

# The Burger Court Opinion Writing Database

## *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*

458 U.S. 50 (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



May 3, 1982

Re: (81-150 - No. Pipeline Construction Co. v. Marathon Pipe  
( Line Co.  
(  
(81-546 - U.S. v. Marathon Pipe Line Co.

MEMORANDUM TO THE CONFERENCE:

My weekend review of this case leads me to reverse.  
I have asked Bill Brennan to take care of assigning.

Regards,

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

CHAMBERS OF  
THE CHIEF JUSTICE

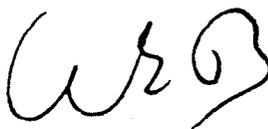
May 4, 1982

Re: (81-150 - Northern Pipeline Construction Company v.  
( Marathon  
(81-546 - United States v. Marathon)

Dear Byron:

Will you take on a dissent in this case? I'd like to  
discuss on your return.

Regards,



Justice White

Copy to Justice Powell

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

CHAMBERS OF  
THE CHIEF JUSTICE

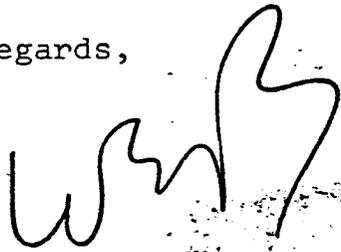
June 17, 1982

Re: No. 81-150 - Northern Pipeline Constr. v. Marathon  
Pipeline  
No. 81-546 - United States v. Marathon Pipeline

Dear Byron:

I join.

Regards,

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

Justice White

Copies to the Conference

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

From: The Chief Justice

Circulated: June 24, 1982

Nos. 81-150 & 81-546 - Northern Pipeline Constr. Co.  
v. Marathon Pipe Line Co.

CHIEF JUSTICE BURGER, dissenting.

I join JUSTICE WHITE's dissenting opinion, but I write separately to emphasize that, notwithstanding the plurality opinion, the Court does not hold today that Congress' broad grant of jurisdiction to the new bankruptcy courts is generally inconsistent with Article III of the Constitution. Rather, the Court's holding is limited to the proposition stated by JUSTICE REHNQUIST in his concurrence in the judgment--that a "traditional" state common-law action, not made subject to a federal rule of decision, and related only peripherally to an adjudication of bankruptcy under federal law, must, absent the consent of the litigants, be heard by an "Article III court" if

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

From: **The Chief Justice**

**JUN 25 1982**

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

1st PRINTED DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 81-150 AND 81-546

NORTHERN PIPELINE CONSTRUCTION CO.,  
APPELLANT

81-150

*v.*

MARATHON PIPE LINE COMPANY AND  
UNITED STATES

UNITED STATES, APPELLANT

81-546

*v.*

MARATHON PIPE LINE CO. ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MINNESOTA

[June —, 1982]

CHIEF JUSTICE BURGER, dissenting.

I join JUSTICE WHITE's dissenting opinion, but I write separately to emphasize that, notwithstanding the plurality opinion, the Court does *not* hold today that Congress' broad grant of jurisdiction to the new bankruptcy courts is generally inconsistent with Article III of the Constitution. Rather, the Court's holding is limited to the proposition stated by JUSTICE REHNQUIST in his concurrence in the judgment—that a "traditional" state common-law action, not made subject to a federal rule of decision, and related only peripherally to an adjudication of bankruptcy under federal law, must, absent the consent of the litigants, be heard by an "Article III court" if it is to be heard by any court or agency of the United States. This limited holding, of course, does not suggest that there is something inherently unconstitu-

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

From: Justice Brennan

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 81-150 AND 81-546

NORTHERN PIPELINE CONSTRUCTION CO.,  
APPELLANT

81-150

v.

MARATHON PIPE LINE COMPANY AND  
UNITED STATES

UNITED STATES, APPELLANT

81-546

v.

MARATHON PIPE LINE CO. ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MINNESOTA

[June —, 1982]

JUSTICE BRENNAN delivered the opinion of the Court.

The question presented is whether the assignment by Congress to bankruptcy judges of the jurisdiction granted in § 241(a) of the Bankruptcy Reform Act of 1978, 28 U. S. C. § 1471 (1976 ed., Supp. III), violates Art. III of the Constitution.

