

# The Burger Court Opinion Writing Database

*Walker v. Armco Steel Corp.*  
446 U.S. 740 (1980)

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

(S)

CHAMBERS OF  
THE CHIEF JUSTICE

May 28, 1980

RE: 78-1862 - Walker v. Armco Steel Corp.

Dear Thurgood:

I join.

Regards,

LSB

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 22, 1980

MEMORANDUM TO: Mr. Justice Stewart  
Mr. Justice Powell  
Mr. Justice Stevens

RE: No. 78-1862 - Walker v. Armco Steel Corp.

We four are in dissent in the above, I will be  
happy to undertake the opinion.

Sincerely,

*Bill*

*William W. H. B.*

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

May 27, 1980



RE: No. 78-1862 Walker v. Armco Steel Corporation

Dear Thurgood:

Potter, Lewis, John and I were in dissent at conference in the above. I was to undertake writing the dissent.

Your circulation, however, is most persuasive and the four of us are willing to abandon the dissent and join you if in an appropriate place in your opinion you could insert a statement (perhaps at page 7?) to the effect that nothing in the opinion is to be taken to imply that the Federal Rules are to be narrowly construed to avoid the necessity for decision of Erie questions.

Sincerely,



Mr. Justice Marshall

cc: The conference

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

May 28, 1980

(W)

RE: No. 78-1862 Walker v. Armco Steel Corporation

Dear Thurgood:

Your suggested insert in the footnote at page 9 is entirely satisfactory to Potter, Lewis, John and me. Thank you for accommodating our concern. Please join me.

Sincerely,

*Bil*

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 28, 1980

Re: No. 78-1862, Walker v. Armco Steel Corp.

Dear Thurgood,

With the footnote addition that you indicate, I am glad to join your opinion for the Court.

Sincerely yours,

PS.  
1.  
1

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 26, 1980

Re: 78-1862 - Walker v. Armco Steel Corp.

Dear Thurgood,

Please join me.

Sincerely yours,



Mr. Justice Marshall

Copies to the Conference

cmc

22 MAY 1980

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 78-1862

Fred N. Walker, Petitioner, | On Writ of Certiorari to the  
v. | United States Court of Ap-  
Armco Steel Corporation. | peals for the Tenth Circuit,

[June —, 1980]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case presents the issue whether in a diversity action the federal court should follow state law or, alternatively, Rule 3 of the Federal Rules of Civil Procedure in determining when an action is commenced for the purpose of tolling the state statute of limitations.

I

According to the allegations of the complaint, petitioner, a carpenter, was injured on August 22, 1975, in Oklahoma City, Okla., while pounding a sheffield nail into a cement wall. Respondent was the manufacturer of the nail. Petitioner claimed that the nail contained a defect which caused its head to shatter and strike him in the right eye, resulting in permanent injuries. The defect was allegedly caused by respondent's negligence in manufacture and design.

Petitioner is a resident of Oklahoma, and respondent is a foreign corporation having its principal place of business in a State other than Oklahoma. Since there was diversity of citizenship, petitioner brought suit in the United States District Court for the Western District of Oklahoma. The complaint was filed on August 19, 1977. Although summons was issued that same day,<sup>1</sup> service of process was not made on

<sup>1</sup> The Court of Appeals stated that summons was issued the following day, August 20. See 592 F. 2d 1133, 1134 (CA10 1979). However, the

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 27, 1980

Re: No. 78-1862 - Walker v. Armco Steel Corp.

Dear Bill:

In response to your memorandum of this afternoon, I intend to insert in a footnote on page 9, at the end of the first full paragraph, the following:

"This is not to suggest that the Federal Rules of Civil Procedure are to be narrowly construed in order to avoid a "direct collision" with state law. The Federal Rules should be given their plain meaning. If a direct collision with state law arises from that plain meaning, then the analysis developed in Hanna v. Plumer applies."

I hope that this will meet your concern.

