

The Burger Court Opinion Writing Database

Hawaii Housing Authority v. Midkiff

467 U.S. 229 (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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
THE CHIEF JUSTICE

May 22, 1984 11 23 AM '84

Re: 83-141) - Hawaii Housing v. Midkiff
83-236) - Portlock Community Association v. Midkiff
83-283) - Kahala Community Association v. Midkiff

Dear Sandra:

I join.

Regards,


Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 7, 1984

No. 83-141) Hawaii Housing
) Authority v. Midkiff
)
) Portlock Community
No. 83-236) Ass'n v. Midkiff
)
) Kahala Community
No. 83-282) Ass'n v. Midkiff

Dear Sandra,

I agree.

Sincerely,

Bill

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 8, 1984

Re: 83-141, 83-236 and 83-283 -
Hawaii Housing Authority v. Midkiff, etc.

Dear Sandra,

I agree.

Sincerely yours,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

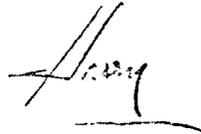
May 7, 1984

Re: No. 83-141) Hawaii Housing Authority v. Midkiff
No. 83-236) Portlock Community Ass'n v. Midkiff
No. 83-283) Kahala Community Ass'n v. Midkiff

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 9, 1984

Dear Sandra:

Re: No. 83-141) Hawaii Housing Authority v. Midkiff
No. 83-236) Portlock Community Ass'n v. Midkiff
No. 83-283) Kahala Community Ass'n v. Midkiff

The votes are coming in rapidly in these cases. I wonder if I may raise a point of personal privilege.

I shall be in Honolulu May 20-22. Do you think the decision in these cases could be withheld until after the 22nd? I run into enough flak as it is these days, and I think it would be better if I were out of the State by the time the decision comes down.

Sincerely,



Justice O'Connor

May 18, 1984

83-141 Hawaii Housing Authority

Dear Sandra:

This refers to our brief conversation yesterday. I should have been in touch with you sooner. My suggested changes, set forth below, do not affect your basic analysis. I have been concerned by the sweep of language that can be read as saying that any "social" purpose may justify the taking of private property. The language to this effect is primarily on page 14.

I suggest the following as a substitute for the next to the last sentence in the paragraph on p. 14 that carries over from p. 13:

"As the unique way titles were held in Hawaii skewed the land market, exercise of the power of eminent domain was justified. The Act advances its purposes without the state taking actual possession of the land. In such cases,"

* * *

The paragraph that begins on p. 14 also can be read broadly to the effect that "social problems" may be addressed by taking private property pursuant to "social legislation". I suggest revision of some of the language of this paragraph, beginning with the second sentence, along the following lines:

"Judicial deference is required here because, in our system of government, legislatures are better able to assess what public purposes should be advanced by an exercise of the taking power. State legislatures are as capable as Congress of making such determinations within their respective spheres of authority. See Berman v Parker, 348 U.S., at 32. Thus, if there are substantial reasons for an exercise of the taking power, courts must . . ."

* * *

The first full sentence on page 13 states that "redistribution of fees simply to reduce the economic and social evils is a rational exercise of the power of eminent domain." Again, I am troubled by the emphasis without limits on "economic and social evils". In this case we are concerned only with a very specific and unique evil. I would suggest omission of the phrase "reduce the economic and social evils", replacing it with "correct deficiencies in the market".

* * *

This is a unique case, and I think we may regret language that could encourage Congress and state legislatures to justify taking private property for any perceived social evil.

I am not sending this letter to the Conference, in the hope that changes along these lines will be acceptable to you. If not, I probably will write briefly.

I do appreciate your willingness to consider these.

Sincerely,

Justice O'Connor

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 21, 1984

83-141 Hawaii Housing Authority v. Midkiff

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

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KELL

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 8, 1984

Re: Nos. 83-141, 83-236 & 83-283 Hawaii Housing Authority
v. Midkiff

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

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Washington, D. C. 20543 SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

84 MAY -8 A9:43

May 7, 1984

Re: 83-141 - Hawaii Housing Authority v.
Midkiff
83-236 - Portlock Comm. Assn. v. Midkiff
83-283 - Kahala Comm. Assn., Inc. v.
Midkiff

Dear Sandra:

Thank you for your response to my suggestion.
Please join me.

Respectfully,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 7, 1984

Re: 83-141 - Hawaii Housing Authority v. Midkiff
83-236 - Portlock Comm. Assn. v. Midkiff
83-283 - Kahala Comm. Assn., Inc. v. Midkiff

Dear Sandra:

Except for two sentences, I am prepared to join your opinion. On page 7 of your draft you state:

"Under Younger-abstention doctrine, federal courts must dismiss federal claims that have been or could be presented in ongoing state proceedings of a judicial nature. See Middlesex Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423 (1982). When the claimant's federal constitutional claim may be raised in state judicial proceedings, interests of comity and federalism counsel toward abstaining from the exercise of federal jurisdiction. See id., at 432-437."

I do not believe the Younger doctrine has ever been stated quite this broadly before. I wonder if you would consider omitting the first of the two sentences and inserting the word "sometimes" in the second sentence. With these changes, I would be glad to join your opinion.

