10-1981

Alfred Snapp & Son, Inc. v. Puerto Rico

Lewis F. Powell Jr.

Paul - I'll take a look at Papers

PS 03/17/81

Several of the Petrs are Va apple growers whom I knew, but I do not recall ever having represented any of them.

Circulated to Dem

PRELIMINARY MEMORANDUM

March 27, 1981 Conference
List 1, Sheet 2

No. 80-1305 — Cert to CA4 (Butzner & Sprouse; Hall, dissenting)

ALFRED L. SNAPP & SON, INC. ET AL.

v.

COMMONWEALTH OF PUERTO RICO — Federal/civil — Timely

1. SUMMARY: Petrs are various apple growers from Virginia* who question the standing of the Commonwealth of Puerto Rico to sue to vindicate the rights of migrant agricultural workers from the Commonwealth.

This decision may be wrong, but I would probably deny.

PS

*Any recusal problem? Sally checked the list and said she recognized none of the petrs as former clients

2. FACTS AND DECISION BELOW: Petrs are 52 Virginia apple growers. Each year they need a substantial amount of temporary labor to harvest their apples. Under federal law, the Dept of Labor attempts to meet such needs through an interstate clearance system--essentially a job advertising service. Federal law, under the Immigration and Nationality Act, also prohibits the hiring of temporary foreign labor unless the supply of workers from all domestic sources is inadequate.

In 1978, the apple crop in Virginia reached record levels and petrs sought workers through the interstate clearance system. In past years, these growers had refused to hire workers from Puerto Rico because of a commonwealth statute, P.L. 87, that required employers to enter into a contract with the commonwealth itself and established standards for working conditions that were higher than permitted by federal law. Instead, the growers had hired foreign workers, arguing that Puerto Rican workers were not fully "available" for purposes of the Immigration and Nationality Act. This position was sustained by several courts, including the First Circuit, in Flecha v. Quiros, 567 F.2d 1154 (1977), cert. denied, 436 U.S. 945 (1978).

In 1978 the Puerto Rican legislature amended P.L. 87 to permit waivers. A waiver was granted to petrs and 2,318 Puerto Rican workers were recruited. 992 of these workers left for the United States, before the flow was cut off because of news that the growers were refusing to hire these workers on arrival. Simultaneously, the growers were resisting these efforts to send Puerto Rican workers by litigating in the W.D. Va., where they

obtained a preliminary injunction allowing them to recruit Jamaican workers, as in the past. Because of refusals to hire and dismissals based on "nonproductivity," fewer than 30 Puerto Rican workers remained employed three weeks after their arrival.

Based on these events, the Commonwealth of Puerto Rico filed suit in the W.D. Va., seeking declaratory and injunctive relief, and alleging violations of various federal statutes through discrimination against Puerto Ricans and preferences for foreign workers. At the same time, the Commonwealth filed a companion suit in New York, where comparable problems had arisen in the apple industry. The District Court in Virginia dismissed the case on the theory that the Commonwealth lacks standing here to pursue the case in its capacity as parens patriae. It viewed the case as equivalent to a contractual dispute involving only about 1000 citizens of Puerto Rico. Emphasizing the small size of the group of injured citizens, the minimal nature of the economic effects felt in Puerto Rico, and the fact that the workers themselves could sue to vindicate their rights, the court based its holding on such cases as Pennsylvania v. New Jersey, 426 U.S. 660 (1976), and Hawaii v. Standard Oil Co., 405 U.S. 251 (1972).

The CA4 reversed, 2-1. The majority weighed the same factors, but viewed the case as more than an isolated dispute. Instead, the Commonwealth has a "quasi-sovereign" interest in the case, as required by past decisions, because it is seeking to remedy a disastrous unemployment problem and the inability of workers to find work on the mainland has an indirect effect on the Commonwealth as a whole. Moreover, there is no reason to think that workers who

are sufficiently impoverished to want to leave home for two months to pick apples will be able to vindicate their rights on their own.

Judge Hall dissented, stating that the case presents a "very close question" but that he felt the District Court had arrived at the right conclusion.

3. CONTENTIONS: The suit by Puerto Rico in New York was dismissed by the SDNY summarily on the authority of the District Court decision in this case. An appeal to the CA2, No. 79-7777, is still pending. As a result, petrs allege a conflict between the CA4 and the SDNY. On the merits, they argue that the Commonwealth has no "quasi-sovereign" interest in this case, and is litigating as a mere "volunteer." The portion of the population affected is not nearly large enough for a parens patriae suit. Moreover, it cannot be suggested that the workers are incapable of suing for themselves, since there has been a class action filed in Puerto Rico against petrs, and a number of petrs have been sued there by particular individuals.

Resp replies that the Commonwealth was dealing with long-term resistance to employment for Puerto Ricans in Virginia orchards. In seeking prospective relief, the Commonwealth sought to vindicate the federal rights of any Puerto Ricans who may seek employment in the future, and to bestow economic benefits on all Puerto Ricans. Finally, there is no conflict over the principles to be applied in this sort of case, and there is no reason for this Court to step in, at least until the Second Circuit has ruled on the same issue.

