

The Burger Court Opinion Writing Database

Minnesota v. Clover Leaf Creamery Co.
449 U.S. 456 (1981)

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

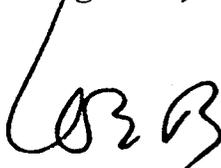
January 8, 1981

Re: 79-1171 - Minnesota v. Clover Leaf Creamery Co.

Dear Bill:

I join.

Regards,



Justice Brennan

Copies to the Conference

REPRODUCED FROM THE COLLECTED

MANUSCRIPT DIVISION

U.S. SUPREME COURT

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 17, 1980

MEMORANDUM TO THE CONFERENCE

Re: No. 79-1171, State of Minnesota v. Clover Leaf Creamery Co.

At Conference, a majority voted to reach and decide the Commerce Clause question in this case, even though the court below did not do so. The Commerce Clause discussion appears as Part III in the attached opinion. If the Conference were to decide that it would be better to remand on this issue, Part III can be deleted.

Sincerely,

Jul

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U.S. DEPARTMENT OF COMMERCE

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

From: Mr. Justice Brennan

Circulated: DEC 18 1980

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1171

State of Minnesota, Petitioner, }
 v. } On Writ of Certiorari to
Clover Leaf Creamery Company } the Supreme Court of
 et al. } Minnesota.

[January —, 1981]

JUSTICE BRENNAN delivered the opinion of the Court:

In 1977, the Minnesota Legislature enacted a statute banning the retail sale of milk in plastic nonreturnable, nonrefillable containers, but permitting such sale in other nonreturnable, nonrefillable containers, such as paperboard milk cartons. Minn. Laws 1977, ch. 268, Minn. Stat., § 116F.21. Respondents¹ contend that the statute violates the Equal Protection and Commerce Clauses of the Constitution.

I

The purpose of the Minnesota statute is set out as § 1:

“The legislature finds that the use of nonreturnable, nonrefillable containers for the packaging of milk and other milk products presents a solid waste management problem for the state, promotes energy waste, and depletes natural resources. The legislature therefore, in

¹ Respondents, plaintiffs below, are a Minnesota dairy that owns equipment for producing plastic nonreturnable milk jugs, a Minnesota dairy that leases such equipment, a non-Minnesota company that manufactures such equipment, a Minnesota company that produces plastic nonreturnable milk jugs, a non-Minnesota dairy that sells milk products in Minnesota in plastic nonreturnable milk jugs, a Minnesota milk retailer, a non-Minnesota manufacturer of polyethylene resin that sells such resin in many States, including Minnesota, and a plastics industry trade association.

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 19, 1980

Re: No. 79-1171, Minnesota v. Clover Leaf Creamery Co.

Dear Lewis:

Thank you for your comments in the above. While the Minnesota Supreme Court did not expressly address the finding of the District Court to which you refer-- or, for that matter, any other finding or conclusion of the District Court-- I would read the following statement as rejecting the District Court's conclusion that the actual purpose of the Act was to promote local economic interests at the expense of out-of-state industry:

"The Act is intended to further the policies stated in Minn. St. 116F.01; therefore, it is intended to promote the state interests of encouraging the reuse and recycling of materials and reducing the amount and type of material entering the solid waste stream. L. 1977, c.268, sec. 1. Specifically, the stated legislative finding of the Act is that nonrefillable milk containers present solid waste management problems, promote energy waste, and deplete natural resources; the stated legislative goal is that use of returnable milk containers should be encouraged. L. 1977, c.268, sec. 1. The Act, undoubtedly, deals with legitimate state interests.... 289 N.W. 2d, at 82.

In any event, I have not received any other requests that the Commerce Clause section be deleted. I shall therefore defer any decision on your suggestion until after the views of other members of the Court are made known.

Sincerely,

JUSTICE POWELL

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 19, 1980

Re: No. 79-1171, Minnesota v. Clover Leaf Creamery Co.

Dear Potter:

Thank you for your comment on the above. Of course, I shall delete the sentence, as you suggest.

Sincerely,

Bill

Justice Stewart

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NATIONAL ARCHIVES MANUSCRIPT DIVISION

U.S. DEPARTMENT OF CONGRESS

pp. 12, 16

Doc. The Chief Justice
Stewart
White
Rehnquist
Burger
Blackmun
Powell
Souter
O'Connor
Kennedy
Ginsburg
Sotomayor
Kagan

DEC 19 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1171

State of Minnesota, Petitioner,
v.
Clover Leaf Creamery Company
et al. } On Writ of Certiorari to
the Supreme Court of
Minnesota.

