

The Burger Court Opinion Writing Database

Idaho ex rel. Evans v. Oregon

462 U.S. 1017 (1983)

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

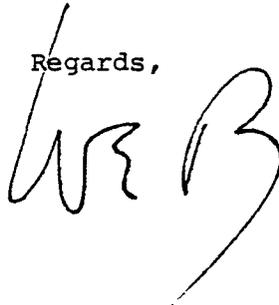
June 17, 1983

Re: 67 Original - State of Idaho v. States of Oregon and Washington

Dear Harry:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'WB' followed by a large flourish that extends downwards and to the right.

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 4, 1983

Re: 67 Original, Idaho v. Oregon

Dear John and Sandra,

We three are in dissent in the
above. Sandra, would you be willing to
do the dissent?

Sincerely,

Justice Stevens
Justice O'Connor

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 17, 1983

No. 67 Original

Idaho ex rel. Evans v. Oregon

Dear Sandra,

Please join me in your dissent in
the above.

Sincerely,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 17, 1983

Re: 67 Orig. -
Idaho v. Oregon and Washington

Dear Harry,

Please join me.

Sincerely yours,



Justice Blackmun

cc: The Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

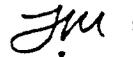
June 17, 1983

Re: No. 67 Orig. - State of Idaho etc. v.
States of Oregon & Washington

Dear Harry:

Please join me.

Sincerely,



T.M.

Justice Blackmun

cc: The Conference

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

From: **Justice Blackmun**

Circulated: JUN 15 1983

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HAB
PL 217
112

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 67 Orig.

STATE OF IDAHO, EX REL. CECIL D. ANDRUS, GOVERNOR; JIM JONES, ATTORNEY GENERAL; JERRY M. CONLEY, DIRECTOR, DEPARTMENT OF FISH AND GAME, PLAINTIFFS *v.* STATES OF OREGON AND WASHINGTON

ON EXCEPTIONS TO SPECIAL MASTER'S REPORT AND RECOMMENDATION

[June —, 1983]

JUSTICE BLACKMUN delivered the opinion of the Court.

In this action invoking the Court's original jurisdiction, the State of Idaho seeks an equitable apportionment against the States of Oregon and Washington of the anadromous fish that migrate between the Pacific Ocean and spawning grounds in Idaho. The Special Master has filed his final report on the merits and recommends that the action be dismissed without prejudice. We have before us Idaho's exceptions to that report.

I

Although somewhat repetitive of the Court's prior writings in this litigation, 444 U. S. 380 (1980), we feel it worthwhile to outline once again the facts of the case and the Court's prior rulings. The dispute concerns fish, one of the valuable natural resources of the Columbia-Snake River system in the Pacific Northwest. That system covers portions of Wyoming, Idaho, Washington, Oregon, and British Columbia. From its origin in northwest Wyoming, the Snake River flows westerly across southern Idaho until it reaches the Idaho and Oregon border. At that point, the river winds

STYLISTIC CHANGES

4 pp. 1, 4

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

From: **Justice Blackmun**

Circulated: _____

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 67 Orig.

STATE OF IDAHO, EX REL. JOHN V. EVANS, GOVERNOR; JIM JONES, ATTORNEY GENERAL; JERRY M. CONLEY, DIRECTOR, DEPARTMENT OF FISH AND GAME, PLAINTIFFS *v.* STATES OF OREGON AND WASHINGTON

ON EXCEPTIONS TO REPORT OF SPECIAL MASTER

[June —, 1983]

JUSTICE BLACKMUN delivered the opinion of the Court.

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Although somewhat repetitive of the Court's prior writings in this litigation, 444 U. S. 380 (1980), we feel it worthwhile to outline once again the facts of the case and the Court's prior rulings. The dispute concerns fish, one of the valuable natural resources of the Columbia-Snake River system in the Pacific Northwest. That system covers portions of Wyoming, Idaho, Washington, Oregon, and British Columbia. From its origin in northwest Wyoming, the Snake River flows westerly across southern Idaho until it reaches the Idaho and Oregon border. At that point, the river winds northward to form the border between those States for ap-

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 15, 1983

67 Orig. Idaho v. Oregon and Washington

Dear Harry:

Please join me.

