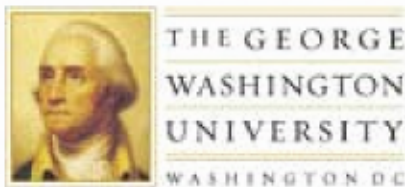


# The Burger Court Opinion Writing Database

## *Monroe v. Standard Oil Co.*

452 U.S. 549 (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

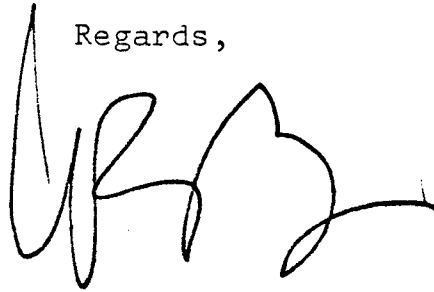
March 9, 1981

Re: 80-298 - Monroe v. Standard Oil Co.

MEMORANDUM TO: Justice Brennan  
Justice Blackmun  
Justice Powell

I will write a dissent in this case.

Regards,



*Of course this precludes  
none!*

*Brennan*

✓

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

CHAMBERS OF  
THE CHIEF JUSTICE

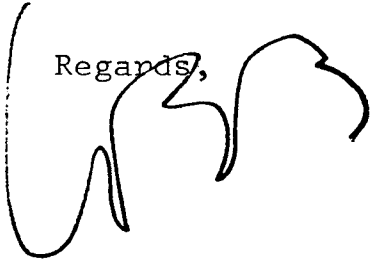
March 25, 1981

Re: No. 80-298 - Monroe v. Standard Oil Co.

Dear Potter:

My dissent is "in the works" and will be  
along soon.

Regards,



Justice Stewart

Copies to the Conference

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

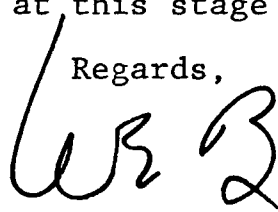
CHAMBERS OF  
THE CHIEF JUSTICE

May 26, 1981

RE: 80-298 Monroe v. Standard Oil Company

MEMORANDUM TO THE CONFERENCE:

Dissent in the above enclosed in typescript --  
not necessarily "final" but it will at least give others  
the "direction" as is needed at this stage of the Term.

Regards,  


✓  
 To: Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: The Chief Justice

Circulated: MAY 27 1981

Recirculated: \_\_\_\_\_

No. 80-298 -- Monroe v. The Standard Oil Co.

CHIEF JUSTICE BURGER, dissenting.

The Court today unduly restricts the employment protections accorded ready reservists and national guardsmen by Congress. In my view, the Court's decision is based upon an erroneous interpretation of 38 U.S.C. § 2021(b)(3) and, in effect, allows employees to be penalized for their service in the military contrary to congressional intent. Thus, I respectfully dissent.

I

A

As in any case involving statutory construction, "our starting point must be the language employed by Congress." Reiter v. Sonotone Corp., 442 U.S. 330, 337 (1979). Title 38 U.S.C. § 2021(a) requires that a veteran returning to civilian employment after military duty be restored to the position he previously held or to "a position of like seniority, status, and pay." In addition, 38 U.S.C. § 2021(b)(1) provides that the veteran's reinstatement be "without loss of seniority" and that he "shall not be discharged from such position without cause within one year after such restoration or reemployment."

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

CHAMBERS OF  
THE CHIEF JUSTICE

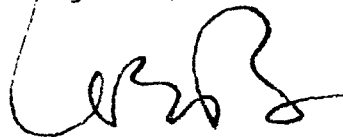
June 4, 1981

RE: 80-298 - Monroe v. The Standard Oil Co.

MEMORANDUM TO THE CONFERENCE:

I intend to make a few changes in my dissent in this case, so the opinion will not be ready for announcement on Monday.

