

The Burger Court Opinion Writing Database

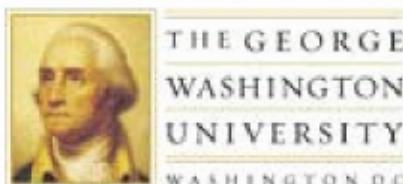
United States v. Chicago, Burlington & Quincy Railway Co.

412 U.S. 401 (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 8, 1973

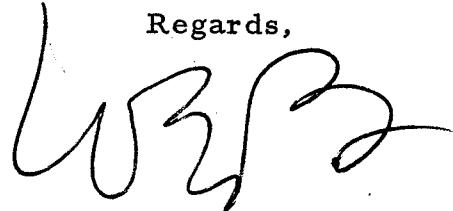
PERSONAL

Re: No. 72-90 - United States v. Chicago, B & Q Ry.

Dear Harry:

I will be joining you but in usual protocol I will wait
on Potter's views.

Regards,



Mr. Justice Blackmun

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

(7)
CHAMBERS OF
THE CHIEF JUSTICE

May 30, 1973

Re: No. 72-90 - United States v. Chicago, Burlington
& Quincy Railroad Company

Dear Harry:

Please join me.

Regards,

WB

Mr. Justice Blackmun

Copies to the Conference

files

October 17, 1972

Dear Harry,

In 72-90, United States v. Chicago,
Burlington & Quincy Railroad Company please
join me in your dissent.

William O. Douglas

Mr. Justice Blackman
cc: The Conference

WJD

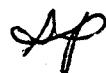
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 25, 1973

Dear Potter:

Please join me in your opinion in
72-90, U.S. v. Chicago, Burlington & Quincy
Railroad Co.


William O. Douglas

Mr. Justice Stewart

cc: The Conference

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-90

United States, Petitioner,

v.
Chicago, Burlington &
Quincy Railroad
Company.

On Writ of Certiorari to the
United States Court of
Claims.

[May —, 1973]

MR. JUSTICE DOUGLAS, dissenting.

While I join the dissent of MR. JUSTICE STEWART, I add a few words. Funds were contributed by the States and by the Federal Government to respondent for the construction of highway overpasses and underpasses and for grade-crossing protection equipment. While the Government provided most of the funds, the respondent did most of the construction work—all as found by the Court of Claims. 455 F. 2d 993, 997-998.

This case is not controlled by *Detroit Edison Co. v. Commissioner*, 319 U. S. 98, as MR. JUSTICE STEWART says, for there the advances were made by customers of a utility as part of "the price of the service." *Id.*, at 103. Here, however, the situation was different. As the Court of Claims found

... under all the agreements, plaintiff was obligated to maintain and replace as necessary, at its own expense, facilities originally built. The facilities were constructed primarily for the benefit of the public to improve safety and to expedite motor-vehicle traffic flow. The record shows, however, that plaintiff received economic benefits from the facilities, *e. g.*, probable lower accident rates, reduced expenses of operating crossing equipment and, where

M

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 1, 1973

Re: No. 72-90 -- United States v. Chicago, Burlington
& Quincy Railroad Co.

Dear Harry:

Please join me.

Sincerely yours,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 30, 1973

MEMORANDUM TO THE CONFERENCE

Re: No. 72-90, U. S. v. Chicago, B & Q R. Co.

In due course, I shall circulate a dissenting opinion in this case.

P. S.

P. S.

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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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

Circulated: MAY 24 1973

No. 72-90

Recirculated: _____

United States, Petitioner,

v.
 Chicago, Burlington &
 Quincy Railroad
 Company.

On Writ of Certiorari to the
 United States Court of
 Claims.

[June —, 1973]

MR. JUSTICE STEWART, dissenting.

This case involves the depreciation of certain railroad facilities constructed with public funds prior to June 22 1954. The precise question before the Court is whether those facilities constituted "contributions to capital" within the meaning of § 113 (a)(8)(B) of the Internal Revenue Code of 1939.

Beginning in the early 1930's, various state governments entered into agreements with the respondent railroad for the construction of highway overpasses and underpasses at highway-railroad intersections, and construction of grade crossing protection equipment such as flashing light signals and automatic gates. The agreements generally provided that the States would pay 50% or more of the total cost, and subsequently Congress authorized the Federal Government to assume the State's share of the construction costs. See National Industrial Recovery Act § 204 (a), 48 Stat. 195, 203. Under the Federal-Aid Highway Act of 1944, § 5, 58 Stat. 838, 840, the Federal Government reimbursed the States for the entire cost of the highway-railroad crossing projects, subject to payment by the railroads for up to 10% of the cost of the project if the railroads were benefited by the facilities.

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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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-90

Circulated: _____
Recirculated: MAY 29 1973

United States, Petitioner

v.
Chicago, Burlington &
Quincy Railroad
Company.

On Writ of Certiorari to the
United States Court of
Claims,

[June 2, 1973]

MR. JUSTICE STEWART with whom MR. JUSTICE DOUGLAS joins, dissenting.

