

# The Burger Court Opinion Writing Database

## *Maryland v. Louisiana*

451 U.S. 725 (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 22, 1981

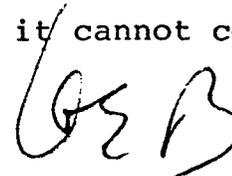
RE: No. 83 Original - State of Maryland v.  
v. State of Louisiana

MEMORANDUM TO THE CONFERENCE:

I am joining Byron but adding:

"There is much validity in Justice Rehnquist's dissenting opinion, and it should keep us alert to any effort to expand the use of our original jurisdiction. However, I am satisfied that the Court's resolution of this case is sound, and I, therefore, join the opinion."

There is no reason I know of why it cannot come down Tuesday.



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 22 1981

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83, Orig.

State of Maryland et al.,  
Plaintiffs,  
v.  
State of Louisiana. } On Bill of Complaint,

[May —, 1981]

CHIEF JUSTICE BURGER, concurring.

There is much validity in JUSTICE REHNQUIST's dissenting opinion, and it should keep us alert to any effort to expand the use of our original jurisdiction. However, I am satisfied that the Court's resolution of this case is sound, and I therefore join the opinion.

*l* Court's *l*

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 4, 1981

RE: No. 83 Orig. Maryland v. Louisiana

Dear Byron:

I agree.

Sincerely,

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

Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 9, 1981

RE: No. 83 Orig. Maryland v. Louisiana

Dear Byron:

Your proposal for the decree is fine with me.

Sincerely,

*Bill*

Justice White

cc: The Conference

*Same for me*  
*[Signature]*

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 1, 1981

Re: No. 83 Original, Maryland v. Louisiana

Dear Byron,

I am glad to join your opinion for the  
Court in this case.

Sincerely yours,

PS  
✓

Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 9, 1981

Re: No. 83 Original, Maryland v. Louisiana

Dear Byron,

The proposed decree, as amended by you,  
is fine with me.

Sincerely yours,

P.S.

Justice White

Copies to the Conference

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

From: Mr. Justice White

Circulated: 30 MAR 1981

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 88, Orig.

State of Maryland et al.,  
Plaintiffs,  
v.  
State of Louisiana. } On Bill of Complaint.

[April —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

In this original action, several States, joined by the United States and a number of pipeline companies, challenge the constitutionality of Louisiana's "First Use Tax" imposed on certain uses of natural gas brought into Louisiana, principally from the outer continental shelf (OCS), as violative of the Supremacy Clause and the Commerce Clause of the United States Constitution.

I

The lands beneath the Gulf of Mexico have large reserves of oil and natural gas. Initially, these reserves could not be developed due to technological difficulties associated with offshore drilling. In 1938, the first drilling rig was constructed off the coast of Louisiana, and with the advent of new technologies, offshore drilling has become commonplace.<sup>1</sup> Ex-

<sup>1</sup>The earliest offshore oil production occurred in 1896 off the coast of California. The early ventures were extensions of onshore drilling projects. Mineral Resource Management of the Outer Continental Shelf, Geological Survey Circular 720, U. S. Dept. of Interior, 2 (1975). The first offshore well drilled from a mobile platform, the dominant technology used today, located out of sight from land was drilled 12 miles from the Louisiana coast in 1947. *Ibid.* In its proffer of evidence, the State of Louisiana estimated that there exists over 13,000 wells operating in OCS lands in the Gulf of Mexico. See Proffer of Proof of State of Louisiana

To: The Chief Justice  
Mr. Justice

STYLISTIC CHANGES THROUGHOUT.  
SEE 21 f 33

From: Mr.

Circulated

Recirculated

5-22-81

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83, Orig.

State of Maryland et al.,  
Plaintiffs,  
v.  
State of Louisiana.

On Bill of Complaint,

[May —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

In this original action, several States, joined by the United States and a number of pipeline companies, challenge the constitutionality of Louisiana's "First Use Tax" imposed on certain uses of natural gas brought into Louisiana, principally from the outer continental shelf (OCS), as violative of the Supremacy Clause and the Commerce Clause of the United States Constitution.

