

# The Burger Court Opinion Writing Database

## *Crown, Cork & Seal Co. v. Parker*

462 U.S. 345 (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

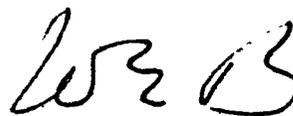
May 25, 1983

Re: No. 82-118, Crown, Cork & Seal, Inc. v. Parker

Dear Harry:

I join.

Regards,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 25, 1983

Re: No. 82-118

Crown, Cork & Seal Company, Inc.  
v. Theodore Parker

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Dear Harry,

I agree.

Sincerely,



Justice Blackmun

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 24, 1983

Re: 82-118 - Crown, Cork & Seal  
Co., Inc. v. Parker

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Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference

cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 23, 1983

Re: No. 82-118-Crown, Cork & Seal Company, Inc. v.  
Theodore Parker

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**

MAY 23 1983

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~~HAB~~  
~~Placed~~

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-118

**CROWN, CORK & SEAL COMPANY, INC., PETITIONER v. THEODORE PARKER**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

[May —, 1983]

JUSTICE BLACKMUN delivered the opinion of the Court.

The question that confronts us in this case is whether the filing of a class action tolls the applicable statute of limitations, and thus permits all members of the putative class to file individual actions in the event that class certification is denied, provided, of course, that those actions are instituted within the time that remains on the limitations period.

I

Respondent Theodore Parker, a Negro male, was discharged from his employment with petitioner Crown, Cork & Seal Company, Inc., in July 1977. In October of that year, he filed a charge with the Equal Employment Opportunity Commission (EEOC) alleging that he had been harassed and then discharged on account of his race. On November 9, 1978, the EEOC issued a Determination Letter finding no reasonable cause to believe respondent's discrimination charge was true, and, pursuant to § 706(f) of the Civil Rights Act of 1964 (Act), 78 Stat. 260, as amended, 42 U. S. C. § 2000e-5(f), sent respondent a Notice of Right to Sue. App. 5A, 7A.

Two months earlier, while respondent's charge was pending before the EEOC, two other Negro males formerly employed by petitioner filed a class action in the United States

HAB

May 24, 1983

Re: No. 82-118 - Crown, Cork & Seal Company v. Parker

Dear John:

I shall be glad to make the change you suggest on page 8.

Sincerely,

HAB

Justice Stevens

STYLISTIC CHANGES  
7.8

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

From: Justice Blackmun

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2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-118

CROWN, CORK & SEAL COMPANY, INC., PETITIONER *v.* THEODORE PARKER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[June —, 1983]

JUSTICE BLACKMUN delivered the opinion of the Court.

The question that confronts us in this case is whether the filing of a class action tolls the applicable statute of limitations, and thus permits all members of the putative class to file individual actions in the event that class certification is denied, provided, of course, that those actions are instituted within the time that remains on the limitations period.

### I

Respondent Theodore Parker, a Negro male, was discharged from his employment with petitioner Crown, Cork & Seal Company, Inc., in July 1977. In October of that year, he filed a charge with the Equal Employment Opportunity Commission (EEOC) alleging that he had been harassed and then discharged on account of his race. On November 9, 1978, the EEOC issued a Determination Letter finding no reasonable cause to believe respondent's discrimination charge was true, and, pursuant to § 706(f) of the Civil Rights Act of 1964 (Act), 78 Stat. 260, as amended, 42 U. S. C. § 2000e-5(f), sent respondent a Notice of Right to Sue. App. 5A, 7A.

Two months earlier, while respondent's charge was pending before the EEOC, two other Negro males formerly employed by petitioner filed a class action in the United States

HAB

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 13, 1983

MEMORANDUM TO THE CONFERENCE

Re: Hold for No. 82-118 - Crown, Cork & Seal v. Parker

No. 82-650, Pavlak v. Church. This is an action for damages under 42 U.S.C. §§1983, 1985(3), and 1986, and 18 U.S.C. §2520. Petitioner's complaint alleges that respondents, various city officials and telephone company employees, engaged in illegal wiretapping and surveillance during March 1977. In April 1977, three other persons filed suit in District Court (Idaho) alleging illegal wiretapping and surveillance by respondents. At least one of these suits was a class action, in which petitioner was a member of the putative class. Class certification was denied for lack of numerosity in August 1979. Petitioner did not move to intervene, but filed this individual action in August 1980. The relevant statute of limitations, under Idaho law, is three years.

The District Court granted summary judgment for respondents on the ground that the statute of limitations had run, and the Court of Appeals (CA9) affirmed; it read American Pipe to apply only to class members who seek to intervene after denial of class certification, and not to those who file individual actions. The Court of Appeals' decision is thus inconsistent with our decision in Crown, Cork & Seal v. Parker.

Our decision in No. 82-271, Chardon v. Soto, will also be relevant to this case. Because this is a §1983 action, Chardon instructs that the "tolling effect" -- the length of time in which petitioner could file suit after the denial of class certification -- must be determined in accordance with state law. The Court of Appeals had no occasion to consider "tolling effect" in this case, since it held that the statute of limitations was not tolled. This issue, however, will be raised on remand.

