

The Burger Court Opinion Writing Database

Phillips Petroleum Co. v. Shutts

472 U.S. 797 (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

May 6, 1985

Re: 84-233 - Phillips Petroleum v. Shutts

Dear Bill:

I join.

Regards,



Justice Rehnquist

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


CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 1, 1985

No. 84-233

Phillips Petroleum Company
v. Shutts, et al.

Dear Bill,

I agree.

Sincerely,

Bill

Justice Rehnquist

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 2, 1985

84-233 - Phillips Petroleum Co. v. Shutts

Dear Bill,

Join me, please.

Sincerely yours,



Justice Rehnquist

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84-233-1120

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 19, 1985

Re: No. 84-233-Phillips Petroleum Co. v. Shutts

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

April 10, 1985

Re: No. 84-233, Phillips Petroleum v. Shutts

Dear Bill:

Please join me.

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.

March 29, 1985

84-233 Phillips Petroleum v. Shutts

Dear Bill:

Please show at the end of the next draft of your opinion that I took no part in the consideration or decision of the above case.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

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2000

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

From: Justice Rehnquist

Circulated: MAR 28 1985

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-233

PHILLIPS PETROLEUM COMPANY, PETITIONER *v.*
IRL SHUTTS, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

[March —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner is a Delaware corporation which has its principal place of business in Oklahoma. During the 1970's it produced or purchased natural gas from leased land located in eleven different states, and sold most of the gas in interstate commerce. Respondents are some 28,000 of the royalty owners possessing rights to the leases from which petitioner produced the gas; they reside in all 50 states, the District of Columbia, and several foreign countries. Respondents brought a class action lawsuit against petitioner in the Kansas state court, seeking to recover interest on royalty payments which had been delayed by petitioner. They recovered judgment in the trial court, and the Supreme Court of Kansas affirmed the judgment over petitioner's contentions that the Due Process Clause of the Fourteenth Amendment prevented Kansas from adjudicating the claims of all the respondents, and that the Due Process Clause and the Full Faith and Credit Clause of Article IV of the Constitution prohibited the application of Kansas law to all of the transactions between petitioner and respondents. *Shutts v. Phillips Petroleum Co.*, 235 Kan. 195, 679 P. 2d 1159 (1984). We granted certiorari to consider these claims. — U. S. —. We reject petitioner's jurisdictional claim, but sustain its claim regarding the choice of law.

Because petitioner sold the gas to its customers in interstate commerce, it was required to secure approval for price

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 1, 1985

Re: No. 84-233 Phillips Petroleum Co. v. Shutts

Dear John,

I think both of your suggestions with respect to part II of my circulating draft have merit, and I will make the following changes.

I will revise the last sentence in the second full paragraph on page 9 to read as follows:

"In Insurance Corp. of Ireland v. Compagnie Des Bauxites, 456 U.S. 694, 702-703 and n. 10 (1982) we explained that the requirement that a court have personal jurisdiction comes from the Due Process Clause's protection of the defendant's personal liberty interest, and said that the requirement "represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty (footnote omitted.)"

I must confess that this distinction seems a bit metaphysical, but we said it in Insurance Corp. and all I want is to accurately reflect the "teaching" of Byron's opinion in that case. On page 12, in footnote 1, I will add to the parade of horrors that absent class members might sometime be subject to the word "discovery," but the issue may be left to a case presenting it in a concrete manner.

With these impedimenta cleared away, I hope you will now join parts I and II.

Sincerely,



Justice Stevens

.91 4/1/85

cc: The Conference

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P 9, 12

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

From: Justice Rehnquist

Circulated: _____

Recirculated: 4/2/85

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-233

**PHILLIPS PETROLEUM COMPANY, PETITIONER v.
IRL SHUTTS, ET AL.**

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

[April —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

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Because petitioner sold the gas to its customers in interstate commerce, it was required to secure approval for price

pld

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 2, 1985

Re: No. 84-233 Phillips Petroleum Co. v. Shutts

Dear Thurgood,

After you called this morning about Hansberry v. Lee, I read the case again (and looked for your name as one of the counsel -- which I didn't find!). I am going to put a new footnote on page 11, following the last sentence in the paragraph carried over from page 10. The footnote will read:

"The holding of Hansberry, of course, was that respondents in that case had not a sufficient common interest with the parties to a prior lawsuit such that a decree against those parties in the prior suit would bind the respondents. But in the present case there is no question that the named plaintiffs adequately represent the class, and that all members of the class have the same interest in enforcing their claims against the defendant."

I hope this will bring you aboard.

Sincerely,


Justice Marshall

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33 APR 1985

Stylistic; new footnote 1 & renumbered

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
Please join me
RM

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-233

**PHILLIPS PETROLEUM COMPANY, PETITIONER v.
IRL SHUTTS, ET AL.**

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

[April —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner is a Delaware corporation which has its principal place of business in Oklahoma. During the 1970's it produced or purchased natural gas from leased land located in 11 different States, and sold most of the gas in interstate commerce. Respondents are some 28,000 of the royalty owners possessing rights to the leases from which petitioner produced the gas; they reside in all 50 States, the District of Columbia, and several foreign countries. Respondents brought a class action against petitioner in the Kansas state court, seeking to recover interest on royalty payments which had been delayed by petitioner. They recovered judgment in the trial court, and the Supreme Court of Kansas affirmed the judgment over petitioner's contentions that the Due Process Clause of the Fourteenth Amendment prevented Kansas from adjudicating the claims of all the respondents, and that the Due Process Clause and the Full Faith and Credit Clause of Article IV of the Constitution prohibited the application of Kansas law to all of the transactions between petitioner and respondents. 235 Kan. 195, 679 P. 2d 1159 (1984). We granted certiorari to consider these claims. 469 U. S. — (1984). We reject petitioner's jurisdictional claim, but sustain its claim regarding the choice of law.

Because petitioner sold the gas to its customers in interstate commerce, it was required to secure approval for price increases from what was then the Federal Power Commis-

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To: The Chief Justice
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Justice Stevens
Justice O'Connor

From: Justice Rehnquist

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4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-233

**PHILLIPS PETROLEUM COMPANY, PETITIONER v.
IRL SHUTTS, ET AL.**

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

[June —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner is a Delaware corporation which has its principal place of business in Oklahoma. During the 1970's it produced or purchased natural gas from leased land located in 11 different States, and sold most of the gas in interstate commerce. Respondents are some 28,000 of the royalty owners possessing rights to the leases from which petitioner produced the gas; they reside in all 50 States, the District of Columbia, and several foreign countries. Respondents brought a class action against petitioner in the Kansas state court, seeking to recover interest on royalty payments which had been delayed by petitioner. They recovered judgment in the trial court, and the Supreme Court of Kansas affirmed the judgment over petitioner's contentions that the Due Process Clause of the Fourteenth Amendment prevented Kansas from adjudicating the claims of all the respondents, and that the Due Process Clause and the Full Faith and Credit Clause of Article IV of the Constitution prohibited the application of Kansas law to all of the transactions between petitioner and respondents. 235 Kan. 195, 679 P. 2d 1159 (1984). We granted certiorari to consider these claims. 469 U. S. — (1984). We reject petitioner's jurisdictional claim, but sustain its claim regarding the choice of law.

Because petitioner sold the gas to its customers in interstate commerce, it was required to secure approval for price increases from what was then the Federal Power Commis-

PP 17, 19, 20

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 29, 1985

Re: 84-233 - Phillips Petroleum Co.
v. Shutts

Dear Bill:

You have written an interesting and persuasive opinion. I expect to join Parts I and II, but I still plan to dissent from Part III. I attach greater significance to the choice of law analysis in Shutts I than you do and I believe the unique character of the interest question in both Shutts I and Shutts II gives the forum court a broader latitude in fashioning the appropriate remedy than would be true in a case like Allstate which involved a clear-cut issue on which the two States had taken opposite, well-defined positions.

With respect to Part II of your opinion, I have two suggestions for your consideration. The last sentence of the second paragraph on page 9 correctly identifies the due process clause as the source of the personal jurisdiction requirement, but then concludes with the phrase "rather than a restriction on state sovereignty in our federal system." I think that phrase is a trifle misleading because the footnote in Insurance Corp. of Ireland, 456 U.S., at 702-703, recognized that the jurisdictional requirement is a restriction on state sovereignty and merely indicated that its source is not properly described as "federalism."

On page 12 you make the important point that absent plaintiffs are not subject to the burdens that litigation imposes upon defendants. You avoid any mention of possible discovery against absent plaintiffs. Of course, there was no such discovery in this case and it is not typical to seek discovery from absent class members, but I believe it does

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occur in some cases and that occasionally there are disputes about whether sanctions can be imposed. Query: Would that burden affect your analysis, and if so, should it be mentioned? Perhaps the wisest course is to save the entire problem for another day and not to mention it at all in this case, but I just thought I would make sure you had not overlooked it.

Respectfully,



Justice Rehnquist

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 3, 1985

Re: 84-233 - Phillips Petroleum Co.,
v. Shutts

Dear Bill:

Thank you for making the changes on page 9 and 12. I will join Parts I and II. I should also advise you that I am working on my dissent from Part III and am more convinced than ever that the Court is taking an incorrect step in the choice of law area.

Respectfully,



Justice Rehnquist

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84-233-3 41:28

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

From: Justice Stevens

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-233

PHILLIPS PETROLEUM COMPANY, PETITIONER *v.*
IRL SHUTTS ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

[June —, 1985]

JUSTICE STEVENS, concurring in part and dissenting in part.

For the reasons stated in Parts I and II of the Court's opinion, I agree that the Kansas courts properly exercised jurisdiction over this class action. I also recognize that the use of the word "compelling" in a portion of the Kansas Supreme Court's opinion, when read out of context, may create an inaccurate impression of that court's choice of law holding. See *ante*, at 23. Our job, however, is to review judgments, not to edit opinions, and I am firmly convinced that there is no constitutional defect in the judgment under review.

As the Court recognizes, there "can be no [constitutional] injury in applying Kansas law if it is not in conflict with that of any other jurisdiction connected to this suit." *Ante*, at 19. A fair reading of the Kansas Supreme Court's opinion in light of its earlier opinion in *Shutts v. Phillips Petroleum Co.*, 567 P. 2d 1292 (Kan. 1977), cert. denied, 434 U. S. 1068 (1978) (hereinafter *Shutts I*), reveals that the Kansas court has examined the laws of connected jurisdictions and has correctly concluded that there is no "direct" or "substantive" conflict between the law applied by Kansas and the laws of those other States. Cf. *ante*, at 19, 24. Kansas has merely developed general common law principles to accommodate the novel facts of this litigation—other State courts either agree with Kansas or have not yet addressed precisely similar claims. Consequently, I conclude that the Full Faith and

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Justice Rehnquist
Justice O'Connor

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES:

From: Justice Stevens

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-233

PHILLIPS PETROLEUM COMPANY, PETITIONER *v.*
IRL SHUTTS ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

[June —, 1985]

JUSTICE STEVENS, concurring in part and dissenting in part.

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4

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 10, 1985

No. 84-233 Phillips Petroleum Co. v. Shutts

Dear Bill,

Your superior powers of persuasion prevail.
I see no value to expression of a contrary view. Please
join me.

Sincerely,



Justice Rehnquist

APR 11 1985
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