

# The Burger Court Opinion Writing Database

## *Mohasco Corp. v. Silver*

447 U.S. 807 (1980)

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 4, 1980

RE: 79-616 - Mahasco Corp. v. Silver

Dear John:

I join.

Regards,

Mr. Justice Stevens

Copies to the Conference

WBR

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 31, 1980

RE: No. 79-616 Mohasco Corporation v. Silver

Dear Harry:

Thurgood, you and I are in dissent in the above.  
Would you be willing to try your hand at the dissent?

Sincerely,

*Biel*

Mr. Justice Blackmun

cc: Mr. Justice Marshall

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 18, 1980

RE: No. 79-616 Mohasco Corp. v. Silver

Dear Harry:

Please join me in the dissenting opinion you  
have prepared in the above.

Sincerely,



Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 2, 1980

Re: No. 79-616, Mohasco Corp. v. Silver

Dear John,

I am glad to join your opinion for  
the Court.

Sincerely yours,

P.S.  
✓

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 2, 1980

Re: 79-616 - Mohasco Corporation v. Silver

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Dear John,

Please join me.

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 30, 1980

Re: No. 79-616 - Mohasco Corp v. Silver

Dear John;

I await the dissent.

Sincerely,

*JM.*

T.M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 18, 1980

Re: No. 79-616 - Mohasco Corp. v. Silver

Dear Harry:

Please join me in your dissent.

Sincerely,

*JM.*  
T.M.

Mr. Justice Blackmun

cc: The Conference



April 1, 1980

Re: No. 79-616 - Mohasco Corp v. Silver

Dear Bill:

I shall be glad to try my hand at a dissent in this case.

