

# The Burger Court Opinion Writing Database

*Southern Railway Co. v. Seaboard Allied Milling Corp.*

442 U.S. 444 (1979)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

June 7, 1979

Dear John:

Re: (78-575 Southern Railway Co. v. Seaboard Allied  
Milling Corp.)  
(78-597 Interstate Commerce Commission v. Seaboard  
Allied Milling Corp.)  
(78-604 Seaboard Coast Line v. Seaboard Allied  
Milling)

I join.

Regards,

WRB

Mr. Justice Stevens

cc: The Conference

P.S. Pursuant to our discussion at Conference, this can  
come down Monday, absent dissent.

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 30, 1979

Nos. 78-575, 78-597, and 78-604, Southern Railway Co. v. ICC.

Dear John,

I would like to echo Byron's thanks for your undertaking this opinion and for the job you have done in clarifying this troublesome area. Although I expressed reservations at Conference about reaching the issue of ultimate reviewability (the government's argument which you reach in part III) in this case, I am now willing to go along on this.

I do have some other problems, but hope they can be worked out.

1. I adhere strongly to my view in Dunlop v. Bachowski, 421 U.S. 560, 567 (stated for 8 of us), on the stringent standard for finding administrative action unreviewable. While I believe your opinion is generally consistent with this view, I would feel more comfortable if you could find it possible to make the following minor alterations:

a. Inserting after the cite to Morris v. Gressette on p. 9, a cite to Dunlop v. Bachowski, 421 U.S. 560, 567.

b. Changing the last sentence on p. 10 to read: "Similar circumstances have been emphasized in past cases in which we have inferred nonreviewability. See Barlow v. Collins, 367 U.S. 159, 166; Schilling v. Rogers, 363 U.S. 666, 674."

c. Changing the first sentence on p. 11 to read: "The structure of the Act also indicates that Congress intended to prohibit judicial review."

d. Changing the first sentence on p. 18 to read: "In short, the language of § 15(8)(a), as well as its place within the statutory design of the Interstate Commerce Act, its legislative history, and the light shed on it by our case law concerning analogous statutes, all taken together provide the necessary 'clear and convincing evidence' that Congress meant to prohibit all judicial

review" of the Commission's limited decision not to initiate an investigation under § 15(8)(a). Dunlop v. Bachowski, 421 U.S., at 568. See Abbott Laboratories v. Gardner, 387 U.S., at 141."

2. Along the same lines, I find fn 16 somewhat troubling. This generalization seems unnecessary to support the result in this case and I fear it may be read too broadly to encourage lower courts to find agency action unreviewable in the absence of the special circumstances present in this case. Could it be deleted?

Sincerely,



Mr. Justice Stevens

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

May 31, 1979

RE: Nos. 78-575, 597 and 604 Southern Rwy Co., et al.  
v. Seaboard Allied Milling Corporation

Dear John:

I very much appreciate your accommodation of my  
suggestions. Please join me.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 30, 1979

Re: No. 78-575, 78-597 & 78-604,  
Southern R. Co. V. Seaboard Allied  
Milling Corp.

Dear John,

I am glad to join your opinion for the  
Court.

Sincerely yours,

P. S.  
1/

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 29, 1979

Re: Nos. 78-575, 78-597 & 78-604 -  
Southern Railway Co. v. Seaboard  
Allied Milling Corp, etc.

Dear John,

With thanks, I join.

Sincerely yours,



Mr. Justice Stevens

Copies to the Conference

cmc

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 31, 1979

Re: Nos. 78-575, 597 and 604 - Southern Rwy Co.,  
et al. v. Seaboard Allied Milling Corp.

Dear John:

Please join me.

Sincerely,

*JM* •  
T.M.

Mr. Justice Stevens

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

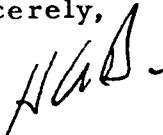
June 4, 1979

Re: No. 78-575 - Southern Railway Corp. v. Seaboard  
Allied Milling Corp.  
No. 78-597 - ICC v. Seaboard Allied Milling Corp.  
No. 78-604 - Seaboard Coast Line Railroad Co.  
v. Seaboard Allied Milling Corp.

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 28, 1979

78-575 Southern Railway v. Seaboard

Dear John:

Please show on the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

*Lewis*

Mr. Justice Stevens

lfp/ss

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 29, 1979

Re: Nos. 78-575, 78-597, and 78-604 - Southern Railway  
Co. v. Seaboard Allied Milling Corp., et al.

