

The Burger Court Opinion Writing Database

Train v. Natural Resources Defense Council, Inc.

421 U.S. 60 (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

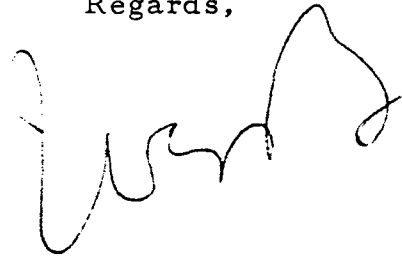
April 10, 1975

Re: No. 73-1742 - Train v. Natural Resources Defense
Council, Inc.

Dear Bill:

Please join me.

Regards,



Mr. Justice Rehnquist

Copies to the Conference

Wm Brown
00774

WOW

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

CHAMBERS OF
THE CHIEF JUSTICE

April 10, 1975

PERSONAL

Re: No. 73-1742 - Train v. Natural Resources Defense
Council, Inc.

Dear Bill:

I am fully in accord with your opinion in this case. I had thought that after all the focus on jurisdiction that it would need a brief comment but I leave that to you.

In your note 26, p. 29, the "second commentator" referred to was on the EPA staff when he wrote the article cited. I am always wary of "planted" articles and I wonder if it would be prudent to indicate awareness that Friend Luneberg had both expertise and possible leanings? Or else not use him?

Regards,

WRS

Mr. Justice Rehnquist

or distributed without the specific authori-
zation of the Hoover Institution Archives.

HOVER INSTITUTION
ON WAR, REVOLUTION AND PEACE
Stanford, California 94305-5080



NOTICE: THIS MATERIAL MAY
BE PROTECTED BY COPYRIGHT
LAW (TITLE 17, U.S. CODE)

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

April 14, 1975

Dear Bill:

Please add at the end of
your opinion in 73-1742, TRAIN v.

NATURAL RESOURCES DEFENSE COUNCIL:

Mr. Justice Douglas dissents.

WOD/ep

William O. Douglas

Mr. Justice Rehnquist

cc: The Conference

REPRODUCED FROM THE COLLECTION

IN THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF COMMERCE

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 18, 1975

RE: No. 73-1742 Train v. Natural Resources Defense Council

Dear Bill:

I agree. You have certainly splendidly unraveled a riddle within an enigma.

Sincerely,

Bill

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 19, 1975

73-1742, Train v. Natural Resources Defense
Council

Dear Bill,

I am glad to join your opinion for the
Court in this case.

Sincerely yours,

PS,
/

Mr. Justice Rehnquist

Copies to the Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION
U.S. SUPREME COURT ARCHIVES

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 18, 1975

Re: No. 73-1742 - Train v. Natural Resources
Defense Council, Inc. et al.

Dear Bill:

I am convinced. Please join me.

Sincerely,

Byron

Mr. Justice Rehnquist

Copies to Conference

REPRODUCED FROM THE COLLECTION

THE MANUSCRIPT DIVISION

LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

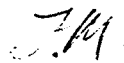
March 27, 1975

Re: No. 73-1742 -- Russell E. Train v. Natural Resources
Defense Council, Inc.

Dear Bill:

Please join me.

Sincerely,



T. M.

Mr. Justice Rehnquist

cc: The Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION
U.S. SUPREME COURT LIBRARY

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

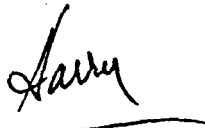
March 21, 1975

Re: No. 73-1742 - Train, Administrator v. Natural Resources
Defense Council

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist
cc: The Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION
OFFICE OF THE CLERK OF THE SUPREME COURT
WASHINGTON, D.C. 20543

73-1742

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 23, 1975

No. 73-1742 Train v. Natural Resources
Defense Council
No. 73-1977 Alyeska Pipeline v. Wilderness
Society

Dear Chief:

After further reflection since our discussion at last Friday's Conference, I have concluded not to participate in the decision of the above cases.

I repeat the reasons: In 73-1742 (Train v. Natural Resources Defense Council) Exxon filed a brief amicus indicating that it will be directly affected by the outcome of the case. Until I reviewed this brief in preparation for the argument, I was not aware of Exxon's interest.

In 73-1977 (Alyeska Pipeline v. Wilderness Society), it appears that Exxon is one of the eight large companies which formed Alyeska and which presumably retains substantial interest in it.

My former law firm represented Exxon in Virginia, primarily doing the work of local counsel with respect to real estate matters and the occasional damage suit. Although I personally did not do the Exxon work (and know none of its management people), I have followed the practice to date of staying out of cases in which Exxon is a party. Neither of these cases quite fits the "party" classification, and ordinarily - in view of the guidance given me by the Conference last fall - I would not remain out on account of a brief amicus. Nor would I normally stay out of a case because some client of my former law firm owned a minority interest in a party to a litigation here. The doctrine of "remoteness" must come into play at some point. However, in view of the indications on the record in these two cases of Exxon's substantial interest, I think it best for me not to take part in the decision of either.

