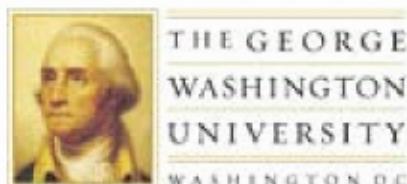


# The Burger Court Opinion Writing Database

*Air Pollution Variance Board of Colorado  
v. Western Alfalfa Corp.*

416 U.S. 861 (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

May 14, 1974

Re: 73-690 - Air Pollution Variance Board  
of State of Colorado v. Western Alfalfa Corporation

Dear Bill:

Please join me.

Regards,

*WES RS*

Mr. Justice Douglas

Copies to the Conference

To : The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Black  
Mr. Justice Black

**1st DRAFT**

**SUPREME COURT OF THE UNITED STATES**

\_\_\_\_\_  
No. 73-690  
\_\_\_\_\_  
Circ. 11:20

*5-3-74*

Recirculation

Air Pollution Variance Board  
of the State of Colorado,  
Petitioner, } On Writ of Certiorari to  
v. } the Court of Appeals of  
Western Alfalfa Corporation. Colorado.

[May —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

An inspector of a Division of the Colorado Department of Health entered the outdoor premises of respondent without its knowledge or consent. It was daylight and the inspector entered the yard to make a Ringelmann<sup>1</sup> and opacity reading of plumes of smoke being emitted from respondent's chimneys. Since that time Colorado has adopted a requirement for a search warrant for violations of air quality standards.<sup>2</sup> At the time of the instant inspection the state law required no warrant and none was sought. Indeed the inspector entered no part of respondent's plant to make the inspection.

<sup>1</sup> This test is prescribed by a Colorado Act Rev. Stat. 66-29-5 (1967 Supp.). It requires a trained inspector to stand in a position where he has an unobstructed view of the smoke plume, observe the smoke, and rate it according to the opacity ~~scale~~ of the Ringelmann chart. The person using the chart matches the color and density of the smoke plume with the numbered example on the chart. The Ringelmann test is generally sanctioned for use in measuring air pollution. See cases collected in *Portland v. Fry Roofing Co.*, 3 Ore. App. 352, 472 P. 2d 826.

<sup>2</sup> Colo. Rev. Stat. 1963, 66-29-8 (2)(d). Perm. Supp. 1969.

To : The City of Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Sutherland  
Mr. Justice Brandeis  
Mr. Justice Holmes

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-690

### Curriculum:

Published:

5-3

Air Pollution Variance Board  
of the State of Colorado.

Petitioner,

Western Alfalfa Corporation.

On Writ of Certiorari to  
the Court of Appeals of  
Colorado.

Western Alfalfa Corporation.

1 May - 1974

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

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<sup>2</sup> Colo. Rev. Stat. 1963, 66-29-8 (2)(d); Perini, Supp. 1969.

3rd DRAFT

2017 RELEASE UNDER E.O. 14176

SUPREME COURT OF THE UNITED STATES

No. 73-690

Circulate:

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5/7/74

Air Pollution Variance Board  
of the State of Colorado.      } On Writ of Certiorari to  
Petitioner,                      } the Court of Appeals of  
v.                                      Colorado.  
Western Alfalfa Corporation.

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<sup>2</sup> Colo. Rev. Stat. 1963, 66-29-8 (2)(d), Perm. Supp. 1969.

May 6, 1974

RE: No. 73-690 Air Pollution Variance Board of the State of Colorado v. Western Alfalfa Corporation

Dear Bill:

I certainly agree with your opinion in the above. Only one question occurs to me. If the State Court had clearly decided that the due process decision was based in whole or in part on the Colorado Constitution would we have jurisdiction to decide the Fourth Amendment question? In other words, if the decision rested on an adequate state ground on any issue, would that foreclose our jurisdiction on all issues? I do recall some suggestions at conference that the due process and Fourth Amendment claims were inextricably intertwined. Would that answer me?

Sincerely,

Mr. Justice Douglas

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 10, 1974

RE: No. 73-690 Air Pollution Variance Board  
of Colo. v. Western Alfalfa Corporation

Dear Bill:

I agree.

Sincerely,

*Brennan*

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 6, 1974

No. 73-690, Air Pollution Variance Bd.  
v. Western Alfalfa

Dear Bill,

I trust you will be willing to add something like the following clause to the final sentence of the text on page 2 of your opinion:

", made applicable to the States by the Fourteenth. Mapp v. Ohio, 367 U. S. 643."

With this addition, I shall be glad to join your opinion for the Court.

Sincerely yours,

PS,  
1

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 4, 1974

Re: No. 73-690 - Air Pollution Variance Board  
v. Western Alfalfa Corp.

Dear Bill:

Please join me.

Sincerely,

*Byrn*

Mr. Justice Douglas

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

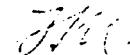
May 10, 1974

Re: No. 73-690 -- Air Pollution Variance Board of  
the State of Colorado v. Western Alfalfa Corporation

Dear Bill:

Please join me.

Sincerely,



T. M.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 6, 1974

Re: No. 73-690 - Air Pollution Variance Board v.  
Western Alfalfa Corp.

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Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 7, 1974

No. 73-690 Air Pollution Variance Board  
v. Western Alfalfa Corporation

Dear Bill:

Please join me.

Sincerely,

*L. C.*

Mr. Justice Douglas

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

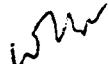
May 6, 1974

Re: No. 73-690 - Air Pollution Variance Bd. v.  
Western Alfalfa

Dear Bill:

Please join me in your opinion for the Court in this case.

sincerely,



Mr. Justice Douglas

Copies to the Conference