Regards,



cc: Mr. Cornio

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

CHANGES AS MARKED: 1, 9

From: The Chief Justice

1st PRINTED DRAFT

Circulated: \_\_\_\_\_

SUPREME COURT OF THE UNITED STATES

Recirculated: JUN 15 1981

No. 80-298

Roger D. Monroe, Petitioner, | On Writ of Certiorari to the  
 v. | United States Court of Ap-  
 The Standard Oil Company. | peals for the Sixth Circuit.

[June —, 1981]

CHIEF JUSTICE BURGER, with whom JUSTICE BRENNAN,  
 JUSTICE BLACKMUN, and JUSTICE POWELL join, dissenting.

The Court today unduly restricts the employment protections accorded ready reservists and national guardsmen by Congress. In my view, the Court's decision is based upon an erroneous interpretation of 38 U. S. C. § 2021 (b) (3) and, in effect, allows employees to be penalized for their service in the military contrary to congressional intent. Thus, I respectfully dissent.

I

A

As in any case involving statutory construction, "our starting point must be the language employed by Congress." *Reiter v. Sonotone Corp.*, 442 U. S. 330, 337 (1979). Title 38 U. S. C. § 2021 (a) requires that a veteran returning to civilian employment after military duty be restored to the position he previously held or to "a position of like seniority, status, and pay." In addition, 38 U. S. C. § 2021 (b) (1) provides that the veteran's reinstatement must be "without loss of seniority" and that he "shall not be discharged from such position without cause within one year after such restoration or reemployment." See *Oakley v. Louisville & Nashville R. Co.*, 338 U. S. 278, 284-285 (1949). Similar safeguards are granted in 38 U. S. C. § 2024 (c) to members of "a Reserve component of the Armed Forces" who have military obligations lasting more than three months. As to reservists whose

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 16, 1981

Re: No. 80-298 -- Monroe v. The Standard Oil Co.

MEMORANDUM TO THE CONFERENCE:

I propose to substitute the following for the first paragraph of my dissent:

"The Court today unduly restricts the employment protections Congress enacted for ready reservists and national guardsmen. In my view, the Court's decision is based upon an erroneous interpretation of 38 U.S.C. § 2021(b)(3) and, in effect, allows employees to be penalized for their service in the military contrary to congressional intent. In addition, the Court seemingly ignores the reality that the strength of our reserves has a significant bearing on whether we can avoid returning to a general draft."

Regards,

WRB

This new sentence seems out of place, especially since the dissent fails to show why it is true. Moreover, such a consideration is irrelevant to this question of statutory construction.

PS



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

CHAMBERS OF  
THE CHIEF JUSTICE

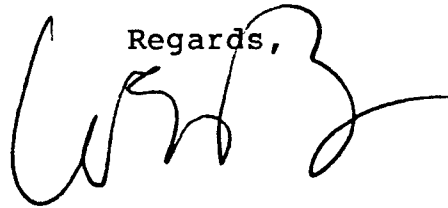
June 16, 1981

Re: No. 80-298 -- Monroe v. The Standard Oil Co.

MEMORANDUM TO THE CONFERENCE:

The final revision of my dissent in this case is to retain the first paragraph as it was with the exception of striking the last sentence. On page 10, I will add the phrase "by way of mandatory military service" at the end of the first full sentence.

Regards,



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

CHAMBERS OF  
THE CHIEF JUSTICE

June 16, 1981

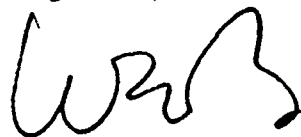
Re: No. 80-298 -- Monroe v. The Standard Oil Co.

MEMORANDUM TO THE CONFERENCE:

I propose to substitute the following for the first paragraph of my dissent:

"The Court today unduly restricts the employment protections Congress enacted for ready reservists and national guardsmen. In my view, the Court's decision is based upon an erroneous interpretation of 38 U.S.C. § 2021(b)(3) and, in effect, allows employees to be penalized for their service in the military contrary to congressional intent. In addition, the Court seemingly ignores the reality that the strength of our reserves has a significant bearing on whether we can avoid returning to a general draft."

Regards,



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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 25, 1981

RE: No. 80-298 Monroe v. Standard Oil Co.

Dear Potter:

I shall await the dissent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill", is written below the word "Sincerely,".