I shall vote now to hold the case for Chardon. When that comes down, I shall vote to GVR in light of both Crown, Cork and Chardon.

HAB

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 24, 1983

82-118 Crown, Cork v. Parker

Dear Harry:

In accord with my Conference vote I will write a  
dissent in due time.

Sincerely,



Justice Blackmun

lfp/ss

cc: The Conference

June 6, 1983

82-118 Crown Cork & Seal v. Parker

Dear Bill:

I have concluded a dissent just will not "wash" without too much explaining that may not be entirely convincing.

In taking a closer look, I also find it difficult for me to dissent in view of what I wrote in Eisen and United Airlines. Harry's opinion for the Court has relied particularly on my opinion in Eisen.

Finally, with seven votes against us, there is not much purpose in a dissent in this type of case. Accordingly, I will now join Harry and write a brief concurring statement on one aspect of the case. I will send this to you.

Sincerely,

Justice Rehnquist

lfp/ss

JUN

6 1983

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

From: Justice Powell

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-118

**CROWN, CORK & SEAL COMPANY, INC., PETITIONER v. THEODORE PARKER**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

[June —, 1983]

JUSTICE POWELL, concurring.

I join the Court's opinion. It seems important to reiterate the view expressed by JUSTICE BLACKMUN in *American Pipe & Constr. Co. v. Utah*, 414 U. S. 538 (1974). He wrote that our decision "must not be regarded as encouragement to lawyers in a case of this kind to frame their pleadings as a class action, intentionally, to attract and save members of the purported class who have slept on their rights." *Id.*, at 561 (concurring opinion). The tolling rule of *American Pipe* is a generous one, inviting abuse. It preserves for class members a range of options pending a decision on class certification. The rule should not be read, however, as leaving a plaintiff free to raise different or peripheral claims following denial of class status.

In *American Pipe* we noted that a class suit "notifies the defendants not only of the substantive claims being brought against them, but also of the number and generic identities of the potential plaintiffs who participate in the judgment. Within the period set by the statute of limitations, the defendants have the essential information necessary to determine both the subject matter and size of the prospective litigation." *Id.*, at 555. When thus notified, the defendant normally is not prejudiced by tolling of the statute of limitations. It is important to make certain, however, that *Amer-*

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

From: Justice Powell

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2nd DRAFT |

SUPREME COURT OF THE UNITED STATES

No. 82-118

CROWN, CORK & SEAL COMPANY, INC.,  
PETITIONER *v.* THEODORE PARKER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

[June —, 1983]

JUSTICE POWELL, with whom JUSTICE REHNQUIST joins,  
concurring.

I join the Court's opinion. It seems important to reiterate the view expressed by JUSTICE BLACKMUN in *American Pipe & Constr. Co. v. Utah*, 414 U. S. 538 (1974). He wrote that our decision "must not be regarded as encouragement to lawyers in a case of this kind to frame their pleadings as a class action, intentionally, to attract and save members of the purported class who have slept on their rights." *Id.*, at 561 (concurring opinion). The tolling rule of *American Pipe* is a generous one, inviting abuse. It preserves for class members a range of options pending a decision on class certification. The rule should not be read, however, as leaving a plaintiff free to raise different or peripheral claims following denial of class status.

In *American Pipe* we noted that a class suit "notifies the defendants not only of the substantive claims being brought against them, but also of the number and generic identities of the potential plaintiffs who participate in the judgment. Within the period set by the statute of limitations, the defendants have the essential information necessary to determine both the subject matter and size of the prospective litigation." *Id.*, at 555. When thus notified, the defendant normally is not prejudiced by tolling of the statute of limita-

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 7, 1983

Re: No. 82-118 Crown, Cork & Seal Co. v. Parker

Dear Lewis:

Please join me in your concurring opinion.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 23, 1983

Re: 82-118 - Crown, Cork & Seal Co. v.  
Parker

Dear Harry:

Please join me.

Respectfully,

91

Justice Blackmun

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 23, 1983

Re: 82-118 - Crown, Cork & Seal Co. v.  
Parker

Dear Harry:

Please join me.

Respectfully,



Justice Blackmun

Copies to the Conference

P.S. to HAB only: In the second sentence of Part III on page 8, I wonder if you would consider changing the word "suspended" to read "tolled." In my draft opinion in Chardon, I use the term suspended in contradistinction to the special rule in Puerto Rico where the statute begins to run anew after it has been tolled.

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 24, 1983

No. 82-118 Crown, Cork & Seal Company,  
Inc. v. Parker

Dear Harry,

Please join me.

Sincerely,

*Sandra*

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 10, 1983

Re: No. 82-118 Crown, Cork & Seal Company v. Parker

Dear Lewis,

Please join me in your concurring opinion.

Sincerely,



Justice Powell

Copies to the Conference