

The Burger Court Opinion Writing Database

Watt v. Alaska

451 U.S. 259 (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

January 16, 1981

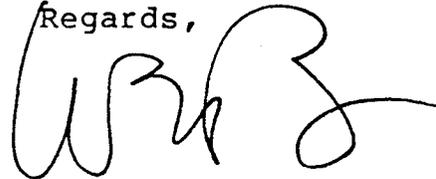
CHAMBERS OF
THE CHIEF JUSTICE

Re: No. 79-1890, Andrus v. Alaska
No. 79-1904, Kenai Peninsula Borough v. Alaska

Dear Potter and Thurgood:

Tentatively, at least, I will undertake a dissent. My approach will probably be that when two statutes on a subject are in irreconcilable conflict, and each is "plain" in meaning, the later in time governs. A sort of "latest plain meaning rule".

Regards,



Justice Stewart
Justice Marshall

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

February 3, 1981

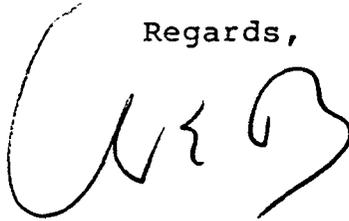
CHAMBERS OF
THE CHIEF JUSTICE

Re: No. 79-1890, Andrus v. Alaska
No. 79-1904, Kenai Peninsula Borough v. Alaska

Dear Potter:

Upon further review of my Spring schedule and my continuing residual of the "Bangkok Bug", I have concluded that in the interest of expedition, and if it suits you, it would be preferable for you to prepare the dissent in these cases. My views on the issues remain as stated at Conference and in my letter of January 16.

Regards,

A handwritten signature in dark ink, appearing to be 'W. S.', written in a cursive style.

Justice Stewart
cc: Justice Marshall

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

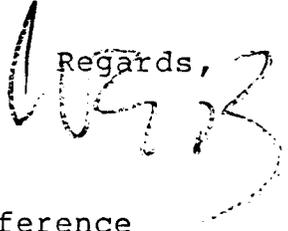
CHAMBERS OF
THE CHIEF JUSTICE

March 30, 1981

Re: No. 79-1890, Watt v. Alaska
No. 79-1904, Kenai Peninsula Borough v.
Alaska

Dear Potter:

Please add my name to your persuasive
dissent.

Regards,


Justice Stewart
Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 23, 1981

RE: No. 79-1890 Andrus v. Alaska
No. 79-1904 Kenai Peninsula Borough

Dear Chief:

Lewis has agreed to take the opinion for the Court
in the above.

Sincerely,

Bill

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 30, 1981

RE: Nos. 79-1890 and 1904 James G. Watt v. Alaska

Dear Lewis:

I agree.

Sincerely,

Brennan

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 3, 1981

Re: No. 79-1890, Andrus v. Alaska
No. 79-1904, Kenai Peninsula
Borough v. Alaska

Dear Chief,

I shall be glad to undertake a dissenting
opinion in these cases.

Sincerely yours,

P.S.
✓

The Chief Justice

Copy to Justice Marshall

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 26, 1981

Re: No. 79-1890, 1904,
Watt v. Alaska

Dear Lewis,

I shall in due course circulate
a dissenting opinion.

Sincerely yours,

Justice Powell

Copies to the Conference

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Mr. Justice Stewart

Nos. 79-1890 AND 79-1904 Circulated: 27 MAR 1981

Recirculated: _____

James G. Watt, Secretary of
Interior, et al., Petitioners,
79-1890 v.
State of Alaska et al.
Kenai Peninsula Borough
Petitioner,
79-1904 v.
State of Alaska et al.

On Writs of Certiorari to the
United States Court of Ap-
peals for the Ninth Circuit.

[March —, 1981]

JUSTICE STEWART, dissenting.

Today the Court strains to conclude that Congress did not mean what it said, and judicially repeals a reasonable¹ and specific legislative provision because the provision announced a change in the law the Court divines to have been unintended.

A

The Wildlife Refuge Revenue Sharing Act, as amended in 1964, expressly provides that "all revenues received by the Secretary of the Interior from the sale or other disposition of . . . minerals . . ." within federal wildlife refuges administered by the Fish and Wildlife Service shall be "re-

¹ There is nothing unreasonable, or even unusual, about a system of revenue sharing that returns a portion to the locality most immediately affected rather than to the State at large. The payment of 25% of the revenues to the county in which the refuge is situated compensates the county for tax revenue lost because of the public status of the lands and for any local services made necessary because of the refuge, and the payment of 75% to the special fund provided for in 16 U. S. C. § 715s satisfies the need to provide a source of revenue for refuge management and maintenance.

PP 4-51 and
Stylistic

[Faint handwritten notes and a large diagonal line crossing through the page]

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Mr. Justice Stewart

Nos. 79-1890 AND 79-1904

Circulated: _____
6 APR 1981

Recirculated: _____

James G. Watt, Secretary of
Interior, et al., Petitioners,
79-1890 v.
State of Alaska et al.