This case involves the depreciation of certain railroad facilities constructed with public funds prior to June 22, 1954. The precise question before the Court is whether those facilities constituted "contributions to capital" within the meaning of § 113 (a)(8)(B) of the Internal Revenue Code of 1939.

Beginning in the early 1930's, various state governments entered into agreements with the respondent railroad for the construction of highway overpasses and underpasses at highway-railroad intersections, and construction of grade crossing protection equipment such as flashing light signals and automatic gates. The agreements generally provided that the States would pay 50% or more of the total cost, and subsequently Congress authorized the Federal Government to assume the State's share of the construction costs. See National Industrial Recovery Act § 204 (a), 48 Stat. 195, 203. Under the Federal-Aid Highway Act of 1944, § 5, 58 Stat. 838, 840, the Federal Government reimbursed the States for the entire cost of the highway-railroad crossing projects, subject to payment by the railroads for up to 10% of the cost of the project if the railroads were benefited by the facilities.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 1, 1973

Re: No. 72-90 - United States v. Chicago,
Burlington & Quincy Rd Co.

Dear Harry:

I am with you in this case.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 3, 1973

Re: No. 72-90 - U. S. v. Chicago, Burlington

Dear Harry:

Please join me.

Sincerely,



T.M.

Mr. Justice Blackmun

cc: Conference

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

1st DRAFT

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 10/17/72

UNITED STATES *v.* CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

No. 72-90. Decided October —, 1972

The petition for a writ of certiorari is denied.

MR. JUSTICE BLACKMUN, dissenting.

The Court's denial of certiorari in this case leaves standing a judgment of the Court of Claims, by a 4-to-3 vote, that permits a private corporation, a railroad, to receive the benefits of income tax deductions for depreciation of crossing facilities paid for not by the railroad but from public funds. Because, without further study, this appears to me to bestow upon the railroad an income tax windfall over and above the direct subsidy it already has received, because this double benefit surely must not have been contemplated by the Congress and seems out of line with accepted principles of depreciation, and because substantial tax revenues are involved, I feel that the Court of Claims decision merits review here.

The facts are these: Beginning in 1930, the respondent, Chicago, Burlington & Quincy Railroad Company (CB&Q), entered into a series of agreements with various midwestern States by which the States were to fund all or some of the costs of construction of certain improvements and CB&Q was to bear the costs of maintenance and replacement of the improvements once they were installed. In 1933, as part of the National Industrial Recovery Act, Congress authorized federal reimbursement to the States of that share of the costs they incurred in the construction of such improvements that inured to the benefit of public safety and improved highway

WD

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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

1st DRAFT

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 4/30/73

No. 72-90

Recirculated: _____

United States, Petitioner,

v.
 Chicago, Burlington &
 Quincy Railroad
 Company.

On Writ of Certiorari to the
 United States Court of
 Claims.

[May —, 1973]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

The issue in this federal income tax case is whether the respondent, Chicago, Burlington & Quincy Railroad Company (CB&Q), an interstate common carrier railroad, may depreciate the cost of certain facilities paid for prior to June 22, 1954, not by it or by its shareholders, but from public funds.

Starting about 1930, CB&Q entered into a series of contracts with various Midwestern States. By these agreements the States were to fund some or all of the costs of construction of specified improvements, and the railroad apparently was to bear, at least in part, the costs of maintenance and replacement of the improvements once they had been installed. In 1933, as part of the program of the National Industrial Recovery Act, 48 Stat. 195, Congress authorized federal reimbursement to the States of the shares of the costs the States incurred in the construction of those improvements that inured to the benefit of public safety and improved highway traffic control.¹ In 1944 Congress went further and authorized

¹ National Industrial Recovery Act, § 204 (a) (1), 48 Stat. 203 (1933).

9-011

RAF/
*Leave your name
JUL*

pp. 11.12.13

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

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES:

No. 72-90

Recirculated: 5/1/73

United States, Petitioner,

v.
Chicago, Burlington &
Quincy Railroad
Company.

On Writ of Certiorari to the
United States Court of
Claims.

[May —, 1973]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

The issue in this federal income tax case is whether the respondent, Chicago, Burlington & Quincy Railroad Company (CB&Q), an interstate common carrier railroad, may depreciate the cost of certain facilities paid for prior to June 22, 1954, not by it or by its shareholders, but from public funds.

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¹ National Industrial Recovery Act, § 204 (a) (1), 48 Stat. 203 (1933).

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

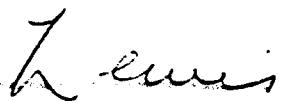
April 30, 1973

Re: No. 72-90 U. S. v. Chicago, Burlington
& Quincy Railroad Company

Dear Harry:

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

Sincerely,



Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 4, 1973

Re: No. 72-90 - U. S. v. Chicago, Burlington

Dear Harry:

Please join me.

Sincerely,

WR

Mr. Justice Blackmun

Copies to the Conference