Respectfully,



Justice O'Connor

Copies to the Conference

83-141-3 6121
MAY 17 1984
U.S. SUPREME COURT

F U 13, 15

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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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-141, 83-236 AND 83-283

83-141 HAWAII HOUSING AUTHORITY ET AL.
v.
FRANK E. MIDKIFF ET AL.

83-236 PORTLOCK COMMUNITY ASSOCIATION
(MAUNALUA BEACH) ET AL.
v.
FRANK E. MIDKIFF ET AL.

83-283 KAHALA COMMUNITY ASSOCIATION, INC., ET AL.
v.
FRANK E. MIDKIFF ET AL.

ON APPEALS FROM THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[May —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

The Fifth Amendment of the United States Constitution provides, in pertinent part, that "private property [shall not] be taken for public use, without just compensation." U. S. Const., Amdt. 5. These cases present the question whether the Public Use Clause of that Amendment, made applicable to the State through the Fourteenth Amendment, prohibits the State of Hawaii from taking, with just compensation, title in real property from lessors and transferring it to lessees in order to reduce the concentration of ownership of fees simple in the state. We conclude that it does not.

I

A

The Hawaiian Islands were originally settled by Polyne-

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7, 8, 12, 13, 15

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

From: Justice O'Conn

Circulated: _____

Recirculated: MAY 4 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-141, 83-236 AND 83-283

83-141 HAWAII HOUSING AUTHORITY ET AL.
v.
FRANK E. MIDKIFF ET AL.

83-236 PORTLOCK COMMUNITY ASSOCIATION
(MAUNALUA BEACH) ET AL.
v.
FRANK E. MIDKIFF ET AL.

83-283 KAHALA COMMUNITY ASSOCIATION, INC., ET AL.
v.
FRANK E. MIDKIFF ET AL.

ON APPEALS FROM THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[May —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.
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Supreme Court of the United States
Washington, D. C. 20543

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

01 MAY -8 09:43

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 7, 1984

- No. 83-141 Hawaii Housing Authority v. Midkiff
No. 83-236 Portlock Comm. Assoc. v. Midkiff
No. 83-283 Kahala Community Assoc. v. Midkiff

Dear John,

Thank you for your letter. I am willing to rewrite the sentences you quote on p. 7 of my draft in order to alleviate your concern. Would the following change be satisfactory?

"The dissenting judge also suggested that abstention was required under the standards articulated in Younger v. Harris, supra. Under Younger-abstention doctrine, interests of comity and federalism counsel federal courts to abstain from jurisdiction whenever federal claims have been or could be presented in ongoing state judicial proceedings that concern important state interests. See Middlesex Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432-437 (1982)...."

Sincerely,



Justice Stevens

Copies to the Conference

7,13,15

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

From: Justice O'Conn

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-141, 83-236 AND 83-283

83-141 HAWAII HOUSING AUTHORITY ET AL.
v.
FRANK E. MIDKIFF ET AL.

83-236 PORTLOCK COMMUNITY ASSOCIATION
(MAUNALUA BEACH) ET AL.
v.
FRANK E. MIDKIFF ET AL.

83-283 KAHALA COMMUNITY ASSOCIATION, INC., ET AL.
v.
FRANK E. MIDKIFF ET AL.

ON APPEALS FROM THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[May —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

The Fifth Amendment of the United States Constitution provides, in pertinent part, that "private property [shall not] be taken for public use, without just compensation." U. S. Const., Amdt. 5. These cases present the question whether the Public Use Clause of that Amendment, made applicable to the State through the Fourteenth Amendment, prohibits the State of Hawaii from taking, with just compensation, title in real property from lessors and transferring it to lessees in order to reduce the concentration of ownership of fees simple in the state. We conclude that it does not.

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

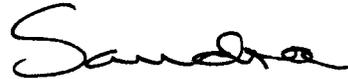
May 9, 1984

No. 83-141 Hawaii Housing Authority v. Midkiff
No. 83-236 Portlock Community Ass'n v. Midkiff
No. 83-283 Kahala Community Ass'n. v. Midkiff

Dear Harry,

I will be more than happy to get you safely
back on the Mainland before lowering the boom by
announcement of this decision.

Sincerely,



Justice Blackmun

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 21, 1984

No. 83-141 Hawaii Housing Authority
v. Midkiff

Dear Lewis,

Thank you for your letter. Your suggestions improve the opinion and I am delighted to incorporate them.

Sincerely,

Sandra

Justice Powell

12/14

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

From: Justice O'Connell

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4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-141, 83-236 AND 83-283

83-141 HAWAII HOUSING AUTHORITY ET AL.
v.
FRANK E. MIDKIFF ET AL.

83-236 PORTLOCK COMMUNITY ASSOCIATION
(MAUNALUA BEACH) ET AL.
v.
FRANK E. MIDKIFF ET AL.

83-283 KAHALA COMMUNITY ASSOCIATION, INC., ET AL.
v.
FRANK E. MIDKIFF ET AL.

ON APPEALS FROM THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[May —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

The Fifth Amendment of the United States Constitution provides, in pertinent part, that "private property [shall not] be taken for public use, without just compensation." U. S. Const., Amdt. 5. These cases present the question whether the Public Use Clause of that Amendment, made applicable to the State through the Fourteenth Amendment, prohibits the State of Hawaii from taking, with just compensation, title in real property from lessors and transferring it to lessees in order to reduce the concentration of ownership of fees simple in the state. We conclude that it does not.

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