I

A

In 1978, after almost ten years of study and investigation, Congress enacted a comprehensive revision of the bankruptcy laws. The Bankruptcy Reform Act of 1978 (Act)<sup>1</sup>

<sup>1</sup> Pub. L. 95-598, 92 Stat. 2549. The Act became effective October 1, 1979.

Stylistic Changes Throughout  
Substantive Changes - pp:  
10, 15, 22, 24, 27, 30

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

From: Justice Brennan

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

Recirculated: JUN 8 1982

*WJ 5*  
*WJ 5*  
*WJ 5*

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 81-150 AND 81-546

NORTHERN PIPELINE CONSTRUCTION CO.,  
APPELLANT

81-150

v.

MARATHON PIPE LINE COMPANY AND  
UNITED STATES

UNITED STATES, APPELLANT

81-546

v.

MARATHON PIPE LINE CO. ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MINNESOTA

[June —, 1982]

JUSTICE BRENNAN delivered the opinion of the Court.

The question presented is whether the assignment by Congress to bankruptcy judges of the jurisdiction granted in §241(a) of the Bankruptcy Act of 1978, 28 U. S. C. §1471 (1976 ed., Supp. III), violates Art. III of the Constitution.

I

A

In 1978, after almost ten years of study and investigation, Congress enacted a comprehensive revision of the bankruptcy laws. The Bankruptcy Act of 1978 (Act)<sup>1</sup> made significant changes in both the substantive and procedural law

<sup>1</sup>Pub. L. 95-598, 92 Stat. 2549. The Act became effective October 1, 1979.

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Stylistic Changes Throughout  
-Substantive Changes: pp. 13-17, 19,  
20, 24-25, 33, 36  
Footnotes renumbered

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

From: Justice Brennan

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

Recirculated: June 18, 1982

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 81-150 AND 81-546

NORTHERN PIPELINE CONSTRUCTION CO.,  
APPELLANT

81-150

v.

MARATHON PIPE LINE COMPANY AND  
UNITED STATES

UNITED STATES, APPELLANT

81-546

v.

MARATHON PIPE LINE CO. ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MINNESOTA

[June —, 1982]

JUSTICE BRENNAN delivered the opinion of the Court.

The question presented is whether the assignment by Congress to bankruptcy judges of the jurisdiction granted in § 241(a) of the Bankruptcy Act of 1978, 28 U. S. C. § 1471 (1976 ed., Supp. III), violates Art. III of the Constitution.

I

A

In 1978, after almost ten years of study and investigation, Congress enacted a comprehensive revision of the bankruptcy laws. The Bankruptcy Act of 1978 (Act)<sup>1</sup> made significant changes in both the substantive and procedural law

<sup>1</sup>Pub. L. 95-598, 92 Stat. 2549. The Act became effective October 1, 1979.

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 24, 1982

TO THE CONFERENCE:

Nos. 81-150 & 81-546 Northern Pipeline Etc.

In reply to Byron's rapid-fire response to footnote 40, and to The Chief's dissent, I propose to amend footnote 40 to read:

"It is thus clear that, at the least, the new bankruptcy judges cannot constitutionally be vested with jurisdiction to decide this state-law contract claim against Marathon. As part of a comprehensive restructuring of the bankruptcy laws, Congress has vested jurisdiction over this and all matters related to cases under title 11 in a single non-Art III court, and has done so pursuant to a single statutory grant of jurisdiction. In these circumstances we cannot conclude that if Congress were aware that the grant of jurisdiction could not constitutionally encompass this and similar claims, it would simply remove the jurisdiction of the bankruptcy court over these matters, leaving the jurisdictional provision and adjudicatory structure intact with respect to other types of claims, and thus subject to Art. III constitutional challenge on a claim-by-claim basis. Indeed, we note that one of the express purposes of the Act was to ensure adjudication of all claims in a single forum and to avoid the delay and expense of jurisdictional disputes. See H.R. Rep. No. 95-595, *supra*, p. 43-48; S. Rep. No. 95-989, p. 17 (1978). Nor can we assume, as the CHIEF JUSTICE suggests, *post*, at 2, that Congress' choice would be to have this case "routed to

the United States district court of which the bankruptcy court is an adjunct." We think that it is for Congress to determine the proper manner of restructuring the Bankruptcy Act of 1978 to conform to the requirements of Art. III in the way that will best effectuate the legislative purpose." 58