4. DISCUSSION: Petrs may well be correct that the decision below constitutes an unwarranted expansion of the doctrine of parens patriae--since the number of affected workers in 1978 was relatively small and the economic effects in Puerto Rico necessarily small as well. On ther other hand, it may be appropriate to view such a case in the context of the Commonwealth's overall effort to overcome resistance to employing Puerto Ricans on the mainland--resistance that is broader than this present case.

I tend to agree with resp that the principles applied below were the correct ones, and there is no reason for review in this court, at least until the Second Circuit has ruled. If the decision of that court conflicts with the CA4, review may be more appropriate.

There is a response.

03/17/81 Smith Op. in petn.

Argued ....., 19... *Assigned* ....., 19... No. 80-1305

Submitted ....., 19... *Announced* ....., 19...

ALFRED L. SNAPP & SON, INC. (Harry Byrd & other Virginia

vs.

PUERTO RICO, ex rel. QUIROS

W.H.R. thinks a CA2 case - that has been argued that we may be better case. I'm not sure of my position in this case.

Relist April 21st

4/24 The Library reports that the CA2 case is still pending. PS A cert petition in the CA2 case was filed August 20, 1981 Blankamp v. Puerto Rico #81-361 DFL

9/22 The CA2 reversed the district court and followed the reasoning of the CA4 here. Thus, there is no conflict.

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POST	JURISDICTIONAL STATEMENT DIS	JURISDICTIONAL STATEMENT AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	ABSENT	NOT VOTING
Burger, Ch. J.			✓										
Brennan, J.			✓										
Stewart, J.					Join 3								
White, J.	✓		for	≠ CA2	case								
Marshall, J.													
Blackmun, J.			✓										
Powell, J.	✓	or	✓										
Rehnquist, J.	✓	✓	or	Relist	+	Hold	for	CA2					(Will Grant Rev. on ≠ CA2 case)
Stevens, J.			✓										
.....													

Court ..... *Voted on* ....., 19...

Argued ....., 19... *Assigned* ....., 19... No. 80-1305

Submitted ....., 19... *Announced* ....., 19...

ALFRED L. SNAPP & SON, INC.

vs.

PUERTO RICO

9/23
Still Dem
no present
conflict

Relisted.

Relist
for
WHR

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.													
Brennan, J.													
Stewart, J.													
White, J.													
Marshall, J.													
Blackmun, J.													
Powell, J.			✓										
Rehnquist, J.													
Stevens, J.													

Court ..... *Voted on*....., 19...

Argued ....., 19... *Assigned* ....., 19... No. 80-1305

Submitted ....., 19... *Announced* ....., 19...

SNAPP

vs.

PUERTO RICO

Relist for Sandra

Mr. Justice Rehnquist

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.			✓										
Brennan, J.			✓										
~~Stewart, J.~~													
White, J.			✓										
Marshall, J.			✓										
Blackmun, J.			✓										
Powell, J.			✓										
Rehnquist, J.		✓											
Stevens, J.			✓										
O'Connor, J.			✓										

Court ..... *Voted on*....., 19...

Argued ....., 19... *Assigned* ....., 19... No. 80-1305

Submitted ....., 19... *Announced* ....., 19...

SNAPP

vs.

PUERTO RICO

Related for Santos
last Term. Should
now reaffirm Denny

D

Relist for
WHR to
write
Oct 30

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POST	JURISDICTIONAL STATEMENT DIS	JURISDICTIONAL STATEMENT AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	ABSENT	NOT VOTING
Burger, Ch. J.													
Brennan, J.													
Stewart, J.													
White, J.													
Marshall, J.													
Blackmun, J.			✓										
Powell, J.			✓										
Rehnquist, J.		✓											
Stevens, J.													
O'Connor, J.													

Court ..... *Voted on*....., *19*...

Argued ....., *19*... *Assigned* ....., *19*... No. 80-1305

Submitted ....., *19*... *Announced* ....., *19*...

SNAPP

vs.

PUERTO RICO

Related for WHR.

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.													
Brennan, J.													
White, J.													
Marshall, J.													
Blackmun, J.			✓										
Powell, J.													
Rehnquist, J.													
Stevens, J.													
O'Connor, J.													

Court ..... *Voted on*....., *19*...

Argued ....., *19*... *Assigned* ....., *19*... No. 80-1305

Submitted ....., *19*... *Announced* ....., *19*...

SNAPP

vs.

PUERTO RICO

Relist
for
WHR

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.													
Brennan, J.													
White, J.													
Marshall, J.													
Blackmun, J.													
Powell, J.													
Rehnquist, J.													
Stevens, J.													
O'Connor, J.													

I doubt the question is of much importance: Puerto Rico can pay the attorney fees of a class action. But that may be all the more reason pp. 1, 2, 4, 5 to grant & reverse.

BL

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

I'll join.