I

The lands beneath the Gulf of Mexico have large reserves of oil and natural gas. Initially, these reserves could not be developed due to technological difficulties associated with offshore drilling. In 1938, the first drilling rig was constructed off the coast of Louisiana, and with the advent of new technologies, offshore drilling has become commonplace.<sup>1</sup> Ex-

<sup>1</sup>The earliest offshore oil production occurred in 1896 off the coast of California. The early ventures were extensions of onshore drilling projects. Mineral Resource Management of the Outer Continental Shelf, Geological Survey Circular 720, U. S. Dept. of Interior, 2 (1975). The first offshore well drilled from a mobile platform, the dominant technology used today, located out of sight from land was drilled 12 miles from the Louisiana coast in 1947. *Ibid.* In its proffer of evidence, the State of Louisiana estimated that there exist over 13,000 wells operating in OCS lands in the Gulf of Mexico. See Proffer of Proof of State of Louisiana

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 9, 1981

Re: 83 Original - Maryland v. Louisiana

Dear Harry,

As you have suggested, it would be better to rearrange the paragraphs of the proposed decree, and I have done so in the attached.

As you know, the Solicitor General and the plaintiff States suggested the provision permitting Louisiana to hold securities until maturity. The pipeline companies chose not to submit any suggested decree. Hence, I am content to leave the decree in its present proposed form.

It would not surprise me if further proceedings prove necessary to implement this decree, in which event it may be that there will be further need for the services of a special master. I would thus not discharge John Davis.

Sincerely yours,



Justice Blackmun

cc: Conference  
Mr. Stevas

cpm

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

From: Mr. Justice White

Circulated: 6-9-81

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

No. 83 Original - State of Maryland v. State of Louisiana

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DECREE

This cause having come on to be heard on the exceptions to the Reports of the Special Master dated May 14, 1980, and September 15, 1980, and having been argued by counsel and this Court having stated its conclusions in its opinion announced May 26, 1981, 451 U.S.\_\_\_\_ (1981), and having considered the positions of the respective parties as to the terms of this decree, it is ordered, adjudged, and decreed as follows:

1. The exceptions of the defendant State of Louisiana to the Report of the Special Master dated May 14, 1980, are overruled and accordingly:

(a) the motions of the State of New Jersey, the United States and the Federal Energy Regulatory Commission, and Columbia

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

From: Mr. Justice White

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

Recirculated: 6-11-81

*Printed*  
 1st DRAFT

## SUPREME COURT OF THE UNITED STATES

STATE OF MARYLAND, ET AL. v. STATE OF  
 LOUISIANA

ON BILL OF COMPLAINT

No. 83, Orig. Decided June —, 1981

### DECREE

This cause having come on to be heard on the exceptions to the Reports of the Special Master dated May 14, 1980, and September 15, 1980, and having been argued by counsel and this Court having stated its conclusions in its opinion announced May 26, 1981, 451 U. S. — (1981), and having considered the positions of the respective parties as to the terms of this decree, it is ordered, adjudged, and decreed as follows:

1. The exceptions of the defendant State of Louisiana to the Report of the Special Master dated May 14, 1980, are overruled and accordingly:

(a) the motion of the State of New Jersey, the United States and the Federal Energy Regulatory Commission, and Columbia Gas Transmission Corporation, et al., for leave to intervene as party plaintiffs are granted; and

(b) the motion of Associated Gas Distributors for leave to file a brief, as *amicus curiae*, is granted.

2. The exceptions of the defendant State of Louisiana to the Report of the Special Master dated September 15, 1980, are overruled, the plaintiff's exceptions are sustained to the extent indicated in this Court's opinion, and accordingly:

(a) the motion of the defendant State of Louisiana to dismiss the bill of complaint is denied; and

(b) the motion of the plaintiff States for judgment on the pleadings is granted in part.

3. The motion of the plaintiff States for entry of decree and the motion of the Solicitor General for entry of decree are granted. The motion of defendant State of Louisiana for entry of decree is denied.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 4, 1981

Re: No. 83, Original-Maryland v. Louisiana

Dear Byron:

Please join me.

Sincerely,



T.M.

Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 10, 1981

Re: No. 83 Orig. - Maryland v. Louisiana

Dear Byron:

Your proposal for the decree is fine with me.

Sincerely,

*JM.*

T.M.

Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 9, 1981

Re: No. 83 Original - Maryland, et. al. v. Louisiana

Dear Byron:

Please join me.