For stylistic reasons, I propose to modify fn. 32, to read:

"Contrary to the dissent's suggestion, we do not concede that "Congress may provide for initial adjudications by Article I courts or administrative judges of all rights and duties arising under otherwise valid federal laws." See post, at 3. Rather we simply reaffirm the holding of Crowell--that Congress may assign to non-Art. III bodies some adjudicatory functions. Crowell itself spoke of "specialized functions. This case does not require us to specify further any limitations that may exist with respect to Congress' power to create adjuncts to assist in the adjudication of federal statutory rights."

Sincerely,

WJB/mlm

W.J.B, Jr.

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 13, 17, 19, 20, 21, 30, 37, 38

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

From: Justice Brennan

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Recirculated: JUN 24 1982

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-150 AND 81-546

NORTHERN PIPELINE CONSTRUCTION CO.,  
APPELLANT

81-150

v.

MARATHON PIPE LINE COMPANY AND  
UNITED STATES

UNITED STATES, APPELLANT

81-546

v.

MARATHON PIPE LINE CO. ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MINNESOTA

[June —, 1982]

JUSTICE BRENNAN delivered the opinion of the Court.

The question presented is whether the assignment by Congress to bankruptcy judges of the jurisdiction granted in § 241(a) of the Bankruptcy Act of 1978, 28 U. S. C. § 1471 (1976 ed., Supp. III), violates Art. III of the Constitution.

I

A

In 1978, after almost ten years of study and investigation, Congress enacted a comprehensive revision of the bankruptcy laws. The Bankruptcy Act of 1978 (Act)<sup>1</sup> made significant changes in both the substantive and procedural law

<sup>1</sup>Pub. L. 95-598, 92 Stat. 2549. The Act became effective October 1, 1979.

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 25, 1982

TO THE CONFERENCE:

Nos. 81-150 & 81-546 Northern Pipeline Etc.

In the final printing the heading of my opinion will read:

"JUSTICE BRENNAN announced the judgment of the Court and delivered an opinion in which JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS, joined."

I have also changed references to Byron's dissent from "the dissent" to "JUSTICE WHITE's dissent," in light of the addition of The Chief's dissent, and changed the page references to reflect the pages in Byron's latest draft. Other than this, and the changed footnotes that I circulated yesterday, the final printing will reflect my circulation of June 24, 1982.

Sincerely,



W.J.B., Jr.

95 6-25-82

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 28, 1982

TO THE CONFERENCE

Case held for 81-150 & 81-546 Northern Pipeline Etc.

No. 81-583, Beneficial Finance Co. of Kansas, Inc. v. United States of America, et. al. is a cross petition in 81-184, United States v. Security Industrial Bank, et. al. (prob. juris. noted 12/14/81). United States v. Security Industrial Bank, et. al. is an appeal from the judgment of the Court of Appeals for the Tenth Circuit holding that the Bankruptcy Code Provision, 11 U.S.C. §522(f) (2), exempting certain personal property, was unconstitutional as applied to security interests acquired before the effective date of the Act. In 81-583 cross-appellant argues that instead of affirming the dismissal of the debtors' "application to Avoid Lien," the Court of Appeals should have vacated and dismissed the entire bankruptcy proceeding on the ground that the Bankruptcy Act of 1978 violated Art. III. Although the question presented on the cross-petition was not raised below, cross-appellant urges us to consider it, and thereby avoid consideration of the question presented in United States v. Security Industrial Bank, et. al.

Our holding in Northern Pipeline is to be applied prospectively only and indeed the judgment is stayed until October 4, 1982. Accordingly, there is no basis for vacating and remanding in light of that case. No. 81-583 presents a slightly different question than Northern, in that it deals with lien avoidance rather than an independent state law contract claim. Arguably, this question was not decided by Northern, at least under the terms of Bill Rehnquist's concurrence, since a lien avoidance is more closely related to the bankruptcy adjudication itself than a contract claim. But, in my view, it would be foolish to consider any further Art. III questions in reference to the Bankruptcy Act until Congress has reacted to the Northern decision.

