

The Burger Court Opinion Writing Database

Nevada v. Hall

440 U.S. 410 (1979)

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

November 11, 1978

Memorandum to the Conference

Re: 77-1337 U. of Nevada v. Hall

I vote to affirm.

Regards,

W.B

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

CHAMBERS OF
THE CHIEF JUSTICE

January 31, 1979

Re: 77-1337 - University of Nevada v. Hall

Dear John:

After oral argument I remained perplexed and somewhat ambivalent about this case, although I came down to affirm.

The passage of time has not cleared this up and, indeed, has revived my concerns. This holding is a large step and if Nevada has removed all its assets from California this holding could generate another case when California seeks the aid of Nevada courts to enforce the judgment.

Harry and Bill Rehnquist voted to reverse and I assume one of them will be writing. I prefer to wait to see what is said on that side.

Regards,

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

March 1, 1979

Re: 77-1337 - University of Nevada v. Hall

Dear Harry & Bill:

Please show me joining both of you in
dissent.

Regards,

Mr. Justice Blackmun
Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

January 19, 1979

RE: No. 77-1337 University of Nevada v. Hall

Dear John:

I agree.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 15, 1979

Re: No. 77-1337 - University of Nevada v. Hall

Dear John:

I am glad to join your opinion for the
Court.

Sincerely yours,

P.S.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 18, 1979

Re: No. 77-1337 - University of Nevada
v. John Michael Hall

Dear John,

With the change we talked about, I
join your opinion in this case.

Sincerely yours,



Mr. Justice Stevens
Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 19, 1979

Re: No. 77-1337 - University of Nevada v. Hall

Dear John:

Please join me.

Sincerely,

T.M.
T.M.

Mr. Justice Stevens

cc: The Conference

November 13, 1978

Re: No. 77-1337 - University of Nevada v. Hall

Dear Bill:

If it is all right with you, I may try my hand at a dissent
in this case when the majority opinion comes out.

Sincerely,

HAB

Mr. Justice Rehnquist

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

From: Mr. Justice Blackmun

Circulated: 7 FEB 1979

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 77-1337

State of Nevada et al. } On Writ of Certiorari to the
Petitioners, } Court of Appeal of California,
v. } First Appellate Dis-
John Michael Hall, Etc., et al. } trict.

[February —, 1979]

MR. JUSTICE BLACKMUN, dissenting.

The Court, in a plausible opinion, holds that the State of Nevada is subject to an unconsented suit in a California state court for damages in tort. This result at first glance does not seem too unreasonable. One might well ask why Nevada, even though it is a State, and even though it has not given its consent, should not be responsible for the wrong its servant perpetrated on a California highway. And one might also inquire how it is that, if no provision of our national Constitution specifically prevents the nonimmunity result, these tort action plaintiffs could be denied their judgment.

But the Court paints with a very broad brush, and I am troubled by the implications of its holding. Despite a fragile footnote disclaimer, *ante*, at 14 n. 24; the Court's basic and undeniable ruling is that what we have always thought of as a "sovereign State" is now to be treated in the courts of a sister State, once jurisdiction is obtained, just as any other litigant. I fear the ultimate consequences of that holding, and I suspect that the Court has opened the door to avenues of liability and interstate retaliation that will prove unsettling and upsetting for our federal system. Accordingly, I dissent.

It is important to note that at the time of the Constitutional Convention, as the Court concedes, there was "widespread acceptance of the view that a sovereign State is never amenable to suit without its consent." *Ante*, at 10. The

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

pp. 1, 4, 5

From: Mr. Justice Blackmun

Circulated: _____

2nd DRAFT

Received: 12 FEB 1979

SUPREME COURT OF THE UNITED STATES

No. 77-1337

State of Nevada et al. | On Writ of Certiorari to the
Petitioners. | Court of Appeal of Califor-
v. | nia, First Appellate Dis-
John Michael Hall, Etc., et al. | trict.

[February —, 1979]

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE REHNQUIST joins, dissenting.

The Court, in a plausible opinion, holds that the State of Nevada is subject to an unconsented suit in a California state court for damages in tort. This result at first glance does not seem too unreasonable. One might well ask why Nevada, even though it is a State, and even though it has not given its consent, should not be responsible for the wrong its servant perpetrated on a California highway. And one might also inquire how it is that, if no provision of our national Constitution specifically prevents the nonimmunity result, these tort action plaintiffs could be denied their judgment.

