

The Burger Court Opinion Writing Database

*United States v. Students Challenging
Regulatory Agency Procedures (SCRAP)*
412 U.S. 669 (1973)

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

May 30, 1973

Re: 72-535) - U. S. & ICC v. SCRAP
72-562) - Aberdeen & Rockfish Ry. Co. v. SCRAP

Dear Potter:

I will probably be able to join all but Part II
but will defer final action until I see the dissents.

Regards,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

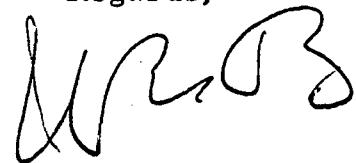
June 7, 1973

Re: 72-535) - U. S. v. SCRAP
72-562) - Aberdeen & Rockfish Ry. Co. v. SCRAP

Dear Byron:

Please join me in your dissent which fits my view of
the case more closely than my prior limited concurrence.

Regards,



Mr. Justice White

Copies to the Conference

B

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 72-535 AND 72-562

United States and Interstate
Commerce Commission,
Appellants,

72-535 *v.*

Students Challenging Regu-
latory Agency Procedures
(SCRAP) et al.

Aberdeen and Rockfish Rail-
road Company et al.,
Appellants,

72-562 *v.*

Students Challenging Regu-
latory Agency Procedures
(SCRAP) et al.

On Appeals from the
United States District
Court for the District
of Columbia.

Printed: 7

Circulated: 5/16/73

Proprietary: _____

[March —, 1973]

MR. JUSTICE DOUGLAS, dissenting.

I

These cases present important environmental problems. They concern ratemaking for the shipment of litter for recycling. Paper, glass, and metals are the main items in today's garbage.¹ As indicated by the

¹ In a Bureau of Mines' survey, it was established that metals and glass account for approximately 75 weight-percent of the residues in municipal incinerator waste. Economics of Recycling Metals and Minerals from Urban Refuse, Bureau of Mines Technical Progress Report, April 1971, p. 2. From these materials, if recycled, familiar products such as bottles, newspapers, iron ingots, paper pulp, fuel oil, and methane gas can be manufactured. In addition, new products are being developed, such as glassphalt for street paving, insulation, glass wool, and glass bricks, in various colors that meet specifica-

1,2,5,11

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

5th DRAFT

From: Douglas, J.

Circulated:

Nos. 72-535 AND 72-562

Recirculated: 5-21-73

United States and Interstate
Commerce Commission,
Appellants,

72-535 *v.*

Students Challenging Regu-
latory Agency Procedures
(SCRAP) et al.

Aberdeen and Rockfish Rail-
road Company et al.,
Appellants,

72-562 *v.*

Students Challenging Regu-
latory Agency Procedures
(SCRAP) et al.

On Appeals from the
United States District
Court for the District
of Columbia.

[May —, 1973]

MR. JUSTICE DOUGLAS, dissenting in part.

I

These cases present important environmental prob-
lems. They concern ratemaking for the shipment of
litter for recycling. Paper, glass, and metals are the
main items in today's garbage.¹ As indicated by the

¹ In a Bureau of Mines' survey, it was established that metals and glass account for approximately 75 weight-percent of the residues in municipal incinerator waste. Economics of Recycling Metals and Minerals from Urban Refuse, Bureau of Mines Technical Progress Report, April 1971, p. 2. From these materials, if recycled, familiar products such as bottles, newspapers, iron ingots, paper pulp, fuel oil, and methane gas can be manufactured. In addition, new products are being developed, such as glassphalt for street paving, insulation, glass wool, and glass bricks, in various colors that meet specifica-

15

6th DRAFT

SUPREME COURT OF THE UNITED STATES

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

Nos. 72-535 AND 72-562

From: Douglas

Circulated

Recirculated

6-

United States and Interstate
Commerce Commission.
Appellants,

72-535

Students Challenging Regu-
latory Agency Procedures
(SCRAP, et al.)

Aberdeen and Rockfish Rail-
road Company et al.
Appellants

72-562

Students Challenging Regu-
latory Agency Procedures
(SCRAP, et al.)

On Appeals from the
United States District
Court for the District
of Columbia.

May 11, 1973

MR. JUSTICE DOUGLAS, dissenting in part.