The Solicitor General argues that this is not properly a cross-appeal under §1252. The appeal by the Government is here under §1252, giving this Court appellate jurisdiction over any court order holding an Act of Congress unconstitutional, where the United States as a party. The Solicitor General argues that the second

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 28, 1982

TO THE CONFERENCE

Case held for 81-150 & 81-546 Northern Pipeline Etc.

Supplemental Memo

No. 81-153, Beneficial Finance Co. of Kansas, Inc. v. United States of America

I'm stupid. This is an appeal from a federal court so of course we cannot dismiss for want of a substantial federal question. There do not appear to be any jurisdictional grounds for dismissing the appeal and we don't want to affirm, since there is a cross petition pending in which we have already noted probable jurisdiction. Therefore, I am changing my recommendation to a hold for 81-184, United States v. Security Industrial Bank, et. al. (prob. juris. noted 12/14/81)--the cross petition in this case. We can dispose of the Art. III question summarily when we decide that case.

W.J.B., Jr.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 1, 1982

Re: 81-150 - Northern Pipeline Construction  
Co. v. Marathon Pipe Line Co.

81-546 - U. S. v. Marathon Pipe Line Co.

---

Dear Bill,

I shall be filing a dissent in these  
cases.

Sincerely yours,



Justice Brennan

Copies to the Conference

cpm

.85 7/14 -1 6/15/82

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

From: **Justice White**

14 JUN 1982

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 81-150 AND 81-546

NORTHERN PIPELINE CONSTRUCTION CO.,  
APPELLANT

81-150

v.

MARATHON PIPE LINE COMPANY AND  
UNITED STATES

UNITED STATES, APPELLANT

81-546

v.

MARATHON PIPE LINE CO., ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MINNESOTA

[June —, 1982]

JUSTICE WHITE, dissenting.

Article III, § 1 of the Constitution is straightforward and  
uncomplicated on its face:

“The judicial Power of the United States, shall be vested  
in one supreme Court, and in such inferior Courts as the  
Congress may from time to time ordain and establish.  
The Judges, both of the supreme and inferior Courts,  
shall hold their Offices during good Behavior, and shall  
at stated Times, receive for their Services a Compensa-  
tion, which shall not be diminished during their Continu-  
ance in Office.”

Any reader could easily take this provision to mean that al-  
though Congress was free to establish such lower courts as it  
saw fit, any court that it did establish would be an “inferior”

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

From: Justice White

- pp. 1, 3, 11, 12, 13;  
stylistic changes throughout -

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

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2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 81-150 AND 81-546

NORTHERN PIPELINE CONSTRUCTION CO.,  
APPELLANT

81-150

v.

MARATHON PIPE LINE COMPANY AND  
UNITED STATES

UNITED STATES, APPELLANT

81-546

v.

MARATHON PIPE LINE CO., ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MINNESOTA

[June —, 1982]

JUSTICE WHITE, with whom THE CHIEF JUSTICE and Justice Powell join, dissenting.

Article III, § 1 of the Constitution is straightforward and uncomplicated on its face:

“The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.”

Any reader could easily take this provision to mean that although Congress was free to establish such lower courts as it

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 23, 1982

MEMORANDUM TO THE CONFERENCE

Re: 81-150 & 81-546 -

Northern Pipeline Construction Co.  
v. Marathon Pipe Line Co.

I am inserting the following footnote at the end of the paragraph ending in the middle of page 4 of my dissent:

I understand Justice Rehnquist to suggest just this method of approach in his opinion concurring in the judgment. In his view, the only issue properly before the Court is Marathon's claim that the case in which it is a defendant must be heard before an Article III judge, if it is to be heard in a federal court at all. Although we disagree on the resolution of this narrow question, we agree that the Court errs in going beyond this issue and striking down §241(c) on its face.

B.R.W.  
35

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 24, 1982

MEMORANDUM TO THE CONFERENCE

Re: 81-150 & 81-546 -

Northern Pipeline Construction Co. v. Marathon Pipe Line Co.