[January —, 1981]

JUSTICE BRENNAN delivered the opinion of the Court:

In 1977, the Minnesota Legislature enacted a statute banning the retail sale of milk in plastic nonreturnable, nonrefillable containers, but permitting such sale in other nonreturnable, nonrefillable containers, such as paperboard milk cartons. Minn. Laws 1977, ch. 268, Minn. Stat., § 116F.21. Respondents¹ contend that the statute violates the Equal Protection and Commerce Clauses of the Constitution.

I

The purpose of the Minnesota statute is set out as § 1:

“The legislature finds that the use of nonreturnable, nonrefillable containers for the packaging of milk and other milk products presents a solid waste management problem for the state, promotes energy waste, and depletes natural resources. The legislature therefore, in

¹ Respondents, plaintiffs below, are a Minnesota dairy that owns equipment for producing plastic nonreturnable milk jugs, a Minnesota dairy that leases such equipment, a non-Minnesota company that manufactures such equipment, a Minnesota company that produces plastic nonreturnable milk jugs, a non-Minnesota dairy that sells milk products in Minnesota in plastic nonreturnable milk jugs, a Minnesota milk retailer, a non-Minnesota manufacturer of polyethylene resin that sells such resin in many States, including Minnesota, and a plastics industry trade association.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 8, 1981

MEMORANDUM TO THE CONFERENCE

RE: No. 79-1171 Minnesota v. Clover Leaf Creamery Co.

In response to John's dissent I intend to delete from the first full paragraph at page 6 the clause "apparently applying the correct legal standard" and also delete footnote 8 on that page. I shall add the attached as a new footnote at the close of the first sentence of the first full paragraph of page 4.

WJB
W.J.B. Jr.

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PP. 4-7

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Mr. Justice Brennan

No. 79-1171

Circulated: _____

Recirculated: **JAN 12 1981**

State of Minnesota, Petitioner, }
v. } On Writ of Certiorari to
Clover Leaf Creamery Company } the Supreme Court of
et al. } Minnesota.

[January —, 1981]

JUSTICE BRENNAN delivered the opinion of the Court:

In 1977, the Minnesota Legislature enacted a statute banning the retail sale of milk in plastic nonreturnable, nonrefillable containers, but permitting such sale in other nonreturnable, nonrefillable containers, such as paperboard milk cartons. Minn. Laws 1977, ch. 268, Minn. Stat., § 116F.21. Respondents¹ contend that the statute violates the Equal Protection and Commerce Clauses of the Constitution.

I

The purpose of the Minnesota statute is set out as § 1:

“The legislature finds that the use of nonreturnable, nonrefillable containers for the packaging of milk and other milk products presents a solid waste management problem for the state, promotes energy waste, and depletes natural resources. The legislature therefore, in

¹ Respondents, plaintiffs below, are a Minnesota dairy that owns equipment for producing plastic nonreturnable milk jugs, a Minnesota dairy that leases such equipment, a non-Minnesota company that manufactures such equipment, a Minnesota company that produces plastic nonreturnable milk jugs, a non-Minnesota dairy that sells milk products in Minnesota in plastic nonreturnable milk jugs, a Minnesota milk retailer, a non-Minnesota manufacturer of polyethylene resin that sells such resin in many States, including Minnesota, and a plastics industry trade association.

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SHAW-NEEDLE COMPANY

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 5, 9

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

From: Mr. Justice Brennan

Circulated: _____

JAN 15 1981

Recirculated: _____

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1171

State of Minnesota, Petitioner, }
 v. } On Writ of Certiorari to
Clover Leaf Creamery Company } the Supreme Court of
 et al. } Minnesota.

