

# The Burger Court Opinion Writing Database

*United States v. American Building Maintenance Industries*

422 U.S. 271 (1975)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

June 12, 1975

Re: No. 73-1689 - United States v. American Building  
Maintenance Industries

Dear Potter:

Please show me as joining with Byron's  
concurring opinion statement.

Regards,

*WESB*

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 12, 1975

Re: 73-1689 - U. S. v. American Building Maintenance Industries

Dear Potter:

Please show me as joining Byron's concurring  
statement.

Regards,

W. B.

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 16, 1975

Re: 73-1689 - U. S. v. American Bldg. Maintenance Industries

Dear Potter:

I have concluded, given the time pressures, that  
I will not write out my relatively minor differences on Part III,  
and you may show me as joining you.

Regards,



Mr. Justice Stewart

Copies to the Conference

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

From: Douglas, J.

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1st DRAFT

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## SUPREME COURT OF THE UNITED STATES

No. 73-1689

United States, Appellant, | On Appeal from the United  
v. | States District Court for  
American Building Main- | the Central District of Cali-  
tenance Industries. | fornia.

[June —, 1975]

MR. JUSTICE DOUGLAS, dissenting.

For the reasons set forth in my dissenting opinion in *Gulf Oil Corp. v. Copp Paving Co.*, 419 U. S. 186, 204-207 (1974), decided earlier this Term, I cannot agree that the "in commerce" language of § 7 of the Clayton Act, 15 U. S. C. § 18, was intended to give that statute a narrower jurisdictional reach than the "affecting commerce" standard which we have read into the Sherman Act, 15 U. S. C. § 1 *et seq.* On the record in this case, it is beyond question that the activities of the acquired firms have a substantial effect on interstate commerce. I would therefore reverse the summary judgment granted below and remand for further proceedings in the District Court.

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

From: Douglas, J.

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2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-1689

United States, Appellant, v. On Appeal from the United States District Court for American Building Maintenance Industries. the Central District of California.

[June —, 1975]

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

For the reasons set forth in my dissenting opinion in *Gulf Oil Corp. v. Copp Paving Co.*, 419 U. S. 186, 204-207 (1974), decided earlier this Term, I cannot agree that the "in commerce" language of § 7 of the Clayton Act, 15 U. S. C. § 18, was intended to give that statute a narrower jurisdictional reach than the "affecting commerce" standard which we have read into the Sherman Act, 15 U. S. C. § 1 *et seq.* On the record in this case, it is beyond question that the activities of the acquired firms have a substantial effect on interstate commerce. I would therefore reverse the summary judgment granted below and remand for further proceedings in the District Court.

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 5, 1975

RE: No. 73-1689 United States v. American Building  
Maintenance Industries

Dear Bill:

Please join me in your dissent in the above.

Sincerely,



Mr. Justice Douglas

cc: The Conference

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

From: Stewart, J.

Circulated: MAY 12 1975

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-1689

United States, Appellant, | On Appeal from the United  
v. | States District Court for  
American Building Main- | the Central District of Cali-  
tenance Industries. | fornia.

[May —, 1975]

MR. JUSTICE STEWART delivered the opinion of the Court.

The Government commenced this civil antitrust action in the United States District Court for the Central District of California, contending that the appellee, American Building Maintenance Industries, had violated § 7 of the Clayton Act, 15 U. S. C. § 18, by acquiring the stock of J. E. Benton Management Corp., and by merging Benton Maintenance Co. into one of the appellee's wholly owned subsidiaries. Following discovery proceedings and the submission of memoranda and affidavits by both parties, the District Court granted the appellee's motion for summary judgment, holding that there had been no violation of § 7 of the Clayton Act. The Government brought an appeal to this Court, and we noted probable jurisdiction. — U. S. —.<sup>1</sup>

### I

The appellee, American Building Maintenance Indus-

<sup>1</sup> The Government appealed directly to this Court pursuant to § 2 of the Expediting Act, 32 Stat. 823, as amended, 15 U. S. C. § 29. The Government's notice of appeal was filed on February 7, 1974, before the effective date of the recent amendments to the Act. See Antitrust Procedures and Penalties Act, Pub. L. No. 93-528, § 7, 88 Stat. 1709.