I see that Bill Brennan is stating in new footnote 40 that §241(a) is not severable and hence if any part of it is invalid, it is unconstitutional on its face. In the course of making other changes in my dissent, I am adding the following footnote at the appropriate place:

/ The plurality attempts to justify its sweeping invalidation of §241(a), because of its inclusion of state-law claims, by suggesting that this statutory provision is nonseverable. Ante, at n.40. The basis for the conclusion of nonseverability, however, is nothing more than a presumption: "Because Congress has vested jurisdiction over this and all matters related to bankruptcy in a single non-Art.III court, and has done so pursuant to a single statutory grant of jurisdiction, we cannot conclude that if Congress were aware that the grant of jurisdiction could not encompass this claim, it would simply withdraw jurisdiction of the bankruptcy courts over these matters." Ibid. Although it is possible, as a historical matter, to find cases of this Court supporting this presumption, see e.g., Williams v. Standard Oil Co., 278 U.S. 235, 242 (1929), I had not thought this to be the contemporary approach to the problem of severability, particularly when dealing with federal statutes. I would follow that approach taken by the Court in Buckley v. Valeo, 424 U.S. 1, 108 (1976): "Unless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law." Quoting Champlin Refining Co. v. Corporation Commission, 286 U.S. 210 (1932). This presumption seems particularly strong when Congress has already "enacted those provisions which are within its power, independently of that which is not" -- i.e., in the old Bankruptcy Act.

B.R.W.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 25, 1982

81-150 & 81-546

MEMORANDUM TO THE CONFERENCE

Re: 81-150 & 81-546 -

Northern Pipeline Construction Co. v. Marathon Pipe Line Co.

In the final printing, footnote 3 will read as follows:

<sup>3</sup>The plurality attempts to justify its sweeping invalidation of §241(a), because of its inclusion of state-law claims, by suggesting that this statutory provision is nonseverable. Ante, at n.40. The concurring Justices specifically adopt this argument as the reason for their decision to join the judgment of the Court. The basis for the conclusion of nonseverability, however, is nothing more than a presumption: "Congress has vested jurisdiction over this and all matters related to cases under title 11 in a single non-Art.III court, and has done so pursuant to a single statutory grant of jurisdiction. In these circumstances, we cannot conclude that if Congress were aware that the grant of jurisdiction could not constitutionally encompass this and similar claims, it would simply remove the jurisdiction of the bankruptcy court over these matters." Ibid. Although it is possible, as a historical matter, to find cases of this Court supporting this presumption, see e.g., Williams v. Standard Oil Co., 278 U.S. 235, 242 (1929), I had not thought this to be the contemporary approach to the problem of severability, particularly when dealing with federal statutes. I would follow that approach taken by the Court in Buckley v. Valeo, 424 U.S. 1, 108 (1976): "Unless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law." Quoting Champlin Refining Co. v. Corporation Commission, 286 U.S. 210 (1932). This presumption seems particularly strong when Congress has already "enacted those provisions which are within its power, independently of that which is not" -- i.e., in the old Bankruptcy Act.

*BW*

pp. 3, 4-5, 9, 12, 13;  
- "majority" and "Court" changed -  
to "plurality" where appropriate

10: The Chief Justice  
Justice Brennan  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

## SUPREME COURT OF THE UNITED STATES

Nos. 81-150 AND 81-546

From: Justice White

NORTHERN PIPELINE CONSTRUCTION CO.  
APPELLANT

Circulated: \_\_\_\_\_  
Recirculated: 25 JUN 1982

81-150

v.

MARATHON PIPE LINE COMPANY AND  
UNITED STATES

UNITED STATES, APPELLANT

81-546

v.

MARATHON PIPE LINE CO., ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MINNESOTA

[June 28, 1982]

JUSTICE WHITE, with whom THE CHIEF JUSTICE and JUSTICE POWELL join, dissenting.

Article III, § 1 of the Constitution is straightforward and uncomplicated on its face:

"The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office."

Any reader could easily take this provision to mean that although Congress was free to establish such lower courts as it saw fit, any court that it did establish would be an "inferior" court exercising "judicial power of the United States" and so

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 9, 1982

Re: Nos. 81-150 and 81-546-Northern Pipeline v.  
Marathon Pipe Line and U.S. v. Marathon Pipe Line

Dear Bill:

Please join me.

Sincerely,

*T.M.*  
T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 21, 1982

Re: No. 81-150 - Northern Pipeline Construction Co.  
v. Marathon Pipe Line Co.  
No. 81-546 - United States v. Marathon Pipe Line Co.

