

# The Burger Court Opinion Writing Database

## *Southland Corp. v. Keating*

465 U.S. 1 (1984)

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



P-10

To: Justice Marshall  
From: Howell  
Date: December 20, 1983

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

Re: Southland v. Keating

I have read the Chief Justice's opinion and am concerned with his analysis of the legislative history of the Arbitration Act in section III.

Because of this concern, I recommend that you withhold your vote until the dissent circulates.

From: **The Chief Justice**

Circulated: DEC 22 1983

Recirculated: \_\_\_\_\_

1st DRAFT

**COURT OF THE UNITED STATES**

No. 82-500

**CORPORATION, ET AL., APPELLANTS v. HARD D. KEATING ET AL.**

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

[January —, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We noted probable jurisdiction to consider (a) whether the California Franchise Investment Law, which invalidates certain arbitration agreements covered by the Federal Arbitration Act, violates the Supremacy Clause and (b) whether arbitration under the Federal Act is impaired when a class action structure is imposed on the process by the state courts.

I

Appellant The Southland Corporation is the owner and franchisor of 7-Eleven convenience stores. Southland's standard franchise agreement provides each franchisee with a license to use certain registered trademarks, a lease or sublease of a convenience store owned or leased by Southland, inventory financing, and assistance in advertising and merchandising. The franchisees operate the stores, supply bookkeeping data, and pay Southland a fixed percentage of gross profits. The franchise agreement also contains the following provision requiring arbitration:

"Any controversy or claim arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration in accordance with the Rules of the American Arbitration Association . . . and judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction thereof."

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

C  
12

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SUPREME COURT U.S.  
JUS

CHANGES AS MARKED: PP. 10-13  
11:24

From: **The Chief Justice**

Circulated: \_\_\_\_\_

Recirculated: **DEC 21 1983**

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-500

**SOUTHLAND CORPORATION, ET AL., APPELLANTS v.  
RICHARD D. KEATING ET AL.**

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

[January —, 1984]

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Appellant The Southland Corporation is the owner and franchisor of 7-Eleven convenience stores. Southland's standard franchise agreement provides each franchisee with a license to use certain registered trademarks, a lease or sublease of a convenience store owned or leased by Southland, inventory financing, and assistance in advertising and merchandising. The franchisees operate the stores, supply bookkeeping data, and pay Southland a fixed percentage of gross profits. The franchise agreement also contains the following provision requiring arbitration:

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CHANGES THROUGHOUT pp. 3, 11, 13

Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **The Chief Justice**

Circulated: \_\_\_\_\_

Recirculated: **JAN 5 1984**

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-500

**SOUTHLAND CORPORATION, ET AL., APPELLANTS v.  
RICHARD D. KEATING ET AL.**

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

[January —, 1984]

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Appellant The Southland Corporation is the owner and franchisor of 7-Eleven convenience stores. Southland's standard franchise agreement provides each franchisee with a license to use certain registered trademarks, a lease or sublease of a convenience store owned or leased by Southland, inventory financing, and assistance in advertising and merchandising. The franchisees operate the stores, supply bookkeeping data, and pay Southland a fixed percentage of gross profits. The franchise agreement also contains the following provision requiring arbitration:

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Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

CHANGES AS MARKED: pp. 11-14

From: **The Chief Justice**

Circulated: \_\_\_\_\_

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4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-500

**SOUTHLAND CORPORATION, ET AL., APPELLANTS v.  
 RICHARD D. KEATING ET AL.**

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

[January —, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

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I

Appellant The Southland Corporation is the owner and franchisor of 7-Eleven convenience stores. Southland's standard franchise agreement provides each franchisee with a license to use certain registered trademarks, a lease or sublease of a convenience store owned or leased by Southland, inventory financing, and assistance in advertising and merchandising. The franchisees operate the stores, supply bookkeeping data, and pay Southland a fixed percentage of gross profits. The franchise agreement also contains the following provision requiring arbitration:

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

February 1, 1984

CHAMBERS OF  
THE CHIEF JUSTICE

Re: 82-500, Southland Corp. v. Keating

MEMORANDUM TO THE CONFERENCE

There are two holds for No. 82-500 - Southland Corp. v. Keating. They are:

1. No. 82-<sup>3</sup>165 - York, Int'l v. Alabama Oxygen Co.

In this case, appellees sued appellants in Alabama state court for breach of a contract that included an arbitration clause. The trial court stayed the suit pending arbitration, but the Alabama Supreme Court issued a conditional writ of mandamus instructing the trial court to vacate the stay. The Alabama Supreme Court held that Alabama law governed because the Federal Arbitration Act was not intended to govern suits in state court. It also stated that if the FAA applied in state court, it would violate the Commerce Clause and the Tenth Amendment (under National League of Cities v. Usery).

Appellate jurisdiction is proper under 28 U.S.C. §1257(2). Appellees' argument that the decision below is not a final order and the Alabama Supreme Court's holding that Alabama law governs are squarely inconsistent with the Court's decision in Keating. Because the Alabama Supreme Court's interpretation of the Tenth Amendment finds little or no support in the Court's cases, I see no reason to remand to the Alabama Supreme Court to allow it to decide the Tenth Amendment issue.

I WILL VOTE TO SUMMARILY REVERSE.      ? ?

