

The Burger Court Opinion Writing Database

Maine v. Taylor

477 U.S. 131 (1986)

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





CHAMBERS OF
THE CHIEF JUSTICE

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

June 18, 1986

RE: 85-62 - Maine v. Taylor

Dear Harry:

I join.

Regards,

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 13, 1986

No. 85-62

Maine v. Taylor, et al.

Dear Harry,

Please join me.

Sincerely,

Bill

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 13, 1986

85-62 - Maine v. Taylor and United States

Dear Harry,

Please join me.

Sincerely yours,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 12, 1986

Re: No. 85-62-Maine v. Taylor

Dear Harry:

Please join me.

Sincerely,

J.M.

T.M.

Justice Blackmun

cc: The Conference

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

From: **Justice Blackmun**

Circulated: JUN 12 1986

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~~HIATB
Please see me
JW~~

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-62

MAINE, APPELLANT *v.* ROBERT J. TAYLOR
AND UNITED STATES

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

[June —, 1986]

Join

JUSTICE BLACKMUN delivered the opinion of the Court.

Once again, a little fish has caused a commotion. Cf. *Hughes v. Oklahoma*, 441 U. S. 322 (1979); *TVA v. Hill*, 437 U. S. 153 (1978); *Cappaert v. United States*, 426 U. S. 128 (1976). The fish in this case is the golden shiner, a species of minnow commonly used as live bait in sport fishing.

Appellee Robert J. Taylor operates a bait business in Maine. Despite a Maine statute prohibiting the importation of live baitfish,¹ he arranged to have 158,000 live golden shiners delivered to him from outside the State. The shipment was intercepted, and a federal grand jury in the District of Maine indicted Taylor for violating and conspiring to violate the Lacey Act Amendments of 1981, 95 Stat. 1073, 16 U. S. C. §§ 3371-3378. Section 3(a)(2)(A) of those Amendments, 16 U. S. C. § 3372(a)(2)(A), makes it a federal crime "to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce . . . any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law."

¹"A person is guilty of importing live bait if he imports into this State any live fish, including smelts, which are commonly used for bait fishing in inland waters." Me. Rev. Stat. Ann., Tit. 12, § 7613 (1981).

STYLISTIC CHANGES
4 pp. 7, 9

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

From: Justice Blackmun

Circulated: _____

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-62

MAINE, APPELLANT *v.* ROBERT J. TAYLOR
AND UNITED STATES

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

[June —, 1986]

JUSTICE BLACKMUN delivered the opinion of the Court.

Once again, a little fish has caused a commotion. See *Hughes v. Oklahoma*, 441 U. S. 322 (1979); *TVA v. Hill*, 437 U. S. 153 (1978); *Cappaert v. United States*, 426 U. S. 128 (1976). The fish in this case is the golden shiner, a species of minnow commonly used as live bait in sport fishing.

Appellee Robert J. Taylor operates a bait business in Maine. Despite a Maine statute prohibiting the importation of live baitfish,¹ he arranged to have 158,000 live golden shiners delivered to him from outside the State. The shipment was intercepted, and a federal grand jury in the District of Maine indicted Taylor for violating and conspiring to violate the Lacey Act Amendments of 1981, 95 Stat. 1073, 16 U. S. C. §§ 3371-3378. Section 3(a)(2)(A) of those Amendments, 16 U. S. C. § 3372(a)(2)(A), makes it a federal crime "to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce . . . any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law."

¹"A person is guilty of importing live bait if he imports into this State any live fish, including smelts, which are commonly used for bait fishing in inland waters." Me. Rev. Stat. Ann., Tit. 12, § 7613 (1981).



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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 12, 1986

85-62 Maine v. Taylor

Dear Harry:

Please join me.

Sincerely,

Lewis

Justice Blackmun

lfp/ss

cc: The Conference

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



MEMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 16, 1986

Re. No. 85-62 Maine v. Taylor

Dear Harry,

Please join me.

Sincerely,

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 13, 1986

Re: 85-62 - Maine v. Taylor and United
States

Dear Harry:

You have written a persuasive opinion and I may end up joining you, but in view of the fact that I voted the other way at Conference and I am still puzzled by the fact that only Maine has this kind of total ban on the importation of bait fish, I would like to take the time to reexamine the case before deciding whether to join you or to write what I'm sure would be a very brief dissent.

Respectfully,



Justice Blackmun

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

From: Justice Stevens

Circulated: JUN 18 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-62

MAINE, APPELLANT *v.* ROBERT J. TAYLOR
 AND UNITED STATES

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
 FOR THE FIRST CIRCUIT

[June —, 1986]

JUSTICE STEVENS, dissenting.

There is something fishy about this case. Maine is the only State in the Union that blatantly discriminates against out-of-state baitfish by flatly prohibiting their importation. Although golden shiners are already present and thriving in Maine (and, perhaps not coincidentally, the subject of a flourishing domestic industry), Maine excludes golden shiners grown and harvested (and, perhaps not coincidentally, sold) in other States. This kind of stark discrimination against out-of-state articles of commerce requires rigorous justification by the discriminating State. "When discrimination against commerce of the type we have found is demonstrated, the burden falls on the State to justify it both in terms of the local benefits flowing from the statute and the unavailability of nondiscriminatory alternatives adequate to preserve the local interests at stake." *Hunt v. Washington Apple Advertising Commn*, 432 U. S. 333, 353 (1977).

Like the District Court, the Court concludes that uncertainty about possible ecological effects from the possible presence of parasites and non-native species in shipments of out-of-state shiners suffices to carry the State's burden of proving a legitimate public purpose. *Ante*, at 11-12, 17. The Court similarly concludes that the State has no obligation to develop feasible inspection procedures that would make a total ban unnecessary. *Id.*, at 16. It seems clear,

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 12, 1986

No. 85-62 Maine v. Taylor and United States

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference