

The Burger Court Opinion Writing Database

Rice v. Norman Williams Co.

458 U.S. 654 (1982)

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

November 13, 1981

RE: (80-1012 - Rice v. Norman Williams Co.
(80-1030 - Bohemian Distributing Co. v.
(Norman Williams Co.
(80-1052 - Wine & Spirits Wholesalers of California
(v. Norman Williams Co.

Dear Bill:

I join your November 4 per curiam.

Regards,

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

May 4, 1982

Re: No. 80-1012, 1030, 1052 - Rice, et al. v.
Norman Williams Co.

Dear Thurgood:

I "dropped the ball" on assigning this case to you rather than to Bill Rehnquist who had done the three drafts of a six page Per Curiam reversing the California Court of Appeals. In the "final week syndrome" I missed this.

I now assign to Bill Rehnquist since he has it all written.

Regards,



Justice Marshall

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

CHAMBERS OF
THE CHIEF JUSTICE

June 7, 1982

Re: (80-1012 - Rice v. Norman Williams
(
(80-1030 - Bohemian District Co. v. Norman Williams
(
(80-1052 - Wine & Spirits Wholesalers v. Norman Will

Dear Bill:

I join.

Regards,



Justice Rehnquist

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 23, 1982

RE: Nos. 80-1012, 1030 & 1052 Rice, et al. v. Williams

Dear Bill:

I agree.

Sincerely,



Justice Rehnquist

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 16, 1981

Re: No. 80-1012 -- Rice v.
Norman Williams Company,
et al., etc.

Dear Bill,

I would prefer to deny this case.
My fallback vote is to grant.

Sincerely yours,



Justice Rehnquist

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 23, 1982

Re: 80-1012 - Rice v. Norman Williams Co.
80-1030 - Bohemian Distributing Co.
v. Norman Williams Co.
80-1052 - Wine & Spirits Wholesalers of
Calif. v. Norman Williams Co.

Dear John,

Please add my name to your concurring
opinion.

Sincerely yours,



Justice Stevens

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cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 23, 1982

Re: Nos. 80-1012, 80-1030 and 80-1052 - Rice v.
Norman Williams Co.; Bohemian Distributing
Co. v. Norman Williams Co.; Wine & Spirits
Wholesalers of Calif. v. Norman Williams Co.

Dear Bill:

Please join me.

Sincerely,

JM.
T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 2, 1981

Re: No. 80-1012 - Rice v. Norman Williams Company
No. 80-1030 - Bohemian Distributing Company
v. Norman Williams Company
No. 80-1052 - Wine & Spirits Wholesalers of
California v. Norman Williams Co.

Dear Bill:

In these cases, I have concluded merely to vote to grant certiorari. If your Per Curiam is adopted by the Court, would you therefore please add the following at the end.

"Justice Blackmun would grant certiorari and hear argument in these cases."

Sincerely,



Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

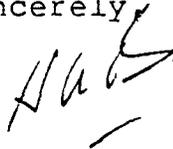
June 24, 1982

Re: No. 80-1012) Rice v. Norman Williams Company
No. 80-1030) Bohemian Distributing Company v.
Norman Williams Company
No. 80-1052) Wine & Spirits Wholesalers of Ca.
v. Norman Williams Company

Dear Bill:

Please join me. As Lewis, I would not object to your
omitting Part III.

Sincerely,



Justice Rehnquist

cc: The Conference

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

✓
CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 3, 1981

80-1012 Rice v. Norman Williams Co.
80-1030 Bohemian Distributing Co. v. Norman Williams Co.
80-1052 Wine and Spirits Wholesalers of California v.
Norman Williams Co.

Dear Bill:

Please join me in your per curiam opinion.

Sincerely,

Lewis

Justice Rehnquist

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LFP/vde

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 20, 1982

80-1012, 80-1030 and 80-1056 Rice v. Williams

Dear Bill:

Please join me.

I doubt that Part III is necessary, as the questions addressed there were not passed upon below.

I would not object to your omitting Part III.

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

OCT 23 1981

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0\$1012H 28-OCT-81 DRB

1st DRAFT

SUPREME COURT OF THE UNITED STATES

BAXTER RICE, DIRECTOR, DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL OF CALIFORNIA

80-1012

v.

NORMAN WILLIAMS, COMPANY, ET AL.

BOHEMIAN DISTRIBUTING COMPANY

80-1030

v.

NORMAN WILLIAMS COMPANY ET AL.

WINE & SPIRITS WHOLESALERS OF CALIFORNIA

80-1052

v.

NORMAN WILLIAMS COMPANY ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT

Nos. 80-1012, 80-1030 AND 80-1052. Decided October —, 1981

PER CURIAM.

Two Terms ago, in *California Liquor Dealers v. Midcal Aluminum*, 445 U. S. 97 (1980), we upheld a decision of the California Court of Appeal striking down § 24866 (b) of the California Business and Professions Code. We agreed with the Court of Appeal that § 24866 (b) was not shielded from the Sherman Act either by the 'state action' doctrine of *Parker v. Brown*, 317 U. S. 341 (1943), or by § 2 of the Twenty-First Amendment. That statute subdivided the State of California into three trading areas for administration of the wine pricing program, and provided that if a wine producer had not set prices through a fair trade contract, wholesalers must post a price schedule for that producer's brands. Neither our decision, nor that of the Court of Appeal, questioned the fact that the state statute facially conflicted with the Sherman Act.

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1-6

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

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0\$1012H, 10-31-81, rev. Wilma

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

BAXTER RICE, DIRECTOR, DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL OF CALIFORNIA
80-1012 v.
NORMAN WILLIAMS COMPANY ET AL.

BOHEMIAN DISTRIBUTING COMPANY
80-1030 v.
NORMAN WILLIAMS COMPANY ET AL.

WINE & SPIRITS WHOLESALERS OF CALIFORNIA
80-1052 v.
NORMAN WILLIAMS COMPANY ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT

Nos. 80-1012, 80-1030 AND 80-1052. Decided November —, 1981

PER CURIAM.

Two Terms ago, in *California Liquor Dealers Association v. Midcal Aluminum, Inc.*, 445 U. S. 97 (1980), we upheld a decision of the California Court of Appeal striking down §24866 of the California Business and Professions Code. We agreed with the Court of Appeal that §24866 was not shielded from the Sherman Act either by the "state action" doctrine of *Parker v. Brown*, 317 U. S. 341 (1943), or by §2 of the Twenty-First Amendment. That statute required all wine producers, wholesalers, and rectifiers to file fair trade contracts or price schedules with the State, and provided that if a wine producer had not set prices through a fair trade contract, wholesalers must post a price schedule for that producer's brands. Neither our decision, nor that of the Court of Appeal, questioned the fact that the state statute facially conflicted with the Sherman Act.

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Rp 246

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

0\$1012H, rev. 11/2/81 spw

From: Justice Rehnquist

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

BAXTER RICE, DIRECTOR, DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL OF CALIFORNIA
80-1012 v.
NORMAN WILLIAMS COMPANY ET AL.

BOHEMIAN DISTRIBUTING COMPANY
80-1030 v.
NORMAN WILLIAMS COMPANY ET AL.

WINE & SPIRITS WHOLESALERS OF CALIFORNIA
80-1052 v.
NORMAN WILLIAMS COMPANY ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT

Nos. 80-1012, 80-1030 AND 80-1052. Decided November —, 1981

PER CURIAM.

Two Terms ago, in *California Liquor Dealers Association v. Midcal Aluminum, Inc.*, 445 U. S. 97 (1980), we upheld a decision of the California Court of Appeal striking down § 24866 of the California Business and Professions Code. We agreed with the Court of Appeal that § 24866 was not shielded from the Sherman Act either by the "state action" doctrine of *Parker v. Brown*, 317 U. S. 341 (1943), or by § 2 of the Twenty-First Amendment. That statute required all wine producers, wholesalers, and rectifiers to file fair trade contracts or price schedules with the State, and provided that if a wine producer had not set prices through a fair trade contract, wholesalers must post a price schedule for that producer's brands. Neither our decision, nor that of the Court of Appeal, questioned the fact that the state statute facially conflicted with the Sherman Act.

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 80-1012, 80-1030 AND 80-1052

BAXTER RICE, DIRECTOR, DEPARTMENT OF
ALCOHOLIC BEVERAGE CONTROL OF
CALIFORNIA, PETITIONER

80-1012

v.

NORMAN WILLIAMS COMPANY ET AL.

BOHEMIAN DISTRIBUTING COMPANY, PETITIONER

80-1030

v.

NORMAN WILLIAMS COMPANY ET AL.

WINE & SPIRITS WHOLESALERS OF
CALIFORNIA, PETITIONER

80-1052

v.

NORMAN WILLIAMS COMPANY ET AL.

ON WRITS OF CERTIORARI TO THE COURT OF APPEALS OF
CALIFORNIA, THIRD APPELLATE DISTRICT

[May —, 1982]

JUSTICE REHNQUIST delivered the opinion of the Court.

Respondents in these cases obtained from the California Court of Appeal an extraordinary writ prohibiting the California Department of Alcoholic Beverage Control from enforcing an amendment to the State's liquor statutes. That court held that because the conduct contemplated by the amendment was *per se* illegal under the Sherman Act, the statute on its face was invalid pursuant to the Supremacy Clause of the United States Constitution. *Norman Wil-*

p. 6

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 80-1012, 80-1030 AND 80-1052

BAXTER RICE, DIRECTOR, DEPARTMENT OF
ALCOHOLIC BEVERAGE CONTROL OF
CALIFORNIA, PETITIONER

80-1012

v.

NORMAN WILLIAMS COMPANY ET AL.

