The Burger Court Opinion Writing Database

Hallie v. Eau Claire

471 U.S. 34 (1985)

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

January 2, 1985

Re: No. 82-1832 - Town of Hallie v. City of Eau Claire

Dear Lewis,

I join.

Regards,

WEB

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 2, 1985

Re: Town of Hallie v. City of Eau Claire
No.82-1832

Dear Lewis,

I must say initially that I am quite happy with your draft opinion in this case and fully intend to join. You deal admirably with an evolving body of precedent that has at times been perceived by commentators as little more than a collection of results in search of a consistent rationale. But because of my past involvement with some of our prior decisions in this area, I hope you will indulge me in making a few comments.

First, I wonder if our holding in City of Lafayette could not be more precisely described. Lafayette was decided in the face of opposing arguments that municipalities, as subdivisions of states, somehow derived total immunity from the federal antitrust laws "simply by reason of their status" as governmental entities. 435 U.S.,at 408. We properly rejected that argument, noting that in our prior decisions involving subsidiary state governmental bodies rather than the state itself, such as Goldfarb and Bates, we did not automatically find a state action exemption. Instead, we consistently had focused on whether the anticompetitive state policy allegedly being carried out by the state agency was "clearly articulated and affirmatively expressed" and whether that policy was "actively supervised" by the state. Id., at 410. Would not that passing description of our prior holdings be more accurately described as dictum, rather than as the "test" or holding of Lafayette as your draft might be read to suggest at pages 4 and 10? I had thought that the statement that was actually central to the result in Lafayette is that appearing at page 413 in the opinion, where we wrote that "the Parker doctrine exempts only anticompetitive conduct engaged in as an act of government by the State as sovereign, or, by its subdivisions, pursuant to state policy to displace competition ...." This is entirely consistent with your discussion and result in Hallie, and I believe a careful reading of Lafayette provides more clarity than perhaps subsequent readers have discerned. The issue of active supervision clearly was not decided in Lafayette, and consequently was, I think, properly noted as an open question in Boulder. 455 U.S., at 51 n.14. While this is simply a matter of tone, could you find some way to recast your brief descriptions of Lafayette, since I really do not think that my plurality opinion there was inconsistent in any sense with your Hallie?

Second, simply in the interests of clarity, do you think that you should note on page 4 that in Midcal, (you will recall that I did not participate in that one), the original action was one of mandamus with an injunction running against a state agency, the California Department of Alcoholic Beverage Control, and not a private party? The California Retail Liquor Dealers Association brought the case here on cert as a party intervenor. Of course, the mere presence of a state agency in the case was not sufficient to alter the state action analysis from that appropriate in a private party case. The California Supreme Court had expressly found that "the state plays no role whatever in setting the retail [liquor] prices" at issue, 445 U.S., at 100 (quoting 21 Cal. 3d, at 445), and we also stated that "[t]he State has no direct control over wine prices, and it does not review the reasonableness of the prices set by wine dealers." 445 U.S., at 100. I suggest a clarifying note only because it seems to me that these facts may be important in distinguishing Midcal from this case, as well as from the scheme which we are about to approve in Southern Motor Carriers.

Third, we held in Boulder that local autonomy and federalism concerns were insufficient to extend state action immunity to "home rule" municipal governance systems. 455 U.S., at 53-54. Thus, with reference to your footnote 8 on page 11, a state "tradition of delegating broad authority to municipalities to regulate" is no reason in itself to fail to scrutinize municipal actions under the federal antitrust laws. Also, I wonder if we should not refrain from commenting on the wisdom of the political decisions of states vis a vis governance of their local subdivisions? In sum, I wonder if footnote 8 should be deleted? If not, what would you think of altering the footnote to read somewhat as follows (changes underlined):

> "Once a clearly articulated and affirmatively expressed state policy is discerned, further requiring States actively to supervise municipal conduct might be unwise as well as unnecessary. [next sentence and citation unchanged.] To require ongoing supervision by the State might well erode local autonomy and [omit possibly] limit the State's ability to focus on more general matters of statewide concern, to a greater extent than is required for effective administration of the federal antitrust laws."

Similar concerns also lead me to ask whether, in the first sentence of the second full paragraph on page 8, the phrase "would be unwise" should be replaced with "could lead to deleterious and unncessary consequences."

Finally, as I stated at Conference, there are at least two other factors that contribute to my view that municipalities should be treated differently to some degree from private parties in the state action area. First, municipalities in many states must conduct their activities in view of the public eye, under

"sunshine" laws or their equivalent; even absent such express laws, municipal conduct invariably is likely to be exposed to public view and scrutiny. Thus there is less reason to require ongoing state involvement, since the state will presumably become aware of deviations from its clearly expressed policies and take action to correct such deviations. (Moreover, I presume that if a deviation from clearly expressed state policy was clear, the municipality would lose whatever derivative state action exemption it might otherwise claim.) Second, unlike most corporate actors, the persons running a municipality are checked through the local electoral process. While this process does not entirely assure "pure" motives on the part of municipal actors (since the electors will in many cases be the same persons who presumably benefit from parochial anticompetitive policies), I think the political process is, in general, a more open system likely to provide some greater degree of protection against antitrust abuses. These factors, and perhaps others, could be added to your discussion at pages 9-10 as additional reasons why "we may presume, absent a showing to the contrary, that the municipality acts in the public interest."

