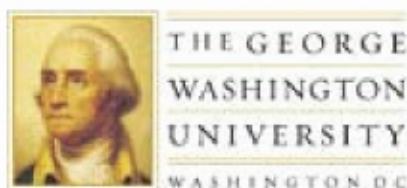


The Burger Court Opinion Writing Database

United Air Lines, Inc. v. Mahin
410 U.S. 623 (1973)

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



1st DRAFT

SUPREME COURT OF THE UNITED STATES

UNITED AIR LINES, INC. v. GEORGE E. MAHIN ET AL. *CIT*

APPEAL FROM THE SUPREME COURT OF ILLINOIS

No. 71-862. Decided February —, 1972

MR. JUSTICE DOUGLAS, dissenting.

Appellant is a common carrier by air operating in interstate and international commerce. Chicago, Illinois, is the hub of appellant's operations, with 13% of its flights departing from that city and 16.5% of the fuel it uses loaded there. The issue here is the constitutionality, under the Commerce Clause, of the use tax the State of Illinois imposes upon the loading of gasoline within the State aboard appellant's interstate and international flights. Because I believe the question to be an important one meriting plenary consideration, I respectfully dissent from today's summary action.

The aviation fuel involved in this case is purchased by appellant in Indiana. At that time, appellant pays a tax at the rate of one-half percent of the purchase price. Burns Ind. Stat. Ann. Tit. 64, c. 26, §§ 64-2601 to 64-2603. Appellant then transports the fuel by common carrier to storage facilities in Illinois where it is eventually loaded aboard United's aircraft for use in interstate and international flights. It is the event of loading the fuel aboard the air carriers that Illinois considers the taxable use and it is at that time that the State imposes the 4% tax now at issue. Ill. Rev. Stat. c. 120, § 439.3.

United Air Lines brought this action seeking to enjoin officers of the Illinois Department of Revenue from assessing and collecting the use tax on aviation fuel loaded aboard interstate and international flights. The trial court upheld the statute against the argument that

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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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

FEB 21 1972, J.

UNITED AIR LINES, INC. v. GEORGE E. *Circulated: _____*

MAHIN ET AL.

Recirculated: 3-13

APPEAL FROM THE SUPREME COURT OF ILLINOIS

No. 71-862. Decided February —, 1972

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE POWELL concurs, dissenting.

Appellant is a common carrier by air operating in interstate and international commerce. Chicago, Illinois, is the hub of appellant's operations, with 13% of its flights departing from that city and 16.5% of the fuel it uses loaded there. The issue here is the constitutionality, under the Commerce Clause, of the use tax the State of Illinois imposes upon the loading of gasoline within the State aboard appellant's interstate and international flights.¹ Because I believe the question to be an important one meriting plenary consideration, I respectfully dissent from today's summary action.

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¹ The litigation involves only those flights, not intrastate flights. Appellee concedes in its brief that United pays the Illinois use tax on all fuel loaded on its intrastate flights between Chicago and Moline, so that fuel is not involved in this case.

B

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 2, 1972

Re: No. 71-862 United Air Lines v. Mahin

Dear Bill:

Please join me in your dissenting opinion.

Your draft states that the fuel is loaded aboard United's aircraft "for use in interstate or international flights." Although I have not checked the record, I was under the impression that the tax applied to the loading whether the flights were intrastate or interstate - with no distinction being made. This would not, of course, affect the validity of your reasoning or the soundness of your conclusion.

Sincerely,

Lewis

Mr. Justice Douglas

cc: Conference