

The Burger Court Opinion Writing Database

Gulf Oil Co. v. Bernard

452 U.S. 89 (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

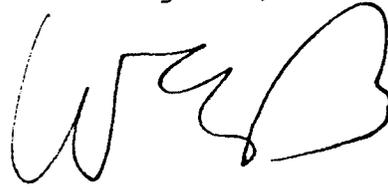
May 29, 1981

RE: 80-441 - Gulf Oil Co. v. Bernard

Dear Lewis:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'WJP', written in a cursive style.

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 27, 1981

RE: No. 80-441 Gulf Oil v. Bernard

Dear Lewis:

I agree.

Sincerely,

Bill

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 26, 1981

Re: No. 80-441, Gulf Oil Co. v. Bernard

Dear Lewis,

I am glad to join your opinion
for the Court.

Sincerely yours,

P.S.
/

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 28, 1981

Re: 80-441 - Gulf Oil Company v. Bernard

Dear Lewis,

Please join me.

Sincerely yours,



Justice Powell

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 27, 1981

Re: No. 80-441 - Gulf Oil v. Bernard

Dear Lewis:

Please join me.

Sincerely,

JM.

T.M.

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 27, 1981

Re: No. 80-441 - Gulf Oil Co. v. Bernard

Dear Lewis:

Please join me in your recirculation of May 26.

Sincerely,



Mr. Justice Powell

cc: The Conference

05/20/81

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

Circulated: MAY 20 1981

Recirculated: _____

No. 80-441, Gulf Oil Co. et al. v. Bernard

JUSTICE POWELL delivered the opinion of the Court.

This is a class action involving allegations of racial discrimination in employment on the part of petitioners, the Gulf Oil Company (Gulf) and one of the unions at its Port Arthur, Texas refinery. We granted a writ of certiorari to determine the scope of a District Court's authority to limit communications from named plaintiffs and their counsel to prospective class members, during the pendency of a class action. We hold that in the circumstances of this case the District Court exceeded its authority under the Federal Rules of Civil Procedure.

I

In April 1976, Gulf and the Equal Employment Opportunity Commission (EEOC) entered into a conciliation agreement involving alleged discrimination against black

0\$0441G. 1st proof, 5/20, wmk

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

1st DRAFT

Circulated: MAY 21 1981

SUPREME COURT OF THE UNITED STATES

Recirculated: _____

No. 80-441

GULF OIL COMPANY, ET AL., PETITIONERS, *v.*
 WESLEY P. BERNARD, ET AL.

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

[May —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

This is a class action involving allegations of racial discrimination in employment on the part of petitioners, the Gulf Oil Company (Gulf) and one of the unions at its Port Arthur, Tex. refinery. We granted a writ of certiorari to determine the scope of a District Court's authority to limit communications from named plaintiffs and their counsel to prospective class members, during the pendency of a class action. We hold that in the circumstances of this case the District Court exceeded its authority under the Federal Rules of Civil Procedure.

I

In April 1976, Gulf and the Equal Employment Opportunity Commission (EEOC) entered into a conciliation agreement involving alleged discrimination against black and female employees at the Port Arthur refinery. Gulf agreed to cease various allegedly discriminatory practices, to undertake an affirmative action program covering hiring and promotion, and to offer back-pay to alleged victims of discrimination based on a set formula. Gulf began to send notices to the 643 employees eligible for back-pay, stating the exact amount available to each person in return for execution within 30 days of a full release of all discrimination claims

May 26, 1981

80-441 Gulf Oil v. Bernard

Dear John:

I am glad to meet your first suggestion with respect to Ashwander.

Also, I think the following language meets the substance of your second suggestion:

"For example, an order requiring parties to file copies of non-privileged communications to class members with the Court may be appropriate in some circumstances."

There is no question about the fact that class actions are susceptible to substantial abuse, often primarily for the benefit of counsel themselves. District Courts have a great deal of difficulty in exercising any effective control over these abuses. Absent a prior restraint, I see no reason why counsel should not be required to file non-privileged communications with the Court.

If the foregoing meets your suggestions, I will adopt them and recirculate.

