

The Burger Court Opinion Writing Database

Evansville-Vanderburgh Airport Authority District v. Delta Airlines, Inc.

405 U.S. 707 (1972)

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 14, 1972

Re: No. 70-99 - Evansville-Vanderburgh Airport Authority
v. Delta Airlines
No. 70-212 - Northeast Airlines v. New Hampshire
Aeronautics Commission

Dear Bill:

Please join me in the above opinion.

Regards,



Mr. Justice Brennan

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

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To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

Circulated: 4-10

Nos. 70-99 AND 70-212

Recirculated:

Evansville-Vanderburgh Airport Authority District et al., Petitioners, 70-99 v. Delta Airlines, Inc., et al.	} On Writ of Certiorari to the Supreme Court of Indiana.
Northeast Airlines, Inc., et al., Appellants, 70-212 v. New Hampshire Aeronautics Commission et al.	
	} On Appeal from the Su- preme Court of New Hampshire.

[March —, 1972]

MR. JUSTICE DOUGLAS, dissenting.

These cases are governed by *Crandall v. Nevada*, 6 Wall. 35, which must be overruled if we are to sustain the instant taxes.

One case involves an Indiana tax of one dollar on every emplaning commercial airline passenger at the Evansville-Vanderburgh Airport. The other involves a New Hampshire dollar tax on every passenger emplaning on an aircraft with a gross weight of 12,500 pounds or more and a 50-cent tax on every passenger emplaning on an aircraft with a gross weight of less than 12,500 pounds.

The carriers are made responsible for paying, accounting for, and remitting the fee to the local authority.

Crandall v. Nevada, decided before the Fourteenth Amendment, struck down a state law which levied a one dollar tax on every person leaving the State by rail, stage coach, or other common carrier. Mr. Justice Miller,

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

45

5th DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

Nos. 70-99 AND 70-212

Recirculated: 4-17

Evansville-Vanderburgh Airport Authority District et al., Petitioners, 70-99 v. Delta Airlines, Inc., et al.	} On Writ of Certiorari to the Supreme Court of Indiana.
Northeast Airlines, Inc., et al., Appellants, 70-212 v. New Hampshire Aeronautics Commission et al.	} On Appeal from the Su- preme Court of New Hampshire.

[April 19, 1972]

MR. JUSTICE DOUGLAS, dissenting.

These cases are governed by *Crandall v. Nevada*, 6 Wall. 35, which must be overruled if we are to sustain the instant taxes.

One case involves an Indiana tax of one dollar on every emplaning commercial airline passenger at the Evansville Airport. The other involves a New Hampshire 50-cent tax on every passenger emplaning on an aircraft with a gross weight of 12,500 pounds or more and a 50-cent tax on every passenger emplaning on an aircraft with a gross weight of less than 12,500 pounds.

The carriers are made responsible for paying, accounting for, and remitting the fee to the local authority.

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3

p 15

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall ✓
 Mr. Justice Blackmun
 Mr. Justice Burger
 Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

Nos. 70-99 AND 70-212 From: Department of Justice

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Evansville-Vanderburgh Airport
 Authority District et al.,
 Petitioners,
 70-99 v.
 Delta Airlines, Inc., et al.

On Writ of Certiorari to
 the Supreme Court of
 Indiana. 4-19

Northeast Airlines, Inc., et al.,
 Appellants,
 70-212 v.
 New Hampshire Aeronautics
 Commission et al.

On Appeal from the Su-
 preme Court of New
 Hampshire.

[April 19, 1972]

MR. JUSTICE DOUGLAS, dissenting.

These cases are governed by *Crandall v. Nevada*, 6 Wall. 35, which must be overruled if we are to sustain the instant taxes.

One case involves an Indiana tax of one dollar on every enplaning commercial airline passenger at the Evansville Airport. The other involves a New Hampshire \$1 tax on every passenger enplaning on an aircraft with a gross weight of 12,500 pounds or more and a 50-cent tax on every passenger enplaning on an aircraft with a gross weight of less than 12,500 pounds.

