

# The Burger Court Opinion Writing Database

*Washington v. General Motors Corp.*  
406 U.S. 109 (1972)

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



B

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

CHAMBERS OF  
THE CHIEF JUSTICE

April 20, 1972

Re: No. 45 Orig. - Washington v. General Motors Corp.

Dear Bill:

Please join me.

Regards,



Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

January 18, 1972

Dear Byron:

In the Original actions -- Nos. 45, 49, and 50 -- the putting of the question raises a cloud of doubt on the established principle that federal law governs.

I would put no question to the parties.

W<sup>W</sup> William O. Douglas

Mr. Justice White

CC: The Conference

January 6<sup>th</sup> 71

Please forward

5th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 45, Orig.

3 | 20 | 7 ✓

State of Washington et al.,  
Plaintiffs,  
v.  
General Motors Corpora-  
tion et al. } On Motion for Leave to File  
Plaintiffs, } Bill of Complaint.

[March —, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Plaintiffs are 18 States who, by this motion for leave to file a complaint, seek to invoke this Court's original jurisdiction under Art. III, § 2, cl. 2 of the Constitution.<sup>1</sup> Named as defendants are the Nation's four major automobile manufacturers and their trade association.

Plaintiffs allege a conspiracy among the defendants to restrain the development of motor vehicle air pollution control equipment. They allege that the conspiracy began as early as 1953 but was concealed until January 1969. Count I of the proposed complaint charges a violation of the federal antitrust laws. Count II charges a common-law conspiracy in restraint of trade independent of the Sherman and Clayton Acts.<sup>2</sup>

<sup>1</sup> Fifteen States originally moved for leave to file a complaint. We subsequently granted leave to the State of Idaho to intervene as plaintiff. 403 U. S. 949. By today's decision we also grant leave to the States of North Dakota and West Virginia to be joined as parties plaintiff.

<sup>2</sup> A third count of plaintiffs' proposed complaint also charged "a public nuisance contrary to the public policy of the Plaintiff States . . . [and] the federal government." Motion for Leave to File Complaint, at 12. In a memorandum filed with this Court February 19, 1972, however, plaintiffs struck this count from their

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

6th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 45, Orig.

3/22/22

State of Washington et al.,  
Plaintiffs,  
*v.*  
General Motors Corpora-  
tion et al. } On Motion for Leave to File  
Plaintiffs, } Bill of Complaint.

[March —, 1972]

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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

7th DRAFT

**SUPREME COURT OF THE UNITED STATES** *Br. of Am. J.*

No. 45, Orig.

2 mediated:

State of Washington et al.,  
Plaintiffs,  
v.  
General Motors Corpora-  
tion et al. } On Motion for Leave to File  
Bill of Complaint.

[March —, 1972]

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. January 18, 1972

RE: No. 45 Orig. - Washington v. General Motors  
No. 49 Orig. - Illinois v. City of Milwaukee  
No. 50 Orig. - Vermont v. New York

Dear Byron:

I agree.

Sincerely,

WJ

Mr. Justice White

cc: The Conference

Wm. Brennan  
OC 71

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 29, 1972

RE: No. 45 Orig. - Washington v. General Motors Corp.  
No. 49 Orig. - Illinois v. City of Milwaukee

Dear Bill:

I agree with both of the above and with the rider in No. 49 Orig. suggested in your note of March 29. Do you think we might add to the rider an express disclaimer of the footnote in Wyandotte?

I'll defer returning in No. 50 Orig. pending Friday's conference discussion. As I told you, I think Bill Rehnquist has made a strong argument for taking that case.

Sincerely,



Mr. Justice Douglas

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

January 17, 1972

Re: 45 Orig. - Washington v. General Motors  
49 Orig. - Illinois v. City of Milwaukee  
50 Orig. - Vermont v. New York

Dear Byron,

I think your phrasing of the question in  
these cases is satisfactory.

Sincerely yours,

P.S.  
J.

Mr. Justice White

Copies to the Conference

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*3*  
*2*  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

March 27, 1972

No. 45 Orig., Washington v. GMC

Dear Bill,

I am glad to join your opinion for the  
Court in this case.

Sincerely yours,

*P.S.*  
*1.*

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 17, 1972

Re: No. 45 Orig. - Washington v. General Motors  
No. 49 Orig. - Illinois v. City of Milwaukee  
No. 50 Orig. - Vermont v. New York

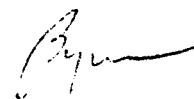
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Dear Chief:

Although there are more complicated ways of putting the question we want the parties in each of these cases to brief and argue, perhaps the following would be adequate:

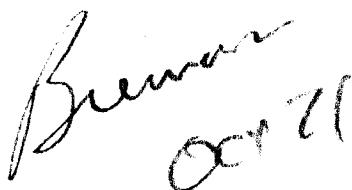
Would federal or state law govern the substantive issues sought to be presented for decision in original actions such as this one?

Sincerely,



The Chief Justice

Copies to Conference



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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 30, 1972

Re: Nos. 45 Orig. - Washington v. General Motors  
49 Orig. - Illinois v. City of Milwaukee

Dear Bill:

I join your opinions in these cases.

As for No. 50 Orig., Vermont v. New York,  
like Bill Brennan, I am impressed with Brother  
Rehnquist's argument that we should grant leave  
to file. I am not at rest, however.

Sincerely,



Mr. Justice Douglas

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 18, 1972

Re: No. 45 Orig. - Washington v. General Motors  
No. 49 Orig. - Illinois v. City of Milwaukee  
No. 50 Orig. - Vermont v. New York

Dear Byron:

I agree with your question.

Sincerely,



T.M.

Mr. Justice White

cc: The Conference

Brennan  
Oct 71

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 23, 1972

Re: Nos. 45 Orig. - Washington v. General Motors  
49 Orig. - Illinois v. Milwaukee  
50 Orig. - Vermont v. New York

Dear Bill:

Please join me in the three opinions  
you have circulated in these cases.

Sincerely,



T.M.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 22, 1972

Re: No. 45 Orig. - Washington v. General Motors  
Corp., et al.

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Dear Bill:

On page 6 of your opinion you have me noted as not taking part in the consideration or decision of these motions. I know of no reason now why I am disqualified. I did sit through the hearing and participated in the conference discussion, and expect to vote in due course.

Sincerely,

*Hab.*  
\_\_\_\_

Mr. Justice Douglas

cc: The Conference

CH

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 24, 1972

Re: No. 45 Orig. - Washington v. General Motors Corp.

Dear Bill:

Please join me.

Sincerely,

*Ha. B.*

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 23, 1972

Dear Bill:

Please join me in your opinion for  
the Court in No. 45, Washington v. General  
Motors Corporation, and No. 49, Illinois  
v. City of Milwaukee, Wisconsin, et al.  
I hope shortly to circulate a dissent from  
your opinion in No. 50, Vermont v. New  
York.

*cc:1*      *cc:1*  
Sincerely,

*Bill*

Mr. Justice Douglas

Copies to the Conference