2. Local 732, Amalgamated Transit Union v. Metropolitan Atlanta Rapid Transit Authority, No. 83-209.

Section 13(c) of the Urban Mass Transportation Act of 1964 requires a state or local government to make arrangements to preserve transit workers' existing collective-bargaining rights before that government may receive federal assistance to finance mass transportation services. In order to obtain federal assistance, respondent entered into a "§13(c) agreement" with

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

December 20, 1983

No. 82-500

Southland Corporation, et al.  
v. Richard D. Keating, et al.

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Dear Chief,

I agree.

Sincerely,



The Chief Justice

Copies to the Conference

3

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 20, 1983

Re: 82-500 -  
Southland Corporation v. Keating

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Dear Chief,

Please join me.

Sincerely,

*Byron*

The Chief Justice  
Copies to the Conference  
cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 22, 1983

Re: No. 82-500-Southland Corp. v. Keating

Dear Chief:

Please join me.

Sincerely,

*T.M.*  
T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 30, 1983

Re: No. 82-500 - Southland Corporation v. Keating

Dear Chief:

Please join me.

I thought that on January 10, 1983, we had postponed in this case, rather than noting. If I am correct, the statement in the middle of p. 3 of your opinion perhaps should be corrected.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 20, 1983

82-500 Southland Corp. v. Keating

Dear Chief:

Please join me.

Sincerely,

*Lewis*

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 19, 1983

Re: No. 82-500 Southland Corp. v. Keating

Dear Chief:

In this case I will await Sandra's dissent.

Sincerely,

*Wm*

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 20, 1983

Re: No. 82-500 Southland Corp. v. Keating

Dear Sandra:

Please join me in your very convincing dissent.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

January 12, 1984

Re: 82-500 - Southland Corp. v. Keating

Dear Chief:

My apologies for holding this case up but I still am not completely at rest. My views are closer to yours than to Sandra's, but I am still inclined to adhere to my dissenting vote which I will try to explain in just a few paragraphs. I am sure I will be finished early next week.

Respectfully,



The Chief Justice

Copies to the Conference

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

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JUSTICE STEVENS

From: **Justice Stevens**

Circulated: 1/18/84

'84 JAN 18 A10:37

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-500

**SOUTHLAND CORPORATION, ET AL., APPELLANTS v.  
RICHARD D. KEATING ET AL.**

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

[January —, 1984]

JUSTICE STEVENS, concurring in part and dissenting in part.

The Court holds that an arbitration clause that is enforceable in an action in a federal court is equally enforceable if the action is brought in a state court. I agree with that conclusion. Although JUSTICE O'CONNOR'S review of the legislative history of the Federal Arbitration Act demonstrates that the 1925 Congress that enacted the statute viewed the statute as essentially procedural in nature, I am persuaded that the intervening developments in the law compel the conclusion that the Court has reached. I am nevertheless troubled by one aspect of the case that seems to trouble none of my colleagues.

For me it is not "clear beyond question that if this suit had been brought as a diversity action in a Federal District Court, the arbitration clause would have been enforceable." *Ante*, at 12. The general rule prescribed by §2 of the Federal Arbitration Act is that arbitration clauses in contracts regulating interstate transactions are enforceable as a matter of federal law. That general rule, however, is subject to an exception based on "such grounds as exist at law or in equity for the revocation of any contract." I believe that exception leaves room for the implementation of certain substantive state policies that would be undermined by enforcing certain categories of arbitration clauses.

Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice O'Connor

STYLISTIC CHANGES THROUGHOUT.  
 SEE PAGES:

From: **Justice Stevens**

Circulated: \_\_\_\_\_

Recirculated: JAN 19 1984

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-500

SOUTHLAND CORPORATION, ET AL., APPELLANTS  
*v.* RICHARD D. KEATING ET AL.

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

[January —, 1984]

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

December 19, 1983

No. 82-500 Southland Corp. v. Keating

Dear Chief,

The work on my dissent has been completed in anticipation of your opinion and it will be circulated within a day or so.

Sincerely,

*Sandra*

The Chief Justice

Copies to the Conference

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

From: **Justice O'Connor**

Circulated: DEC 19 1983

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-500

SOUTHLAND CORPORATION ET AL., APPELLANTS *v.*  
 RICHARD D. KEATING ET AL.

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

[December —, 1983]

JUSTICE O'CONNOR, dissenting.

Section 2 of the Federal Arbitration Act (FAA), 9 U. S. C. §2, provides that a written arbitration agreement "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."<sup>1</sup> §2 does not, on its face, identify which judicial forums are bound by its requirements or what procedures govern its enforcement. The FAA deals with these matters in §§3 and 4. §3 provides:

"If any suit or proceeding be brought *in any of the courts of the United States* upon any issue referable to arbitration . . . the court . . . shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement. . . ."<sup>2</sup>

§4 specifies that a party aggrieved by another's refusal to arbitrate

"may petition *any United States district court* which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter . . . for an order directing that such arbitration

<sup>1</sup>9 U. S. C. §2.

<sup>2</sup>9 U. S. C. §3 (emphasis added).

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 NO!!!

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

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 JUN 22 1983

'83 DEC 22 A10:58

From: Justice O'Connor

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Recirculated: DEC 22 1983

~~and~~  
 1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-500

SOUTHLAND CORPORATION ET AL., APPELLANTS v.  
 RICHARD D. KEATING ET AL.

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

[January —, 1984]

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"may petition *any United States district court* which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter . . . for an order directing that such arbitration

<sup>1</sup>9 U. S. C. §2.

<sup>2</sup>9 U. S. C. §3 (emphasis added).