These cases present important environmental prob-
lems. They concern ratemaking for the shipment of
litter for recycling. Paper, glass, and metals are the
main items in today's garbage.¹ As indicated by the
Bureau of Mines in Appendix I to this dissent, America's

¹ In a Bureau of Mines survey, it was established that metals and
glass account for approximately 75 weight-percent of the residues
in municipal incinerator waste. Economics of Recycling Metals and
Minerals from Urban Refuse, Bureau of Mines Technical Progress
Report, April 1971, p. 2. From these materials, if recycled, familiar
products such as bottles, newspapers, iron ingots, paper pulp, fuel
oil, and methane gas can be manufactured. In addition, new products
are being developed, such as glassphalt for street paving, insula-
tion, glass wool, and glass bricks, in various colors that meet specifica-

7

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 5, 1973

RE: No. 72-535 and 72-562 - U.S. & I.C.C.
v. SCRAP

Dear Harry:

Please join me in your concurring opinion
in the above.

Sincerely,

Brennan

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

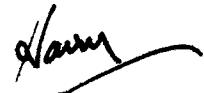
June 6, 1973

Re: No. 72-535 - U. S. v. SCRAP
No. 72-562 - Aberdeen & Rockfish RR v. SCRAP

Dear Bill:

With the forthcoming change in Potter's opinion (a matter my clerk has verified with his clerk), two alternatives appear open to me. The first is merely to join. The second is to revise my circulation of June 4. I am inclined to the latter. Because I am, I enclose a copy of the proposed revision. Would it meet with your approval? I send it to you because you have joined me. Do not feel obligated to adhere to that joinder.

Sincerely,



Mr. Justice Brennan

Harry,
I agree & fully
approve your change.
Bill

3

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 15, 1973

MEMORANDUM TO THE CONFERENCE

Re: Nos. 72-535 and 72-562, United States v. SCRAP

My Conference notes show that a majority thought the appellees had standing to sue, and that a majority thought the District Court had no jurisdiction to issue an injunction, but that these were quite different majorities. Accordingly, I have in this proposed opinion done my best completely to separate the discussions of these two issues in Parts II and III.



P. S.

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

Nos. 72-535 AND 72-562

Circulated: MAY 15 1973

Recirculated: _____

United States and Interstate
Commerce Commission,
Appellants.

72-535 *v.*

Students Challenging Regu-
latory Agency Procedures
(SCRAP) et al.

Aberdeen and Rockfish Rail-
road Company et al.,
Appellants,

72-562 *v.*

Students Challenging Regu-
latory Agency Procedures
(SCRAP) et al.

On Appeals from the
United States District
Court for the District
of Columbia.

[May —, 1973]

MR. JUSTICE STEWART delivered the opinion of the
Court.

Under the Interstate Commerce Act, the initiative for
rate increases remains with the railroads. But in the
absence of special permission from the Interstate Com-
merce Commission, a railroad seeking an increase must
provide at least 30 days' notice to the Commission and
the public before putting the new rate into effect. 49
U. S. C. § 6 (3).¹ During that 30-day period, the Com-

¹ 49 U. S. C. § 6 (3) provides: "No change shall be made in the
rates, fares, and charges or joint rates, fares, and charges which
have been filed and published by any common carrier in compliance
with the requirements of this section, except after thirty days'

STYLING AND TYPE THROUGHOUT.

17, 18, 19, 28

3rd DRAFT

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

SUPREME COURT OF THE UNITED STATES

Nos. 72-535 AND 72-562

Circulated: MAY 18 1973
Recirculated:

United States and Interstate
Commerce Commission,
Appellants,

72-535 v.

Students Challenging Regu-
latory Agency Procedures
(SCRAP) et al.

Aberdeen and Rockfish Rail-
road Company et al.,
Appellants,

72-562 v.

Students Challenging Regu-
latory Agency Procedures
(SCRAP) et al.

On Appeals from the
United States District
Court for the District
of Columbia.

[May —, 1973]

MR. JUSTICE STEWART delivered the opinion of the Court.

Under the Interstate Commerce Act, the initiative for rate increases remains with the railroads. But in the absence of special permission from the Interstate Commerce Commission, a railroad seeking an increase must provide at least 30 days' notice to the Commission and the public before putting the new rate into effect. 49 U. S. C. § 6 (3).¹ During that 30-day period, the Com-

¹ 49 U. S. C. § 6 (3) provides: "No change shall be made in the rates, fares, and charges or joint rates, fares, and charges which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days."

