

The Burger Court Opinion Writing Database

Ray v. Atlantic Richfield Co.
435 U.S. 151 (1978)

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
JUSTICE WM.J. BRENNAN, JR.

November 14, 1977

RE: No. 76-930 Ray v. Atlantic Richfield Company

Dear Thurgood and Bill:

We three were in dissent in the above. I'll undertake a dissent if one should be written.

Sincerely,



Mr. Justice Marshall

Mr. Justice Rehnquist

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 13, 1978

RE: No. 76-930 Ray v. Atlantic Richfield Co, et al.

Dear Thurgood:

Please join me in the opinion you have prepared
in the above.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 16, 1978

No. 76-930, Ray v. Atlantic Richfield Co.

Dear Byron,

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

Sincerely yours,

PS
1/

Mr. Justice White

Copies to the 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: 1/2/78

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-930

Dixy Lee Ray, Governor of Washington, et al., Appellants,
v.

Atlantic Richfield Company and
Seatrain Lines, Incorporated.

On Appeal from the United
States District Court for
the Western District of
Washington.

[January —, 1978]

MR. JUSTICE WHITE delivered the opinion of the Court.

Pursuant to the Ports and Waterways Safety Act of 1972 (PWSA), 86 Stat. 424, 33 U. S. C. § 1221 *et seq.* (1970 ed., Supp. V), and 46 U. S. C. § 391a (1970 ed., Supp. V), navigation in Puget Sound, a body of inland water lying along the northwest coast of the State of Washington,¹ is controlled in major respects by federal law. The PWSA also subjects to federal rule the design and operating characteristics of oil tankers.

This case arose when Chapter 125, Laws of Washington, 1975, First Extraordinary Session, Wash. Rev. Code § 88.16.170 *et seq.* (Tanker Law), was adopted with the aim of regulating in particular respects the design, size, and

¹ Puget Sound is an estuary consisting of 2,500 square miles of inlets, bays, and channels in the northwestern part of Washington. More than 200 islands are located within the Sound, and numerous marshes, tidal flats, wetlands, and beaches are found along the 2,000 miles of shoreline. The Sound's waters and shorelines provide recreational, scientific, and educational opportunities, as well as navigational and commercial uses, for Washington citizens and others. The Sound, which is connected to the Pacific Ocean by the Strait of Juan de Fuca, is constantly navigated by commercial and recreational vessels and is a water resource of great value to the State, as well as to the United States.

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 19, 20, & 7

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: _____

Recirculated: 2/14

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-930

Dixy Lee Ray, Governor of Washington, et al., Appellants,
v.
Atlantic Richfield Company and
Seatrain Lines, Incorporated. } On Appeal from the United
States District Court for
the Western District of
Washington.

[January —, 1978]

MR. JUSTICE WHITE delivered the opinion of the Court.

Pursuant to the Ports and Waterways Safety Act of 1972 (PWSA), 86 Stat. 424, 33 U. S. C. § 1221 *et seq.* (1970 ed., Supp. V), and 46 U. S. C. § 391a (1970 ed., Supp. V), navigation in Puget Sound, a body of inland water lying along the northwest coast of the State of Washington,¹ is controlled in major respects by federal law. The PWSA also subjects to federal rule the design and operating characteristics of oil tankers.

This case arose when Chapter 125, Laws of Washington, 1975, First Extraordinary Session, Wash. Rev. Code § 88.16.170 *et seq.* (Tanker Law), was adopted with the aim of regulating in particular respects the design, size, and

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 15, 1978

Re: #76-930 - Ray v. Atlantic
Richfield Co. and Seatrain
Lines, Inc.

MEMO TO THE CONFERENCE:

When all of the votes are in, I shall add to
footnote 25 a sentence or two indicating that less
than a majority of the Court joins part V in its
entirety and identifying those Justices who do and
those who do not, all of which, of course, will be
reflected in the lineup.



B.R.W.

Copies to the Conference

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 19, 20

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: _____

Recirculated: 3/2

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-930

Dixy Lee Ray, Governor of Washington, et al., Appellants,
v.
Atlantic Richfield Company and
Seatrain Lines, Incorporated. } On Appeal from the United
States District Court for
the Western District of
Washington.

[January —, 1978]

MR. JUSTICE WHITE delivered the opinion of the Court.

Pursuant to the Ports and Waterways Safety Act of 1972 (PWSA), 86 Stat. 424, 33 U. S. C. § 1221 *et seq.* (1970 ed., Supp. V), and 46 U. S. C. § 391a (1970 ed., Supp. V), navigation in Puget Sound, a body of inland water lying along the northwest coast of the State of Washington,¹ is controlled in major respects by federal law. The PWSA also subjects to federal rule the design and operating characteristics of oil tankers.