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

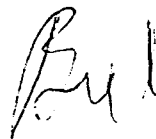
June 2, 1981

RE: No. 80-298 Monroe v. Standard Oil Company

Dear Chief:

Please join me in your dissent.

Sincerely,

A handwritten signature in cursive script, appearing to be the name "Bill".

The Chief Justice  
cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

March 6, 1981

Re: No. 80-298, MONROE v. STANDARD OIL CO.

Dear Chief,

I will try my hand at preparing a Court  
opinion in this case.

Sincerely yours,

*P.S.*

The Chief Justice

Copies to the Conference

204 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 From: Mr. Justice Stewart  
25 MAR 1981

SUPREME COURT OF THE UNITED STATES

No. 80-298

Roger D. Monroe, Petitioner, | On Writ of Certiorari to the  
v. | United States Court of Ap-  
The Standard Oil Company. | peals for the Sixth Circuit.

[March —, 1981]

JUSTICE STEWART delivered the opinion of the Court.

The Court of Appeals for the Sixth Circuit concluded that 38 U. S. C. § 2021 (b)(3) of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 does not require an employer to provide preferential scheduling of workhours for an employee who must be absent from work to fulfill his military reserve obligations. *Standard Oil Co. v. Monroe*, 613 F. 2d 641. We granted certiorari to consider the petitioner's contention that an employer has a statutory duty to make work scheduling accommodations for reservist-employees not made for other employees, whenever such accommodations reasonably can be accomplished. — U. S. —.<sup>1</sup>

I

In 1975 and 1976, the years pertinent to this litigation, the petitioner was a full-time employee in the respondent's continuous process refinery in Lima, Ohio. The refinery was operated 24 hours a day, 7 days a week, 365 days a year. To insure that the burdens of weekend and shift work would be equitably divided among its employees over the course of a year, the respondent scheduled its employees to work five eight-hour days in a row weekly, but in a different five-day sequence each week. Under the respondent's collective agree-

<sup>1</sup> There is an apparent intercircuit conflict on this issue. Compare the case under review with *West v. Safeway Stores, Inc.*, 609 F. 2d 147 (CA5).

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 26, 1981

Re: 80-298 - Monroe v.  
The Standard Oil Company

Dear Potter,

Please join me.

Sincerely yours,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 2, 1981

Re: No. 80-298 - Monroe v. Standard Oil Co.

Dear Potter:

Please join me.

Sincerely,



T.M.

Justice Stewart

cc: The Conference



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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 26, 1981

Re: No. 80-298 - Monroe v. Standard Oil Company

Dear Potter:

Here again, I shall await the dissent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Mr. Justice Stewart

cc: The Conference

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

May 29, 1981

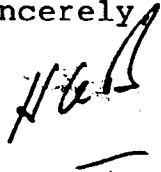
CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

Re: No. 80-298 - Monroe v. Standard Oil Company

Dear Chief:

Please join me in your dissent.

Sincerely



The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 26, 1981

80-298 Monroe v. Standard Oil Company

Dear Potter:

As I voted with the Chief Justice in this case, I  
will await his dissent.

Sincerely,

A handwritten signature in cursive script, appearing to read "L. Powell".

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 28, 1981

80-298 Monroe v. The Standard Oil Co.

Dear Chief:

Please join me in your dissent.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

June 16, 1981

80-298 Monroe v. Standard Oil Co.

Dear Chief:

This refers to your memo of this date, proposing substitute language.

I would omit the last sentence in which you refer to a "significant bearing on whether we can avoid returning to a general draft".

I enclose an article in the Post this morning by Max Taylor which expresses my very strongly held view. The volunteer armed forces have been little short of a total disaster. I can document this if you wish. I therefore do not wish to associate my name with any statement that can be read as negative toward the draft.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 26, 1981

Re: No. 80-298 Monroe v. Standard Oil Co.

Dear Potter:

Please join me in your opinion of the Court.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 26, 1981

Re: 80-298 - Monroe v. Standard Oil Co.

Dear Potter:

Please join me.

Respectfully,



Justice Stewart

Copies to the Conference