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 6, 1973

Re: No. 72-535 and 72-562, United States v.
SCRAP

Dear Harry,

In accord with our telephone conversation this morning, I am hopeful that the deletions I have now made will enable you to join the opinion in toto, feeling free, of course, to note in concurrence that, in accord with your dissent in Sierra, you would find standing even if there were no allegation by the appellees that they themselves were injured. I greatly appreciate your spirit of cooperation.

Sincerely yours,

P.S.
P.

Mr. Justice Blackmun

Copy to Mr. Justice Brennan

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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 72-535 AND 72-562

Stewart, J.

Circulated:

JUN 6 1

Recirculated:

United States and Interstate
Commerce Commission,
Appellants

72-535 v.

Students Challenging Regu-
latory Agency Procedures
(SCRAP) et al

Aberdeen and Rockfish Rail-
road Company et al
Appellants

72-562 v.

Students Challenging Regu-
latory Agency Procedures
(SCRAP, et al)

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

[May -- 1973]

MR. JUSTICE STEWART delivered the opinion of the
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merce Commission, a railroad seeking an increase must
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with the requirements of this section, except after thirty days'

12-14

file

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

5th DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

Nos. 72-535 AND 72-562 Recirculated: JUN 13 1973

112-2
United States and Interstate
Commerce Commission,
Appellants,

72-535 *v.*

Students Challenging Regu-
latory Agency Procedures
(SCRAP) et al.

Aberdeen and Rockfish Rail-
road Company et al.,

Appellants,

72-562 *v.*

Students Challenging Regu-
latory Agency Procedures
(SCRAP) et al.

On Appeals from the
United States District
Court for the District
of Columbia.

[May —, 1973]

MR. JUSTICE STEWART delivered the opinion of the
Court.

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rate increases remains with the railroads. But in the
absence of special permission from the Interstate Com-
merce Commission, a railroad seeking an increase must
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have been filed and published by any common carrier in compliance
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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
~~Mr.~~ Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

Circulated: 6-4

Recirculated:

United States and Interstate
Commerce Commission,
Appellants,

72-535 *v.*

Students Challenging Regulatory Agency Procedures (SCRAP) et al.

Aberdeen and Rockfish Railroad Company et al.
Appellants.

72-562

Students Challenging Regu- latory Agency Procedures (SCRAP) et al.

On Appeals from the
United States District
Court for the District
of Columbia.

[June — 1973]

MR. JUSTICE WHITE, dissenting in part.

I would reverse the judgment of the District Court and order the complaint dismissed because appellees lack standing to bring this suit. None of our cases, including inferences that may be drawn from dicta in *Sierra Club v. Morton*, where we denied standing to petitioner there, are sufficient to confer standing on plaintiffs in circumstances like these. The allegations here do not satisfy the threshold requirement of injury in fact for constituting a justiciable case or controversy. The inquiry alleged is that the failure of the Commission to suspend a 2.5% freight rate increase may discourage the transportation of recyclable materials, thus retarding the use of recycled materials, causing further consumption of our forests and natural resources (some

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
 Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Po
Mr. Justice Re

p. 1

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

Nos. 72-535 AND 72-562

Circulated: _____

Recirculated: 6-7

United States and Interstate
Commerce Commission
Appellants

72-535 v.

Students Challenging Regu-
latory Agency Procedures
(SCRAP) et al.

Aberdeen and Rockfish Rail-
road Company et al.
Appellants

72-562 v.

Students Challenging Regu-
latory Agency Procedures
(SCRAP) et al.

On Appeals from the
United States District
Court for the District
of Columbia.

June - 1973

MR. JUSTICE WHITE, with whom MR. JUSTICE REHN-
QUIST joins, dissenting in part

I would reverse the judgment of the District Court and order the complaint dismissed because appellees lack standing to bring this suit. None of our cases, including inferences that may be drawn from dicta in *Sierra Club v. Morton*, where we denied standing to petitioner there, are sufficient to confer standing on plaintiffs in circumstances like these. The allegations here do not satisfy the threshold requirement of injury in fact for constituting a justiciable case or controversy. The inquiry alleged is that the failure of the Commission to suspend a 2.5% freight rate increase may discourage the transportation of recyclable materials, thus retarding the use of recycled materials, causing further consumption of our forests and natural resources (some

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 1, 1973

Re: Nos. 72-535 and 72-562 - U. S. v. SCRAP and
Aberdeen & Rockfish R. Co. v. SCRAP

Dear Potter:

I am glad to join Part II of your opinion in these cases, but I find that I am unable to agree with Part III. Consequently, I will be circulating a dissent from Part III in due course.