[January —, 1981]

JUSTICE BRENNAN delivered the opinion of the Court:

In 1977, the Minnesota Legislature enacted a statute banning the retail sale of milk in plastic nonreturnable, nonrefillable containers, but permitting such sale in other nonreturnable, nonrefillable containers, such as paperboard milk cartons. Minn. Laws 1977, ch. 268, Minn. Stat., § 116F.21. Respondents¹ contend that the statute violates the Equal Protection and Commerce Clauses of the Constitution,

I

The purpose of the Minnesota statute is set out as § 1:

“The legislature finds that the use of nonreturnable, nonrefillable containers for the packaging of milk and other milk products presents a solid waste management problem for the state, promotes energy waste, and depletes natural resources. The legislature therefore, in

¹ Respondents, plaintiffs below, are a Minnesota dairy that owns equipment for producing plastic nonreturnable milk jugs, a Minnesota dairy that leases such equipment, a non-Minnesota company that manufactures such equipment, a Minnesota company that produces plastic nonreturnable milk jugs, a non-Minnesota dairy that sells milk products in Minnesota in plastic nonreturnable milk jugs, a Minnesota milk retailer, a non-Minnesota manufacturer of polyethylene resin that sells such resin in many States, including Minnesota, and a plastics industry trade association.

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SHSBJN0030 ADV 001 1 IN

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 18, 1980

Re: 79-1171 - Minnesota v. Clover Leaf
Creamery Co.

Dear Bill:

I hope you can agree to delete the final sentence of footnote 12 on page 12 of your opinion, beginning "As the Minnesota Supreme Court. . ." This sentence purports to give definitional content to the concept of substantive due process, and I do not agree with the definition. If this sentence in question were deleted, I would be glad to join your opinion for the Court.

Sincerely yours,

P.S.
/

Justice Brennan

Copies to the Conference

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U.S. SENATE LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 29, 1980

Re: 79-1171 - Minnesota v. Clover
Leaf Creamery Co.

Dear Bill,

I have not said so, but you may
have guessed I am awaiting John's
dissent.

Sincerely yours,

Byron

Mr. Justice Brennan

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 7, 1981

Re: 79-1171 - Minnesota v. Clover
Leaf Creamery Co.

Dear Bill,

Please join me.

Sincerely yours,



Mr. Justice Brennan

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OF THE MANUSCRIPT DIVISION

OF THE LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 18, 1980

Re: No. 79-1171 - State of Minnesota v. Clover
Leaf Creamery Company, et al.

Dear Bill:

Please join me.

Sincerely,

J.M.

T.M.

Justice Brennan

cc: The Conference

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NATIONAL ARCHIVES MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 22, 1980

Re: No. 79-1171 - Minnesota v. Clover Leaf Creamery Co.

Dear Bill:

Please join me in your recirculation of December 19. I, for one, am quite content to have Part III, dealing with the Commerce Clause, remain in the opinion.

Sincerely,



Mr. Justice Brennan

cc: The Conference

REPRODUCED FROM THE COLLECTION

MANUSCRIPT DIVISION

SECRETARY OF COURTS

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 18, 1980

79-1171 Minnesota v. Clover Leaf Creamery Co.

Dear Bill:

Although I can join your reversal on the Equal Protection issue, I would still remand on the Commerce Clause question that was not addressed by the Minnesota Supreme Court.

The District Court expressly found:

"Despite the purported policy statement published by the legislature as its basis for enacting Chapter 268, the actual basis was to promote the economic interests of certain segments of the local dairy and pulpwood industries at the expense of the economic interests of other segments of the dairy industry and the plastics industry." A-24.

This finding was not rejected - certainly not expressly - by the Minnesota Supreme Court. Instead, I read that court's opinion as accepting, quite properly for equal protection analysis, the avowed purposes of the statute in the context of "rational basis" analysis. But the Commerce Clause issue remains, and it seems to me that the trial court's finding is supported by extrinsic evidence such as the fact that the paper industry is substantial in Minnesota, whereas the plastics industry is of little or no importance.

In my view, this finding brings this case squarely within our Commerce Clause decisions that forbid a state to close its markets, directly or indirectly, from out-of-state products as a means of protecting local business.

I would be willing to join your opinion if Part III were deleted, and you stated simply that we remand the case for consideration of the Commerce Clause issue not addressed by the Minnesota Supreme Court. I suppose it also

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would be necessary to refer to the finding, mentioned above, by the trial court.

Absent a majority to remand, I will write a brief dissenting opinion to this effect.

Sincerely,

Lewis

Mr. Justice Brennan

lfp/ss

cc: The Conference

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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 Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

1-7-81

Circulated: JAN 7 1981

1st DRAFT

Reirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 79-1171

State of Minnesota, Petitioner,
v.
Clover Leaf Creamery Company
et al. } On Writ of Certiorari to
the Supreme Court of
Minnesota.