This case arose when Chapter 125, Laws of Washington, 1975, First Extraordinary Session, Wash. Rev. Code § 88.16.170 *et seq.* (Tanker Law), was adopted with the aim of regulating in particular respects the design, size, and

¹ Puget Sound is an estuary consisting of 2,500 square miles of inlets, bays, and channels in the northwestern part of Washington. More than 200 islands are located within the Sound, and numerous marshes, tidal flats, wetlands, and beaches are found along the 2,000 miles of shoreline. The Sound's waters and shorelines provide recreational, scientific, and educational opportunities, as well as navigational and commercial uses, for Washington citizens and others. The Sound, which is connected to the Pacific Ocean by the Strait of Juan de Fuca, is constantly navigated by commercial and recreational vessels and is a water resource of great value to the State, as well as to the United States.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 17, 1978

Re: No. 76-930, Ray v. Atlantic Richfield Co.

Dear Byron:

In due course I shall circulate a dissent in this one.

Sincerely,

JM

T. M.

Mr. Justice White

cc: The Conference

10 FEB 1978

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-930

Dixy Lee Ray, Governor of Washington, et al., Appellants,
v.
Atlantic Richfield Company and
Seatrail Lines, Incorporated.

On Appeal from the United States District Court for the Western District of Washington.

[February —, 1978]

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

The Washington Tanker Law at issue here has three operative provisions: (1) a requirement that every oil tanker of 50,000 deadweight tons (DWT) or larger employ a pilot licensed by the State of Washington while navigating Puget Sound and adjacent waters, Wash. Rev. Code § 88.16.180 (Supp. 1975); (2) a requirement that every oil tanker of from 40,000 to 125,000 DWT either possess certain safety features or utilize tug escorts while operating in Puget Sound, *id.*, § 88.16.190 (2); and (3) a size limitation, barring tankers in excess of 125,000 DWT from the Sound, *id.*, § 88.16.190 (1).

I agree with the Court that the pilotage requirement is pre-empted only with respect to enrolled vessels. I also agree that the tug escort requirement is fully valid, at least until such time as the Secretary of Transportation or his delegate promulgates a federal tug escort rule or decides, after full consideration, that no such rule is necessary.

In the current posture of this case, however, I see no need to speculate, as the Court does in Part IV of its opinion, on the validity of the safety features alternative to the tug requirement. Since the effective date of the Tanker Law, all tankers—including those owned or chartered by appellees—

14 FEB 1978

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-930

Dixy Lee Ray, Governor of Washington, et al., Appellants,
v.
Atlantic Richfield Company and
Seatrain Lines, Incorporated. } On Appeal from the United
States District Court for
the Western District of
Washington.

[February —, 1978]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN and MR. JUSTICE REHNQUIST join, concurring in part and dissenting in part.

The Washington Tanker Law at issue here has three operative provisions: (1) a requirement that every oil tanker of 50,000 deadweight tons (DWT) or larger employ a pilot licensed by the State of Washington while navigating Puget Sound and adjacent waters, Wash. Rev. Code § 88.16.180 (Supp. 1975); (2) a requirement that every oil tanker of from 40,000 to 125,000 DWT either possess certain safety features or utilize tug escorts while operating in Puget Sound, *id.*, § 88.16.190 (2); and (3) a size limitation, barring tankers in excess of 125,000 DWT from the Sound, *id.*, § 88.16.190 (1).

I agree with the Court that the pilotage requirement is pre-empted only with respect to enrolled vessels. I also agree that the tug escort requirement is fully valid, at least until such time as the Secretary of Transportation or his delegate promulgates a federal tug escort rule or decides, after full consideration, that no such rule is necessary.

In the current posture of this case, however, I see no need to speculate, as the Court does in Part IV of its opinion, on the validity of the safety features alternative to the tug requirement. Since the effective date of the Tanker Law, all tankers—including those owned or chartered by appellees—

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

*Circulated
3/31/78*

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 3, 1978

L

Re: No. 76-930, Ray v. Atlantic Richfield Company

Dear Bill and Bill,

In light of the modifications circulated yesterday by Byron, I am now willing to join Part V of the Court's opinion without qualification. Please let me know if you agree.

Joining Part V will necessitate certain stylistic changes in my opinion's first two pages. Copies of those pages with the proposed changes are attached.

Sincerely,

T.M.

Mr. Justice Brennan

Mr. Justice Rehnquist

cc: The Conference

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-930

Dixy Lee Ray, Governor of Washington, et al., Appellants,
v.
Atlantic Richfield Company and Seatrain Lines, Incorporated. } On Appeal from the United States District Court for the Western District of Washington.

[February —, 1978]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN and MR. JUSTICE REHNQUIST join, concurring in part and dissenting in part.

The Washington Tanker Law at issue here has three operative provisions: (1) a requirement that every oil tanker of 50,000 deadweight tons (DWT) or larger employ a pilot licensed by the State of Washington while navigating Puget Sound and adjacent waters, Wash. Rev. Code § 88.16.180 (Supp. 1975); (2) a requirement that every oil tanker of from 40,000 to 125,000 DWT either possess certain safety features or utilize tug escorts while operating in Puget Sound, *id.*, § 88.16.190 (2); and (3) a size limitation, barring tankers in excess of 125,000 DWT from the Sound, *id.*, § 88.16.190 (1).