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

105  
STYLISTIC CHANGES THROUGHOUT.

P.12

John: Stewart, J.

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Recirculated, MAY 19 1975

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

—  
No. 73-1689  
—

United States, Appellant, } On Appeal from the United  
v. } States District Court for  
American Building Main- } the Central District of Cali-  
tenance Industries. } fornia.

W B  
[May —, 1975]

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I

The appellee, American Building Maintenance Indus-

<sup>1</sup> The Government appealed directly to this Court pursuant to § 2 of the Expediting Act, 32 Stat. 823, as amended, 15 U. S. C. § 29. The Government's notice of appeal was filed on February 7, 1974, before the effective date of the recent amendments to the Act. See Antitrust Procedures and Penalties Act, Pub. L. No. 93-528, § 7, 88 Stat. 1709.

✓ STYLISTIC CHANGES THROUGHOUT.

P.14

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

From:

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3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-1689

United States, Appellant, } On Appeal from the United  
v. } States District Court for  
American Building Main- } the Central District of Cali-  
tenance Industries. fornia.

[May —, 1975]

MR. JUSTICE STEWART delivered the opinion of the Court.

The Government commenced this civil antitrust action in the United States District Court for the Central District of California, contending that the appellee, American Building Maintenance Industries, had violated § 7 of the Clayton Act, 15 U. S. C. § 18, by acquiring the stock of J. E. Benton Management Corp., and by merging Benton Maintenance Co. into one of the appellee's wholly owned subsidiaries. Following discovery proceedings and the submission of memoranda and affidavits by both parties, the District Court granted the appellee's motion for summary judgment, holding that there had been no violation of § 7 of the Clayton Act. The Government brought an appeal to this Court, and we noted probable jurisdiction. — U. S. —.<sup>1</sup>

### II

The appellee, American Building Maintenance Indus-

<sup>1</sup> The Government appealed directly to this Court pursuant to § 2 of the Expediting Act, 32 Stat. 823, as amended, 15 U. S. C. § 29. The Government's notice of appeal was filed on February 7, 1974, before the effective date of the recent amendments to the Act. See Antitrust Procedures and Penalties Act, Pub. L. No. 93-528, § 7, 88 Stat. 1709.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 21, 1975

Re: No. 73-1689 - U.S. v. American Building  
Maintenance Industries

Dear Potter:

I should have formally indicated before,  
but I am working on a dissent in this case.

Sincerely,



Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 10, 1975

Re: No. 73-1689 - United States v. American  
Building Maintenance Industries

Dear Potter:

Please add at the foot of your opinion the  
following:

"Mr. Justice White concurs in the  
judgment and all of the Court's opinion  
except Part III."

Sincerely,



Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 12, 1975

Re: No. 73-1689 - U. S. V. American Building  
Maintenance Industries

Dear Chief:

I request that the announcement of the  
above case be postponed.

Sincerely,



The Chief Justice

Copies to Conference

10: THE CHIEF JUSTICE  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: White, J.

Circulated: 6-16-75

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

No. 73-1689

United States, Appellant, ) On Appeal from the United  
v. ) States District Court for  
American Building Main- ) the Central District of  
tenance Industries. ) California.

Mr. Justice White, concurring.

I concur in the judgment and Parts I and II of the Court's opinion. I do not join Part III, for I doubt that the interposition of a California wholesaler or distributor between the Benton companies and out-of-state manufacturers of janitorial supplies necessarily requires that the Benton companies be found not to be "in commerce" merely because they buy directly from out-of-state suppliers only a negligible amount of their supplies. For the purposes of § 7 of the Clayton Act, a remedial statute, the regular movement of goods from out-of-state manufacturer to local wholesaler and then to retailer or institutional consumer is at least arguably sufficient to place the latter in the stream of commerce, particularly where it appears that when the complaint was filed, cf. United States v. Penn-Olin Co., 378

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

From: White, J.