But the Court paints with a very broad brush, and I am troubled by the implications of its holding. Despite a fragile footnote disclaimer, *ante*, at 14 n. 24, the Court's basic and undeniable ruling is that what we have always thought of as a "sovereign State" is now to be treated in the courts of a sister State, once jurisdiction is obtained, just as any other litigant. I fear the ultimate consequences of that holding, and I suspect that the Court has opened the door to avenues of liability and interstate retaliation that will prove unsettling and upsetting to our federal system. Accordingly, I dissent.

It is important to note that at the time of the Constitutional Convention, as the Court concedes, there was "widespread acceptance of the view that a sovereign State is never amenable to suit without its consent." *Ante*, at 10. The

February 28, 1979

Re: No. 77-1337 - State of Nevada v. Hall

Dear Bill:

I am very pleased that you have written in dissent in this case. What you have said is worth saying. I think the two opinions in dissent complement each other and that it is better to have the two shorter ones than one long one.

Because of your opinion's several references to me, it would be awkward for me to join it. This does not mean that I do not share the views expressed in your opinion. The more I think about this case, the more convinced I am that we are on the right side.

Sincerely,

HAB

Mr. Justice Rehnquist

January 16, 1979

77-1337 University of Nevada v. Hall

Dear John:

In a separate note, I am joining your opinion in the above case.

It is a fine opinion, and I am happy to join it. I do have one suggestion that perhaps you will consider. As you suggest, comity among the states should prevent our decision in this case from producing reciprocal-type litigation on questions more closely related to state sovereignty than a tort action. It is difficult to foresee the types of situations that may arise. I would therefore be happier if your opinion had some sort of caveat.

Possibly a footnote along the following lines would serve this purpose:

"California's exercise of jurisdiction in this case poses no substantial threat to our constitutional system of cooperative federalism. Suits involving traffic accidents occurring outside of Nevada could hardly interfere with Nevada's capacity to fulfil its own sovereign responsibilities. There may be situations where this could result from a suit in the courts of another state. We express no view, for example, as to whether a state could entertain suits against a sister state with respect to sovereign acts taken within the sister state's borders. See R. Weintraub, *Commentary on the Conflict of Laws*, 408-19 (1971)."

Sincerely,

Mr. Justice Stevens

1fp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 16, 1979

77-1337 University of Nevada v. Hall

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 8, 1979

Re: No. 77-1337 - Nevada v. Hall

Dear Harry:

Please join me in your dissenting opinion.

Sincerely,

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 13, 1979

Re: No. 77-1337 - University of Nevada v. Hall

Dear John:

I have joined Harry's dissent in this case, which I am sure will be the principal one, but may want to write a separate dissent enlarging on one point. I will try not to hold you up for more than a few days.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black ~~Mr.~~
Mr. Justice Powell
Mr. Justice Stevens

Re 258410

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Mr. Justice Rehnquist

No. 77-1337

Circulated: 27 FEB 1979

State of Nevada et al.,
Petitioners,
v.
John Michael Hall, Etc., et al.

On Writ of Certiorari to the
Court of Appeal of California,
First Appellate District.

Recirculated:

[March 1, 1979]

MR. JUSTICE REHNQUIST, dissenting.

Like my Brother BLACKMUN, I cannot agree with the majority that there is no constitutional source for the sovereign immunity asserted in this case by the State of Nevada. I think the Court's decision today works a fundamental readjustment of interstate relationships which is impossible to reconcile not only with an "assumption" this and other courts have entertained for almost 200 years, but also with express holdings of this Court and the logic of the constitutional plan itself.

Any document—particularly a constitution—is built on certain postulates or assumptions; it draws on shared experience and common understanding. On a certain level, that observation is obvious. Concepts such as "State" and "Bill of Attainder" are not defined in the Constitution and demand external referents. But on a more subtle plane, when the Constitution is ambiguous or silent on a particular issue, this Court has often relied on notions of a constitutional plan—the implicit ordering of relationships within the federal system necessary to make the Constitution a workable governing charter and to give each provision within that document the full effect intended by the Framers. The tacit postulates yielded by that ordering are as much engrained in the fabric of the document as its express provisions, because without

—
G. 1
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

2nd DRAFT

Circulate: _____

2 MAR 1979

SUPREME COURT OF THE UNITED STATES

—
No. 77-1337
—

State of Nevada et al., Petitioners,
v.
John Michael Hall, Etc., et al. On Writ of Certiorari to the
Court of Appeal of California, First Appellate District.

