

The Burger Court Opinion Writing Database

Baldwin v. Fish and Game Commission of Montana

436 U.S. 371 (1978)

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



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: 12-16-76

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

LESTER BALDWIN ET AL. v. FISH AND GAME
COMMISSION OF MONTANA ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MONTANA

No. 76-5528. Filed October 12, 1976

MR. JUSTICE WHITE, dissenting.

Because elk has become a scarce resource in Montana, elk hunting is closely regulated by that State. As part of its elk-conservation program, Montana imposes a hunting-license fee that is significantly higher for nonresidents than it is for residents. See Mont. Rev. Codes Ann. § 26-202.1. The Montana licensing scheme discriminates against nonresidents in two ways. First, it requires nonresidents who want to hunt elk to purchase a so-called "combination" license, which entitles the licensee to take one elk, one deer, and one black bear, while residents are permitted to purchase a license solely for the hunting of elk. In 1976 the cost of a combination license to a nonresident was \$225, while the cost of an elk-hunting license to a resident was only \$9. Thus, a nonresident who wanted to hunt elk during the 1976 season had to pay a fee 25 times as great as would a similarly situated resident of Montana. Second, if a resident did want to purchase all of the privileges contained in a nonresident's combination license, the cost would be only \$30—a ratio of 7.5 to 1.

Appellants brought this action against certain state officials in the United States District Court for the District of Montana, challenging the constitutional validity of Montana's license fee system under the Privileges and Immunities¹ and the Equal Protection² Clauses of the United States Constitution.³

¹ "The Citizens of each State shall be entitled to all Privileges and

[Footnotes 2 and 3 are on p. 2]

12/17
Received.
A permanent
opinion,
but state
game
laws for
"sports"
business
&
fish will
have long
been
recognized
as in a
different
category
from laws
affecting
or business.
17P

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
~~Mr. Justice Powell~~
Mr. Justice Rehnquist
Mr. Justice Stevens

2nd DRAFT

From: Mr. Justice White

SUPREME COURT OF THE UNITED STATES

Recirculated: _____
LESTER BALDWIN ET AL. v. FISH AND GAME
COMMISSION OF MONTANA ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MONTANA

No. 76-5528. Filed October 12, 1976

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

Because elk has become a scarce resource in Montana, elk hunting is closely regulated by that State. As part of its elk-conservation program, Montana imposes a hunting-license fee that is significantly higher for nonresidents than it is for residents. See Mont. Rev. Codes Ann. § 26-202.1.

The Montana licensing scheme discriminates against nonresidents in two ways. First, it requires nonresidents who want to hunt elk to purchase a so-called "combination" license, which entitles the licensee to take one elk, one deer, and one black bear, while residents are permitted to purchase a license solely for the hunting of elk. In 1976 the cost of a combination license to a nonresident was \$225, while the cost of an elk-hunting license to a resident was only \$9. Thus, a nonresident who wanted to hunt elk during the 1976 season had to pay a fee 25 times as great as would a similarly situated resident of Montana. Second, if a resident did want to purchase all of the privileges contained in a nonresident's combination license, the cost would be only \$30—a ratio of 7.5 to 1.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 29, 1976

MEMORANDUM TO CONFERENCE

Re: No. 76-5528 - Baldwin v. Fish & Game Comm'n
of Montana

Somehow I did not get a copy of John's
December 16 joinder of the dissent in this case.
There are now four votes to grant.

B.R.W.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 16, 1976

Re: No. 76-5528, Baldwin v. Fish and Game Comm'n of
Montana

Dear Byron:

While I join your dissent, I could go further and
join a summary reversal.

Sincerely,

T.M.
T. M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 17, 1976

Re: No. 76-5528 - Baldwin v. Fish and Game Commission

Dear Byron:

I voted to note before and do so again. I think that makes the fourth vote.

I am still disturbed about the claimed in forma pauperis status of these appellants. Was Mr. Ginty to check into this?

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

✓

December 16, 1976

Re: 76-5528 - Baldwin v. Fish & Game Commission
of Montana

Dear Byron:

Please join me.

Respectfully,

JH

Mr. Justice White

Copies to the Conference