From: Justice Rehnquist

0$1305H 05-NOV-81 DRB

Circulated: NOV 16 1981

Recirculated: _____

I agree with W H R that Puerto Rico has no standing to [illegible] on behalf of [illegible] workers

1st DRAFT

Sally - While a Join Note 11/11

SUPREME COURT OF THE UNITED STATES

80–1305 ALFRED L. SNAPP & SON, INC., *v.* PUERTO RICO EX REL. QUIROS

81–361 BRAMKAMP, ET AL *v.* PUERTO RICO EX REL. QUIROS

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

Nos. 80–1305 AND 81–361. Decided November ——, 1981

JUSTICE REHNQUIST, dissenting.

Two Courts of Appeals, the Fourth and the Second, have reversed holdings of United States District Courts within their circuits. The result is that the Commonwealth of Puerto Rico is allowed to sue, in the same manner as these appellate courts thought that a State might sue, as *parens patriae* on behalf of disappointed Puerto Ricans who unsuccessfully sought employment as temporary workers in the annual apple harvest along the east coast of the United States. Temporary workers from the growing regions are normally not available in adequate numbers, and as a consequence the apple growers customarily employ workers from other States and from foreign countries. Since 1975, the Commonwealth has referred agricultural workers to east coast apple growers through a public employment network known as the Interstate Clearance System. The growers, for various reasons, have preferred to hire foreign workers, primarily from Jamaica. Under the terms of the Immigration and Nationality Act, however, they are permitted to do so only "if unemployed persons capable of performing such service or labor

cannot be found in this country." 8 U. S. C. § 1101(a) (15) (H) (ii).

In reliance on this provision, the Commonwealth filed suit against more than 30 Virginia apple growers and various individuals in the United States District Court for the Western District of Virginia. The following day a companion action was instituted by it against 55 apple industry defendants in the United States District Court for the Southern District of New York. Both of these actions were brought on behalf of Puerto Rican workers who had been refused employment, or discriminated against once hired, and both were dismissed on the ground that the Commonwealth lacked standing as *parens patriae* to prosecute the actions. In both instances the Commonwealth appealed, and in both instances it was successful in its appeal. See *Puerto Rico ex rel. Quiros* v. *Alfred L. Snapp. & Son, Inc.*, 632 F. 2d 365 (CA4 1980); *Puerto Rico ex rel. Quiros* v. *Bramkamp*, 654 F. 2d 212 (CA2 1981).

The reasoning of both Courts of Appeals purports to disguise, but cannot alter, the limited nature of the interest asserted by the Commonwealth of Puerto Rico in these suits. The complaints allege, in essence, that petitioners and other apple growers have discriminated against a group of Puerto Rican workers who sought temporary employment during the 1978 apple harvest. In my opinion, as such they represent "nothing more than a collectivity of private suits." *Pennsylvania* v. *New Jersey*, 426 U. S. 660, 666 (1976) (per curiam). This Court has always emphasized the distinction between the *sovereign* interests necessary for a State to sue as *parens patriae* and private interests for which the State may not sue in such a capacity. See, *e. g.*, *id.*, at 665. The distinction between sovereign interests and private interests is not always easy to define with precision; nevertheless, because the Courts of Appeals for the Fourth and Second Circuits have in fact, if not in theory, totally abandoned that distinction, I would grant the two petitions for certiorari on behalf of the apple growers. If the distinction enunciated by

this Court is to be abandoned, it is this Court which should abandon it.

Even in its most expansive view of *parens patriae*, a State must allege an injury that "affects [its] general population . . . in a substantial way." *Maryland* v. *Louisiana*, 451 U. S. ——, —— (1981). It may not "merely litigat[e] as a volunteer the personal claims of its citizens." *Pennsylvania* v. *New Jersey*, *supra*, at 665. In their zeal to relieve the plight of individual Puerto Rican workers, the Courts of Appeals in these cases have cast loose from its moorings the doctrine of *parens patriae* standing. One need not denigrate the workers' desire for seasonal employment to conclude that it does not amount to a sovereign interest whose vindication properly actuates the Commonwealth's complaints. In reaching a contrary conclusion, the Courts of Appeals relied on the Commonwealth's professed interest in alleviating severe unemployment on the island. One need not denigrate *that* interest to conclude that it cannot furnish a basis for *parens patriae* standing every time a resident adds to aggregate unemployment by failing to obtain work in another jurisdiction.

In assessing the magnitude of the Commonwealth's interest, the Court of Appeals for the Fourth Circuit declined to limit its attention to the farm workers temporarily employed in the harvest, but went on to comment:

> "[Puerto Rico's] economy is in dire straits. The morale of the average Puerto Rican citizen under the circumstances can be expected to be extremely low. Deliberate efforts to stigmatize the labor force as inferior can carry a universal sting.
>
> . . . The apparent inability of the United States government, through the Department of Labor, to grant Puerto Ricans equal treatment with other citizens or even with foreign temporary workers must certainly have an effect which permeates the entire island of Puerto Rico. Residual injuries to the Commonwealth

> effort are, to say the least, very serious." *Snapp*, *supra*, at 870.

