

# The Burger Court Opinion Writing Database

*United Airlines, Inc. v. McDonald*  
432 U.S. 385 (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

June 13, 1977

Re: 76-545 - United Airlines v. McDonald

Dear Lewis:

I join your dissent.

Regards,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM.J. BRENNAN, JR.

May 11, 1977

RE: No. 76-545 United Air Lines v. McDonald

Dear Potter:

I agree.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

From: Mr. Justice Stewart  
**MAY 10 1977**

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
No. 76-545  
\_\_\_\_\_

United Air Lines, Inc.,  
Petitioner,  
v.  
Liane Buix McDonald. } On Writ of Certiorari to the United  
States Court of Appeals for the  
Seventh Circuit.

[May —, 1977]

MR. JUSTICE STEWART delivered the opinion of the Court.

Rule 24 of the Federal Rules of Civil Procedure requires that an application to intervene in federal litigation must be "timely." In this case a motion to intervene was filed promptly after the final judgment of a district court, for the purpose of appealing the court's earlier denial of class action certification. The question presented is whether this motion was "timely" under Rule 24.

Until November 7, 1968, United Airlines required its female stewardesses to remain unmarried as a condition of employment; no parallel restriction was imposed on any male employees, including male stewards and cabin flight attendants.<sup>1</sup> This "no-marriage rule" resulted in the termination of the employment of a large number of stewardesses, and in turn spawned a good deal of litigation.

One of the first challenges to this rule was brought by Mary Sprogis, who filed timely charges with the Equal Employment Opportunity Commission in August 1966, contending that her discharge constituted sex discrimination in violation of Title VII of the Civil Rights Act of 1964. 42 U. S. C. § 2000 (e) *et seq.* (1970 & Supp. V). The EEOC found reasonable cause

<sup>1</sup> See generally *Sprogis v. United Airlines*, 444 F. 2d 1194, 1197-1201 (CA7).

stylistic changes

Pg. 2, b-1, 10

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

From: Mr. Justice Stewart

Circulated: \_\_\_\_\_

Recirculated: MAY 24 1977

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-545

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Liane Buix McDonald. } On Writ of Certiorari to the United  
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<sup>1</sup> See generally *Sprogis v. United Air Lines, Inc.*, 444 F. 2d 1194, 1197-1201 (CA7).

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 11, 1977

Re: No. 76-545 - United Air Lines, Inc. v.  
McDonald

Dear Lewis:

Please join me in your dissenting opinion.

Sincerely,



Mr. Justice Powell

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 18, 1977

Re: No. 76-545, United Airlines, Inc. v. McDonald

Dear Potter:

Please join me.

Sincerely,



T. M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 12, 1977

Re: No. 76-545 - United Airlines v. McDonald

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 12, 1977

No. 76-545 United Air Lines v. McDonald

Dear Potter:

In due time, I will circulate a dissenting opinion.

As work is somewhat "backed up" in my Chambers, it may be a couple of weeks or more before I can get to it.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

LFP/lab

6/10/77

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

From: Mr. Justice Powell

JUN 10 1977

Circulated: \_\_\_\_\_

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

No. 76-545 United Air Lines, Inc. v. McDonald

MR. JUSTICE POWELL, dissenting.

The Court's opinion shifts confusingly between the two distinct questions of timeliness raised by Respondent McDonald's attempt to intervene in this action against Petitioner United Air Lines, Inc. 1/ The first question involves the effect of the statute of limitations on respondent's rights against petitioner. This question is directly relevant to respondent's motion to intervene because a prerequisite of intervention for any purpose is that the intervenor have an interest in the litigation. Petitioner has consistently contended that respondent's interest in this litigation was barred by the statute of limitations at the time she sought to intervene. Assuming that respondent's interest was not time-barred, the second question involves the broader and more discretionary

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 13, 1977

Re: No. 76-545 United Airlines, Inc. v. McDonald

Dear Potter:

I think I was probably the least persuaded of the five who voted to affirm the Seventh Circuit in this case; a couple of changes in your presently circulating draft would make it a pleasure to join. The factor which was of great importance to me, and I think I may have stressed it at Conference more than others who voted to affirm, was the fact that the motion to intervene had been filed within the 30 day period in which an appeal might be taken from the final judgment. To me this is an absolutely indispensable requirement, entirely apart from the equitable considerations of "promptness" which are used in analyzing the timeliness of an ordinary motion to intervene under Rule 24.

I would suggest adding the following language or its equivalent as a substitute for the last sentence in the second full paragraph beginning on page 6:

"That purpose was to obtain appellate review of the District Court's order denying class action status in the Romansanta law suit, and the motion complied with, as it was required to, the 30 day limitation for lodging an appeal prescribed by Fed. R. App. P. 4(a). Success in that review would result in the certification of a class, the named members of which had complied with the statute of limitations; respondent is a member of that

class against whom the statute had not run at the time the class action was commenced."

I also have some reservation about the seemingly blanket endorsement of the lower court decisions contained in the language on page 9 of the draft opinion. If all of these make clear that the motion to intervene had been filed within the 30 day period for taking an appeal, I have no objection to them; but if any of them do not make that clear, I fear that their apparent endorsement in the text of the opinion may leave room for misunderstanding as to one of the limitations on the rule as I conceive it.

Sincerely,

W.M.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

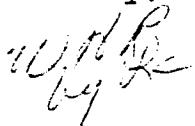
May 17, 1977

Re: No. 76-545 - United Airlines v. McDonald

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to the Conference