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Rice v. Rehner

463 U.S. 713 (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

April 2, 1983

Re: RICE v. REHNER
No. 82-401

MEMORANDUM TO THE CONFERENCE:

At Conference I voted to affirm in this close case, but my further consideration leads me to make my vote to reverse. Dividing the regulation of liquor dispensing between a State and the Indians, even with the Secretary of Interior as a "monitor" does not "wash."

My vote is to reverse.

Regards,



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

CHAMBERS OF
THE CHIEF JUSTICE

June 3, 1983

Re: No. 82-401, Rice v. Rehner

Dear Sandra:

I join.

Regards



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 4, 1983

Re: No. 82-401 -- Rice v. Rehner

Dear Thurgood, Harry and Lewis,

We four are in dissent in the
above. Lewis, will you take on the
dissent?

Sincerely,

Bill

Justice Marshall

Justice Blackmun

Justice Powell

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 31, 1983

No. 82-401

Rice v. Rehner

Dear Lewis,

It's very good of you to undertake the memorandum in dissent. However, I think I'll try my hand at one. Thanks so much.

Sincerely,



Justice Powell

Copies to:

Justice Marshall
Justice Blackmun

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 29, 1983

No. 82-401

Rice v. Rehner

Dear Harry,

Please join me in your
dissent.

Sincerely,

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 1, 1983

Re: 82-401 - Rice v. Rehner

Dear Sandra,

I agree.

Sincerely,



Justice O'Connor

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 28, 1983

Re: No. 82-401-Rice v. Rehner

Dear Harry:

Please join me in your dissent.

Sincerely,

T.M.

T.M.

Justice Blackmun

cc: The Conference

Blackmun
me
11/11/73

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

From: Justice Blackmun

Circulated: JUN 27 1983

Recirculated: _____

No. 82-401, Rice v. Rehner

JUSTICE BLACKMUN, dissenting.

The Court today holds that a State may prevent a federally licensed Indian trader from selling liquor on an Indian reservation, or may condition the trader's right to sell liquor upon payment of a substantial license fee. Because I believe the State lacks authority to require a license, I dissent.

Since 1790, see Act of July 22, 1790, 1 Stat. 137, the Federal Government has regulated trade with the Indians and has required persons engaging in such trade to obtain a federal license. Existing law provides:

"The Commissioner of Indian Affairs shall have the sole power and authority to appoint traders to the Indian tribes and to make such rules and regulations as he may deem just and proper specifying the kind and quantity of goods and the prices at which such goods shall be sold to the Indians." Act of Aug. 15, 1876, ch. 289, §5, 19 Stat. 200, 25 U.S.C. §261, (emphasis added).

A person wishing to trade with the Indians is "permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe," once he has established "to the satisfaction of the Commissioner ... that he is a proper person to engage in such trade." Act of Mar. 3, 1901, ch. 832, §1, 31 Stat. 1066, as amended by the Act of Mar. 3, 1903, ch. 994, §10, 32 Stat. 1009, 25 U.S.C. §262.

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

From: **Justice Blackmun**

Circulated: _____

Recirculated: JUN 28 1983

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-401

BAXTER RICE, INDIVIDUALLY AND AS DIRECTOR
OF THE DEPARTMENT OF ALCOHOLIC BEVERAGE
CONTROL OF CALIFORNIA, PETITIONER *v.*
EVA REHNER

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

[June —, 1983]

JUSTICE BLACKMUN, dissenting.

The Court today holds that a State may prevent a federally licensed Indian trader from selling liquor on an Indian reservation, or may condition the trader's right to sell liquor upon payment of a substantial license fee. Because I believe the State lacks authority to require a license, I dissent.

Since 1790, see Act of July 22, 1790, 1 Stat. 137, the Federal Government has regulated trade with the Indians and has required persons engaging in such trade to obtain a federal license. Existing law provides:

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April 1, 1983

82-401 Rice v. Rehner

Dear Sandra:

I so much appreciate your taking the time - busy as we all are - to outline how you thought a reversal of CA9 could be written.