Sincerely,

Mr. Justice Stevens

lfp/ss

9, 10, 12,

LJP
M
W

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

0\$0441G, 1st proof, 5/20, wmk cx 5/26 spw

From: Mr. Justice Powell

Circulated: ~~MAY 26 1981~~

Recirculated: MAY 26 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-441

GULF OIL COMPANY, ET AL., PETITIONERS, v.
WESLEY P. BERNARD, ET AL.

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

[May —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

This is a class action involving allegations of racial discrimination in employment on the part of petitioners, the Gulf Oil Company (Gulf) and one of the unions at its Port Arthur, Tex. refinery. We granted a writ of certiorari to determine the scope of a District Court's authority to limit communications from named plaintiffs and their counsel to prospective class members, during the pendency of a class action. We hold that in the circumstances of this case the District Court exceeded its authority under the Federal Rules of Civil Procedure.

I.

In April 1976, Gulf and the Equal Employment Opportunity Commission (EEOC) entered into a conciliation agreement involving alleged discrimination against black and female employees at the Port Arthur refinery. Gulf agreed to cease various allegedly discriminatory practices, to undertake an affirmative action program covering hiring and promotion, and to offer back-pay to alleged victims of discrimination based on a set formula. Gulf began to send notices to the 643 employees eligible for back-pay, stating the exact amount available to each person in return for execution within 30 days of a full release of all discrimination claims

May 29, 1981

80-441 Gulf Oil Co. v. Bernard

Dear Chief:

At Conference you indicated a tentative disposition to join my opinion in this case.

The case is now ready to bring down Monday subject to your vote.

Sincerely,

The Chief Justice

lfp/ss

Stylistic Changes Throughout.

For the Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stevens
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Black
 Mr. Justice Kennedy
 Mr. Justice Souter

5-29-81

Mr. Justice Powell

3rd DRAFT

Revised:

SUPREME COURT OF THE UNITED STATES

MAY 29 1981

No. 80-441

Gulf Oil Company et al., Petitioners, v. Wesley P. Bernard et al.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Fifth Circuit.
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[June —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

This is a class action involving allegations of racial discrimination in employment on the part of petitioners, the Gulf Oil Company (Gulf) and one of the unions at its Port Arthur, Tex. refinery. We granted a writ of certiorari to determine the scope of a District Court's authority to limit communications from named plaintiffs and their counsel to prospective class members, during the pendency of a class action. We hold that in the circumstances of this case the District Court exceeded its authority under the Federal Rules of Civil Procedure.

I

In April 1976, Gulf and the Equal Employment Opportunity Commission (EEOC) entered into a conciliation agreement involving alleged discrimination against black and female employees at the Port Arthur refinery. Gulf agreed to cease various allegedly discriminatory practices, to undertake an affirmative action program covering hiring and promotion, and to offer backpay to alleged victims of discrimination based on a set formula. Gulf began to send notices to the 643 employees eligible for backpay, stating the exact amount available to each person in return for execution

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

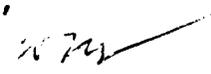
May 22, 1981

Re: No. 80-441 Gulf Oil Co. v. Bernard

Dear Lewis:

Please join me. I would have no objection to your adopting the first suggestion contained in John's letter to you of May 21st, since I believe it is a correct statement of the law. On the other hand, I would prefer to see your n. 20 left as it now appears in your draft circulated May 21st.

Sincerely,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 21, 1981

Re: 80-441 - Gulf Oil v. Bernard

Dear Lewis:

With two minor suggestions, I am prepared to join your opinion.

(1) On pages 14-15, your note that "prior to reaching any constitutional questions, we must consider" It seems to me that you should also say that it was error for the Court of Appeals not to address the construction issue first. In other words, I believe we should remind the Circuit Court that the Ashwander rule applies to all federal courts not just to this Court.

(2) In note 20, you seem to be holding that an order requiring parties to file all copies of communications to the class with the Court would be proper. You may be correct but I must confess that the more I think about the problem the more doubts I have. If you would prefer not to omit the note entirely, perhaps you could qualify it to read something like this:

"In some circumstances, for example, an order requiring parties to file copies of certain nonprivileged communications to class members with the Court might be appropriate."

Respectfully,



Justice Powell
Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 26, 1981

Re: 80-441 - Gulf Oil v. Bernard .

Dear Lewis:

Please join me.

Respectfully,



Justice Powell

Copies to the Conference