As I say, these matters, while not unimportant, are tangential to the main result which you have skillfully described.

Sincerely

Bill

Justice Powell

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 13, 1985

No. 82-1832

Town of Hallie, et al.
v. City of Eau Claire

Dear Lewis,

I wonder if at page 5 you have unintentionally repeated a line. At the end of line 7 you state "we declined to accept City of Lafayette's suggestion that a municipality must show more than a state policy to displace competition exists. We . . . ." Should that not be omitted in light of what you say at the end of the paragraph, to wit: "we declined to decide whether governmental action by a municipality must also be actively supervised by the State"? Whatever you do doesn't affect my full join.

Sincerely,

Bill

Justice Powell

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 13, 1985

No. 82-1832

Town of Hallie, et al.
v. City of Eau Claire

Dear Lewis,

I join with pleasure your 4th draft in the above.

Sincerely,

Justice Powell

Copies to the Conference

(5)

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 2, 1985

Re: 82-1832 -

Town of Hallie v. City of Eau Claire

Dear Lewis,

Please join me.

Sincerely yours,

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 30, 1985

Re: No. 82-1832-Town of Hallie v. City of Eau Claire

Dear Lewis:

I have no objection to your accommodating the suggestions made by Bill Brennan.

Sincerely,

T.M.

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 19, 1985

Re: No. 82-1832-Town of Hallie v. City of Eau Claire

Dear Lewis:

Please join me.

Sincerely,

T.M.

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 21, 1984

Re: No. 82-1832, Town of Hallie v. City of Eau Claire

Dear Lewis:

Please join me.

Sincerely,

Harry

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 29, 1985

Re: No. 82-1832, Town of Hallie v. City of Eau Claire

Dear Lewis:

I have no objection to your accommodating the suggestions made by Bill Brennan.

Sincerely,

Harry

Justice Powell

cc: The Conference

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

From: **Justice Powell**

Circulated: DEC 20 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1832

TOWN OF HALLIE, ET AL., PETITIONERS *v.*
CITY OF EAU CLAIRE

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

[December ——, 1984]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether a municipality's anticompetitive activities are protected by the state action exemption to the federal antitrust laws established by *Parker* v. *Brown*, 317 U. S. 341 (1943), when the activities are authorized, but not compelled, by the State, and the State does not actively supervise the anticompetitive conduct.

I

Petitioners—Town of Hallie, Town of Seymour, Town of Union, and Town of Washington (the "Towns")—are four Wisconsin townships located adjacent to respondent, the City of Eau Claire (the "City"). Town of Hallie is located in Chippewa County, and the other three towns are located in Eau Claire County.[1] The Towns filed suit against the City in United States District Court for the Western District of Wisconsin seeking injunctive relief and alleging that the City violated the Sherman Act, 15 U. S. C. § 1 *et seq.*, by acquiring a monopoly over the provision of sewage treatment services in Eau Claire and Chippewa Counties, and by tying the provision of such services to the provision of sewage collection and

[1] The City is located in both Eau Claire and Chippewa Counties.

12/26

Stylistic changes throughout.

pp. 1-6
8-11

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

From: **Justice Powell**

Circulated: _____

Recirculated: DEC 28 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1832

TOWN OF HALLIE, ET AL., PETITIONERS *v.*
CITY OF EAU CLAIRE

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

[January ——, 1985]

JUSTICE POWELL delivered the opinion of the Court.

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(5)

[1] The City is located in both Eau Claire and Chippewa Counties.

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

From: **Justice Powell**

Circulated: _____

Recirculated: JAN 7 1985

Stylistic Changes Throughout.

3rd ~~2nd~~ DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1832

TOWN OF HALLIE, ET AL., PETITIONERS *v.*
CITY OF EAU CLAIRE

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

[January ——, 1985]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether a municipality's anticompetitive activities are protected by the state action exemption to the federal antitrust laws established by *Parker* v. *Brown*, 317 U. S. 341 (1943), when the activities are authorized, but not compelled, by the State, and the State does not actively supervise the anticompetitive conduct.

I

Petitioners—Town of Hallie, Town of Seymour, Town of Union, and Town of Washington (the Towns)—are four Wisconsin unincorporated townships located adjacent to respondent, the City of Eau Claire (the City). Town of Hallie is located in Chippewa County, and the other three towns are located in Eau Claire County.[1] The Towns filed suit against the City in United States District Court for the Western District of Wisconsin seeking injunctive relief and alleging that the City violated the Sherman Act, 15 U. S. C. § 1 *et seq.*, by acquiring a monopoly over the provision of sewage treatment services in Eau Claire and Chippewa Counties, and by tying the provision of such services to the provision of sewage

[1] The City is located in both Eau Claire and Chippewa Counties.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 28, 1985

MEMORANDUM TO THE CONFERENCE

No. 82-1832 Town of Hallie v. City of Eau Claire

Justice Powell requested that I write a memorandum to you, informing you that he has read Justice Brennan's letter of January 2, 1985, proposing some changes to the opinion in this case. Justice Powell views these changes as consistent with the rationale of the opinion, and proposes to incorporate them in his draft, provided the Justices who have already joined the opinion find Justice Brennan's proposals to be acceptable. If this suggestion meets with your approval, the changes will be incorporated and a revised draft circulated within a few days.