There is no doubt in my mind as to the sensible resolution of this case. It makes little sense to have liquor stores operating in a state pursuant to different and probably conflicting regulations. Yet, I still find it difficult to conclude that §1161 actually granted authority to the states to enforce their regulations. It may be that §1161 fairly can be read to make it a federal crime to sell liquor on a reservation without a state license. Such a reading would not confer any independent authority on the state.

Having said all of this, I am not entirely at rest, and will await the writing.

I do thank you.

Sincerely,

Justice O'Connor

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 5, 1983

82-401 Rice v. Rehner

Dear Bill:

As I think your notes will show, my vote in this case was tentative. I have no doubt as to the desirability of a uniform system of statewide regulation of liquor stores. I therefore have said to Sandra, who feels very strongly about this case, that I would try to be open minded about what she writes for the Court.

But I have not yet found it easy to read the statutory framework as vesting in the states the authority to license and regulate these stores.

In these circumstances, if you wish me to do so I will be happy to try my hand at a memorandum of dissent. If Sandra should persuade me, my memorandum, of course, would be available to you, Thurgood and Harry.

I am a bit "stacked up" at the moment, but if the preparation of a memorandum is satisfactory, I will gladly undertake it in due time.

Sincerely,

Justice Brennan

lfp/ss

cc: Justice Marshall
Justice Blackmun

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 30, 1983

82-401 Rice v. Rehner

Dear Bill:

In my letter to you of April 5, responding to your inquiry whether I would draft a dissent for the four of us who voted that way, I recorded my doubt as to the proper disposition of this case.

Sandra's opinion, circulated May 26, is persuasive. She details history that is rather convincing that Indian Tribes never possessed inherent authority over liquor sales, and that in 1954 Congress believed that such sales on reservations would be subject to the same state laws as all liquor sales. This makes a good deal of sense to me. In a word, I think I could join Sandra. OK

Nevertheless, I recognize that the question is close, and I volunteered in my letter of April 5 to prepare a memorandum advancing a different view. If you, Thurgood and Harry are still of a mind to dissent - and wish me to do so - I will be glad to undertake the memorandum. OK

Sincerely,

Lewis

Justice Brennan

lfp/ss

cc: Justice Marshall
Justice Blackmun

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 3, 1983

82-401 Rice v. Rehner

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 27, 1983

Re: No. 82-401 Rice v. Rehner

Dear Sandra:

Please join me.

Sincerely,

WR

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 27, 1983

Re: 82-401 - Rice v. Rehner

Dear Sandra:

Please join me.

Respectfully,



Justice O'Connor

Copies to the Conference

Full

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 26, 1983

No. 82-401 Rice v. Rehner

Dear Lewis,

My basic view in this case is that although there is a canon of construction to the effect that a grant of jurisdiction to the State requires an explicit statement from Congress, it seems that this canon, like all canons of construction, is useful when we have no indication of congressional intent. In this case, I think that we do know what Congress intended, and the utility of the canon is diminished to that degree.

The Senate Report on §1161 is useful in at least three respects. First, it indicates that the Senate Committee on Interior and Insular Affairs believed that §1161 empowered "a State or local municipality . . . to restrict the sales of intoxicants to Indians." S. Rep. 722, 83rd Cong., 1st Sess. (1953). Second, the Report indicates that §1161 started off as a measure applicable only to Arizona. The Senate Committee recommended that the statute have general application. Arizona was not one of the States covered by the simultaneously enacted PL 280. Therefore, if, as the Senate Report indicates, Congress intended to empower States to "restrict" sales if they so decided, then it had to be the case that they intended this to be done through §1161 because very few states had, and have, power under PL 280. Third, the Senate Report indicates that the purpose of §1161 was to remove discrimination against Indians. If we interpret §1161 in the way that the respondent suggests, then the effect will be not only to remove discrimination, but also to provide a clear preference for Indians by exempting them from requirements imposed on all others in the State. In addition, the effect of a decision adverse to the petitioner would be particularly troubling in those States that have monopoly control over liquor. For example, Washington has made contraband all liquor not purchased through its monopoly scheme. If Indians alone can buy and import at market prices any liquor that they desire, then Indians are given a considerable advantage that I doubt Congress intended to provide to them in light of the desire merely to remove discrimination.

In addition to the Senate Report, the interpretation given to §1161 from 1953 to 1971 by the Department of the Interior was consistent with the petitioner's view. During congressional hearings on §1161, then-Commissioner of the Bureau of Indian Affairs Dillon Myer was asked whether the statute should include a statement that §1161 did not affect any state laws. In response, Commissioner Myer explained that "[w]e certainly do not intend to try to revise State laws regarding Indians or anyone else, and it should be clear that is provided. . . . [The statute does not] interfere with State laws." Brief for Petr, Vol. II, at A-26, A-27.

A 1954 Opinion of the Solicitor of the Interior indicated clearly that the Solicitor thought that States were able to impose their licensing requirements. The Opinion was issued in response to the views of the Attorney General of California, and the Solicitor opined that the State may "license sales of liquor on such reservation for consumption both on and off the premises where the liquor is sold." A copy of the opinion is enclosed. The 1958 Federal Indian Handbook, published by the Government and approved by the Secretary of the Interior, relied on this 1954 Opinion and stated that "a State license to sell for consumption on the premises will give protection only against State prosecutions but not against Federal prosecutions under section 1156." *Id.*, at 383 (emphasis added). The implication here is that the Secretary of the Interior was of the view that the States could enforce their licensing requirements. It is ironic that the SG relies on a quote from another portion of this same 1958 edition of the Handbook to establish and support the proposition that a grant of jurisdiction to the States must be explicit. See Brief for the SG, at 8. It appears to me that what was required in 1958 to satisfy the requirement of an explicit grant of state jurisdiction was somewhat less than what this Court has required more recently. Although a 1971 Opinion of the Solicitor of the Interior indicated that the States could not impose their licensing requirements, I feel that the early practice is surely relevant to a determination of what Congress intended, especially when the Secretary espoused this view in congressional hearings before the statute was enacted.

It seems to me a creditable opinion could be written for application of state liquor licensing regulations.

Sincerely,

Justice Powell

A handwritten signature in cursive script, appearing to read "Sandra".

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

From: **Justice O'Connor**

Circulated: MAY 26 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-401

BAXTER RICE, INDIVIDUALLY AND AS DIRECTOR
OF THE DEPARTMENT OF ALCOHOLIC BEVERAGE
CONTROL OF CALIFORNIA, PETITIONER *v.*
EVA REHNER

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

[May —, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court.

The question presented by this case is whether the State of California may require a federally licensed Indian trader, who operates a general store on an Indian reservation, to obtain a state liquor license in order to sell liquor for off-premises consumption. We granted certiorari to review the question of federal pre-emption of the regulation of liquor use in Indian country.¹ Because we find that Congress has delegated authority to the States as well as to the Indian tribes to regulate the use and distribution of alcoholic beverages on Indian reservations, we reverse the judgment of the Court of Appeals for the Ninth Circuit.

I

¹ 18 U. S. C. § 1151 defines "Indian country" as "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

~~Stylistic~~ Changes Throughout

PP. 5, 10, 14, 17

25 Draft

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

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

SUPREME COURT OF THE UNITED STATES

No. 82-401

From: Justice O'Connor

Circulated: _____

Recirculated: JUN 30

BAXTER RICE, INDIVIDUALLY AND AS DIRECTOR OF
THE DEPARTMENT OF ALCOHOLIC BEVERAGE
CONTROL OF CALIFORNIA, PETITIONER *v.*
EVA REHNER

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

[July 1, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court.

The question presented by this case is whether the State of California may require a federally licensed Indian trader, who operates a general store on an Indian reservation, to obtain a state liquor license in order to sell liquor for off-premises consumption. Because we find that Congress has delegated authority to the States as well as to the Indian tribes to regulate the use and distribution of alcoholic beverages in Indian country,¹ we reverse the judgment of the Court of Appeals for the Ninth Circuit.

I

The respondent Rehner is a federally licensed Indian

¹18 U. S. C. § 1151 defines "Indian country" as "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

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