The Court also speculated, without elaboration, that the migrant workers might be too destitute to litigate effectively. *Ibid.*

The Court of Appeals for the Second Circuit joined the refrain by stating that "all future migrant workers who might be refused employment due to the alleged unlawful discrimination, and the families of these workers, stand to be directly injured." *Bramkamp*, *supra*, at 216. In addition, that court determined that the growers' conduct "will adversely affect the continuing effort of the Commonwealth to secure work for its citizens." *Id.*, at 217. While holding that the Commonwealth was not required to show that the workers would be unable to vindictate their interests if *parens patriae* standing were denied, it nonetheless indicated its awareness that a class action by Puerto Rican workers had already been filed in federal court against the New York apple growers. See *id.*, at 217 and n. 7.[1]

The Courts of Appeals sought to enlarge and embellish the Commonwealth's intrinsically limited interests by a combination of rhetorical slight-of-hand and sheer speculation. The Court in *Snapp* opined that "[d]eliberate efforts to stigmatize the labor force as inferior"—presumably a reference to the occasions on which the growers refused to hire—"carry a universal sting." 632 F. 2d, at 370. This effect "must certainly . . . permeate[] the entire Island." *Ibid.* "Residual injuries to the Commonwealth effort"—whatever these may be—"are, to say the least, very serious." *Ibid.* Needless to say, the limitations which this Court has enunciated concerning the doctrine of *parens patriae* standing will become meaningless if they can be surmounted by such unsupported generalizations.

---

[1] Petitioners have also been named as defendants in a class action filed by Puerto Rican workers in the United States District Court for the District of Puerto Rico. *Lopez Rivas* v. *Marshall*, Civ. No. 78-2175 (filed Nov. 9, 1978). Many of the petitioners have also been sued in the courts of Puerto Rico. See Pet. for Cert. 14, n. 10.

While the Court in *Bramkamp* refrained from asserting that the growers' conduct fastened a "badge of inferiority" on the entire Puerto Rican populace, it postulated an injury to "all future migrant workers who might be refused employment," and their families. 654 F. 2d, at 216. Of course, every law suit may result in a decision whose precedential effect may help or hinder similarly situated parties. But heretofore this effect has not been thought to be a proper basis for a finding of sovereign interest without trivializing that term and recasting the concept of *parens patriae* standing.

This Court stated in *United States* v. *Kagama*, 118 U. S. 375, 379 (1886), that the only two political sovereignties known to the makers of the Constitution were the federal government and the States. See also *United States* v. *Wheeler*, 435 U. S. 313, 320–321 (1978). Puerto Rico, of course, is not a State; it is, by its own choice, a "Commonwealth," and vigorous internal discussion has taken place as to whether it should opt for statehood, complete independence, or the retention of its "commonwealth" status. Neither of the Courts of Appeals pondered the question whether the ambiguous status of Puerto Rico should be equated with that of a State for the purpose of exercising sovereign power in federal court as *parens patriae*. Both because of my uncertainty concerning Puerto Rico's refusal to seek statehood, and because of my belief that even if it were treated as a State it would not have *parens patriae* standing in this case, I would grant these petitions for certiorari.

November 12, 1981

80-1305 Snapp v. Puerto Rico
81-361 Bramkamp v. Puerto Rico

Dear Bill:

Please join me in your dissent.

Sincerely,

Justice Rehnquist

lfp/ss

cc: The Conference

Court ..... *Voted on*....., *19*...

Argued ....., *19*... *Assigned* ....., *19*... No. 80-1305

Submitted ....., *19*... *Announced* ....., *19*...

SNAPP

vs.

PUERTO RICO

Relist

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.													
Brennan, J.													
White, J.													
Marshall, J.													
Blackmun, J.													
Powell, J.													
Rehnquist, J.													
Stevens, J.													
O'Connor, J.													

pp 1, 2, 4, 5

You have joined
No changes of
substance
DL

0$1305H 12-NOV-81 DICK-rev.

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

From: Justice Rehnquist

Circulated: _____

Recirculated: NOV 13 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

ALFRED L. SNAPP & SON, INC., ET AL.
80–1305 *v.*
PUERTO RICO EX REL. QUIROS

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

BRAMKAMP, ET AL.
81–361 *v.*
PUERTO RICO EX REL. QUIROS

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

Nos. 80–1305 AND 81–361. Decided November ——, 1981

Joined

JUSTICE REHNQUIST, with whom JUSTICE POWELL joins, dissenting.

