

The Burger Court Opinion Writing Database

United States v. Stauffer Chemical Co.

464 U.S. 165 (1984)

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

December 10, 1983

Re: 82-1448 United States v. Stauffer Chemical Co.

Dear Bill:

I join.

Regards,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 7, 1983

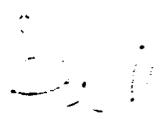
No. 82-1448

United States v. Stauffer
Chemical Co.

Dear Bill,

I agree.

Sincerely,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 9, 1983

Re: 82-1448 - United States v.
Stauffer Chemical Co.

Dear Bill,

I shall write separately in this case.

Sincerely,



Justice Rehnquist

Copies to the Conference

cpm

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

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'83 DEC 21 A11 :24

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1448

UNITED STATES, PETITIONER *v.* STAUFFER
CHEMICAL COMPANY

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

[January —, 1984]

JUSTICE WHITE, concurring in the result.

I agree with the majority that within the Tenth Circuit Stauffer is insulated from further litigation with the EPA on the private contractor issue. Though it is a harder question, I also agree that the court below correctly found that the EPA was barred from litigating this issue with Stauffer in the Sixth Circuit, which had not adopted a position on the merits. I write separately because I do not believe that estoppel should be applied any further than that.

I

Relying on *Montana v. United States*, 440 U. S. 147 (1979), the majority states that the limits to collateral estoppel on unmixed questions of law, whatever they may be, they are not exceeded here where the government has attempted "to litigate twice with the same party an issue arising in both cases from virtually identical facts." *Ante*, at 7. Two cases need not arise from the very same facts or transaction to constitute the same "demand." *Id.*, n. 5. "Any factual differences between the two cases, such as the difference in the location of the plants and the difference in the private contracting firms involved, are of no legal significance whatever in resolving the issue presented in both cases." *Ante*, at 7. Thus, this case falls squarely within *Montana*.

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

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1448

UNITED STATES, PETITIONER *v.* STAUFFER
CHEMICAL COMPANY

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

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

From: Justice White

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1448

UNITED STATES, PETITIONER *v.* STAUFFER
CHEMICAL COMPANY

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

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 8, 1983

Re: No. 82-1448-U.S. v. Stauffer Chemical Co.

Dear Bill:

Please join me.

Sincerely,

J.M.

T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 9, 1983

Re: No. 82-1448 - United States v. Stauffer Chemical Co.

Dear Bill:

Please join me in your second draft circulated December 8.

Sincerely,



Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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JUSTICE W.F. POWELL

'83 DEC -8 A9:54

December 8, 1983

82-1448 United States v. Stauffer Chemical Company

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference

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

From: **Justice Rehnquist**

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WHR
Rehnquist
ZM

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1448

**UNITED STATES, PETITIONER *v.* STAUFFER
CHEMICAL COMPANY**

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

[December —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

In March of 1980, when the Environmental Protection Agency (EPA) tried to inspect one of respondent Stauffer Chemical Company's Tennessee plants using private contractors in addition to full-time EPA employees, Stauffer refused to allow the private contractors to enter the plant. Stauffer argues that private contractors are not "authorized representatives" as that term is used in section 114(a)(2) of the Clean Air Act, 41 U. S. C. (Supp. V) § 7414(a)(2). Stauffer also argues that the government should be estopped from relitigating the question of whether private contractors are "authorized representatives" under the statute because it has already litigated that question against Stauffer and lost in connection with an attempted inspection of one of Stauffer's plants in Wyoming. The Court of Appeals agreed with Stauffer on the merits and also on the collateral estoppel issue. Without reaching the merits, we affirm the Court of Appeals' holding that the government is estopped from relitigating the statutory issue against Stauffer.

On March 27, 1980, officials from EPA and the state of Tennessee, accompanied by employees of a private firm under contract to EPA, attempted to inspect Stauffer's elemental phosphorus production plant in Mt. Pleasant, Tennessee. Stauffer refused entry to the private contractors unless they would sign an agreement not to disclose trade secrets.

Jan 7

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

From: Justice Rehnquist

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1448

UNITED STATES, PETITIONER *v.* STAUFFER
CHEMICAL COMPANY

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

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To: The Chief Justice
Justice Brennan
Justice White
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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1448

**UNITED STATES, PETITIONER v. STAUFFER
CHEMICAL COMPANY**

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

[January —, 1984]

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

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JUSTICE MARSHALL

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December 7, 1983

Re: 82-1448 - United States v. Stauffer
Chemical Co.

Dear Bill:

Please join me.

Respectfully,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

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SUPREME COURT U.S.
JUSTICE MARSHALL

December 6, 1983

'83 DEC -7 A9:58

No. 82-1448 U. S. v. Stauffer Chemical Co.

Dear Bill,

Please join me.

Sincerely,



Justice Rehnquist

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