

# The Burger Court Opinion Writing Database

## *United States v. Interstate Commerce Commission*

396 U.S. 491 (1970)

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



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

CHAMBERS OF  
THE CHIEF JUSTICE

January 21, 1970

MEMORANDUM TO THE CONFERENCE

Re: No. 28 - U. S. v. Interstate Commerce  
Commission

No. 38 - Brundage v. U. S.

No. 43 - City of Auburn v. U. S.

No. 44 - Livingston Anti-Merger Committee  
v. Interstate Commerce Commission

Enclosed is a proposed opinion in the above cases.  
They are important and I welcome comments and suggestions.

Two maps of the merging lines and of others will  
be attached to the opinions.

A few minor alterations are being made, but they  
are of no significance.

*W.E.B.*  
W. E. B.

To: Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
~~Mr. Justice Fortas~~  
Mr. Justice Marshall

1

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES, Circulated: **JAN 21 1970**

Nos. 28, 38, 43, 44.—OCTOBER TERM, 1969

Recirculated: \_\_\_\_\_

United States, Appellant,  
28            *v.*  
Interstate Commerce  
Commission et al.  
Charles E. Brundage et al.,  
Appellants,  
38            *v.*  
United States et al.  
City of Auburn, Appellant.  
43            *v.*  
United States et al.  
Livingston Anti-Merger  
Committee, Appellant,  
44            *v.*  
Interstate Commerce  
Commission et al.

On Appeals From the United  
States District Court for  
the District of Columbia  
Circuit.

[January —, 1970]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

The Interstate Commerce Commission orders which give rise to this appeal grow out of applications seeking approval of a merger plan filed by the Great Northern Railway Company, the Northern Pacific Railway Company (collectively the Northern Lines), and three of their subsidiaries—the Pacific Coast Railroad Company, the Chicago, Burlington & Quincy Railroad Company (Burlington), and the Spokane, Portland & Seattle Railway Company (SP&S). The Commission approved the merger and a three-judge Federal District Court for the District

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

CHAMBERS OF  
THE CHIEF JUSTICE

January 29, 1970

MEMORANDUM TO THE CONFERENCE

Re: Nos. 28, 38, 43, 44 - Northern Lines Merger Case

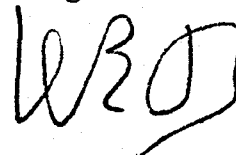
Enclosed is second and final draft of the proposed opinion in which all, with Mr. Justice Douglas taking no part, have joined.

Changes are noted in red pencil. None are significant in my view.

Enclosed also is a proposed "advance" headnote which I had Mr. Putzel prepare to "try it for size." I fear, however, if we give headnotes in advance in one case, the press will plague us to do it for all.

However, if we confer Friday on other matters, we can discuss the advance headnote idea. At present I have some doubts about it for the reasons stated, among others.

I will be at the Naval Hospital for a routine check-up Thursday and perhaps Friday morning.



W. E. B.

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To: Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
~~Mr. Justice Fortas~~  
Mr. Justice Marshall

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

Circulated: \_\_\_\_\_

Nos. 28, 38, 43, 44.—OCTOBER TERM, 1969

Recirculated: 1/29/70

United States, Appellant,  
28 v.  
Interstate Commerce  
Commission et al.  
Charles E. Brundage et al.,  
Appellants,  
38 v.  
United States et al.  
City of Auburn, Appellant,  
43 v.  
United States et al.  
Livingston Anti-Merger  
Committee, Appellant,  
44 v.  
Interstate Commerce  
Commission et al.

On Appeals From the United  
States District Court for  
the District of Columbia

[February —, 1970]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

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Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
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Mr. Justice White  
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From the Chief Justice

Circulated: \_\_\_\_\_

Nos. 28, 38, 43, 44.—OCTOBER TERM, 1969

Registered: 1-30-70

United States, Appellant,  
28 v.  
Interstate Commerce  
Commission et al.  
Charles E. Brundage et al.,  
Appellants,  
38 v.  
United States et al.  
City of Auburn, Appellant,  
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WB  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HUGO L. BLACK

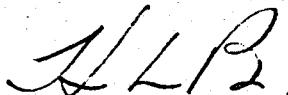
January 23, 1970

Dear Chief,

Re: Nos. 28, 38, 43, 44 - I. C. C. cases

I am glad to agree to this illuminating explanation of the merger of the railroads serving your section of the country.

Sincerely,



H. L. B.

The Chief Justice

cc: Members of the Conference

January 26, 1970

Re: Nos. 28, 38, 43, 44 - Railroad  
Merger Cases

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Dear Chief:

I think your opinion in this case is an  
excellent one, and I am glad to join it.

Sincerely,

J.M.H.

The Chief Justice

CC: The Conference





January 29, 1970

Re: Nos. 28, 38, 43, 44 - Railroad  
Merger Cases

Dear Chief:

I agree with your opinion as rearticulated today.

While the accompanying memo seems to me a perfectly satisfactory one, I understand the importance of the desirability of our conducting an integrated program of railroad mergers, even in a situation where the railroads themselves are unwilling to merge. It is our duty to see that the public interest is served and that the railroads are merged in a way that will benefit the country.

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 26, 1970


RE: Nos. 28, 38, 43 and 44 - United States  
v. I. C. C.; Brundage v. U. S.; City of  
Auburn v. U. S.; Livingston Anti-Merger  
Comm. v. I. C. C.

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Dear Chief:

I agree with your opinion in the above  
cases.

Sincerely,



W.J.B. Jr.

The Chief Justice

cc: The Conference

Supreme Court  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

January 22, 1970

Nos. 28, 38, 43 and 44  
United States v. I. C. C.

Dear Chief,

I think you have done a fine job with these cases and am glad to join the opinion you have written for the Court.

Any suggestions I may have are so picayune that I shall simply ask my law clerk to convey them to one of your clerks.

Sincerely yours,

P.S.  
/

The Chief Justice

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

January 22, 1970

Re: Nos. 28, 38, 43 & 44 - U.S. v.  
Interstate Commerce Comm

Dear Chief:

Please join me. And thanks  
for a difficult job.

Sincerely,

B.R.W.

The Chief Justice

U.S. Supreme Court

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 26, 1970

Re: No. 28 etc. - U. S. v. Interstate  
Commerce Commission, etc.

Dear Chief:

Please join me in your opinion  
in these cases.

Sincerely,

  
T.M.

The Chief Justice

cc: The Conference