

# The Burger Court Opinion Writing Database

*Hospital Building Co. v. Trustees of Rex Hospital*

425 U.S. 738 (1976)

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

May 14, 1976

Re: 74-1452 - Hospital Building Co. v. Rex Hospital Trustees

Dear Thurgood:

I join your proposed opinion dated May 10.

Regards,

WQB

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 7, 1976

RE: No. 74-1452 Hospital Building Co. v. Trustees of the  
Rex Hospital, et al.

Dear Thurgood:

I agree.

Sincerely,

*Bill*

Mr. Justice Marshall

cc: The Conference

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

B

CHAMBERS OF  
JUSTICE POTTER STEWART

May 6, 1976

74-1452, Hospital Building Co. v. Rex Trustees

Dear Thurgood,

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

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

P. S. -- My law clerk, Jim Gardner, has given  
to your law clerk a proposed footnote  
which I sincerely hope you will be willing  
to add.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 14, 1976

Re: No. 74-1452 - Hospital Building Company v.  
Trustees of the Rex  
Hospital

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Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to Conference

MAY 5 1976

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1452

Hospital Building Company,  
Petitioner,  
v.  
Trustees of the Rex Hospital  
et al. } On Writ of Certiorari to  
the United States Court  
of Appeals for the Fourth  
Circuit.

[May —, 1976]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This is a suit brought under §§ 1 and 2 of the Sherman Act. 26 Stat. 209, as amended, 15 U. S. C. §§ 1-2. Petitioner has alleged that respondents are engaged in an unlawful conspiracy to restrain trade and commerce in the furnishing of medical and surgical hospital services, and that they are attempting to monopolize the hospital business in the Raleigh, N. C., metropolitan area. The District Court dismissed petitioner's amended complaint on the pleadings, finding that petitioner had not alleged a sufficient nexus between the alleged violations of the Sherman Act and interstate commerce. The Court of Appeals for the Fourth Circuit, sitting en banc, affirmed the judgment of the District Court, holding that the provision of hospital services is only a "local activity" and that the amended complaint did not adequately allege a "substantial effect" on interstate commerce. 511 F. 2d 678 (1975). We granted certiorari, 423 U. S. 820 (1975), and now reverse. We hold that the amended complaint, fairly read, adequately alleges a restraint of trade substantially

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 theme

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Marshall

**Circulated:**

Recirculated: MAY 10 1976

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 74-1452

Hospital Building Company,  
Petitioner,  
*v.*  
Trustees of the Rex Hospital  
et al. } On Writ of Certiorari to  
the United States Court  
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Supreme Court of the United States  
Washington, D. C. 20542

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CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 11, 1976

Re: No. 74-1452 - Hospital Building Co. v.  
Trustees of Rex Hospital

Dear Thurgood:

Please join me in your recirculation of May 10.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

(1)

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 6, 1976

No. 74-1452 Hospital Building Company  
v. Trustees of Rex Hospital

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 14, 1976

Re: No. 74-1452 - Hospital Building Co. v. Trustees

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

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

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CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 7, 1976

Re: 74-1452 - Hospital Building Co. v. Trustees  
of the Rex Hospital et al.

Dear Thurgood:

Please join me.

Because I have some doubt about the sufficiency of the allegations of violations of the Sherman Act, and because no argument was directed to that issue, I wonder if you would consider revising footnote 4 at the end of the opinion to read something like this:

"It may of course be that even though petitioner's complaint adequately alleges an effect on interstate commerce, further proceedings in this case will demonstrate that respondent's conduct in fact involves no violation of law, or indeed, no substantial effect on interstate commerce. Cf. United States v. Oregon State Medical Society, 343 U.S. 326 (1952)."

This is just a suggestion. Even if you reject it, I still join the opinion.

Respectfully,



Mr. Justice Marshall

Copies to the Conference