

# The Burger Court Opinion Writing Database

## *National Railroad Passenger Corp. v. National Association of Railroad Passengers*

414 U.S. 453 (1974)

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

January 3, 1974

Re: No. 72-1289 - National Railroad Passenger Corp., et al.  
v. National Association of Railroad Passengers

Dear Potter:

Please join me.

Regards,

W. B.

Mr. Justice Stewart

Copies to the Conference

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1289

Circulate: 12-22-73

National Railroad Passenger  
Corporation et al.,  
Petitioners,  
v.  
National Association of Rail-  
road Passengers.

Recirculated:

On Writ of Certiorari to  
the United States Court  
of Appeals for the Dis-  
trict of Columbia Cir-  
cuit.

[December —, 1973]

MR. JUSTICE DOUGLAS, dissenting.

The Rail Passenger Service Act of 1970, 45 U. S. C. § 501 *et seq.*, authorized the creation of Amtrak to provide inter-city rail passage. With "the expectation that the rendering of such [rail] service along certain corridors [could] be made a profitable commercial undertaking," the Act established Amtrak as a private-for-profit corporation. 45 U. S. C. § 541; H. R. Rep. No. 91-1580, 91st Cong., 2d Sess., 1 (1970). Amtrak has until January 1, 1975, to tender a contract to a railroad to release the latter of its entire responsibility for the provision of inter-city rail passenger service. 45 U. S. C. § 564 (a). Unless a railroad has a contract with Amtrak to render the service, it may not discontinue inter-city passenger service prior to January 1, 1975. "the provisions of any other Act, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before a Federal or State court, agency, or authority to the contrary notwithstanding." *Id.*, § 564 (a). Those inter-city services are not yet a part of "the basic system" put together by Amtrak, a system.

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1289

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1-3-74

1st DRAFT

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trict of Columbia Cir-  
cuit.

[January —, 1974]

MR. JUSTICE BRENNAN, concurring.

Although I am in agreement that the legislative history of the Amtrack Act provides a clear and convincing expression of Congress' intent to preclude any except the Attorney General and in certain situations an employee or his duly authorized representative from maintaining an action under the Act against petitioners, I would leave open the question whether a private suit for mandamus under 28 U. S. C. § 1361 might be maintained against the Attorney General if his refusal to act under § 307—even though within the letter of his authority—went “beyond any rational exercise of his discretion.” *United States ex rel. Schonbrun v. Commanding Officer, Armed Forces*, 403 F. 2d 371, 374 (1968); see Byse & Fiocca, § 1361 of the Mandamus and Venue Act of 1962 and “Nonstatutory” Judicial Review of Federal Administrative Action, 81 Harv. L. Rev. 308, 333-335 (1967).

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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

From: Stewart, J.

Circulated: DEC 21 1973

No. 72-1289

Recirculated: \_\_\_\_\_

National Railroad Passenger  
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v.

National Association of Rail-  
road Passengers.

On Writ of Certiorari to  
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of Appeals for the Dis-  
trict of Columbia Cir-  
cuit.

[January —, 1974]

MR. JUSTICE STEWART delivered the opinion of the  
Court.

The respondent, the National Association of Railroad  
Passengers (NARP), brought this action in the District  
Court to enjoin the announced discontinuance of certain  
passenger trains that had previously been operated by  
the Central of Georgia Railway Company (Central).  
Named as defendants were Central, its parent, Southern  
Railway Company (Southern), and the National Rail-  
road Passenger Corporation (Amtrak), all of whom are  
the petitioners in this Court. The question before us is  
whether this action is maintainable under applicable  
federal law.

After the enactment of the Rail Passenger Service Act  
of 1970 ("Amtrak Act"), 84 Stat. 1330, 45 U. S. C. § 501  
*et seq.*, Central contracted with Amtrak for the latter  
to assume Central's intercity rail passenger service re-  
sponsibilities.<sup>1</sup> Southern has not entered into any con-

<sup>1</sup> Section 401 of the Act, 45 U. S. C. § 561, authorizes Amtrak to  
contract with any railroad to undertake its entire responsibility for  
intercity rail passengers service. Upon entering such a contract, a

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Burger  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Stewart

3rd DRAFT

SUPREME COURT OF THE UNITED STATES:

No. 72-1289

Recirculated: 1/27/73

National Railroad Passenger  
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Supreme Court of the United States  
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CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 28, 1973

Re: No. 72-1289 - National Rd Passenger Corp.  
v. National Assn of Rd Passengers

Dear Potter:

Please join me.

Sincerely,

*Byron*  
*W*

Mr. Justice Stewart

Copies to Conference



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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

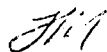
January 3, 1974

Re: No. 72-1289 -- National Railroad Passenger Corp.  
v. National Association of Railroad Passengers

Dear Potter:

Please join me in your opinion in this case.

Sincerely,



T. M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 26, 1973

Re: No. 72-1289 - National RR Passenger Corp. v.  
National Ass'n of RR Passengers

Dear Potter:

Please join me in the opinion you propose for this  
case.

Sincerely,

A handwritten signature in dark ink, appearing to read "Harry", with a horizontal line drawn underneath it.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

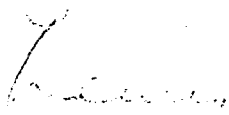
December 26, 1973

No. 72-1289 National Railroad Passenger Corp.  
v. National Association of Railroad Passengers

Dear Potter: —

Please note at the end of your opinion that I took no part in  
the consideration or decision of the above case.

Sincerely,



Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 26, 1973

Re: No. 72-1289 - National Railroad Passenger Corp.  
v. National Association of Railroad Passengers

Dear Potter:

Please join me in your opinion for the Court.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

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