

The Burger Court Opinion Writing Database

American Farm Lines v. Black Ball Freight Service

397 U.S. 532 (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

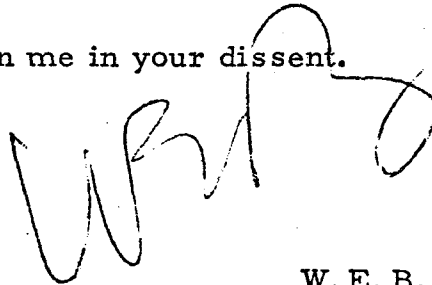
CHAMBERS OF
THE CHIEF JUSTICE

April 3, 1970

Re: No. 369 & 382 - American Farm Lines and ICC v.
Black Ball Freight Service

Dear Bill:

Please join me in your dissent.



W. E. B.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

March 26, 1970

Dear Bill,

Re: No. 369 - American Farm Lines
v. Black Ball Freight, et al.
No. 382 - Interstate Commerce
Commn. v. Black Ball Freight

As you will recall, I voted to reverse these cases and uphold the ICC's action. I am still of that opinion but in view of the comparative unimportance of the cases in our whole field of jurisprudence, I have decided to acquiesce in your opinion and judgment unless someone else decides to write in opposition to it.

Sincerely,

Hugo
Hugo

Mr. Justice Brennan

cc: Members of the Conference

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

April 1, 1970

Dear Bill,

Re: Nos. 369 and 382 - American
Farm Lines v. Black Ball Freight
Service, et al, etc.

Please join me in your dissent.

Sincerely,


Hugo

Mr. Justice Douglas

cc: Members of the Conference

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

April 17, 1970

Dear Bill,

Nos. 369 and 382 - American
Farm Lines v. Black Ball Freight,
etc.; ICC v. Black Ball Freight, etc.

I agree.

Sincerely,


H. L. B.

Mr. Justice Douglas

cc: Members of the Conference

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

1

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

Nos. 369 AND 382.—OCTOBER TERM, 1969

Circulated: 3/31/70

American Farm Lines,
Appellant,

369 v.
Black Ball Freight Service et al.

Interstate Commerce Com-
mission, Appellant,

382 v.
Black Ball Freight Service et al.

Recirculated: _____

On Appeals From the
United States Dis-
trict Court for the
Western District of
Washington.

[April —, 1970]

MR. JUSTICE DOUGLAS, dissenting.

The issue in this case involves the failure of the Interstate Commerce Commission to require strict compliance with its own rules. The rules in question, promulgated by the Commission in 1965, require certain information to be set forth in statements filed by shippers in support of applications of motor carriers for temporary operating authority. 49 CFR § 1131.2 (c). Among the items of information are the following:

“(8) whether efforts have been made to obtain the service from existing motor, rail, or water carriers, and the dates and results of such efforts.

“(9) names and addresses of existing carriers who have either failed or refused to provide service, and the reasons given for any such failure or refusal.”

Appellant American Farm Lines (AFL) applied to the Commission in May 1968 for temporary authority to perform transportation services for the Department of Defense (DOD). DOD filed a statement in support of the application. The Commission's Temporary Authority Board denied the application, but Division 1 of the Commission reversed the Board and granted the

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
~~Mr. Justice Marshall~~

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

Nos. 369 AND 382.—OCTOBER TERM, 1969

Circulated: _____
Recirculated: 4-1

American Farm Lines,
Appellant,
369 v.
Black Ball Freight Service et al.
Interstate Commerce Com-
mission, Appellant,
382 v.
Black Ball Freight Service et al.

On Appeals From the
United States Dis-
trict Court for the
Western District of
Washington.

[April —, 1970]

MR. JUSTICE DOUGLAS, dissenting.

The error, if any, in this case is in the failure of the Interstate Commerce Commission to require strict compliance with its own rules. The rules in question, unlike some of our own, do not involve "jurisdictional" problems but only require certain information to be set forth in statements filed by shippers in support of applications of motor carriers for temporary operating authority. 49 CFR § 1131.2 (c). Among the items of information are the following:

- "(8) whether efforts have been made to obtain the service from existing motor, rail, or water carriers, and the dates and results of such efforts.
- "(9) names and addresses of existing carriers who have either failed or refused to provide service, and the reasons given for any such failure or refusal."

Appellant American Farm Lines (AFL) applied to the Commission in May 1968 for temporary authority to perform transportation services for the Department of Defense (DOD). DOD filed a statement in support of the application. The Commission's Temporary Authority Board denied the application, but Division 1 of

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Burger
Mr. Justice Marshall

3

SUPREME COURT OF THE UNITED STATES

Nos. 369 AND 382.—OCTOBER TERM, 1969

From: Douglas, J.

