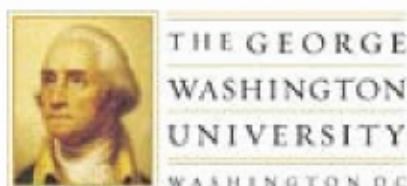


# The Burger Court Opinion Writing Database

*Brennan v. United States Postal Service*  
439 U.S. 1345 (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

No. A-152

Patricia H. Brennan and J. Paul  
Brennan, d/b/a P. H. Brennan  
Hand Delivery, Petitioners.      } On Application for Stay.  
v.  
United States Postal Service.

[August 11, 1978]

MR. JUSTICE MARSHALL, Circuit Justice.

Patricia H. Brennan and J. Paul Brennan have applied to me for a stay of the judgment of the Second Circuit Court of Appeals pending the filing and disposition by this Court of their petition for a writ of certiorari. Applicants operate a hand delivery mail service in Rochester, N. Y. The United States Postal Service (USPS) brought suit in the Western District of New York to enjoin operation of this service on the ground that the Private Express Statutes, 39 U. S. C. §§ 601-606 and 18 U. S. C. §§ 1693-1699, proscribe private carriage and delivery of "letters and packets." Applicants concede that the Private Express Statutes do indeed prohibit their activities, but they challenge the prohibition principally on the basis that the Constitution does not confer upon Congress exclusive power to operate a postal system.<sup>1</sup> The District Court rejected the challenge and permanently enjoined further violations. The Court of Appeals affirmed, denied motions for rehearing and rehearing en banc, and refused to

<sup>1</sup> They contend also that the legislation violates the Tenth Amendment because it denies to the States and to the people a concurrent power reserved to them, that Congress improperly delegated to the USPS the power to define "letters and packets," and that the extension of the postal monopoly only to letter mail arbitrarily discriminates against their business. Applicants intend to pursue these challenges in their petition for certiorari, but do not elaborate on them here.