Corvallis Sand and Gravel Company
No. 75-577 - Corvallis Sand and Gravel Company v. Oregon

Dear Bill:

Please join me.

Sincerely,

H. A. Blackmun

Mr. Justice Rehnquist

cc: The Conference

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

November 29, 1976

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

No. 75-567 Oregon v. Corvallis Sand and Gravel
No. 75-577 Corvallis Sand and Gravel v. Oregon

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

December 28, 1976

Corvallis

75-567, 577

Dear Bill:

The changes made in your second draft have my approval, although footnote 7 (page 14) struck me as being rather harsh on our Brother Marshall. Your point is well taken, but the last two sentences in the note do "rub the salt in" with a certain amount of sting.

I write this note in your absence. Otherwise, I would have called you on the telephone.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

✓
✓

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: NOV 24 1976

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75-567 AND 75-577

Oregon ex rel. State Land
Board, Petitioner,

75-567 v.

Corvallis Sand and
Gravel Company.

Corvallis Sand and Gravel
Company, Petitioner,

75-577 v.

Oregon ex rel. State
Land Board.

On Writs of Certiorari to the
Supreme Court of Oregon.

[November —, 1976]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

This lawsuit began when the State of Oregon sued Corvallis Sand and Gravel Company, an Oregon corporation, to settle the ownership of certain lands underlying the Willamette River. The Willamette is a navigable river, and this land is located near Corvallis, Oregon. The river is not an interstate boundary.

Corvallis Sand had been digging in the disputed part of the riverbed for 40 to 50 years without a lease from the State. The State brought an ejectment action against Corvallis Sand, seeking to recover 11 separate parcels of riverbed, as well as damages for the use of the parcels. The State's complaint alleged that by virtue of its sovereignty it was the owner in fee simple of the disputed portions of the riverbed, and that it was entitled to immediate possession

9 1, 2, 4, 10, 12-14, 16-18

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: DEC 21 1970

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75-567 AND 75-577

Oregon ex rel. State Land
 Board, Petitioner,
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Corvallis Sand and
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Corvallis Sand and Gravel
 Company, Petitioner,
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Oregon ex rel. State
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JANUARY 7
 [November —, 1970]

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 21, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 75-567 Oregon v. Corvallis Sand & Gravel Co.
75-577 Corvallis Sand & Gravel Co. v. Oregon

Potter has suggested that I truncate the footnote eight contained in the second draft of this opinion recently circulated, and I propose to do so as follows:

Substitute for the present first sentence of the footnote the following: "We think that the insistence of our dissenting Brethren that 'federal common law' should be applied to a determination of title in this case, albeit not for the same reason expounded in Bonelli, misapprehends the meaning and significance of the term common law as it is used in several of our old cases."

Retain the remaining of the body of the footnote on page 16 and the first eight lines on page 17. Delete the balance of the body of the footnote on page 17.

Sincerely,

WHR

Copies to the Conference

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

3rd DRAFT

Circulated _____

SUPREME COURT OF THE UNITED STATES

Circulated: DEC 29 1978

Nos. 75-567 AND 75-577

Oregon ex rel. State Land
 Board, Petitioner,
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Corvallis Sand and
 Gravel Company.

Corvallis Sand and Gravel
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Oregon ex rel. State
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[January —, 1977]

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 29, 1976

RE: Nos. 75-567 and 75-577 -- Oregon v. Corvallis Sand
and Gravel Co.

Dear Bill:

Please join me in what I consider a most convincing opinion. I am particularly pleased with your handling of the stare decisis question in Part V.

Respectfully,



Mr. Justice Rehnquist

cc: The Conference