The Burger Court Opinion Writing Database

Andrus v. Charlestone Stone Products Co.

436 U.S. 604 (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
THE CHIEF JUSTICE

May 9, 1978

Dear Thurgood:

Re: 77-380 Andrus v. Charlestone Stone Products Co.

I hereby grant and vest in you my proxy to add a vote to what shapes up as a consensus. You have done a good job, you have it in mind, and I will "go along."

Regards,

WEB

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

May 23, 1978

Dear Thurgood: 77-380

Re: Andrus v. Charlestone Stone Products, Inc.

I join.

Regards,

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 9, 1978

RE: No. 77-380 Andrus v. Charlestone Stone Products Co.

Dear Thurgood:

I would support exercise of option (2).

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

J

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 22, 1978

RE: No. 77-380 Andrus v. Charlestone Stone Products

Dear Thurgood:

I agree.

Sincerely,

WJB

Mr. Justice Marshall

cc: The Conference

J

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

CHAMBERS OF
JUSTICE POTTER STEWART

W

May 9, 1978

Re: No. 77-380, Andrus v. Charlestone Stone Products Co.

Dear Thurgood,

I prefer option (2).

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

V

(V)

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 22, 1978

No. 77-380 - Andrus v.
Charlestone Stone Products

Dear Thurgood,

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

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

May 9, 1978

203

Re: 77-380 - Andrus v. Charlestone
Stone Products Company

Dear Thurgood:

I agree with you that options 2 and 3 are the best. You have my proxy as to which.

Sincerely yours,

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 22, 1978

Re: 77-380 - Andrus v. Charlestone
Stone Products Company, Inc.

Dear Thurgood,

Please join me.

Sincerely yours,

Byron

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 8, 1978

Re: No. 77-380, Andrus v. Charlestone Stone Products Co.

MEMORANDUM TO THE CONFERENCE

While working on this case, in which I have been assigned the Court opinion, I have come across a jurisdictional issue that requires a decision from the Conference as to how we should proceed. While the question of the District Court's subject matter jurisdiction was not raised in that court, in the Court of Appeals, or in this Court, I believe that we have an obligation to consider the matter sua sponte in the circumstances of this case.

Respondent here sought District Court review of a decision of the Interior Board of Land Appeals (IBLA) that held invalid all but one of respondent's claims to certain mining lands. The District Court vacated the IBLA decision, holding that most of the claims were valid and that respondent should be allowed access to water on one of the claims not otherwise valid. The Court of Appeals for the Ninth Circuit affirmed, adding sua sponte that the claim involving water should itself be held valid because water is a "valuable mineral" under the federal mining laws. Only the latter issue, regarding the status of

water as a "mineral," was presented in the Government's petition for certiorari, although the Government noted that it disagreed with other aspects of the decision below.

I

Respondent's District Court complaint, filed in May 1973, alleges two bases of jurisdiction: the Administrative Procedure Act and 28 U.S.C. § 1361. App. 27A.* At the time the complaint was filed, the law in the Ninth Circuit was that the APA provided an independent basis of subject matter jurisdiction. See Califano v. Sanders, 430 U.S. 99, 104 n.4 (1977), citing Brandt v. Hickel, 427 F.2d 53 (CA9 1970). In Sanders this Court held to the contrary, and our holding has been interpreted by the lower courts as applying to complaints filed prior to the Sanders decision. I assume that this interpretation is correct, since we reversed in Sanders for lack of subject matter jurisdiction and subsequently g-v-r'd a case for reconsideration in light of Sanders, Hazelwood Chronic & Conv. Hosp. v. Califano, 430 U.S. 952 (1977).

Respondent's other asserted jurisdictional ground, 28 U.S.C. § 1361, is the statute giving jurisdiction over "any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." Prior to the 1976 amendment of

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* Respondent also alleged jurisdiction under 28 U.S.C. § 1391(e), but this is a venue statute (passed at the same time as § 1361) and cannot itself confer jurisdiction.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-380

Cecil D. Andrus, Secretary of the Interior, Petitioner, *v.* Charlestone Stone Products Co., Inc.

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

[May —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Under the basic federal mining statute, which derives from an 1872 law,[1] "all valuable mineral deposits in lands belonging to the United States" are declared "free and open to exploration and purchase." 30 U. S. C. § 22.[2] The question presented is whether water is a "valuable mineral" as those words are used in the mining law.

I

A claim to land containing "valuable mineral deposits" may be "located" by complying with certain procedural requisites; one who locates a claim thereby gains the exclusive right to possession of the land, as well as the right to

[1] Act of May 10, 1872, 17 Stat. 91.

[2] 30 U. S. C. § 22 provides in full:

"Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States."

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 22, 1978

Re: No. 77-380 - Andrus v. Charlestone Stone Products

Dear John:

I have taken out all of note 12 on page 12.

I have not changed the language "defies common sense" on page 10 because it is acceptable and respectable language in my view.

I am sorry I cannot "omit Part IV entirely".

Sincerely,

T.M.

Mr. Justice Stevens

Pp. 1, 5, 9-12

23 MAY 1978

Recirculation

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-380

Cecil D. Andrus, Secretary of the Interior, Petitioner, *v.* Charlestone Stone Products Co., Inc. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[May —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Under the basic federal mining statute, which derives from an 1872 law,[1] "all valuable mineral deposits in lands belonging to the United States" are declared "free and open to exploration and purchase." 30 U. S. C. § 22.[2] The question presented is whether water is a "valuable mineral" as those words are used in the mining law.