I agree with the Court that the pilotage requirement is pre-empted only with respect to enrolled vessels. I also agree that the tug escort requirement is fully valid, at least until such time as the Secretary of Transportation or his delegate promulgates a federal tug escort rule or decides, after full consideration, that no such rule is necessary. ✓

I therefore join
Parts I, II, III,
V, and VII of
the Court's
opinion.

In the current posture of this case, however, I see no need to speculate, as the Court does, ~~in Part IV of its opinion~~ on the validity of the safety features alternative to the tug requirement. Since the effective date of the Tanker Law, all tankers—including those owned or chartered by appellees—

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 17, 1978

Re: No. 76-930 - Ray v. Atlantic Richfield Co.

Dear Byron:

Please join me.

Sincerely,

Ha S.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 19, 1978

No. 76-930 Ray v. Atlantic Richfield

Dear Byron:

As I was in agreement with John as to the tug escort requirement of the Tanker Law, I will await his dissent with respect to this particular question.

I expect to join your fine opinion on the other issues.

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 3, 1978

No. 76-930 Ray v. Atlantic Richfield

Dear John:

I would appreciate your adding my name to your concurring and dissenting opinion.

Sincerely,

Lewis

Mr. Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 3, 1978

No. 76-930 Ray v. Atlantic Richfield

Dear Byron:

As John Stevens concurring and dissenting opinion reflects the views I expressed at Conference, I am joining him.

This means that I join your opinion with the exception of Parts V and VII.

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 9, 1978

Re: No. 76-930 Ray v. Atlantic Richfield Company

Dear Byron:

I am awaiting Thurgood's dissent in this case.

Sincerely,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 10, 1978

Re: No. 76-930 - Dixy Lee Ray v. Atlantic Richfield

Dear Thurgood:

Please join me in your separate opinion in this case.

Sincerely,

WR

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 18, 1978

Re: 76-930 - Dixy Lee Ray v. Atlantic Richfield

Dear Byron:

Although I expect to join Parts I, II, III, IV, and VI of your opinion, I plan to write a short dissent from Parts V and VII.

Respectfully,



Mr. Justice White

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 Rehnquist

From: Mr. Justice Stevens

Circulated: 1/25/78

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 76-930

Dixy Lee Ray, Governor of Washington, et al., Appellants,
 v.
 Atlantic Richfield Company and
 Seatrain Lines, Incorporated.

On Appeal from the United States District Court for the Western District of Washington.

[February —, 1978]

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

The federal interest in uniform regulation of commerce on the high seas, reinforced by the Supremacy Clause, "dictates that the federal judgment that a vessel is safe to navigate United States waters prevail over the contrary state judgment. . . ." *Ante*, at 12. For that reason, as the Court explains in Part IV of its opinion, we must reject the judgment expressed by the Legislature of the State of Washington that an oil tanker of 40,000 to 125,000 tons cannot safely navigate in Puget Sound unless it possesses the "standard safety features" prescribed by § 88.16.190 (2) of the Washington Code.¹

¹ Wash. Rev. Code § 88.16.190 (2) reads as follows:

"(2) An oil tanker, whether enrolled or registered, of forty to one hundred and twenty-five thousand deadweight tons may proceed beyond the points enumerated in subsection (1) if such tanker possesses all of the following standard safety features:

"(a) Shaft horsepower in the ratio of one horsepower to each two and one-half deadweight tons, and

"(b) Twin screws; and

"(c) Double bottoms, underneath all oil and liquid cargo compartments; and

"(d) Two radars in working order and operating, one of which must be collision avoidance radar; and

"(e) Such other navigational position location systems as may be prescribed from time to time by the board of pilotage commissioners:

"PROVIDED, That, if such forty to one hundred and twenty-five thousand

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

From: Mr. Justice Stevens

Circulated:

Recirculated: FEB 6 1978

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-930

Dixy Lee Ray, Governor of Washington, et al., Appellants,
 v.
 Atlantic Richfield Company and
 Seatrain Lines, Incorporated. } On Appeal from the United States District Court for the Western District of Washington.

[February —, 1978]

MR. JUSTICE STEVENS, with whom MR. JUSTICE POWELL joins, concurring in part and dissenting in part.

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¹ Wash. Rev. Code § 88.16.190 (2) reads as follows:

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"(b) Twin screws; and

"(c) Double bottoms, underneath all oil and liquid cargo compartments; and

"(d) Two radars in working order and operating, one of which must be collision avoidance radar; and

"(e) Such other navigational position location systems as may be prescribed from time to time by the board of pilotage commissioners:

"PROVIDED, That, if such forty to one hundred and twenty-five thousand