[March —, 1979]

MR. JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE joins, dissenting

Like my Brother BLACKMUN, I cannot agree with the majority that there is no constitutional source for the sovereign immunity asserted in this case by the State of Nevada. I think the Court's decision today works a fundamental readjustment of interstate relationships which is impossible to reconcile not only with an "assumption" this and other courts have entertained for almost 200 years, but also with express holdings of this Court and the logic of the constitutional plan itself.

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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: JAN 11 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1337

University of Nevada et al. } On Writ of Certiorari to the
Petitioners, } Court of Appeal of California,
v. } First Appellate Dis-
John Michael Hall, Etc., et al. } trikt.

[January —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

In this tort action arising out of an automobile collision in California, a California court has entered a judgment against the State of Nevada that Nevada's own courts could not have entered. We granted certiorari to decide whether federal law prohibits the California courts from entering such a judgment or, indeed, from asserting any jurisdiction over another sovereign State.

The respondents are California residents. They suffered severe injuries in an automobile collision on a California highway on May 13, 1968. The driver of the other vehicle, an employee of the University of Nevada, was killed in the collision. It is conceded that he was driving a car owned by the State, that he was engaged in official business, and that the University is an instrumentality of the State itself.

Respondents filed this suit for damages in the Superior Court for the City of San Francisco, naming the administrator of the driver's estate, the University, and the State of Nevada as defendants. Process was served on the State and the University pursuant to the provisions of the California Code authorizing service of process on nonresident motorists.¹

¹ Section 17451 of the California Code provides:

The acceptance by a nonresident of the rights and privileges conferred upon him by this code or any operation by himself or agent of a motor

pp. 5, 8, 13, 15, 16

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: JAN 15 1979

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1337

University of Nevada et al. } On Writ of Certiorari to the
Petitioners, } Court of Appeal of Califor-
v. } nia, First Appellate Dis-
John Michael Hall, Etc., et al. } trict.

[January —, 1979]

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¹ Section 17451 of the California Code provides:

"The acceptance by a nonresident of the rights and privileges conferred upon him by this code or any operation by himself or agent of a motor

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

I called John's
office & approved
this 1/18 9.15 AM
January 17, 1979

JFP

Re: 77-1337 - University of Nevada v. Hall

Dear Lewis:

Would the following new n. 27 at the end of Part III on page 14 take care of your concern?

"27/ California's exercise of jurisdiction in this case poses no substantial threat to our constitutional system of cooperative federalism. Suits involving traffic accidents occurring outside of Nevada could hardly interfere with Nevada's capacity to fulfill its own sovereign responsibilities. We have no occasion, in this case, to consider whether different state policies, either of California or of Nevada, might require a different analysis or a different result. See R. Weintraub, *Commentary on the Conflict of Laws*, 408-410 (1971)."

Respectfully,



Mr. Justice Powell

pp. 7, 10, 14-15

— footnotes renumbered

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:

1/18/76

Recirculated:

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1337

University of Nevada et al. } On Writ of Certiorari to the
Petitioners. } Court of Appeal of Califor-
nina, First Appellate Dis-
John Michael Hall, Etc., et al. } trict.

[January --, 1979]

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Respondents filed this suit for damages in the Superior Court for the City of San Francisco, naming the administrator of the driver's estate, the University, and the State of Nevada as defendants. Process was served on the State and the University pursuant to the provisions of the California Code authorizing service of process on nonresident motorists.¹

¹Section 17461 of the California Code provides:

"The acceptance by a nonresident of the rights and privileges conferred upon him by this code or any operation by himself or agent of a motor

17
spf.

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: **73 9 79**

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1337

State of Nevada et al. Petitioners, v. John Michael Hall, Etc., et al. } On Writ of Certiorari to the Court of Appeal of California, First Appellate District.

[January —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

In this tort action arising out of an automobile collision in California, a California court has entered a judgment against the State of Nevada that Nevada's own courts could not have entered. We granted certiorari to decide whether federal law prohibits the California courts from entering such a judgment or, indeed, from asserting any jurisdiction over another sovereign State.

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