

The Burger Court Opinion Writing Database

United States v. Chesapeake & Ohio Railway Co.

426 U.S. 500 (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 26, 1976

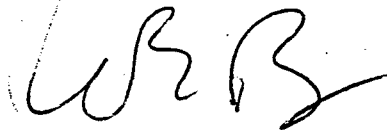
Re: 75-420 - U.S. & ICC v. C & O Ry.

MEMORANDUM TO THE CONFERENCE:

Enclosed in typewritten form is a draft opinion in which I have undertaken to give expression to the Conference vote and discussion. The case is not as simple or easy as it "seemed" at the time of the Conference.

I hope to "squeeze" the footnotes, which unfortunately are longer than usual. It is now quite clear to me that a reason why we heard nothing from other carriers is that few are in the presently enviable financial position of "Chessie."

1 Regards,



P.S. I may place some of
the long footnotes in
an Appendix.

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

From: The Chief Justice

Circulated: MAY 26 1976

Recirculated: _____

MR. CHIEF JUSTICE BURGER delivered the opinion of
the Court:

This case is here on direct appeal, pursuant to 28 U.S.C.
1/
§§ 1253, 2325 from an order of the District Court which
permanently enjoined the Interstate Commerce Commission from
2/
enforcing, against the appellee railway system, an order requiring
the application of increased revenues to deferred capital improve-
ments and deferred maintenance as a condition for the nonsuspension
of the rate increases. Chesapeake and Ohio Railway Co. v. United
States 392 F.Supp. 358 (E.D. Va. 1975).

3/
In April 1974, the Nation's railroads, including the appellee,
filed with the Interstate Commerce Commission a joint petition
for a general revenue increase "with respect to the revenue needs
of all carriers by railroad operating in the United States". (appx 1)

1/
For cases filed after March 1, 1975, review of Interstate
Commerce Commission orders is in the Court of Appeals with
further review possible by petition for writ of certiorari to this
Court. Pub. L. 93-584, 88 Stat 1917 The present case was
filed prior to March 1, 1975.

2/
Appellees are the Chesapeake and Ohio Railroad Company,
the Baltimore and Ohio Railway Company, and the Western
Maryland Railway Company. These railroads are known as
the Chessie system and shall be referred to as such throughout
this opinion.

3/
Except the Long Island Railroad.

STYLISTIC CHANGES

3.4, 9.10, 14

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: _____

Recirculated: JUN 14 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-420

United States and Interstate
Commerce Commission,
Appellants,
v.

The Chesapeake and Ohio
Railway Company et al.

On Appeal from the United
States District Court for
the Eastern District of
Virginia.

[June —, 1976]

MR. CHIEF JUSTICE BURGER delivered the opinion of
the Court.

This case is here on direct appeal, pursuant to 28 U. S. C. §§ 1253, 2325, from an order of the District Court which permanently enjoined the Interstate Commerce Commission from enforcing, against the appellee railway system,² an order requiring the application of increased revenues to deferred capital improvements and deferred maintenance as a condition for the nonsuspension of the rate increases. *Chesapeake and Ohio R. Co. v. United States*, 392 F. Supp. 358 (ED Va. 1975).

In April 1974, the Nation's railroads,³ including the

¹ For cases filed after March 1, 1975, review of Interstate Commerce Commission orders is in the Court of Appeals with further review possible by petition for writ of certiorari to this Court. Pub. L. 93-584, 88 Stat. 1917. The present case was filed prior to March 1, 1975.

² Appellees are the Chesapeake and Ohio Railroad Company, the Baltimore and Ohio Railway Company, and the Western Maryland Railway Company. These railroads are known as the Chessie system and shall be referred to as such throughout this opinion.

³ Except the Long Island Railroad.

C
Please join me
JMY

While my tentative
vote was the other way
I give up

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 27, 1976

RE: No. 75-420 U.S. & ICC v. Chesapeake & Ohio Ry Co.

Dear Chief:

I agree.

Sincerely,

Bill

The Chief Justice

cc: The Conference

✓

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

✓

CHAMBERS OF
JUSTICE POTTER STEWART

June 1, 1976

Re: 75-420, U. S. & ICC v. C & O Ry.

Dear Chief,

I shall await John's dissenting
opinion in this case.

Sincerely yours,

J.P.S.
/

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 9, 1976

75-420 - U. S. v. C&O R. Co.

Dear John,

Please add my name to your
dissenting opinion in this case.

Sincerely yours,

P.S.
/

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 27, 1976

Re: No. 75-420 - U.S. & ICC v. Chesapeake & Ohio
Railway Co.

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 14, 1976

Re: No. 75-420 - U.S. & ICC v. C & O Ry. Co.

Dear Chief:

While my tentative vote was the other way, I give
up.

Please join me.

Sincerely,

T.M.

T.M.

The Chief Justice

cc: The Conference

✓

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

✓

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

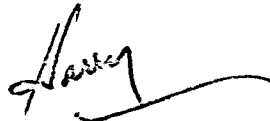
June 15, 1976

Re: No. 75-420 - United States and I. C. C. v. C & O Ry.

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

✓

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

✓

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

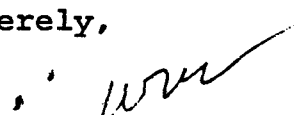
June 2, 1976

Re: No. 75-420 - United States v. Chesapeake & Ohio
Railway

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference

✓

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 27, 1976

Re: 75-420 - U.S. & ICC v. C & O Ry.

Dear Chief:

In due course I shall circulate a dissent
in the above case.

Respectfully,



The Chief Justice

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: Mr. Justice Stevens

Circulated: JUN 8 1976

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-420

United States and Interstate Commerce Commission, Appellants, v. The Chesapeake and Ohio Railway Company et al.	}	On Appeal from the United States District Court for the Eastern District of Virginia.
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[June —, 1976]

MR. JUSTICE STEVENS, dissenting.

The question presented is not whether it is desirable for a railroad to spend its money wisely. It clearly is. The question is not whether Congress could authorize the Interstate Commerce Commission to regulate a railroad's expenditure of funds for capital improvements, deferred maintenance, or costs of material. It clearly could. The question is simply whether or to what extent Congress did grant the Commission such authority.¹

If the power the Commission purports to exercise in this case really exists, it is rather surprising that it has lain dormant for so long and has been disavowed so often.² Nowhere in the voluminous statutory language

¹ Cf. *NAACP v. FPC*, slip op., at 3 (May 19, 1976). See also *id.*, slip op., at 2 (BURGER, C. J., concurring in the judgment) (emphasizing the need for caution before concluding that Congress authorized the Federal Power Commission to regulate business practices not previously regulated by that agency).

² As recently as 1971, the Commission disavowed precisely the position it has taken in this case. Referring to a report finding a need for the railroads to double their expenditures for equipment and facilities, the Commission stated:

"The development of capital for investments of the type recommended in this report remains the function of management and is

pg. 13, 6, 7

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: Mr. Justice Stevens

Circulated: _____

Recirculated: 6/16/76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-420

United States and Interstate Commerce Commission, Appellants, v. The Chesapeake and Ohio Railway Company et al.	On Appeal from the United States District Court for the Eastern District of Virginia.
--	--

[June —, 1976]

MR. JUSTICE STEVENS, with whom MR. JUSTICE STEWART joins, dissenting.

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² As recently as 1971, the Commission disavowed precisely the position it has taken in this case. Referring to a report finding a need for the railroads to double their expenditures for equipment and facilities, the Commission stated:

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