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## SUPREME COURT OF THE UNITED STATES

No. 73-1689

United States, Appellant, } On Appeal from the United  
v. } States District Court for  
American Building Main- } the Central District of Cali-  
tenance Industries. } fornia.

[June —, 1975]

MR. JUSTICE WHITE, concurring in the judgment.

I concur in the judgment and Parts I and II of the Court's opinion. I do not join Part III, for I doubt that the interposition of a California wholesaler or distributor between the Benton companies and out-of-state manufacturers of janitorial supplies necessarily requires that the Benton companies be found not to be "in commerce" merely because they buy *directly* from out-of-state suppliers only a negligible amount of their supplies. For the purposes of § 7 of the Clayton Act, a remedial statute, the regular movement of goods from out-of-state manufacturer to local wholesaler and then to retailer or institutional consumer is at least arguably sufficient to place the latter in the stream of commerce, particularly where it appears that when the complaint was filed, cf. *United States v. Penn-Olin Co.*, 378 U. S. 158, 168 (1964), the "local" distributor from which supplies were being purchased was a wholly owned subsidiary of the acquiring company, a national concern admittedly in commerce. In this case, however, the United States makes no such contention and appellee's motion for summary judgment was not opposed by the Government on that theory. It is therefore inappropriate to address the issue at this time; and on this record, I concur in the judgment that the Benton companies were not in commerce.

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Loc 74

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 10, 1975

Re: No. 73-1689 -- United States v. American Building  
Maintenance Industries

Dear Potter:

Please join me.

Sincerely,

*J. M.*  
T. M.

Mr. Justice Stewart

cc: The 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

From: Blackmun, J.

Circulated: 6/11/75

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

No. 73-1689 - United States v. American Building Maintenance Industries

MR. JUSTICE BLACKMUN, dissenting.

I believe that the scope of the Clayton Act should be held to extend to acquisitions and sales having a substantial effect on interstate commerce. I therefore dissent. For me, the reach of § 7 of the Clayton Act, 15 U.S.C. § 18, is as broad as that of the Sherman Act, and should not be given the narrow construction we properly have given, just this Term, to the Robinson-Patman Act. Gulf Oil Corp. v. Copp Paving Co., 419 U.S. 186 (1974).

For more than a quarter of a century the Court has held that the Sherman Act should be construed broadly to reach the full extent of the commerce power, and to proscribe those restraints that substantially affect interstate commerce. See, e.g., Mandeville Island Farms, Inc. v. American Crystal Sugar Co., 334 U.S. 219, 234 (1948); United States v. Southeastern Underwriters Ass'n, 322 U.S. 533, 558 (1944). The Clayton Act was enacted to supplement the Sherman Act, and to "arrest in its incipiency" any restraint or substantial lessening of competition. United States v. E. I. duPont de Nemours & Co., 353 U.S. 586, 589 (1957). To

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.

Circulated:

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**1st DRAFT**

**SUPREME COURT OF THE UNITED STATES**

No. 73-1689

United States, Appellant, } On Appeal from the United  
v. } States District Court for  
American Building Main- } the Central District of Cali-  
tenance Industries. } fornia.

[June —, 1975]

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I believe that the scope of the Clayton Act should be held to extend to acquisitions and sales having a substantial effect on interstate commerce. I therefore dissent. For me, the reach of § 7 of the Clayton Act, 15 U. S. C. § 18, is as broad as that of the Sherman Act, and should not be given the narrow construction we properly have given, just this Term, to the Robinson-Patman Act. *Gulf Oil Corp. v. Copp Paving Co.*, 419 U. S. 186 (1974).

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 13, 1975

No. 73-1689 U.S. v. American Building  
Maintenance Industries

Dear Potter:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 15, 1975

Re: No. 73-1689 - United States v. American Building  
Maintenance Industries

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to the Conference