

# The Burger Court Opinion Writing Database

## *Aloha Airlines, Inc. v. Director of Taxation of Hawaii*

464 U.S. 7 (1983)

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

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CHAMBERS OF  
THE CHIEF JUSTICE

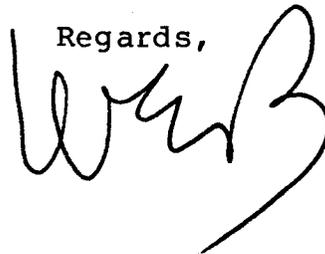
October 24, 1983

RE: 82-585) - Aloha Airlines, Inc. v. Dir. of Taxation of  
Hawaii  
82-586) - Hawaiian Airlines, Inc. v. Dir. of Taxation  
of Hawaii

Dear Thurgood:

I join.

Regards,



Justice Marshall

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

October 27, 1983

Nos. 82-585 & 82-586

Aloha Airlines, Inc.  
v. Director of Taxation  
of Hawaii, etc.

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Dear Thurgood,

Please join me.

Sincerely,



Justice Marshall

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

October 26, 1983

Re: 82-585 - Aloha Airlines, Inc. v.  
Director of Taxation of Hawaii  
  
82-586 - Hawaiian Airlines, Inc., v.  
Director of Taxation of Hawaii

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Dear Thurgood,

Please join me.

Sincerely,



Justice Marshall

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cpm



PP. 3

Justice Brennan  
Justice White  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Marshall**

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 82-585 AND 82-586

82-585 ALOHA AIRLINES, INC., APPELLANT  
*v.*  
DIRECTOR OF TAXATION OF HAWAII

82-586 HAWAIIAN AIRLINES, INC., APPELLANT  
*v.*  
DIRECTOR OF TAXATION OF HAWAII

ON APPEALS FROM THE SUPREME COURT OF HAWAII

[Decided October —, 1983]

JUSTICE MARSHALL delivered the opinion of the Court.

These appeals present the question whether 49 U. S. C. § 1513(a) preempts a Hawaii statute that imposes a tax on the gross income of airlines operating within the State. We conclude that the Hawaii tax is preempted.

I

In 1970, Congress committed the federal government to assisting States and localities in expanding and improving the nation's air transportation system. See Airport and Airway Development Act of 1970, Pub. L. 91-258, 84 Stat. 219. In the same session, Congress established the Airport and Airway Trust Fund to funnel federal resources to local airport expansion and improvement projects. See Airport and Airway Revenue Act of 1970, Pub. L. 91-258, § 208, 84 Stat. 236, 250-252. As originally devised, the Trust Fund received its revenues from several federal aviation taxes, including an 8% tax on domestic airline tickets, a \$3 head tax on international flights out of the United States, and a 5% tax on air freight. See §§ 203, 204, 84 Stat. 238-240 (codified as amended, at 26

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

October 31, 1983

MEMORANDUM TO CONFERENCE

There is one hold for No. 82-585, Aloha Airlines, Inc. v. Director of Taxation of Hawaii.

The case is No. 83-162, New York State Department of Taxation and Finance v. Air Transport Association of America, a petition for certiorari to the New York State Court of Appeals. In this case, the Air Transport Association successfully challenged a New York franchise tax "equal to three-quarters of one per centum of . . . gross earnings from all sources within this state." N.Y. Tax Law § 184(1) (McKinney). The New York courts concluded that this franchise tax, as applied to airlines, was "a tax on gross receipts from sale of air transport services," and therefore preempted by 49 U.S.C. § 1513(a). See Airport Transport Association v. New York State Department of Taxation, No. 43719 (N.Y. App. Div., 3d Dep't, Dec. 14, 1982), aff'd, No. 326 (N.Y. June 28, 1983).

The New York courts' analysis of section 184(1) is perfectly consistent with our disposition of Aloha Airlines. In Aloha, we ruled that 49 U.S.C. § 1513(a) preempted a Hawaiian tax levied on the gross receipts of airlines, even though the state legislature had labelled the tax a means of taxing property. In Airport Transport Association, the New York courts ruled that section 1513(a) preempts another tax levied on the gross receipts of airlines, even though the New York legislature characterized the tax as a franchise tax.

Since the ruling of the New York Court of Appeals is consistent with Aloha Airlines, I will vote to deny certiorari.

Sincerely,

*T.M.*  
T.M.

*See also opinion  
3/11/82*

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

October 24, 1983

Re: No. 82-585) Aloha Airlines, Inc. v.  
Director of Taxation of Hawaii  
No. 82-586) Hawaiian Airlines, Inc.  
v. Director of Taxation of Hawaii

Dear Thurgood:

Please join me.

Sincerely,



Justice Marshall

cc: The Conference

①

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

October 24, 1983

82-585 Aloha Airlines v. Director of Taxation

Dear Thurgood:

Please join me.

Sincerely,



Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

October 24, 1983

Re: Nos. 82-585 & 82-586 Aloha Airlines, Inc.  
v. Director of Taxation of Hawaii

Dear Thurgood:

Please join me in your opinion.

Sincerely,



Justice Marshall

cc: The Conference

P.S. to Justice Marshall only:

Would you consider the following rather minor suggestions, although my "join" is not conditioned upon your doing so?

(1) Page 5, carry-over sentence from page 4. Delete the phrase "and should not" now appearing in lines 2 and 3; it seems to me enough to say that courts "need not" look beyond the plain language of a federal statute. OK

(2) Page 6, footnote 9. Since this footnote is offered only to explain the motive of the Hawaii legislature in characterizing its statute, I am concerned about unnecessary dicta. Don't you convey the message after you have suggested the comparison between the two Railway Express Agency cases, so that you could omit a characterization of Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977). I would rather let that opinion continue to speak for itself. OK

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

October 24, 1983

Re: 82-585 - Aloha Airlines v. Dir. of  
Taxation of Hawaii  
82-586 - Hawaiian Airlines v. Dir. of  
Taxation of Hawaii

Dear Thurgood:

My join in your persuasive opinion is unconditional, but I intended to raise the question with you whether the words "and should not" in the second and third lines on page 5 might possibly be a little stronger than we need. Perhaps they could either be omitted or perhaps toned down to something like "and ordinarily should not."

This is just a suggestion.

Respectfully,



Justice Marshall

W

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

October 24, 1983

Re: 82-585 - Aloha Airlines v. Dir. of  
Taxation of Hawaii  
82-586 - Hawaiian Airlines v. Dir. of  
Taxation of Hawaii

Dear Thurgood:

Please join me.

Respectfully,



Justice Marshall

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

October 24, 1983

No. 82-585 Aloha Airlines, Inc. v. Director  
of Taxation of Hawaii  
No. 82-586 Hawaiian Airlines, Inc. v. Director  
of Taxation of Hawaii

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Dear Thurgood,

Please join me.

Sincerely,

*Sandra*

Justice Marshall

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