Circulated: _____

Recirculated: 7-1

American Farm Lines,
Appellant,
369 v.
Black Ball Freight Service et al.
Interstate Commerce Com-
mission, Appellant,
382 v.
Black Ball Freight Service et al.

On Appeals From the
United States Dis-
trict Court for the
Western District of
Washington.

[April —, 1970]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK
and MR. JUSTICE HARLAN concur, dissenting.

The error, if any, in this case is in the failure of the
Interstate Commerce Commission to require strict com-
pliance with its own rules. The rules in question, unlike
some of our own, do not involve "jurisdictional" prob-
lems but only require certain information to be set forth
in statements filed by shippers in support of appli-
cations of motor carriers for temporary operating au-
thority. 49 CFR § 1131.2 (c). Among the items of
information are the following:

"(8) whether efforts have been made to obtain
the service from existing motor, rail, or water
carriers, and the dates and results of such efforts.

"(9) names and addresses of existing carriers who
have either failed or refused to provide service, and
the reasons given for any such failure or refusal."

Appellant American Farm Lines (AFL) applied to the
Commission in May 1968 for temporary authority to
perform transportation services for the Department of
Defense (DOD). DOD filed a statement in support of
the application. The Commission's Temporary Au-
thority Board denied the application, but Division 1 of

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

3

SUPREME COURT OF THE UNITED STATES

Nos. 369 AND 382.—OCTOBER TERM, 1969

American Farm Lines,
Appellant,
369 v.
Black Ball Freight Service et al.
Interstate Commerce Com-
mission, Appellant,
382 v.
Black Ball Freight Service et al.

On Appeals From the
United States Dis-
trict Court for the
Western District of
Washington.

[April —, 1970]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The Interstate Commerce Commission has statutory power to grant motor carriers temporary operating authority "~~without hearings or other proceedings~~" when the authority relates to a "service for which there is an immediate and urgent need" and where there is "no carrier service capable of meeting such need."¹ Interstate Commerce Act § 210 (a), 49 U. S. C. § 310 (a). The ICC processes applications for such authority under rules

¹ Section 210a(a) provides in part:

"To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service, by common carrier or a contract carrier by motor vehicle, as the case may be. . . ."

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

March 30, 1970

Re: Nos. 369 and 382 - American Farm
Lines, ICC v. Black Ball Freight Svc.

Dear Bill:

I agree with your opinion.

Sincerely,



J. M. H.

~~Mr. Justice Brennan~~

CC: The Conference

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

April 1, 1970

**Re: No. 369 and 382 - American Farms and
ICC v. Black Ball Freight**

Dear Bill:

I write to say that I find myself converted by Brother Douglas' dissent in this case, and that I am therefore withdrawing from your opinion and joining him.

Sincerely,

J. M. H.

Mr. Justice Brennan

CC: The Conference

(WOD) Dear Bill:

I think you have written an excellent opinion, and would appreciate your joining me.

Sincerely,

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

April 1, 1970

Re: No. 369 and 382 - American Farms and
ICC v. Black Ball Freight

Dear Bill:

I write to say that I find myself converted by
Brother Douglas' dissent in this case, and that I am there-
fore withdrawing from your opinion and joining him.

Sincerely,



J. M. H.

Mr. Justice Brennan

CC: The Conference

April 14, 1970

Re: Hous. 369 and 368 - American Farm
Lines, I.C.C. v. Black Belt Freight

Dear Bill:

I agree with your opinion.
Sincerely,

J.M.H.

Mr. Justice Douglas

CC: The Conference

SUPREME COURT OF THE UNITED STATES

Nos. 369 AND 382.—OCTOBER TERM, 1969

American Farm Lines, Appellant,	On Appeals From the
369 v.	United States Dis-
Black Ball Freight Service et al.	trict Court for the
Interstate Commerce Com-	Western District of
mission, Appellant,	Washington.
382 v.	
Black Ball Freight Service et al.	

On Appeals From the United States District Court for the Western District of Washington.

[March —, 1970]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The Interstate Commerce Commission has statutory power to grant motor carriers temporary operating authority "without hearings or other proceedings" when the authority relates to a "service for which there is an immediate and urgent need" and where there is "no carrier service capable of meeting such need." Interstate Commerce Act § 210 (a), 49 U. S. C. § 310 (a). ICC processes applications for such authority under rules promulgated in 1965. 49 CFR § 1131.¹ Among other

¹ Rule 1131.4 (b) (2) defines the statutory term "immediate and urgent need" as follows:

"An immediate and urgent need justifying a grant of temporary authority will be determined to exist only where it is established that there is or soon will be an immediate transportation need which reasonably cannot be met by existing carrier service. Such a showing may involve a new or relocated plant, different method of distribution, new or unusual commodities, an origin or destination

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SUPREME COURT OF THE UNITED STATES

Nos. 369 AND 382.—OCTOBER TERM, 1969

American Farm Lines,
Appellant,
369 v.
Black Ball Freight Service et al.