Sincerely,



T.M.

Mr. Justice Stewart

cc: Conference

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 72-535 AND 72-562

To: Marshall, J.

Circulated: JUN 11 1973

Recirculated: _____

United States and Interstate
 Commerce Commission
 Appellants.

72-535 v.

Students Challenging Regu-
 latory Agency Procedures
 (SCRAP) et al.

Aberdeen and Rockfish Rail-
 road Company et al.,
 Appellants.

72-562 v.

Students Challenging Regu-
 latory Agency Procedures
 (SCRAP) et al.

On Appeals from the
 United States District
 Court for the District
 of Columbia.

[June 11, 1973]

MR. JUSTICE MARSHALL, concurring in part and dis-
 senting in part.

I fully agree with and join in Part II of the Court's
 opinion wherein it sustains the District Court's deter-
 mination that the appellees have standing to challenge
 the 2.5% interim surcharge on the ground that the Inter-
 state Commerce Commission's order of April 24 per-
 mitting the surcharge to take effect was not issued in
 compliance with the requirements of the National En-
 vironmental Policy Act of 1969 (NEPA), 42 U. S. C
 §§ 4321-4347. The Court goes on, however, to hold in
 Part III of its opinion that the District Court lacked
 power to issue a preliminary injunction barring imple-
 mentation of the surcharge due to the Commission's
 alleged failure to comply with NEPA in the suspension

WD

15
2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 72-535 AND 72-562

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

From: Marshall, J.

Circulated:

Recirculated: JUN 14 1973

United States and Interstate
 Commerce Commission
 Appellants.

72-535 v.

Students Challenging Regu-
 latory Agency Procedures
 (SCRAP) et al.

Aberdeen and Rockfish Rail-
 road Company et al.,
 Appellants,

72-562 v.

Students Challenging Regu-
 latory Agency Procedures
 (SCRAP) et al.

On Appeals from the
 United States District
 Court for the District
 of Columbia.

[June — 1973]

MR. JUSTICE MARSHALL, concurring in part and dis-
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I fully agree with and join in Part II of the Court's
 opinion wherein it sustains the District Court's deter-
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 vironmental Policy Act of 1969 (NEPA), 42 U. S. C.
 §§ 4321-4347. The Court goes on, however, to hold in
 Part III of its opinion that the District Court lacked
 power to issue a preliminary injunction barring imple-
 mentation of the surcharge due to the Commission's
 alleged failure to comply with NEPA in the suspension

WD

9
Blackmun 6
No. 72-535 - United States, et. al. v. SCRAP

No. 72-562 - Aberdeen & Rockfish R. Co. v. SCRAP

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

From: Blackmun, J.

MR. JUSTICE BLACKMUN, concurring.

Circulated: 5/31/

I join the Court's judgment and its opinion, with the exception
of Part II and of the dictum constituting the first paragraph of Part III.

I concur in Part II's result.

For the reasons stated in my dissenting opinion in Sierra Club
v. Morton, 405 U.S. 727, 755 (1972), I would hold that the appellees
here have standing to maintain this action based on their allegations of
harm to the environment resulting from the Commission's order of
April 24, 1972. The Court states, however, ante p. 19, that "[i]n
view of the attenuated nature of the alleged harm and the consequent
difficulty the plaintiffs would have in ultimately proving that they were
in fact injured, we have the gravest doubts whether, as a matter of
equity, a preliminary injunction was justified upon the complaint in
this case" (emphasis added). I would not require that the appellees,
in their individual capacities, prove that they in fact were injured. Rather,
I would require only that appellees, as responsible and sincere rep-
resentatives of environmental interests, show that the environment would
be injured in fact and, in order to justify equitable relief, that such
injury would be irreparable and substantial.

I otherwise join Part III of the Court's opinion to the effect that a federal court is without jurisdiction to grant the injunctive relief sought here. Inasmuch as this holding disposes of all questions relating to injunctive relief, it is not necessary, in my view, to consider the degree of irreparable harm necessary to justify equitable relief. Nor is it necessary to speculate about the likelihood that appellees, under any standard, could prove sufficient injury to warrant equitable intervention.

