

# The Burger Court Opinion Writing Database

## *Belknap, Inc. v. Hale*

463 U.S. 491 (1983)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



To: The Chief Justice  
 Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens

From: Justice O'Connor

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

BELKNAP, INC., PETITIONER *v.* DUWAIN E. HALE  
 ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME  
 COURT OF KENTUCKY

No. 81-1966. Decided June —, 1982

JUSTICE O'CONNOR, dissenting.

Today the Court agrees to hear an issue embedded in a controversy that has not yet gone to trial. Although the Court arguably has jurisdiction to review the state court's decision under *Construction & General Laborers' Union v. Curry*, 371 U. S. 542 (1963),\* the interlocutory posture of the case counsels against our discretionary exercise of that power. As respondents point out, Brief in Opposition 10-11, the record currently reveals only the barest outlines of the controversy. Respondents suggest, for example, that supplementation of the record would show that they attempted to obtain relief from the National Labor Relations Board and that the Board refused to accept jurisdiction over their com-

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\* *Curry*, like this case, involved a claim that the subject matter of a state suit fell within the exclusive jurisdiction of the National Labor Relations Board. In that case, however, the state supreme court had reversed the trial court's refusal to grant an interlocutory injunction and had remanded for entry of an injunction. In addition, as Justice Harlan observed, the petitioner conceded that it had "nothing left to litigate" in any further state proceedings. 371 U. S., at 554 (concurring opinion). See also *id.*, at 550-551 (majority opinion). Here, the state courts have not even entered an interlocutory injunction; the controversy waits at the very threshold of adjudication. Moreover, petitioners have not claimed that their only defense to the state action is the federal one they press here. Under these circumstances, *Curry* may be distinguishable. The general rule, of course, is that this Court possesses jurisdiction only to review *final* state judgments. 28 U. S. C. § 1257; *O'Dell v. Espinoza*, 456 U. S. — (1982).