Sincerely,

T.M.

T.M.

Mr. Justice Brennan

cc: The Conference

pp. 9, 10, 12  
footnotes renumbered

28 MAY 1980

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

**No. 78-1862**

Fred N. Walker, Petitioner, | On Writ of Certiorari to the  
v. | United States Court of Ap-  
Armco Steel Corporation. | peals for the Tenth Circuit.

[June —, 1980]

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

September 25, 1979

MEMORANDUM TO THE CONFERENCE

In No. 78-1862 Walker v. Armco Steel Corp. (page 19 of the September 24 list). I am now voting to grant certiorari. If other votes remain firm, this case is granted.

The same issue lies in the background of No. 78-6808, Lindsey v. Dayton Hudson Corp. on page 35 of this list, but, strangely it is not raised in the petition for certiorari. Both cases come out of the Tenth Circuit and Oklahoma.

*Ha*

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 26, 1980

D

Re: No. 78-1862 - Walker v. Armco Steel Corporation

Dear Thurgood:

Please join me.

Sincerely,

HAW.

Mr. Justice Marshall

cc: The Conference

United States Court of Appeals for the District of Columbia Circuit  
Argued: February 14, 1980  
Decided: February 14, 1980  
Text?

February 14, 1980

78-1870 Whirlpool Corp. v. Marshall

Dear Potter:

170-150

I expect to join your opinion, but on the basis of a first reading I do have one suggestion that I would appreciate your considering.

In note 30 (p. 16) you leave open whether "discrimination" would encompass the right to be paid in this case. I think you are wise in not attempting to answer this question not addressed below.

It would be helpful, however, if we could give some guidance to the DC - difficult as this may be. You correctly state in the text that the regulation "does not require employers to pay workers" who leave jobs because of a good faith and reasonable belief of imminent danger. But an employer may not "discriminate".

There was considerable discussion at oral argument, and I believe in the briefs, as to what constituted discrimination. You mention, correctly, that the placing of reprimands was discrimination only because the "walk off" was reasonable. I am afraid, however, that the footnote will invite the District Court to consider whether, despite what is said in the text of your opinion, respondents were discriminated against because they were not paid during their absence.

If other duties had been offered respondents, and they had declined to undertake them (because, for example, sweeping the floor was too menial), I would think it clear withholding pay would not be discrimination. The question perhaps would be closer if the other work offered were forbidden under a union contract. Another possibility would be the absence of any other work available at the time. In such a situation, I also think there would be no discrimination.

Would it not be helpful if we at least used examples such as these to illustrate the statement in your text?

Sincerely,

第二步：在“我的电脑”或“我的文档”中，右键单击“我的公文包”，选择“发送到”→“移动到当前位置”。

Mr. Justice Stewart

### Theorem 1 (Continuity)

1fp/ss

It is my opinion that the best offshoot of any organization is a  
superior and independent one, independent either of party or of the  
state within which the laborers work, especially if such a state is one  
which itself may would ever be almost independent. This organization  
perhaps would be clearer if the other would off such a  
federation under a union contract. Another advantage would  
be the absence of any other work available at the time, in  
such a situation. I also think there would be no  
objection,

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 26, 1980

78-1862 Walker v. Armco Steel Corp.

Dear Thurgood:

I will await the dissent.

Sincerely,



Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

(5)

May 28, 1980

78-1862 Walker v. Armco Steel Corp.

Dear Thurgood:

This will confirm, as indicated by Bill Brennan's correspondence with you, that I am now happy to join your opinion.

Sincerely,

*Lewis*

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

b3

May 27, 1980

Re: No. 78-1862 Walker v. Armco Steel Corp.

Dear Thurgood:

Please join me in your opinion of the Court.

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 28, 1980

Re: 78-1862 - Walker v. Armco Steel Corp.

Dear Thurgood:

Please join me.

Respectfully,



Mr. Justice Marshall

Copies to the Conference