The carriers are made responsible for paying, accounting for, and remitting the fee to the local authority.

Crandall v. Nevada, decided before the Fourteenth Amendment, struck down a state law which levied a one dollar tax on every person leaving the State by rail, stage coach, or other common carrier. Mr. Justice Miller,

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Please join me
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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 4-4-72

Nos. 70-99 AND 70-212

Recirculated: _____

Evansville-Vanderburgh Airport Authority District et al., Petitioners, 70-99 v. Delta Airlines, Inc., et al.	} On Writ of Certiorari to the Supreme Court of Indiana.
Northeast Airlines, Inc., et al., Appellants, 70-212 v. New Hampshire Aeronautics Commission et al.	

} On Appeal from the Su-
preme Court of New
Hampshire.

[April —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The question is whether a charge by a State or municipality of \$1 per commercial airline passenger to help defray the costs of airport construction and maintenance violates the Federal Constitution. Our answer is that, as imposed in these two cases, the charge does not violate the Federal Constitution.

No. 70-99: Evansville-Vanderburgh Airport Authority District was created by the Indiana Legislature to operate Dress Memorial Airport in Evansville, Indiana. Under its authority to enact ordinances adopting rates and charges to be collected from users of the airport facilities and services, the Airport Authority enacted Ordinance No. 33 establishing "a use and service charge of One Dollar (\$1.00) for each passenger enplaning any com-

15, & minor changes
throughout

joined

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or formal errors, in order that corrections may be made before the preliminary print goes to press.

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____
Recirculated: 4/17/72

Nos. 70-99 AND 70-212

Evansville-Vanderburgh Airport Authority District et al., Petitioners, 70-99 v. Delta Airlines, Inc., et al.	}	On Writ of Certiorari to the Supreme Court of Indiana.
Northeast Airlines, Inc., et al., Appellants, 70-212 v. New Hampshire Aeronautics Commission et al.		On Appeal from the Su- preme Court of New Hampshire.

[April 19, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The question is whether a charge by a State or municipality of \$1 per commercial airline passenger to help defray the costs of airport construction and maintenance violates the Federal Constitution. Our answer is that, as imposed in these two cases, the charge does not violate the Federal Constitution.

No. 70-99. Evansville-Vanderburgh Airport Authority District was created by the Indiana Legislature to operate Dress Memorial Airport in Evansville, Indiana. Under its authority to enact ordinances adopting rates and charges to be collected from users of the airport facilities and services, the Airport Authority enacted Ordinance No. 33 establishing "a use and service charge of One Dollar (\$1.00) for each passenger enplaning any com-

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 5, 1972

Re: Nos. 70-99 and 70-212
Evansville-Vanderburgh Airport Auth.

Dear Bill,

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

Sincerely yours,

P.S.
✓

Mr. Justice Brennan

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U.S. SUPREME COURT RECORDS

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 5, 1972

Re: Nos. 70-99 & 70-212, Evansville-
Vanderburgh Airport Authority
v. Delta Airlines, Inc.

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 5, 1972

Re: Nos. 70-90 and 70-212 - Evansville-Vanderburgh
Airport Authority District v. Delta Airlines, etc.

Dear Bill:

Please join me.

Sincerely,


T.M.

Mr. Justice Brennan

cc: The Conference

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SECTION OF ADVANCE

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 10, 1972

Re: No. 70-99 - Evansville-Vanderburgh Airport Authority
District v. Delta Airlines, Inc.
No. 70-212 - Northeast Airlines, Inc. v. New Hampshire
Aeronautics Commission

Dear Bill:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Brennan

cc: The Conference

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U.S. SUPREME COURT RECORDS

6
M

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 6, 1972

Re: Nos. 70-99 and 70-12 - Evansville-Vanderburgh v.
Delta; and Northeast Airlines v. New Hampshire
Aeronautics Commission

Dear Bill:

Please join me in your excellent opinion for the Court
in these cases.

Sincerely,
WHR

Mr. Justice Brennan

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U.S. SUPREME COURT RECORDS