

# The Burger Court Opinion Writing Database

*EPA v. Brown*

431 U.S. 99 (1977)

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

March 17, 1977

RE: (75-909 - EPA v. Brown  
(75-960 - EPA v. Maryland  
(75-1050 - State Air Pollution Control Bd. v. Train  
(75-1055 - Train v. Dist. of Columbia

MEMORANDUM TO THE CONFERENCE:

To the extent that is is possible, we should probably give some consideration to the above at Friday's Conference.

Regards,

URB

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

CHAMBERS OF  
THE CHIEF JUSTICE

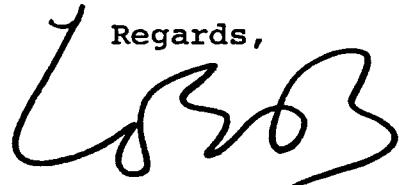
April 21, 1977

Re: 75-909;960;1050;1055 EPA v. Brown; Maryland; Train; D.C.

Dear Bill:

I join.

Regards,



Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 5, 1977

RE: Nos. 75-909, 960, 1050 & 1055 "EPA Cases"

Dear Bill:

I agree with the Per Curiam you have prepared  
in the above.

Sincerely,

*Bill*

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 17, 1977

Re: EPA Cases / 75-909 et al

Dear Lewis,

I agree in every respect with your letter to the Chief Justice of January 14, and suggest that we move very promptly in making a further request of the S.G.

Sincerely yours,

P.S.  
1/17/77

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 5, 1977

Re: Nos. 75-909, 75-960, 75-1050, 75-1055  
EPA v. Brown

Dear Bill,

I agree with the Per Curiam you have circulated today.

Sincerely yours,

✓  
R.S.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 11, 1977

No. 75-909, EPA v. Brown

Dear Bill:

I agree with your suggested Per Curiam.

Sincerely,



T. M.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 5, 1977

Re: Nos. 75-909, 75-960, 75-1050, 75-1055 - EPA cases

Dear Bill:

Please join me in your per curiam.

Sincerely,

*H. A. B.*

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 14, 1977

EPA Cases

75-909

Dear Chief:

We now have a letter, dated January 13, from Deputy Solicitor General Randolph purporting to respond to our request at oral argument for additional information. His letter identifies "the particular regulations at issue in these cases", and it is helpful to have his summary in this respect.

But his response falls considerably short of what I thought we had requested. The SG has made substantial concessions, indicating that the regulations that were before the several Courts of Appeals must be modified in light of these concessions. SG's Brief at 20, n. 14. I was interested - and understood that all of us were - in having the government indicate exactly how the regulations will be changed.

I can illustrate this by taking a look at Regulation 52.1095. This is listed on the second page of Mr. Randolph's letter as being at issue in the Maryland case. It is printed as Appendix A in the "Brief for the States" at p. 1a. You will note from the Regulation as printed (and which was the basis of CA4's decision) that it contains some very strong language. For example, it states (i) that Maryland "shall establish an inspection and maintenance program . . ."; (ii) "shall submit legally adopted regulations to the Administrator. . . ."; (iii) the regulations "shall include . . . sanctions against individual owners and repair facilities"; (iv) the regulations also provide that the "enforcement program . . . shall include appropriate penalties for violation"; and (v) that the Governor [of Maryland] must submit a statement "identifying the sources and amounts of funds for the program," and if funds are not available under existing statutory authority "the text of needed legislation

- 2 -

[also] shall be submitted." The foregoing is merely a rough summary of portions of the Regulation.

If I understand the extent of the SG's concessions, much of what I have noted above is no longer before us. I believe we will find the same situation with respect to many of the other regulations mentioned in Mr. Randolph's letter.

I would have thought that before we were asked to decide this case we would have something more specific than the general statements as to how the regulations will be amended. Normally we decide cases on the basis of statutes and regulations that were considered by the courts below.

I am inclined to think we should make a further request of the SG. Indeed, I am not at all sure that the case is in a posture for us to decide it intelligently.

Sincerely,



The Chief Justice

1fp/ss

cc: The Conference

March 31, 1977

No. 75-909 EPA v. Brown

Dear Bill:

At the request of your Chambers, I have taken a look at your draft of 3/29 of a proposed Per Curiam in the above case.

I wonder whether it is necessary to go into detail as to why we are remanding these cases. What would you think of a fairly brief PC along the lines enclosed?

Sincerely,

Mr. Justice Rehnquist

lfp/ss

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 5, 1977

No. 75-909 etc. EPA v. Brown

Dear Bill:

I agree with your Per Curiam in the above cases.

Sincerely,

*Lewis*

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 17, 1977

75-709

Dear Lewis:

I fully concur in your suggestion that we ask for a further response from the Solicitor General in the EPA cases.

Sincerely,

W

Mr. Justice Powell

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 Stevens

From: Mr. Justice Rehnquist

Circulated: APR 5 1977

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 75-909, 75-960, 75-1050, AND 75-1055

[April —, 1977]

**PER CURIAM.**

These cases arise under the Clean Air Act, as amended in 1970, 42 U. S. C. § 1857, and raise questions concerning the authority of the Administrator of petitioner Environmental Protection Agency to compel various types of implementation

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: APR 7 1971

## 1st DRAFT

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

**SUPREME COURT OF THE UNITED STATES**

Nos. 75-909, 75-960, 75-1050, AND 75-1055

Environmental Protection Agency, Petitioner,  
75-960 v. the United States Court  
State of Maryland et al. of Appeals for the  
Fourth Circuit.

<p>State Air Pollution Control Board, Petitioner, 75-1050                          <i>v.</i> Russell E. Train, Administrator, Environmental Protection Agency. Russell E. Train, Administrator, Environmental Protection Agency, Petitioner, 75-1055                          <i>v.</i> District of Columbia et al.</p>	<p>On Writs of Certiorari to the United States Court of Appeals for the Dis- trict of Columbia Cir- cuit.</p>
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[April —, 1977]

MR. JUSTICE STEVENS, dissenting,

The action the Court takes today is just as puzzling as the Government's position. Unless and until the Environmental Protection Agency rescinds the regulations in dispute, it is perfectly clear that the litigation is not moot. Moreover, an apparent admission that those regulations are invalid unless