Two Courts of Appeals, the Fourth and the Second, have reversed holdings of United States District Courts within their circuits. The result is that the Commonwealth of Puerto Rico is allowed to sue, in the same manner as these appellate courts thought that a State might sue, as *parens patriae* on behalf of disappointed Puerto Ricans who unsuccessfully sought employment as temporary workers in the annual apple harvest along the east coast of the United States. Temporary workers from the growing regions are normally not available in adequate numbers, and as a consequence the apple growers customarily employ workers from other States and from foreign countries. Since 1975, the Commonwealth has referred agricultural workers to east coast apple growers through a public employment network known as the Interstate Clearance System. The growers, for various reasons, have preferred to hire foreign workers, primarily from Ja-

maica. Under the terms of the Immigration and Nationality Act, however, they are permitted to do so only "if unemployed persons capable of performing such service or labor cannot be found in this country." 8 U. S. C. § 1101(a) (15) (H) (ii).

In reliance on this provision, the Commonwealth filed suit against more than 30 Virginia apple growers and various individuals in the United States District Court for the Western District of Virginia. The following day a companion action was instituted by it against 55 apple industry defendants in the United States District Court for the Southern District of New York. Both of these actions were brought on behalf of Puerto Rican workers who had been refused employment, or discriminated against once hired, and both were dismissed on the ground that the Commonwealth lacked standing as *parens patriae* to prosecute the actions. In both instances the Commonwealth appealed, and in both instances it was successful in its appeal. See *Puerto Rico ex rel. Quiros* v. *Alfred L. Snapp. & Son, Inc.*, 632 F. 2d 365 (CA4 1980); *Puerto Rico ex rel. Quiros* v. *Bramkamp*, 654 F. 2d 212 (CA2 1981).

The reasoning of both Courts of Appeals purports to disguise, but cannot alter, the limited nature of the interest asserted by the Commonwealth of Puerto Rico in these suits. The complaints allege, in essence, that petitioners and other apple growers have discriminated against a group of Puerto Rican workers who sought temporary employment during the 1978 apple harvest. In my opinion, as such they represent "nothing more than a collectivity of private suits." *Pennsylvania* v. *New Jersey*, 426 U. S. 660, 666 (1976) (per curiam). This Court has always emphasized the distinction between the *sovereign* interests necessary for a State to sue as *parens patriae* and private interests for which the State may not sue in such a capacity. See, *e. g.*, *id.*, at 665. The distinction between sovereign interests and private interests is not always easy to define with precision; nevertheless, because the Courts of Appeals for the Fourth and Second Cir-

cuits have in fact, if not in theory, totally abandoned that distinction, I would grant the two petitions for certiorari on behalf of the apple growers. If the distinction enunciated by this Court is to be abandoned, it is this Court which should abandon it.

Even in its most expansive view of *parens patriae*, a State must allege an injury that "affects [its] general population . . . in a substantial way." *Maryland* v. *Louisiana*, 451 U. S. ——, —— (1981). It may not "merely litigat[e] as a volunteer the personal claims of its citizens." *Pennsylvania* v. *New Jersey*, *supra*, at 665. In their zeal to relieve the plight of individual Puerto Rican workers, the Courts of Appeals in these cases have cast loose from its moorings the doctrine of *parens patriae* standing. One need not denigrate the workers' desire for seasonal employment to conclude that it does not amount to a sovereign interest whose vindication properly actuates the Commonwealth's complaints. In reaching a contrary conclusion, the Courts of Appeals relied on the Commonwealth's professed interest in alleviating severe unemployment on the island. One need not denigrate *that* interest to conclude that it cannot furnish a basis for *parens patriae* standing every time a resident adds to aggregate unemployment by failing to obtain work in another jurisdiction.

In assessing the magnitude of the Commonwealth's interest, the Court of Appeals for the Fourth Circuit declined to limit its attention to the farm workers temporarily employed in the harvest, but went on to comment:

> "[Puerto Rico's] economy is in dire straits. The morale of the average Puerto Rican citizen under the circumstances can be expected to be extremely low. Deliberate efforts to stigmatize the labor force as inferior can carry a universal sting.
>
> . . . The apparent inability of the United States government, through the Department of Labor, to grant Puerto Ricans equal treatment with other citizens or

> even with foreign temporary workers must certainly have an effect which permeates the entire island of Puerto Rico. Residual injuries to the Commonwealth effort are, to say the least, very serious." *Snapp*, *supra*, at 370.

The Court also speculated, without elaboration, that the migrant workers might be too destitute to litigate effectively. *Ibid.*

The Court of Appeals for the Second Circuit joined the refrain by stating that "all future migrant workers who might be refused employment due to the alleged unlawful discrimination, and the families of these workers, stand to be directly injured." *Bramkamp, supra*, at 216. In addition, that court determined that the growers' conduct "will adversely affect the continuing effort of the Commonwealth to secure work for its citizens." *Id.*, at 217. While holding that the Commonwealth was not required to show that the workers would be unable to vindictate their interests if *parens patriae* standing were denied, it nonetheless indicated its awareness that a class action by Puerto Rican workers had already been filed in federal court against the New York apple growers. See *id.*, at 217 and n. 7.[1]