BOHEMIAN DISTRIBUTING COMPANY, PETITIONER

80-1030

v.

NORMAN WILLIAMS COMPANY ET AL.

WINE & SPIRITS WHOLESALERS OF
CALIFORNIA, PETITIONER

80-1052

v.

NORMAN WILLIAMS COMPANY ET AL.

ON WRITS OF CERTIORARI TO THE COURT OF APPEALS OF
CALIFORNIA, THIRD APPELLATE DISTRICT

[June —, 1982]

JUSTICE REHNQUIST delivered the opinion of the Court.

Respondents in these cases obtained from the California Court of Appeal an extraordinary writ prohibiting the California Department of Alcoholic Beverage Control from enforcing an amendment to the State's liquor statutes. That court held that because the conduct contemplated by the amendment was *per se* illegal under the Sherman Act, the statute on its face was invalid pursuant to the Supremacy Clause of the United States Constitution. *Norman Wil-*

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 3, 1981

Re: 80-1012 - Rice v. Norman Williams Co.;
80-1030 - Bohemian Dist. Co. v. Norman
Williams Co.
80-1052 - Wine & Spirits Wholesalers
v. Norman Williams Co.

Dear Bill:

As presently advised, I am inclined to think that the California statute is invalid. Like Harry, therefore, I am not prepared to join your per curiam. Unlike Harry, however, I am still inclined to deny certiorari.

Respectfully,



Justice Rehnquist

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

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80-1012 - Rice v. Norman Williams Co.
80-1030 - Bohemian Distributing Co. v. Norman Williams Co.
80-1052 - Wine & Spirits Wholesalers of California v.
Norman Williams Co.

JUSTICE STEVENS, concurring in the judgment.

Under the California designation statute, each distiller is empowered to decide whether to regulate its product distribution within California by designating those importers that may sell its product. The statute contemplates a private market decision but provides a nonmarket mechanism for enforcing the decision. Hybrid restraints of this character require analysis that is different from a public regulatory scheme on the one hand, see, e.g., Exxon Corp. v. Governor of Maryland, 437 U.S. 117; Seagram & Sons v. Hostetter, 384 U.S. 35,¹ and a purely private restraint on the other, see, e.g., Continental T.V., Inc. v. GTE Sylvania Inc., 433 U.S. 36; Dr. Miles Medical Co. v. John D. Park & Sons

¹The Court states that Seagram & Sons is "much like" this case. Ante, at 8. Except for the fact that Seagram & Sons also involved a facial challenge against a state statute, the two cases are quite different. The New York statute involved in Seagram & Sons imposed a degree of public regulation of the market; it did not grant liquor distributors a degree of private regulatory power. The restraint on the market was, therefore, not of the hybrid character that distinguishes this case from most antitrust cases.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 25, 1982

Re: 80-1012 - Rice v. Williams

Dear Bill:

I will delete footnote 6 of my opinion in response to your modification of the language quoted therein.

Respectfully,



Justice Rehnquist

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

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Footnote 6 omitted

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SUPREME COURT OF THE UNITED STATES

No. 80-1012

BAXTER RICE, DIRECTOR, DEPARTMENT OF
ALCOHOLIC BEVERAGE CONTROL OF
CALIFORNIA, PETITIONER

80-1012

v.

NORMAN WILLIAMS COMPANY ET AL.

BOHEMIAN DISTRIBUTING COMPANY, PETITIONER

80-1030

v.

NORMAN WILLIAMS COMPANY ET AL.

WINE & SPIRITS WHOLESALERS OF
CALIFORNIA, PETITIONER

80-1052

v.

NORMAN WILLIAMS COMPANY ET AL.

ON WRITS OF CERTIORARI TO THE COURT OF APPEALS OF
CALIFORNIA, THIRD APPELLATE DISTRICT

[June —, 1982]

JUSTICE STEVENS, with whom JUSTICE WHITE joins, con-
curring in the judgment.

Under the California designation statute, each distiller is empowered to decide whether to regulate its product distribution within California by designating those importers that may sell its product. The statute contemplates a private market decision but provides a nonmarket mechanism for enforcing the decision. Hybrid restraints of this character require analysis that is different from a public regulatory

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

November 2, 1981

No. 80-1012 Rice v. Norman Williams Company
No. 80-1030 Bohemian Dist. v. Norman Williams Co.
No. 80-1052 Wine & Spirits Wholesalers of Calif.
v. Norman Williams Company

Dear Bill,

I agree with your draft of a Per Curiam in the
referenced cases.

Sincerely,



Mr. Justice Rehnquist

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 19, 1982

No. 80-1012 Rice v. Norman Williams Co.
No. 80-1030 Bohemian Distributing Co. v.
Norman Williams Co.
No. 80-1052 Wine & Spirits Wholesalers of
California v. Norman Williams Co.

Dear Bill,

Please join me.

Sincerely,



Justice Rehnquist

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