Sincerely,



Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 16, 1983

Re: No. 67 Orig. Idaho v. Oregon & Washington

Dear Harry:

Please join me.

Sincerely,



Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 15, 1983

Re: 67 Orig. - Idaho ex rel. Evans v.
Oregon

Dear Sandra:

Please join me in your dissenting opinion.

Respectfully,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 4, 1983

No. 67 Original Idaho v. Oregon

Dear Bill,

I would be happy to try to write a
dissent in this case.

Sincerely,



Justice Brennan

cc: Justice Stevens

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 15, 1983

Re: No. 67 Original Idaho ex rel. v. Oregon

MEMORANDUM TO THE CONFERENCE

Due to the end of Term time-crunch and the backlog in the printing office, I am circulating this dissent in typed form. I will follow it up with a printed version when it becomes available.

Sincerely,

Sandra

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

From: Justice O'Connor

Circulated: _____

Recirculated: JUN 15 1983

No. 67 Original

IDAHO ex rel. EVANS v. OREGON

JUSTICE O'CONNOR, dissenting.

The Special Master reasoned that Idaho was entitled to a "fair share" of the anadromous fish that are the subject of this dispute. Without quantifying that share, however, he rejected the claim that Washington and Oregon had mismanaged the fishery, Report of the Special Master, at 30-34, concluding instead that they had acted in good faith, id., at 35, and that the relief requested by Idaho was unworkable, ibid. In reaching that conclusion, he refused to consider any evidence pertaining to years earlier than 1975 or to future developments. Id., at 25-26, 27.

The Court today overrules the exceptions to the report of the Special Master. I see substantial merit to several of the points raised by Idaho and am persuaded that they require a remand to the Special Master for further proceedings. Accordingly, I dissent.

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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Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 67 Orig.

STATE OF IDAHO, EX REL. CECIL D. ANDRUS, GOVERNOR; JIM JONES, ATTORNEY GENERAL; JERRY M. CONLEY, DIRECTOR, DEPARTMENT OF FISH AND GAME, PLAINTIFFS *v.* STATES OF OREGON AND WASHINGTON

ON EXCEPTIONS TO SPECIAL MASTER'S REPORT
AND RECOMMENDATION

[June —, 1983]

JUSTICE O'CONNOR, dissenting.

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The Court today overrules the exceptions to the report of the Special Master. I see substantial merit to several of the points raised by Idaho and am persuaded that they require a remand to the Special Master for further proceedings. Accordingly, I dissent.

I

The Master properly concluded that "Idaho is entitled to its fair share of the fish." *Id.*, at 25. No one owns an individual fish until he reduces that fish to possession, *Pierson v.*

Stylistic Changes Throughout

TP. 4, 5, 7, 9, 10

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

From: Justice O'Connor

Circulated: _____

Recirculated: JUN 21 1983 _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 67 Orig.

STATE OF IDAHO, EX REL. CECIL D. ANDRUS, GOVERNOR; JIM JONES, ATTORNEY GENERAL; JERRY M. CONLEY, DIRECTOR, DEPARTMENT OF FISH AND GAME, PLAINTIFFS *v.* STATES OF OREGON AND WASHINGTON

ON EXCEPTIONS TO SPECIAL MASTER'S REPORT AND RECOMMENDATION

[June —, 1983]

JUSTICE O'CONNOR, with whom JUSTICES BRENNAN and STEVENS join

The Special Master reasoned that Idaho was entitled to a "fair share" of the anadromous fish that are the subject of this dispute. Without quantifying that share, however, he rejected the claim that Washington and Oregon had mismanaged the fishery, Report of the Special Master, at 30-34, concluding instead that they had acted in good faith, *id.*, at 35, and that the relief requested by Idaho was unworkable, *ibid.* In reaching that conclusion, he refused to consider any evidence pertaining to years earlier than 1975 or to future developments. *Id.*, at 25-26, 27.

dissenting.

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