The Courts of Appeals sought to enlarge and embellish the Commonwealth's intrinsically limited interests by a combination of rhetorical slight-of-hand and sheer speculation. The Court in *Snapp* opined that "[d]eliberate efforts to stigmatize the labor force as inferior"—presumably a reference to the occasions on which the growers refused to hire—"carry a universal sting." 632 F. 2d, at 370. This effect "must certainly . . . permeate[ ] the entire Island." *Ibid.* "Residual injuries to the Commonwealth effort"—whatever these may be—"are, to say the least, very serious." *Ibid.* Needless to say,

---

[1] Petitioners have also been named as defendants in a class action filed by Puerto Rican workers in the United States District Court for the District of Puerto Rico. *Lopez Rivas* v. *Marshall*, Civ. No. 78–2175 (filed Nov. 9, 1978). Many of the petitioners have also been sued in the courts of Puerto Rico. See Pet. for Cert. 14, n. 10.

the limitations which this Court has enunciated concerning the doctrine of *parens patriae* standing will become meaningless if they can be surmounted by such unsupported generalizations.

While the Court in *Bramkamp* refrained from asserting that the growers' conduct fastened a "badge of inferiority" on the entire Puerto Rican populace, it postulated an injury to "all future migrant workers who might be refused employment," and their families. 654 F. 2d, at 216. Of course, every law suit may result in a decision whose precedential effect may help or hinder similarly situated parties. But heretofore this effect has not been thought to be a proper basis for a finding of sovereign interest without trivializing that term and recasting the concept of *parens patriae* standing.

This Court stated in *United States* v. *Kagama*, 118 U. S. 375, 379 (1886), that the only two political sovereignties known to the makers of the Constitution were the federal government and the States. See also *United States* v. *Wheeler*, 435 U. S. 313, 320–321 (1978). Puerto Rico, of course, is not a State; it is, by its own choice, a "Commonwealth," and vigorous internal discussion has taken place as to whether it should opt for statehood, complete independence, or the retention of its "commonwealth" status. Neither of the Courts of Appeals pondered the question whether the ambiguous status of Puerto Rico should be equated with that of a State for the purpose of exercising sovereign power in federal court as *parens patriae*. Both because of my uncertainty concerning Puerto Rico's refusal to seek statehood, and because of my belief that even if it were treated as a State it would not have *parens patriae* standing in this case, I would grant these petitions for certiorari.

p.1 has joined JL

David

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

From: Justice Rehnquist

Circulated: _____

Recirculated: NOV 2 3 1981

0$1305H rev. 11/23/81 spw

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

ALFRED L. SNAPP & SON, INC., ET AL.
80–1305 *v.*
PUERTO RICO EX REL. QUIROS

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

BRAMKAMP, ET AL.
81–361 *v.*
PUERTO RICO EX REL. QUIROS

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

Nos. 80–1305 AND 81–361. Decided November ——, 1981

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE and JUSTICE POWELL join, dissenting.

Two Courts of Appeals, the Fourth and the Second, have reversed holdings of United States District Courts within their circuits. The result is that the Commonwealth of Puerto Rico is allowed to sue, in the same manner as these appellate courts thought that a State might sue, as *parens patriae* on behalf of disappointed Puerto Ricans who unsuccessfully sought employment as temporary workers in the annual apple harvest along the east coast of the United States. Temporary workers from the growing regions are normally not available in adequate numbers, and as a consequence the apple growers customarily employ workers from other States and from foreign countries. Since 1975, the Commonwealth has referred agricultural workers to east coast apple growers through a public employment network known as the Interstate Clearance System. The growers, for various reasons, have preferred to hire foreign workers, primarily from Ja-

maica. Under the terms of the Immigration and Nationality Act, however, they are permitted to do so only "if unemployed persons capable of performing such service or labor cannot be found in this country." 8 U. S. C. § 1101 (a) (15) (H) (ii).

In reliance on this provision, the Commonwealth filed suit against more than 30 Virginia apple growers and various individuals in the United States District Court for the Western District of Virginia. The following day a companion action was instituted by it against 55 apple industry defendants in the United States District Court for the Southern District of New York. Both of these actions were brought on behalf of Puerto Rican workers who had been refused employment, or discriminated against once hired, and both were dismissed on the ground that the Commonwealth lacked standing as *parens patriae* to prosecute the actions. In both instances the Commonwealth appealed, and in both instances it was successful in its appeal. See *Puerto Rico ex rel. Quiros* v. *Alfred L. Snapp. & Son, Inc.*, 632 F. 2d 365 (CA4 1980); *Puerto Rico ex rel. Quiros* v. *Bramkamp*, 654 F. 2d 212 (CA2 1981).

