

# The Burger Court Opinion Writing Database

*FCC v. National Citizens Committee for Broadcasting*

436 U.S. 775 (1978)

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 7, 1978

Dear Thurgood:

Re: 76-1471 etc. FCC v. National Citizens Comm.

I join.

Regards,

*W E B. Jr.*

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 30, 1978

Re: Nos. 76-1471, etc., FCC v. National  
Citizens Comm. for Broadcasting

Dear Thurgood,

I am glad to join your opinion for the Court  
in these cases.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

5  
May 30, 1978

Re: 76-1471; 76-1521; 76-1595; 76-1604;  
76-1624 and 76-1685 - FCC cases.

Dear Thurgood,

Please join me.

Sincerely yours,



Mr. Justice Marshall

Copies to the Conference

Thurgood,  
Are not "enact" and "codify" a little strong for what agencies do?  
— See 10<sup>th</sup> line of Part AG) p 16.  
B.R.W.

26 MAY 1978

**1st DRAFT**

**SUPREME COURT OF THE UNITED STATES**

Nos. 76-1471, 76-1521, 76-1595, 76-1604, 76-1624, & 76-1685

Federal Communications Commission, Petitioner,  
76-1471 *v.*

National Citizens Committee for Broadcasting et al.

Channel Two Television Company et al., Petitioners,  
76-1521 *v.*

National Citizens Committee for Broadcasting et al.

National Association of Broadcasters, Petitioner,  
76-1595 *v.*

Federal Communications Commission et al.

American Newspaper Publishers Association, Petitioner,  
76-1604 *v.*

National Citizens Committee for Broadcasting et al.

Illinois Broadcasting Company, Inc., et al., Petitioners,  
76-1624 *v.*

National Citizens Committee for Broadcasting et al.

Post Company et al., Petitioners,  
76-1685 *v.*

National Citizens Committee for Broadcasting et al.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

**2 FCC v. NATIONAL CITIZENS COMM. FOR BROADCASTING**

MR. JUSTICE MARSHALL delivered the opinion of the Court.

At issue in these cases are Federal Communications Commission regulations governing the permissibility of common ownership of a radio or television broadcast station and a daily newspaper located in the same community. Second Report and Order (Docket No. 18110), 50 F. C. C. 2d 1046 (1975) (hereinafter cited as Order), as amended upon reconsideration, 53 F. C. C. 2d 589 (1975), codified in 47 CFR §§ 73.35, 73.240, 73.636 (1976). The regulations, adopted after a lengthy rulemaking proceeding, prospectively bar formation or transfer of co-located newspaper-broadcast combinations. Existing combinations are generally permitted to continue in operation. However, in communities in which there is common ownership of the only daily newspaper and the only broadcast station, or (where there is more than one broadcast station) of the only daily newspaper and the only television station, divestiture of either the newspaper or the broadcast station is required within five years, unless grounds for waiver are demonstrated.

The questions for decision are whether these regulations either exceed the Commission's authority under the Communications Act of 1934, 47 Stat. 1064, as amended, 48 U. S. C. § 151 *et seq.*, or violate the First or Fifth Amendment rights of newspaper owners; and whether the lines drawn by the Commission between new and existing newspaper-broadcast combinations, and between existing combinations subject to divestiture and those allowed to continue in operation, are arbitrary or capricious within the meaning of § 10 (e) of the Administrative Procedure Act, 5 U. S. C. § 706 (2)(A). For the reasons set forth below, we sustain the regulations in their entirety.

**I**

**A**

Under the regulatory scheme established by the Radio Act of 1927, 44 Stat. 1162, and continued in the Communications

PP 33,38

6 JUN 1978

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 76-1471, 76-1521, 76-1595, 76-1604, 76-1624, & 76-1685

Federal Communications Commission, Petitioner,  
76-1471 v.  
National Citizens Committee for Broadcasting et al.

Channel Two Television Company et al., Petitioners,  
76-1521 v.  
National Citizens Committee for Broadcasting et al.

National Association of Broadcasters, Petitioner,  
76-1595 v.  
Federal Communications Commission et al.

American Newspaper Publishers Association, Petitioner,  
76-1604 v.  
National Citizens Committee for Broadcasting et al.

Illinois Broadcasting Company, Inc., et al., Petitioners,  
76-1624 v.  
National Citizens Committee for Broadcasting et al.

Post Company et al., Petitioners,  
76-1685 v.  
National Citizens Committee for Broadcasting et al.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[June —, 1978]

2 FCC v. NATIONAL CITIZENS COMM. FOR BROADCASTING

MR. JUSTICE MARSHALL delivered the opinion of the Court.

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Under the regulatory scheme established by the Radio Act of 1927, 44 Stat. 1162, and continued in the Communications

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

(6)

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 31, 1978

Re: No. 76-1471, etc. - FCC v. National Citizens  
Committee, etc.

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 29, 1978

No. 76-1471 et seq. FCC v. National Citizens  
Committee, et seq.

Dear Thurgood:

Please join me in your opinion for the Court.

Sincerely,



Mr. Justice Marshall

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543  
(5)

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 30, 1978

Re: Nos. 76-1471, 76-1521, 76-1595, 76-1604, 76-1624,  
& 76-1685 - FCC v. National Citizens Committee

Dear Thurgood:

Please join me.

Sincerely,

*W*

Mr. Justice Marshall

Copies to the Conference

✓ 4  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 30, 1978

Re: 76-1471, etc. - FCC v. National Citizens  
Committee for Broadcasting et al.

Dear Thurgood:

Please join me.

Respectfully,



Mr. Justice Marshall

Copies to the Conference