

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

From: [redacted]

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

1-2-13

National Railroad Passenger Corporation et al. Petitioners.	On Writ of Certiorari to the United States Court of Appeals for the Dis- trict of Columbia Cir- cuit.
National Association of Rail- road Passengers.	

[December —, 1973]

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unclosed

1-3-74

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1289

National Railroad Passenger Corporation et al., Petitioners,
v.
National Association of Railroad Passengers. } On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[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. § 1331 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 & Fioeca, § 1331 of the Mandamus and Venue Act of 1962 and “Nonstatutory” Judicial Review of Federal Administrative Action, 81 Harv. L. Rev. 308, 333–335 (1967).

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

From: Stewart, J.

Circulated: DEC 21 1973

SUPREME COURT OF THE UNITED STATES

No. 72-1289

Recirculated: _____

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 v.
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On Writ of Certiorari to
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[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 Railroad 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 responsibilities.¹ Southern has not entered into any con-

¹ 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 passenger 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 Black
Mr. Justice Harlan
Mr. Justice Stewart

3rd DRAFT

SUPREME COURT OF THE UNITED STATES:

No. 72-1289

Recirculated: 1/23/74

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

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[January —, 1974]

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

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,



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,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

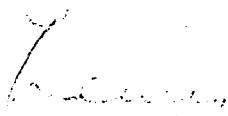
December 26, 1973

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,

W

Mr. Justice Stewart

Copies to the Conference