The reasoning of both Courts of Appeals purports to disguise, but cannot alter, the limited nature of the interest asserted by the Commonwealth of Puerto Rico in these suits. The complaints allege, in essence, that petitioners and other apple growers have discriminated against a group of Puerto Rican workers who sought temporary employment during the 1978 apple harvest. In my opinion, as such they represent "nothing more than a collectivity of private suits." *Pennsylvania* v. *New Jersey*, 426 U. S. 660, 666 (1976) *(per curiam)*. This Court has always emphasized the distinction between the *sovereign* interests necessary for a State to sue as *parens patriae* and private interests for which the State may not sue in such a capacity. See, *e. g.*, *id.*, at 665. The distinction between sovereign interests and private interests is not always easy to define with precision; nevertheless, because the Courts of Appeals for the Fourth and Second Cir-

collection of private suits

cuits have in fact, if not in theory, totally abandoned that distinction, I would grant the two petitions for certiorari on behalf of the apple growers. If the distinction enunciated by this Court is to be abandoned, it is this Court which should abandon it.

Even in its most expansive view of *parens patriae*, a State must allege an injury that "affects [its] general population . . . in a substantial way." *Maryland* v. *Louisiana*, 451 U. S. ——, —— (1981). It may not "merely litigat[e] as a volunteer the personal claims of its citizens." *Pennsylvania* v. *New Jersey*, *supra*, at 665. In their zeal to relieve the plight of individual Puerto Rican workers, the Courts of Appeals in these cases have cast loose from its moorings the doctrine of *parens patriae* standing. One need not denigrate the workers' desire for seasonal employment to conclude that it does not amount to a sovereign interest whose vindication properly actuates the Commonwealth's complaints. In reaching a contrary conclusion, the Courts of Appeals relied on the Commonwealth's professed interest in alleviating severe unemployment on the island. One need not denigrate *that* interest to conclude that it cannot furnish a basis for *parens patriae* standing every time a resident adds to aggregate unemployment by failing to obtain work in another jurisdiction.

State must allege an injury that affects the "general population" in substantial way

In assessing the magnitude of the Commonwealth's interest, the Court of Appeals for the Fourth Circuit declined to limit its attention to the farm workers temporarily employed in the harvest, but went on to comment:

> "[Puerto Rico's] economy is in dire straits. The morale of the average Puerto Rican citizen under the circumstances can be expected to be extremely low. Deliberate efforts to stigmatize the labor force as inferior can carry a universal sting.
>
> . . . The apparent inability of the United States government, through the Department of Labor, to grant Puerto Ricans equal treatment with other citizens or

> even with foreign temporary workers must certainly have an effect which permeates the entire island of Puerto Rico. Residual injuries to the Commonwealth effort are, to say the least, very serious." *Snapp*, *supra*, at 370.

The Court also speculated, without elaboration, that the migrant workers might be too destitute to litigate effectively. *Ibid.*

The Court of Appeals for the Second Circuit joined the refrain by stating that "all future migrant workers who might be refused employment due to the alleged unlawful discrimination, and the families of these workers, stand to be directly injured." *Bramkamp*, *supra*, at 216. In addition, that court determined that the growers' conduct "will adversely affect the continuing effort of the Commonwealth to secure work for its citizens." *Id.*, at 217. While holding that the Commonwealth was not required to show that the workers would be unable to vindictate their interests if *parens patriae* standing were denied, it nonetheless indicated its awareness that a class action by Puerto Rican workers had already been filed in federal court against the New York apple growers. See *id.*, at 217 and n. 7.[1]

Class action already filed

The Courts of Appeals sought to enlarge and embellish the Commonwealth's intrinsically limited interests by a combination of rhetorical slight-of-hand and sheer speculation. The Court in *Snapp* opined that "[d]eliberate efforts to stigmatize the labor force as inferior"—presumably a reference to the occasions on which the growers refused to hire—"carry a universal sting." 632 F. 2d, at 370. This effect "must certainly . . . permeate[ ] the entire Island." *Ibid.* "Residual injuries to the Commonwealth effort"—whatever these may be—"are, to say the least, very serious." *Ibid.* Needless to say,

---

[1] Petitioners have also been named as defendants in a class action filed by Puerto Rican workers in the United States District Court for the District of Puerto Rico. *Lopez Rivas* v. *Marshall*, Civ. No. 78–2175 (filed Nov. 9, 1978). Many of the petitioners have also been sued in the courts of Puerto Rico. See Pet. for Cert. 14, n. 10.

the limitations which this Court has enunciated concerning the doctrine of *parens patriae* standing will become meaningless if they can be surmounted by such unsupported generalizations. CA4 & CA2

While the Court in *Bramkamp* refrained from asserting that the growers' conduct fastened a "badge of inferiority" on the entire Puerto Rican populace, it postulated an injury to "all future migrant workers who might be refused employment," and their families. 654 F. 2d, at 216. Of course, every law suit may result in a decision whose precedential effect may help or hinder similarly situated parties. But heretofore this effect has not been thought to be a proper basis for a finding of sovereign interest without trivializing that term and recasting the concept of *parens patriae* standing.