Interstate Commerce Com-
mission, Appellant,
382 v.
Black Ball Freight Service et al.)

On Appeals From the
United States Dis-
trict Court for the
Western District of
Washington.

MR. JUSTICE BRENNAN, dissenting.

I would affirm the judgment of the District Court on the ground that "[e]ven if ICC had jurisdiction to reopen the ICC proceedings and to consider the Caputo verified statement, [the statement] would not meet the requirements of categories (8) and (9) of ICC Rule 49, CFR § 1131.2 (c)." 298 F. Supp., at 1011.

Inssofar as ICC regulations emphasize the requirement of information concerning the ability of existing carriers to provide the service sought by a shipper, they implement not only the statutory standard under Interstate Commerce Act § 210, 49 U. S. C. § 310 (a), but also the fundamental scheme of our national transportation policy. Ever since the enactment in 1887 of the Interstate Commerce Act, 24 Stat. 379, national policy has reflected the congressional determination that the public interest is served by regulating entry into the transportation industry, and competition among regulated carriers. See. *e. g.*, Act of September 18, 1940, c. 722, Tit. I, § 1, 49 U. S. C. preceding § 301; *American Trucking Association v. United States*, 344 U. S. 298 (1953); *Pan-Atlantic Steamship Corp. v. Atlantic Coast Line R. Co.*, 353 U. S. 436, 440 (1957) (Burton, J., dissenting). To

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SUPREME COURT OF THE UNITED STATES

Nos. 369 AND 382.—OCTOBER TERM, 1969

<p>American Farm Lines, Appellant, 369 v. Black Ball Freight Service et al.</p> <p>Interstate Commerce Com- mission, Appellant, 382 v. Black Ball Freight Service et al.</p>	}	<p>On Appeals From the United States Dis- trict Court for the Western District of Washington.</p>
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[April 20, 1970]

MR. JUSTICE BRENNAN, whom MR. JUSTICE STEWART and MR. JUSTICE WHITE join, dissenting.

I would affirm the judgment of the District Court on the ground that "[e]ven if ICC had jurisdiction to reopen the ICC proceeding and to consider the Caputo verified statement, [the statement] would not meet the requirements of categories (8) and (9) of ICC Rule 49 CFR § 1131.2 (c)." 298 F. Supp., at 1011.

~~Insofar as ICC regulations emphasize the requirement~~ of information concerning the ability of existing carriers to provide the service sought by a shipper, they implement not only the statutory standard under Interstate Commerce Act § 210a, 49 U. S. C. § 310a, but also the fundamental scheme of our national transportation policy. Ever since the enactment in 1887 of the Interstate Commerce Act, 24 Stat. 379, national policy has reflected the congressional determination that the public interest is served by regulating competition among carriers. See, e. g., Act of September 18, 1940, § 1, 54 Stat. 899, 49 U. S. C. preceding § 301. Regulation of entry into the motor transportation industry is one important feature of the pattern of regulation. *American Trucking Associations, Inc. v. United States*, 344 U. S. 298 (1953); *Pan-*

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 25, 1970

Re: Nos. 369 and 382 --
American Farm Lines v.
Black Ball Freight Service et al.

Dear Bill,

I am glad to join your opinion for
the Court in these cases.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 17, 1970

Nos. 369 & 382 - American Farm Lines

Dear Bill,

I am glad to join your dissenting
opinion in these cases.

Sincerely yours,

PS,
1.

Mr. Justice Brennan

Copies to the Conference

To: The Chief
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
From: Brennan
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1970

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 24, 1970

Re: Nos. 369 & 382 - American Farm
Lines v. Black Ball Freight
Service

Dear Bill:

Please join me.

Sincerely,



B.R.W.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 17, 1970

Re: Nos. 369 & 382 - American Farm
Lines v. Black Ball Freight

Dear Bill:

Please join me in your
dissenting opinion in these cases.

Sincerely,


B.R.W.

Mr. Justice Brennan

cc: Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 2, 1970

Re: No. 369 and 382 - American Farm Lines
and ICC v. Black Ball Freight Svc.

Dear Bill:

Please join me in your dissent.

Sincerely,


T.M.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 9, 1970

Re: Nos. 369 and 382 - Amer. Farm Lines
and ICC v. Black Ball Freight

Dear Bill:

Please permit me to join
in your latest circulation.

Sincerely,


T.M.

Mr. Justice Douglas

cc: The Conference