Lynda Guild Simpson

Lynda Guild Simpson
Law Clerk to Justice Powell

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

From: **Justice Powell**

Circulated: _____

Recirculated: FEB 12 1985

changes on pp. 1, 3-12

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1832

TOWN OF HALLIE, ET AL., PETITIONERS *v.* CITY OF EAU CLAIRE

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

[February ——, 1985]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether a municipality's anticompetitive activities are protected by the state action exemption to the federal antitrust laws established by *Parker* v. *Brown*, 317 U. S. 341 (1943), when the activities are authorized, but not compelled, by the State, and the State does not actively supervise the anticompetitive conduct.

I

Petitioners—Town of Hallie, Town of Seymour, Town of Union, and Town of Washington (the Towns)—are four Wisconsin unincorporated townships located adjacent to respondent, the City of Eau Claire (the City). Town of Hallie is located in Chippewa County, and the other three towns are located in Eau Claire County.[1] The Towns filed suit against the City in United States District Court for the Western District of Wisconsin seeking injunctive relief and alleging that the City violated the Sherman Act, 15 U. S. C. § 1 *et seq.*, by acquiring a monopoly over the provision of sewage treatment services in Eau Claire and Chippewa Counties, and by tying the provision of such services to the provision of sewage

[1] The City is located in both Eau Claire and Chippewa Counties.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 26, 1985

MEMORANDUM TO THE CONFERENCE

We held five cases pending our disposition of No. 82-1832, Town of Hallie v. City of Eau Claire. I will vote to deny in all of them, as it appears in each one that the Court of Appeals properly anticipated (i) the standard we would apply for determining when a State's policy has been clearly articulated, and (ii) the fact that we would not require active state supervision where municipal conduct was involved.

(1) Gold Cross Ambulance v. Kansas City, et al., No. 83-138: Resp Ambulance Service, Inc. ("ASI") is the only company allowed by resp Kansas City to provide ambulance services in Kansas City. All of the stock of ASI is owned by a municipal trust. Petrs are two ambulance companies that are denied access to most of the Kansas City market. They sued resps, alleging violations of the state and federal antitrust laws. The DC dismissed the antitrust claims. CA8 affirmed, concluding that state action immunity applied because there was a clear state policy, compulsion was not required, and active state supervision was not necessary where municipal conduct was involved.

This case was originally held for Hoover v. Ronwin, No. 82-1474, but was relisted and held for Town of Hallie after it became clear that Hoover would not decide the compulsion and state supervision claims where municipal conduct was at issue. As noted above, I would deny cert in this case because CA8 properly anticipated our decision in Town of Hallie.

(2) Central Iowa Refuse Systems, Inc. v. Des Moines Metr. Area Solid Waste Agency, et al., No. 83-825: Resp Des Moines and several neighboring municipalities entered into a cooperative venture for the collection of waste. In order to finance a municipal landfill, the municipalities formed resp Solid Waste Agency, issued bonds, and agreed to use the landfill as the exclusive site of solid waste disposal. Petr, who runs a private landfill, is not allowed to dispose of refuse collected within resps' area in its landfill. Petr sued, arguing that the municipalities' arrangement violated the Sherman Act. The DC dismissed the action, and CA8 affirmed. It ruled that the Iowa legislature had authorized the challenged municipal activity

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 2, 1985

Re: No. 82-1832 Town of Hallie v. City of Eau Claire

Dear Lewis,

Please join me.

Sincerely,

WHR

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 1, 1985

Re: 82-1832 - Town of Hallie v. City of Eau Claire

Dear Lewis:

I agree with Sandra's comments in her letter to you of January 29th.

Sincerely,

WHR

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 2, 1985

Re: 82-1832 - Town of Hallie, et al.
v. City of Eau Claire

Dear Lewis:

Please join me.

Respectfully,

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 2, 1985

Re: 82-1832 Town of Hallie, et al v. City of Eau Claire

Dear Lewis,

Please join me.

Sincerely,

Sandra

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 29, 1985

No. 82-1832 Town of Hallie v. City of Eau Claire

Attention: Linda Guild Simpson

Dear Lewis,

I think Bill Brennan's suggestions are generally quite useful and that they will be helpful if incorporated in the opinion with one exception. I was in dissent in Boulder and am uncomfortable with the final underlined portion of Bill's amendment to footnote 8. Would it be agreeable to simply put a period after the words "statewide concern"?

Sincerely,

Sandra

Justice Powell

Copies to the Conference