1
9
Place to
dissent in P.M. 1/1

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Blackmun, J.

Nos. 72-535 AND 72-562

Circulated: _____

Recirculated: 6/4/73

United States and Interstate
Commerce Commission,
Appellants,

72-535 *v.*

Students Challenging Regu-
latory Agency Procedures
(SCRAP) et al.

Aberdeen and Rockfish Rail-
road Company et al.
Appellants.

72-562 *v.*

Students Challenging Regu-
latory Agency Procedures
(SCRAP) et al.

On Appeals from the
United States District
Court for the District
of Columbia.

[June —, 1973]

MR. JUSTICE BLACKMUN, concurring:

I join the Court's judgment and its opinion, with the exception of Part II and of the dictum constituting the first paragraph of Part III. I concur in Part II's result.

For the reasons stated in my dissenting opinion in *Sierra Club v. Morton*, 405 U. S. 727, 755 (1972), I would hold that the appellees here have standing to maintain this action based on their allegations of harm to the environment resulting from the Commission's order of April 24, 1972. The Court states, however, *ante*, p. 19, that "[i]n view of the attenuated nature of the alleged harm and the consequent difficulty the plaintiffs would have in ultimately proving that *they* were in fact injured, we have the gravest doubts whether, as a matter of equity, a preliminary injunction was justified upon

June 6, 1973

Re: No. 72-535 - U. S. v. SCRAP
No. 72-562 - Aberdeen & Rockfish RR v. SCRAP

Dear Bill:

With the forthcoming change in Potter's opinion (a matter my clerk has verified with his clerk), two alternatives appear open to me. The first is merely to join. The second is to revise my circulation of June 4. I am inclined to the latter. Because I am, I enclose a copy of the proposed revision. Would it meet with your approval? I send it to you because you have joined me. Do not feel obligated to adhere to that joinder.

Sincerely,

HAB

Mr. Justice Brennan

June 7, 1973

Re: No. 72-535 - U. S. v. SCRAP
No. 72-562 - Aberdeen & Rockfish RR v. SCRAP

Dear Potter:

The enclosed is what I have sent down to the Print Shop as a revision of my short separate opinion. Bill Brennan approves. I hope that you will find it acceptable and in line with your recirculation of June 6.

Sincerely,

HAB

Mr. Justice Stewart

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 72-535 AND 72-562

Circulate : _____

Recirculated: 6/7/7

United States and Interstate
Commerce Commission,
Appellants,

72-535 *v.*

Students Challenging Regu-
latory Agency Procedures
(SCRAP) et al.

Aberdeen and Rockfish Rail-
road Company et al.
Appellants.

72-562 *v.*

Students Challenging Regu-
latory Agency Procedures
(SCRAP) et al.

On Appeals from the
United States District
Court for the District
of Columbia.

[June 1, 1973]

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE BRENNAN joins, concurring.

I join the Court's judgment and its opinion, but because of the presence of the first sentence of Part III of the opinion, and to avoid any misunderstanding as to my posture, I add a few words.

For the reasons stated in my dissenting opinion in *Sierra Club v. Morton*, 405 U. S. 727, 755 (1972), I would hold that the appellees here have standing to maintain this action based on their allegations of harm to the environment resulting from the Commission's order of April 24, 1972. And in evaluating whether injunctive relief is warranted, I would not require that the appellees, in their individual capacities, prove that they

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 15, 1973

No. 72-535 U. S. v. SCRAP
No. 72-562 Aberdeen and Rockfish Railroad v. SCRAP

Dear Potter:

Please note on the next draft of your opinion that I took no part in the consideration or decision of the above case.

Sincerely,

Lewis

Mr. Justice Stewart

cc: The Conference

lfp/ss

M
Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 21, 1973

Re: Nos. 72-535 and 72-562 - United States, et al.,
v. SCRAP, et al.

Dear Potter:

I will join Part III of your opinion in these cases which disposes of the contentions of the parties on the merits. As presently advised, I do not believe that I can join Part I: and if a dissent is written to that part of the opinion I will probably join it.

Sincerely,

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

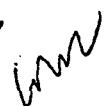
June 6, 1973

Re: Nos. 72-535 and 72-562 - U.S. & I.C.C. v. SCRAP,
et al.

Dear Byron:

Please join me in your dissent.

Sincerely,



Mr. Justice White

Copies to the Conference