I

A claim to federal land containing "valuable mineral deposits" may be "located" by complying with certain procedural requisites; one who locates a claim thereby gains the exclusive right to possession of the land, as well as the right to

[1] Act of May 10, 1872, 17 Stat. 91.

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P. 4

24 MAY 1978

Recirculation

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-380

Cecil D. Andrus, Secretary of the Interior, Petitioner, *v.* Charlestone Stone Products Co., Inc. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[May —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Under the basic federal mining statute, which derives from an 1872 law,[1] "all valuable mineral deposits in lands belonging to the United States" are declared "free and open to exploration and purchase." 30 U. S. C. § 22.[2] The question presented is whether water is a "valuable mineral" as those words are used in the mining law.

I

A claim to federal land containing "valuable mineral deposits" may be "located" by complying with certain procedural requisites; one who locates a claim thereby gains the exclusive right to possession of the land, as well as the right to

[1] Act of May 10, 1872, 17 Stat. 91.

[2] 30 U. S. C. § 22 provides in full:

"Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States."

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 9, 1978

Re: No. 77-380 - Andrus v. Charlestone Stone Products Co.

Dear Thurgood:

This is in response to your memorandum of May 8.

It is my understanding that pre-Sanders cases are still percolating and will be doing so for some time. Accordingly, my view is that the third option you outline would clearly be the best, that is, the opinion should explain the jurisdictional problem and give the reasons (outlined in your memorandum) for adopting the resolution suggested by the memo. This, I think, would be consistent with principled decision-making and would also be useful to the lower courts.

Sincerely,

Harry

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 23, 1978

Re: No. 77-380 - Andrus v. Charlestone Stone Products Co., Inc.

Dear Thurgood:

Please join me.

I share Bill Rehnquist's feeling about the bulk of footnote 12 and join him in the hope that this will be omitted. We give the panel a heavy jolt, as it is, in the next to the last sentence of Part III on page 10.

Sincerely,

Harry

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 9, 1978

No. 77-380 Andrus v. Charlestone Stone Products Co.

Dear Thurgood:

I found your memorandum on the jurisdictional issue quite interesting and helpful.

My vote is for Option (2). I think we are justified in finding jurisdiction under § 1331(a), as amended. I would not make a "big deal" of the issue.

Sincerely,

Lewis

Mr. Justice Marshall

Copies to the Conference

LFP/lab

V

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 22, 1978

No. 77-380 Andrus v. Charlestone

Dear Thurgood:

Please join me.

Sincerely,

L. Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

(2)

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 9, 1978

Re: No. 77-380 - Andrus v. Charlestone Stone Products Co.

Dear Thurgood:

I appreciated the thoroughness of your memorandum on the jurisdictional issue in this case; I think my preference is for the second option. I have always felt, rightly or wrongly, that if one alleged sufficient facts under the Federal Rules of Civil Procedure to support federal jurisdiction, a federal court could consider his complaint, even though he had not specifically referred to the section of Title 28 which conferred jurisdiction upon the court. I think the allegations in the complaint are pretty shaky as to mandamus jurisdiction here, notwithstanding the reference to 28 U.S.C. § 1361. Therefore I would prefer to rest on 28 U.S.C. § 1331(a), as amended, and not reach the § 1361 mandamus issue.

Sincerely,

WEHR

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 22, 1978

Re: No. 77-380 - Andrus v. Charlestone Stone Products Co., Inc.

Dear Thurgood:

Please join me in your opinion in this case.

For somewhat personal reasons, I would prefer to see you omit all but the first sentence of footnote 12 on page 12. The three judges on this panel are people that I see annually at the Ninth Circuit Conference (from which I have just returned they were obviously wrong in this case, and your opinion clearly and convincingly demonstrates this without the additional aspersions which the latter part of footnote 12 casts upon them. To say, as the balance of the footnote does, that "the case cannot be taken seriously . . . the court collective went stark raving mad . . . ." is, in my judgment, an unwarranted added dose of the strong medicine that your opinion already gives this panel. I leave the matter to your decision, however, reserving only the possibility of a separate statement to the effect that I join all but that particular footnote of the opinion.

Sincerely,

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 10, 1978

Re: 77-380 - Andrus v. Charlestone Stone Products Co.

Dear Thurgood:

Although I lean slightly in favor of option (3), you have my proxy.

Respectfully,

John

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 22, 1978

Re: 77-380 - Andrus v. Charlestone Stone Products Co.

Dear Thurgood:

Please join me.

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 22, 1978

77-380 - Andrus v. Charlestone Stone Products Co.

Dear Thurgood:

Your opinion demonstrates that the result is unquestionably correct and that the Court of Appeals committed an unfortunate blunder. I wonder, however, what is to be gained by making the Court look as bad as your opinion does. Why, for example, is it necessary to quote the "stark raving mad" comment in n. 12 on p. 12, or to say that the Court's holding "defies common sense" on p. 10. In fact, you could even omit Part IV entirely and have amply justified our holding.

I am not suggesting that your comments are not warranted, but I wonder if we might just go a little easier on our over-worked brethren on the Courts of Appeals.

Respectfully,

Mr. Justice Marshall