Kenai Peninsula Borough
Petitioner,
79-1904 v.
State of Alaska et al.

On Writs of Certiorari to the
United States Court of Ap-
peals for the Ninth Circuit,

[March —, 1981]

JUSTICE STEWART, with whom THE CHIEF JUSTICE joins,)
dissenting.

Today the Court strains to conclude that Congress did not mean what it said, and judicially repeals a reasonable¹ and specific legislative provision because the provision announced a change in the law the Court divines to have been unintended.

A

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 30, 1981

Re: 79-1890, 1904 -
Watt v. Alaska, etc.

Dear Lewis,

Please join me.

Sincerely yours,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 7, 1981

Nos. 79-1890 and 1904 - Watt v. Alaska

Dear Potter:

Please join me in your dissent.

Sincerely,

J.M.

T.M.

Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 2, 1981

Re: No. 79-1890 - Watt v. Alaska
No. 79-1904 - Kenai Peninsula Borough v. Alaska

Dear Lewis:

Please join me.

Sincerely,

A handwritten signature in dark ink, appearing to be 'H.A.B.', with a horizontal line underneath.

Mr. Justice Powell

cc: The Conference

Mr. Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

9\$1890G, 9\$1904G CX'd 3/25 wmk--revise cx's

From: Mr. Justice Powell

Circulated: MAR 26 1981

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1890, 1904

JAMES G. WATT, SECRETARY OF INTERIOR, ET AL. *v.*
ALASKA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[March —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

The narrow issue presented by these cases is which of two federal statutes provides the formula for distribution of revenues received from oil and gas leases on national wildlife refuges reserved from public lands.

I

The Kenai National Moose Range was created in 1941 by the withdrawal of nearly two million acres from public lands on the Kenai Peninsula in Alaska. See Executive Order No. 8,979, 6 Fed. Reg. 6471 (1941). See also Public Land Order No. 3400, 29 Fed. Reg. 7094-7095 (1964) (adjusting the boundaries). The Kenai Moose Range, as its name suggests, provides a refuge and breeding ground for moose. The Fish and Wildlife Service in the Department of the Interior administers it as part of the national wildlife refuge system.

Commercially significant quantities of oil underlie the Kenai Moose Range.¹ Pursuant to authority under the Mineral Leasing Act of 1920, 30 U. S. C. §181 *et seq.*, the

¹Today, the Kenai Moose Range is the only national wildlife refuge created from public lands where oil is being pumped. See Brief for United States 4, n. 4. Substantial quantities of oil, however, are thought to underlie other reserved refuge lands in Alaska.

— pg 9

Stylistic Changes Throughout.

- 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

4-2-81

From: Mr. Justice Powell

Circulated: _____

2nd DRAFT recirculated: APR 3 1981

SUPREME COURT OF THE UNITED STATES

Nos. 79-1890 AND 79-1904

James G. Watt, Secretary of
Interior, et al., Petitioners,
79-1890 v.
State of Alaska et al.

Kenai Peninsula Borough
Petitioner,
79-1904 v.
State of Alaska et al.

On Writs of Certiorari to the
United States Court of Ap-
peals for the Ninth Circuit.

[April —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

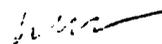
March 31, 1981

Re: No. 79-1890 and 1904 James G. Watt, Secretary of
Interior, Et Al v. Alaska

Dear Lewis,

Please join me.

Sincerely,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 27, 1981

Re: 79-1890 and 79-1904 - Watt v. Alaska

Dear Lewis:

Please join me.

Respectfully,



Justice Powell

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

1st DRAFT

Circulated: APR 2 '81

SUPREME COURT OF THE UNITED STATES: _____

Nos. 79-1890 AND 79-1904

James G. Watt, Secretary of
Interior, et al., Petitioners,
79-1890 v.

State of Alaska et al.

Kenai Peninsula Borough
Petitioner,

79-1904 v.

State of Alaska et al.

On Writs of Certiorari to the
United States Court of Ap-
peals for the Ninth Circuit.

[April —, 1981]

JUSTICE STEVENS, concurring.

My colleagues periodically criticize the way the Court manages its docket. Most frequently, such criticism takes the form of a dissent from the denial of certiorari. See, *e. g.*, *Brown Transport Corp. v. Atcon, Inc.*, 439 U. S. 1014 (WHITE, J., dissenting). Although I consider the practice of dissenting from denials of certiorari counterproductive, see *Singleton v. Commissioner of Internal Revenue*, 439 U. S. 940, 942-946 (opinion of STEVENS, J.), in the context of the present case it may be appropriate to suggest that the Court may misuse its scarce resources not only by occasionally denying certiorari in cases deserving plenary consideration, but also by granting certiorari without adequate justification.¹ As long as the Court creates unnecessary work for it-

¹Of course, these two problems are not wholly independent of one another. In light of the ever-increasing number of petitions for certiorari and the severe practical constraints on our ability freely to grant certiorari, it is certainly safe to assume that whenever we grant certiorari in a case not deserving plenary review, we increase the likelihood that certiorari will be denied in other, more deserving, cases.