Sincerely,

HAB

Mr. Justice Brennan

cc: Mr. Justice Marshall

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

From: Mr. Justice Blackmun

Circulated: JUN 17 1980

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

*[Handwritten notes in left margin: "1/18/80", "1/19/80", "1/20/80", "1/21/80", "1/22/80", "1/23/80", "1/24/80", "1/25/80", "1/26/80", "1/27/80", "1/28/80", "1/29/80", "1/30/80", "1/31/80", "2/1/80", "2/2/80", "2/3/80", "2/4/80", "2/5/80", "2/6/80", "2/7/80", "2/8/80", "2/9/80", "2/10/80", "2/11/80", "2/12/80", "2/13/80", "2/14/80", "2/15/80", "2/16/80", "2/17/80", "2/18/80", "2/19/80", "2/20/80", "2/21/80", "2/22/80", "2/23/80", "2/24/80", "2/25/80", "2/26/80", "2/27/80", "2/28/80", "2/29/80", "2/30/80", "3/1/80", "3/2/80", "3/3/80", "3/4/80", "3/5/80", "3/6/80", "3/7/80", "3/8/80", "3/9/80", "3/10/80", "3/11/80", "3/12/80", "3/13/80", "3/14/80", "3/15/80", "3/16/80", "3/17/80", "3/18/80", "3/19/80", "3/20/80", "3/21/80", "3/22/80", "3/23/80", "3/24/80", "3/25/80", "3/26/80", "3/27/80", "3/28/80", "3/29/80", "3/30/80", "3/31/80", "4/1/80", "4/2/80", "4/3/80", "4/4/80", "4/5/80", "4/6/80", "4/7/80", "4/8/80", "4/9/80", "4/10/80", "4/11/80", "4/12/80", "4/13/80", "4/14/80", "4/15/80", "4/16/80", "4/17/80", "4/18/80", "4/19/80", "4/20/80", "4/21/80", "4/22/80", "4/23/80", "4/24/80", "4/25/80", "4/26/80", "4/27/80", "4/28/80", "4/29/80", "4/30/80", "5/1/80", "5/2/80", "5/3/80", "5/4/80", "5/5/80", "5/6/80", "5/7/80", "5/8/80", "5/9/80", "5/10/80", "5/11/80", "5/12/80", "5/13/80", "5/14/80", "5/15/80", "5/16/80", "5/17/80", "5/18/80", "5/19/80", "5/20/80", "5/21/80", "5/22/80", "5/23/80", "5/24/80", "5/25/80", "5/26/80", "5/27/80", "5/28/80", "5/29/80", "5/30/80", "5/31/80", "6/1/80", "6/2/80", "6/3/80", "6/4/80", "6/5/80", "6/6/80", "6/7/80", "6/8/80", "6/9/80", "6/10/80", "6/11/80", "6/12/80", "6/13/80", "6/14/80", "6/15/80", "6/16/80", "6/17/80", "6/18/80", "6/19/80", "6/20/80", "6/21/80", "6/22/80", "6/23/80", "6/24/80", "6/25/80", "6/26/80", "6/27/80", "6/28/80", "6/29/80", "6/30/80", "7/1/80", "7/2/80", "7/3/80", "7/4/80", "7/5/80", "7/6/80", "7/7/80", "7/8/80", "7/9/80", "7/10/80", "7/11/80", "7/12/80", "7/13/80", "7/14/80", "7/15/80", "7/16/80", "7/17/80", "7/18/80", "7/19/80", "7/20/80", "7/21/80", "7/22/80", "7/23/80", "7/24/80", "7/25/80", "7/26/80", "7/27/80", "7/28/80", "7/29/80", "7/30/80", "7/31/80", "8/1/80", "8/2/80", "8/3/80", "8/4/80", "8/5/80", "8/6/80", "8/7/80", "8/8/80", "8/9/80", "8/10/80", "8/11/80", "8/12/80", "8/13/80", "8/14/80", "8/15/80", "8/16/80", "8/17/80", "8/18/80", "8/19/80", "8/20/80", "8/21/80", "8/22/80", "8/23/80", "8/24/80", "8/25/80", "8/26/80", "8/27/80", "8/28/80", "8/29/80", "8/30/80", "8/31/80", "9/1/80", "9/2/80", "9/3/80", "9/4/80", "9/5/80", "9/6/80", "9/7/80", "9/8/80", "9/9/80", "9/10/80", "9/11/80", "9/12/80", "9/13/80", "9/14/80", "9/15/80", "9/16/80", "9/17/80", "9/18/80", "9/19/80", "9/20/80", "9/21/80", "9/22/80", "9/23/80", "9/24/80", "9/25/80", "9/26/80", "9/27/80", "9/28/80", "9/29/80", "9/30/80", "10/1/80", "10/2/80", "10/3/80", "10/4/80", "10/5/80", "10/6/80", "10/7/80", "10/8/80", "10/9/80", "10/10/80", "10/11/80", "10/12/80", "10/13/80", "10/14/80", "10/15/80", "10/16/80", "10/17/80", "10/18/80", "10/19/80", "10/20/80", "10/21/80", "10/22/80", "10/23/80", "10/24/80", "10/25/80", "10/26/80", "10/27/80", "10/28/80", "10/29/80", "10/30/80", "10/31/80", "11/1/80", "11/2/80", "11/3/80", "11/4/80", "11/5/80", "11/6/80", "11/7/80", "11/8/80", "11/9/80", "11/10/80", "11/11/80", "11/12/80", "11/13/80", "11/14/80", "11/15/80", "11/16/80", "11/17/80", "11/18/80", "11/19/80", "11/20/80", "11/21/80", "11/22/80", "11/23/80", "11/24/80", "11/25/80", "11/26/80", "11/27/80", "11/28/80", "11/29/80", "11/30/80", "12/1/80", "12/2/80", "12/3/80", "12/4/80", "12/5/80", "12/6/80", "12/7/80", "12/8/80", "12/9/80", "12/10/80", "12/11/80", "12/12/80", "12/13/80", "12/14/80", "12/15/80", "12/16/80", "12/17/80", "12/18/80", "12/19/80", "12/20/80", "12/21/80", "12/22/80", "12/23/80", "12/24/80", "12/25/80", "12/26/80", "12/27/80", "12/28/80", "12/29/80", "12/30/80", "12/31/80"]*  
No. 79-616 - Mohasco Corp. v. Silver

MR. JUSTICE BLACKMUN, dissenting.

This might be viewed as "one of those cases that occasionally appears in the procedural area where it is more important that it be decided (in order to dispel existing conflict . . . ) than that it be decided correctly." Oscar Mayer & Co. v. Evans, 441 U.S. 750, 766 (1979) (concurring opinion). But I cannot concur in the result the Court reaches today. For reasons set out below, I believe that the Court's decision neither is correct as a matter of statutory construction, nor does it dispel the existing decisional conflict, see ante, at 6 n. 16, in an acceptable fashion. I would affirm the holding of the Court of Appeals that, in a

June 18, 1980

Re: No. 79-616 - Mohasco Corp. v. Silver

Dear John:

This will confirm our telephone conversation of this afternoon. I see no impropriety in a Justice's sitting on a case involving an issue on which he passed when he was on a Court of Appeals. Neither do I see any impropriety in his being the author of the opinion for the Court.