This Court stated in *United States* v. *Kagama*, 118 U. S. 375, 379 (1886), that the only two political sovereignties known to the makers of the Constitution were the federal government and the States. See also *United States* v. *Wheeler*, 435 U. S. 313, 320–321 (1978). Puerto Rico, of course, is not a State; it is, by its own choice, a "Commonwealth," and vigorous internal discussion has taken place as to whether it should opt for statehood, complete independence, or the retention of its "commonwealth" status. Neither of the Courts of Appeals pondered the question whether the ambiguous status of Puerto Rico should be equated with that of a State for the purpose of exercising sovereign power in federal court as *parens patriae*. Both because of my uncertainty concerning Puerto Rico's refusal to seek statehood, and because of my belief that even if it were treated as a State it would not have *parens patriae* standing in this case, I would grant these petitions for certiorari.

Court ..... Voted on ....., 19...

Argued ....., 19... Assigned ....., 19... No. 80-1305

Submitted ....., 19... Announced ....., 19...

SNAPP

VS.

PUERTO RICO

Grant

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POST	JURISDICTIONAL STATEMENT DIS	JURISDICTIONAL STATEMENT AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	ABSENT	NOT VOTING
Burger, Ch. J.		✓											
Brennan, J.			✓										
White, J.		✓			in both								
Marshall, J.			✓										
Blackmun, J.			✓										
Powell, J.		✓											
Rehnquist, J.		✓											
Stevens, J.			✓										
O'Connor, J.					Join 3.								
.....													

80-1305 ALFRED SNAPP v. PUERTO RICO Argued 4/20/82

Apple growers case. J FB Gr is not a party.

See WHR's opinion dissenting from denial of Cert - which J joined

Bacas (Petrs)

Same principles as to parens patria apply to P.R. that applies to States.

Lengini (Resps)

Claim for eq. relief - no claim for damages.

P.R. workers are discriminated vs on ethnic grounds.

But there must be a "public wrong" for parens patria to apply.

~~Tho~~ Doesn't rely on "associational" standing

Bacas (Reply)

Both courts below applied same test - considering three questions. Courts disagreed only as to application of the test.

Standing doesn't rest on unemployment rate of a state - eg Mich.

No allegation in complaint of a conspiracy.

No. 80-1305, Alfred Snapp v. Puerto Rico Conf. 4/23/82

The Chief Justice

Out

Although I voted to grant his case, I was unaware then of extent to which parties included long time friends - Dick Byrd, Harry Byrds + Glaize.

When I read Briefs in preparation for argument, I discovered their presence as parties.

Justice Brennan

Justice White

Justice Marshall

Justice Blackmun

Justice Powell

Justice Rehnquist

Justice Stevens

Justice O'Connor

II. Snapp No. 80-1305

I still think that Justice Rehnquist's dissent from denial is correct and that the CA4 should be overturned. If there is parens patria standing in this case, then there will be in a host of other cases. The argument that Puerto Rico has been given standing under the Wagner-Peyser Act to protect its workers is specious as the reply brief indicates. Indeed, under the scheme established by federal regulation under the Act, it is the state of Virginia who is responsible to investigate complaints of unfair treatment in the first instance. The Act simply makes Puerto Rico an employment agency.

The argument on associational standing strikes me as equally unconvincing. Associations sue as the agents of the members. Associations have no existence apart from their memberships. All of the parens partria cases emphasize that the state is permitted to sue not on behalf of a group of citizens--as their agent--but because it has sovereign interests above and apart from the interests of the particular injured citizens.

Three further points are worth noting. First, Puerto Rico could undoubtedly foot the legal bill of a class action. Denying standing therefore does not mean that the state can take no action to redress the grievance here. Second, the amicus submission by the Department of Labor to

the CA2 may not represent the government's current position. Also, that submission is couched rather narrowly; it argues that Puerto Rico should have standing because it is distant from the mainland. The Department would not urge that another state in a similar situation should be permitted to sue.

Finally, note that the cause of action is implied on the Wagner-Peyser Act. Although the issue is not here directly, it is not at all clear that an implied right of action should be found--for the state as parens patria or for individual workers. There is an administrative review procedure. Perhaps at the end of the administrative review procedure an individual worker could sue under the Administrative Procedure Act. The argument is relevant to this extent: If it is argued that the State has some special role under the Wagner-Peyser Act to protect its workers, it might be countered that its role does not include a right to litigate in federal court since that Act makes no provision for suit.

May 26, 1982

80-1305 Snapp v. Puerto Rico

Dear Byron:

Please add that I took no part in the decision of this case.

Sincerely,

Justice White

lfp/ss

cc: The Conference

THE C. J.	W. J. B.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.	S. D. O'C.
		5/3/82						
Join BRW 6/8/82	Concurring opinion Typed Dropt 6/4/82	1st Dropt 5/25/82	Join wjB 6/9/82	Join wjB 6/18/82	out letter 5/26/82	Join BRW 6/24/82	Join wjB 6/4/82	Join BRW 5/26/82
	1st dropt 6/7/82	2nd Dropt 6/25/82	Join BRW	Join BRW 6/18/82				
	2nd Dropt 6/21/82							
				I'm Out				
				80-1305 Snapp v. Puerto Rico				