Sincerely,

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

Mr. Justice White  
cc: The Conference

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

June 8, 1981

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

Re: No. 83 Orig. - Maryland v. Louisiana

Dear Byron:

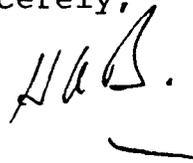
I have given a preliminary reading to the proposed decree in this case. Because you were the author of the opinion, I direct these comments to you for your reactions.

1. The typographical errors in the first and fourth lines of the first paragraph should be corrected.

2. Would not paragraphs 4 and 5 be better placed if they became paragraphs 1 and 2?

3. Paragraph 3(b) seems to say that Louisiana is entitled to hold any invested securities until each of them matures. I mildly question why Louisiana should have this privilege. Should the investments as well as the proceeds thereof go over to the prevailing parties at once? The latter may well not choose to hold them to maturity but to sell them and obtain the principal proceeds forthwith.

Sincerely,



Mr. Justice White

cc: The Conference  
Mr. Francis J. Lorson

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 9, 1981

Re: No. 83 Orig. - Maryland v. Louisiana

Dear Byron:

Your proposal for the decree has my approval.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 31, 1981

83 Orig. Maryland v. Louisiana

Dear Byron:

Please show at the end of the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 1, 1981

Re: 83 Orig. Maryland v. Louisiana

Dear Byron:

In due course I will circulate a dissent on the standing issue in this case.

Sincerely,



Mr. Justice White

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 Stevens

From: Mr. Justice Rehnquist

MAY 19 1981

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

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

83, Original Maryland v. Louisiana

JUSTICE REHNQUIST, dissenting.

There is no question that this controversy falls within the literal terms of the constitutional and statutory grant of original jurisdiction to this Court. U.S. Const. Art. III, § 2, cl. 2; 28 U.S.C. § 1251(a) (Supp. III 1979). As the Court stated in Illinois v. Milwaukee, 406 U.S. 91, 93 (1972), however, "[w]e construe 28 U.S.C. § 1251(a)(1), as we do Art. III, § 2, cl. 2, to honor our original jurisdiction but to make it obligatory only in appropriate cases." Because of the nature of the interests which the plaintiff States seek to vindicate in this original action, and because of the existence of alternate forums in which these interests can be vindicated, I do not consider this an "appropriate case" for the exercise of original jurisdiction.

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

From: Mr. Justice Rehnquist

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

Recirculated: **MAY 21 1981**

1st PRINTED DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83, Orig.

State of Maryland et al., Plaintiffs, v. State of Louisiana.	}	On Bill of Complaint.
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[May —, 1981]

JUSTICE REHNQUIST, dissenting.

There is no question that this controversy falls within the literal terms of the constitutional and statutory grant of original jurisdiction to this Court. U. S. Const., Art. III, § 2, cl. 2; 28 U. S. C. § 1251 (a) (Supp. III 1979). As the Court stated in *Illinois v. Milwaukee*, 406 U. S. 91, 93 (1972), however, “[w]e construe 28 U. S. C. § 1251 (a)(1), as we do Art. III, § 2, cl. 2, to honor our original jurisdiction but to make it obligatory only in appropriate cases.” Because of the nature of the interests which the plaintiff States seek to vindicate in this original action, and because of the existence of alternate forums in which these interests can be vindicated, I do not consider this an “appropriate case” for the exercise of original jurisdiction. The plaintiff States have not, in my view, established the “strictest necessity” required for invoking this Court’s original jurisdiction, *Ohio v. Wyandotte Chemicals Corp.*, 401 U. S. 493, 505 (1971), and therefore I would grant defendant Louisiana’s motion to dismiss the complaint.

I

It has been a consistent and dominant theme in decisions of this Court that our original jurisdiction should be exercised with considerable restraint and only after searching inquiry into the necessity for doing so. As we noted in *Illinois v. Milwaukee*, “[i]t has long been this Court’s philoso-

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 9, 1981

Re: No. 83 Orig. Maryland v. Louisiana

Dear Byron:

Your proposal for the decree has my approval.

Sincerely,



Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 31, 1981

Re: 83 Original - Maryland v. Louisiana

Dear Byron:

Please join me.

Respectfully,

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

Justice White

Copies to the Conference