[January —, 1981]

JUSTICE POWELL, concurring in part and dissenting in part.

The Minnesota statute at issue bans the retail sale of milk in plastic nonreturnable, nonrefillable containers, but permits such sale in paperboard milk cartons. Respondents challenged the validity of the statute under both the Equal Protection and Commerce Clauses. The Minnesota District Court agreed with respondents on both grounds. The Supreme Court of Minnesota also agreed that the statute violated the Equal Protection Clause, but found it unnecessary to reach the Commerce Clause issue.

This Court today reverses the Supreme Court of Minnesota, finding no merit in either of the alleged grounds of invalidity. I concur in the view that the statute survives equal protection challenge, and therefore join the judgment of reversal on this ground. I also agree with most of Parts I and II of the Court's opinion.

I would not, however, reach the Commerce Clause issue, but would remand it for consideration by the Supreme Court of Minnesota. The District Court expressly found:

"12. Despite the purported policy statement published by the legislature as its basis for enacting Chapter 268, the actual basis was to promote the economic interests of certain segments of the local dairy and pulpwood industries at the expense of the economic interests of other segments of the dairy industry and the plastics industry."
Pet. for Cert. A-24.

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THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 17, 1980

Re: No. 79-1171 Minnesota v. Clover Leaf Creamery Co.

Dear Bill:

Would you please note when you circulate the opinion in this case that I took no part in the consideration or decision of it.

Sincerely,



Mr. Justice Brennan

Copies to the Conference

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U.S. SUPREME COURT ARCHIVES

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 18, 1980

Re: No. 79-1171 Minnesota v. Clover Leaf Creamery Co.

Dear Bill:

Would you please note in this case that I took no part in the consideration or decision of it.

Sincerely,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 22, 1980

Re: 79-1171 - Minnesota v. Clover Leaf
Creamery Co.

Dear Bill:

As soon as I can get to it, I will circulate
a dissenting opinion.

Respectfully,



Justice Brennan

Copies to the Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION OF THE LIBRARY OF CONGRESS

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

79-1171 - State of Minnesota v. Clover Leaf Creamery Co. Circulated: JAN 6 '81

Recirculated: _____

JUSTICE STEVENS, dissenting.

While the Court in this case seems to do nothing more than apply well-established equal protection and Commerce Clause principles to a particular state statute, in reality its reversal of the Minnesota Supreme Court is based upon a newly-discovered principle of federal constitutional law. According to this principle, which is applied but not explained by the majority, the Federal Constitution defines, not only the relationship between Congress and the federal courts, but also the relationship between state legislatures and state courts. Because I can find no support for this novel constitutional doctrine in either the language of the Federal Constitution or the prior decisions of this Court, I respectfully dissent.

I

The keystone of the Court's equal protection analysis is its pronouncement that "it is not the function of the courts to substitute their evaluation of legislative facts for that of the legislature." Ante, at 11.¹ If the pronouncement concerned the

¹ See also ante, at 5, where the Court states that "States are not required to convince the courts of the correctness of their

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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: _____

Recirculated: JAN 13 '81

7p. 2-13

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1171

State of Minnesota, Petitioner, }
v. } On Writ of Certiorari to
Clover Leaf Creamery Company } the Supreme Court of
et al. } Minnesota.

[January —, 1981]

JUSTICE STEVENS, dissenting.

While the Court in this case seems to do nothing more than apply well-established equal protection and Commerce Clause principles to a particular state statute, in reality its reversal of the Minnesota Supreme Court is based upon a newly discovered principle of federal constitutional law. According to this principle, which is applied but not explained by the majority, the Federal Constitution defines, not only the relationship between Congress and the federal courts, but also the relationship between state legislatures and state courts. Because I can find no support for this novel constitutional doctrine in either the language of the Federal Constitution or the prior decisions of this Court, I respectfully dissent.

I

The keystone of the Court's equal protection analysis is its pronouncement that "it is not the function of the courts to substitute their evaluation of legislative facts for that of the legislature." *Ante*, at 13.¹ If the pronouncement concerned the function of *federal* courts, it would be amply supported by reason and precedent. For federal tribunals are courts of

¹ See also *ante*, at 7, where the Court states that "States are not required to convince the courts of the correctness of their legislative judgments"; and *id.*, at 7, where the Court states that "litigants may not procure invalidation of the legislation merely by tendering evidence in court that the legislature was mistaken."

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