In rereading the first footnote of my dissent, I realize that it would have been better not to mention you personally. I hope that the change I am proposing today will be acceptable to you. I would not wish to offend you.

Sincerely,

HAB

Mr. Justice Stevens

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 18, 1980

MEMORANDUM TO THE CONFERENCE

Re: No. 79-616 - Mohasco Corp. v. Silver

I am changing the first footnote of my dissent to read  
in line with the enclosure.

*HAB.*  
—

1/ It seems significant that the Court today "adopts," ante, at 6 n.16, the decision in Moore v. Sunbeam Corp., 459 F.2d 811 (CA7 1972), the initial opinion in which was filed prior to the passage of the 1972 re-enactment of §§ 706(c) and (e). See id., at 830 (order on petition for rehearing). In Moore, the Seventh Circuit stated that the legislative history of the 1972 re-enactment was not relevant to a proper interpretation of Title VII's filing requirements, as they were enacted in 1964. Ibid. Today, this Court goes a step further in failing to give that legislative history appropriate weight in interpreting the 1972 re-enactment.

1st *Printed* DRAFT

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

SUPREME COURT OF THE UNITED STATES

No. 79-616

From: Mr. Justice Blackmun

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

Recirculated: JUN 20 1980

Mohasco Corporation, Petitioner,  
v.  
Ralph H. Silver.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Sec-  
ond Circuit.

[June —, 1980]

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join, dissenting.

This might be viewed as "one of those cases that occasionally appears in the procedural area where it is more important that it be decided (in order to dispel existing conflict . . .) than that it be decided correctly." *Oscar Mayer & Co. v. Evans*, 441 U. S. 750, 766 (1979) (concurring opinion). But I cannot concur in the result the Court reaches today. For reasons set out below, I believe that the Court's decision neither is correct as a matter of statutory construction, nor does it dispel the existing decisional conflict, see *ante*, at 6, n. 16, in an acceptable fashion. I would affirm the holding of the Court of Appeals that, in a deferral State, a Title VII complaint is timely filed with the EEOC if it is "filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred." § 706 (e), 42 U. S. C. § 2000e-5 (e).

I

The Court finds its interpretation of the interplay between §§ 706 (c) and (e) of Title VII, 42 U. S. C. §§ 2000e-5 (c) and (e), to be based upon a "rather straightforward reading of the statute." *Ante*, at 10. That finding is cast into some doubt when one carefully considers the language, structure, and purpose of § 706. Moreover, the relevant legislative his-

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 31, 1980

79-616 Mohasco Corp. v. Silver

Dear John:

Please join me.

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

June 2, 1980

Re: No. 79-616 Mohasco Corp. v. Silver

Dear John:

On the assumption that there will be only one page  
"four" in the final opinion, I join.

Sincerely,



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 Rehnquist

From: Mr. Justice Stevens

Circulated: MAY 30 '80

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 79-616

Mohasco Corporation, Petitioner, } On Writ of Certiorari to  
v. } the United States Court  
Ralph H. Silver. } of Appeals for the Sec-  
ond Circuit.

[June —, 1980]

MR. JUSTICE STEVENS delivered the opinion of the Court.

The question in this Title VII case is whether Congress intended the word "filed" to have the same meaning in subsections (c) <sup>1</sup> and (e) <sup>2</sup> of § 706 of the Civil Rights Act of 1964,

<sup>1</sup> "In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection [(b)] by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days under the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate state or local authority."

<sup>2</sup> "A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 18, 1980

79-616

Dear Harry:

The question whether a justice should sit in a case presenting a question he addressed as a circuit judge has concerned me several times during my relatively brief tenure here. Three times I have been assigned the Court opinion on an issue I had addressed in the Court of Appeals. Twice--in Branti and in Mohasco--I adhered to my earlier view and once--in Commissioner v. Standard Life and Accident Insurance Co., 433 U.S. 148--I was persuaded to take a different view.

At the informal lunches with law clerks, I have been asked occasionally whether I thought there was an appearance of impropriety involved in a case of this sort, and I responded with what I thought was the prevailing view. However, your first footnote in your Mohasco dissent gives me the impression that you may not share that view. Because I have always been most favorably impressed by your careful attention to questions of this kind, I would be grateful if you would tell me candidly if you feel that there is an impropriety in my participation in this case.

Respectfully,



Mr. Justice Blackmun

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS


June 18, 1980

Re: 79-616 - Mohasco Corp. v. Silver

Dear Harry:

Many thanks. The change takes care of the  
problem completely.

Sincerely,



Mr. Justice Blackmun