Dear John:

Please join me.

Sincerely,

*WR*

Mr. Justice Stevens

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 Bahnquist

## 1st DRAFT

## SUPREME COURT OF THE UNITED STATES

From: Mr. Justice Stevens

28 '79

Circulated:

Nos. 78-575, 78-597, AND 78-604

Recirculated:

Southern Railway Company,  
 Petitioner,

78-575 v.

Seaboard Allied Milling Corp.  
 et al.

Interstate Commerce Commis-  
 sion, Petitioner,

78-597 v.

Seaboard Allied Milling Corp.  
 et al.

Seaboard Coast Line Railroad  
 Company et al., Petitioners,

78-604 v.

Seaboard Allied Milling Corp.  
 et al.

On Writs of Certiorari to the  
 United States Court of Ap-  
 peals for the Eighth Circuit.

[June —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

On September 14, 1977, the Interstate Commerce Commis-  
 sion decided not to exercise its authority under § 15 (8)(a) of  
 the Interstate Commerce Act ("the Act") to order a hearing  
 to investigate the lawfulness of a seasonal rate increase pro-  
 posed by a group of railroads.<sup>1</sup> The question presented by

<sup>1</sup> At all relevant times, § 15 (8) provided in pertinent part:

"(a) Whenever a schedule is filed with the Commission by a common  
 carrier by railroad stating a new individual or joint rate, fare, or charge,  
 or a new individual or joint classification, regulation, or practice affecting  
 a rate, fare, or charge, the Commission may, upon the complaint of an in-

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 30, 1979

Re: 78-575; 597; 604 - Southern Railway Co.  
v. Seaboard Allied Mill Co.

Dear Bill:

Your suggestions give me no problem. I will  
make them all.

Respectfully,



Mr. Justice Brennan

*RP*  
*12, 6, 7, 9 - 14, 16 - 18*

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: 6/31/79

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 78-575, 78-597, AND 78-604

Southern Railway Company,  
Petitioner,

78-575      *v.*

Seaboard Allied Milling Corp.  
et al.

Interstate Commerce Commis-  
sion, Petitioner,

78-597      *v.*

Seaboard Allied Milling Corp.  
et al.

Seaboard Coast Line Railroad  
Company et al., Petitioners,

78-604      *v.*

Seaboard Allied Milling Corp.  
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or a new individual or joint classification, regulation, or practice affecting  
a rate, fare, or charge, the Commission may, upon the complaint of an in-

Stylistic changes + p. 17

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: JUN 5 79

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 78-575, 78-597, AND 78-604

Southern Railway Company,  
Petitioner,

78-575      *v.*

Seaboard Allied Milling Corp.  
et al.

Interstate Commerce Commis-  
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78-597      *v.*

Seaboard Allied Milling Corp.  
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Seaboard Coast Line Railroad  
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78-604      *v.*

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On Writs of Certiorari to the  
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or a new individual or joint classification, regulation, or practice affecting  
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Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 11, 1979

MEMORANDUM TO THE CONFERENCE

RE: Case Held for 78-575 et al., Southern Ry. Co. v. Seaboard Milling Corp.

In Aberdeen and Rockfish R. Co. v. United States, No. 78-685, almost all of the Nation's railroads simultaneously sought permission from the ICC to file a master tariff increasing their freight rates by an average of 5%. Protests were filed, but the ICC refused to stay the general increase.

✓ It did, however, initiate an investigation under § 15(8) of the Interstate Commerce Act into the legality of the increases with respect to seven specified commodities. At the end of that investigation, it determined that the increases as to those commodities were too high and ordered the rates "held down" to either 2 or 3%. In the course of deciding those issues, the ICC included some dicta in its order suggesting that it might not favor general tariff proposals such as this one in the future, but might require separate tariffs from each railroad with respect to each commodity or set of related commodities. The affected railroads sought judicial review with CADC (Wright, Robb). That court dismissed the review petition by order, apparently accepting the position of the Government that the ICC's decision was not judicially reviewable in the present posture of the case.

Our decision in Southern Ry. does not bear directly on this case. There, shippers were asking the courts to review the ICC's decision not to investigate certain rate increases under § 15(8). Here, railroads are seeking judicial review of the results of such an investigation that the ICC voluntarily chose to initiate. Nonetheless, the decision below does appear generally to conform to the analysis in Southern Ry. and, in my opinion, is not appropriate for certiorari review in any case.