Dear Bill:

Please join me.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

81-546 S-111 58

June 1, 1982

81-150 Northern Pipeline v. Marathon Pipe Line  
81-546 United States v. Marathon Pipe Line

Dear Bill:

I will await the dissent.

Sincerely,



Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 18, 1982

81-150 Northern Pipeline v. Marathon

Dear Byron:

Please join me in your dissent.

Sincerely,



Justice White

lfp/ss

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST



May 3, 1982

Re: Nos. 81-150 & 81-546 Northern Pipeline Construction  
Co. v. Marathon Pipeline Co., et al.

Dear Chief:

I passed at Friday's Conference on this case. I have by no means resolved my doubts, but realize that for purposes of assignment, etc., I must give some indication of my vote. Therefore, I tentatively (with great emphasis on the "tentatively") vote to affirm.

Sincerely,

The Chief Justice

Copies to the Conference

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

From: Justice Rehnquist

Circulated: JUN 22 1982

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

Nos. 81-150 & 81-546 - Northern Pipeline Construction  
Co. v. Marathon Pipe Line Co.

JUSTICE REHNQUIST, concurring in part in the judgment.

Were I to agree with the Court that the question presented by this case is "whether the assignment by Congress to bankruptcy judges of the jurisdiction granted in § 241(a) of the Bankruptcy Act of 1978 ... violates Art. III of the Constitution," ante, at 1, I would with considerable reluctance embark on the duty of deciding this broad question. But I do not think appellee Marathon Pipe Line Co. has standing to raise any question of such sweep. It was named as a defendant in a suit brought by appellant in a United States Bankruptcy Court. The suit sought damages for, inter alia, breaches of contract and warranty. Marathon moved to dismiss the action on the grounds that the Bankruptcy Act of 1978, which authorized the suit, violated Art. III of the Constitution insofar as it established Bankruptcy Judges whose tenure and salary protection do not conform to the requirements of Art. III.

Stylistic changes

pp 1-2, 4

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

From: Justice Rehnquist

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

Recirculated: 6-24-82

Nos. 81-150 & 81-546 - Northern Pipeline Construction  
Co. v. Marathon Pipe Line Co.

JUSTICE REHNQUIST, concurring in the judgment.

Were I to agree with the plurality that the question presented by this case is "whether the assignment by Congress to bankruptcy judges of the jurisdiction granted in § 241(a) of the Bankruptcy Act of 1978 ... violates Art. III of the Constitution," ante, at 1, I would with considerable reluctance embark on the duty of deciding this broad question. But appellee Marathon Pipe Line Co. has not been subjected to the full range of authority granted Bankruptcy Courts by § 241(a). It was named as a defendant in a suit brought by appellant in a United States Bankruptcy Court. The suit sought damages for, inter alia, breaches of contract and warranty. Marathon moved to dismiss the action on the grounds that the Bankruptcy Act of 1978, which authorized the suit, violated Art. III of the Constitution insofar as it established Bankruptcy Judges whose tenure and salary protection do not conform to the requirements of Art. III.

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 2, 1982

Re: 81-150 & 81-546 - Northern Pipeline v.  
Marathon Pipe Line

Dear Bill:

Please join me. My join is unconditional but I would be open to further consideration of the nonretroactivity problem and the timing of the entry of our judgment. Since the opinion will be handed down toward the end of the Term, perhaps it would be reasonable to provide that the judgment will be stayed until the first Monday in October.

Respectfully,

*J*

Justice Brennan

Copies to the Conference

.85 11-8 2512

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 24, 1982

CORRECTED COPY

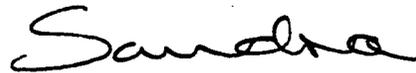
No. 81-150 No. Pipeline Construction Co. v.  
Marathon Pipe Line Co.  
No. 81-546 United States v. Marathon Pipe  
Line Co.

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Dear Bill,

With the few changes we have discussed, I plan  
to join in your concurrence in part in the judgment.

Sincerely,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 25, 1982

Re: Nos. 81-150 & 81-546 Northern Pipeline v. Marathon  
Pipe Line

Dear Bill,

Please join me in your concurrence in the  
judgment.

Sincerely,



Justice Rehnquist

Copies to the Conference

85 JUN 24 1982

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