I continue to be puzzled as to how long one should stay out of cases such as these. Apart from my old firm's representation I have no interest whatever in Exxon.

I will expect you, of course, to make up for my non-participation here by giving me a full quota of opinions to write in other cases.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

✓

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 14, 1975

No. 73-1742 Train v. Natural Resources
Defense Counsel

Dear Bill:

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

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

✓

REPRODUCED FROM THE COLLECTION

OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 13, 1975

MEMORANDUM TO THE CONFERENCE

Re: No. 73-1472 - Train v. Natural Resources Defense
Council

My Conference notes show that while the vote at Conference to reverse the Court of Appeals for the Fifth Circuit was eight to nothing, at least two members of the Conference expressed a preference for the reasoning adopted by the Court of Appeals for the First Circuit in dealing with the same issue. Going over, and over, and over the statute and its legislative history, I concluded that the approach of the First Circuit was very nearly as wrong as that of the Fifth Circuit, for reasons stated at some length in the attached draft opinion. I have therefore written the opinion to uphold the agency's initial construction of the sections in issue.

Sincerely,



W.R. me
✓ 1/11/75

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

From: Rehnquist, J.

Circulated: 3-14-75

Re-circulated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1742

Russell E. Train, Administrator,
United States Environmental Protection
Agency, et al.,
Petitioners,
v.

Natural Resources Defense
Council, Inc., et al.

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

[March —, 1975]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

We granted certiorari in this case, — U. S. — (1974), to review a judgment of the Court of Appeals for the Fifth Circuit which required the petitioner, Administrator of the Environmental Protection Agency, to disapprove a portion of the implementation plan submitted to him by the State of Georgia pursuant to the Clean Air Act Amendments of 1970.¹ The case presents an issue of statutory construction which is illuminated by the anatomy of the statute itself, by its legislative history, and by the history of congressional efforts to control air pollution.

I

Congress initially responded to the problem of air pollution by offering encouragement and assistance to the

¹ *Natural Resources Defense Council, Inc. v. Environmental Protection Agency*, 489 F.2d 390 (CA5 1974). We issued a stay of the contested portion of the court's judgment on June 10, 1974, 417 U. S. 942.

STYLISTIC CHANGES THROUGHOUT

pp 21+22, 37

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

From: Rehnquist, J.

Circulated: _____

Circulated: 4/9/75

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1742

Russell E. Train, Administrator,
United States Environmental Protection
Agency, et al.,
Petitioners,
v.

Natural Resources Defense
Council, Inc., et al.

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

[March —, 1975]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

We granted certiorari in this case, — U. S. — (1974), to review a judgment of the Court of Appeals for the Fifth Circuit which required the petitioner, Administrator of the Environmental Protection Agency, to disapprove a portion of the implementation plan submitted to him by the State of Georgia pursuant to the Clean Air Act Amendments of 1970.¹ The case presents an issue of statutory construction which is illuminated by the anatomy of the statute itself, by its legislative history, and by the history of congressional efforts to control air pollution.

I

Congress initially responded to the problem of air pollution by offering encouragement and assistance to the

¹ *Natural Resources Defense Council, Inc. v. Environmental Protection Agency*, 489 F. 2d 390 (CA5 1974). We issued a stay of the contested portion of the court's judgment on June 10, 1974, 417 U. S. 942.

✓
STYLISTIC CHANGES

P. 29

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

From: Rehnquist, J.

Circular 3

4/10/75

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1742

Russell E. Train, Administrator,
United States Environmental Protection
Agency, et al.,
Petitioners,
v.

Natural Resources Defense
Council, Inc., et al.

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

[March —, 1975]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

We granted certiorari in this case, — U. S. — (1974), to review a judgment of the Court of Appeals for the Fifth Circuit which required the petitioner, Administrator of the Environmental Protection Agency, to disapprove a portion of the implementation plan submitted to him by the State of Georgia pursuant to the Clean Air Act Amendments of 1970.¹ The case presents an issue of statutory construction which is illuminated by the anatomy of the statute itself, by its legislative history, and by the history of congressional efforts to control air pollution.

I

Congress initially responded to the problem of air pollution by offering encouragement and assistance to the

¹ *Natural Resources Defense Council, Inc. v. Environmental Protection Agency*, 489 F. 2d 390 (CA5 1974). We issued a stay of the contested portion of the court's judgment on June 10, 1974, 417 U. S. 942.

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION