

The Burger Court Opinion Writing Database

Schreiber v. Burlington Northern, Inc.

472 U.S. 1 (1985)

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



To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

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Please join me
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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-2129

**BARBARA R. SCHREIBER, PETITIONER v.
BURLINGTON NORTHERN, INC., ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT**

[May —, 1985]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to resolve a conflict in the circuits over whether misrepresentation or nondisclosure is a necessary element of a violation of § 14(e) of the Securities Exchange Act of 1934, 15 U. S. C. § 78n(e).

I

On December 21, 1982, Burlington Northern, Inc. made a hostile tender offer for El Paso Gas Co. Through a wholly-owned subsidiary, Burlington proposed to purchase 25.1 million El Paso shares at \$24 per share. Burlington reserved the right to terminate the offer if any of several specified events occurred. El Paso management initially opposed the takeover, but its shareholders responded favorably, fully subscribing the offer by the December 30, 1982 deadline.

Burlington did not accept those tendered shares; instead, after negotiations with El Paso management, Burlington announced on January 10, 1983, the terms of a new and friendly takeover agreement. Pursuant to the new agreement, Burlington undertook to (1) rescind the December tender offer, (2) purchase 4,166,667 shares from El Paso at \$24 per share, (3) substitute a new tender offer for only 21 million shares at \$24 per share, (4) provide procedural protections against a

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MAY 31 1985

STYLISTIC CHANGES THROUGHOUT

CHANGES AS MARKED: 12-N-10

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 83-2129

BARBARA R. SCHREIBER, PETITIONER *v.*
BURLINGTON NORTHERN, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[June 4, 1985]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to resolve a conflict in the Circuits over whether misrepresentation or nondisclosure is a necessary element of a violation of § 14(e) of the Securities Exchange Act of 1934, 15 U. S. C. § 78n(e).

I

On December 21, 1982, Burlington Northern, Inc., made a hostile tender offer for El Paso Gas Co. Through a wholly owned subsidiary, Burlington proposed to purchase 25.1 million El Paso shares at \$24 per share. Burlington reserved the right to terminate the offer if any of several specified events occurred. El Paso management initially opposed the takeover, but its shareholders responded favorably, fully subscribing the offer by the December 30, 1982 deadline.

Burlington did not accept those tendered shares; instead, after negotiations with El Paso management, Burlington announced on January 10, 1983, the terms of a new and friendly takeover agreement. Pursuant to the new agreement, Burlington undertook to (1) rescind the December tender offer, (2) purchase 4,166,667 shares from El Paso at \$24 per share, (3) substitute a new tender offer for only 21 million shares at \$24 per share, (4) provide procedural protections against a

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

CHAMBERS OF
THE CHIEF JUSTICE

May 31, 1985

Re: 83-2129 - Schreiber v. Burlington Northern, Inc., et al.

MEMORANDUM TO THE CONFERENCE:

This case is scheduled to come down Tuesday.

Small stylistic changes were marked on today's draft, but I am in no hurry, and if anyone wishes to put this over, I am content.

Regards,



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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 22, 1985

No. 83-2129

Schreiber v. Burlington Northern,
Inc., et al.

Dear Chief,

I agree.

Sincerely,

Bill

The Chief Justice

Copies to the Conference

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CHAMBERS OF
JUSTICE BYRON R. WHITE

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

May 22, 1985

DA: OIA ES YAM AB

83-2129 -

Schreiber v. Burlington Northern, Inc.

Dear Chief,

Please join me.

Sincerely,

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 29, 1985

Re: No. 83-2129-Schreiber v. Burlington Northern

Dear Chief:

Please join me.

Sincerely,

J.M.

T.M.

The Chief Justice

cc: The Conference

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

6
CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 28, 1985

Re: No. 83-2129, Schreiber v. Burlington Northern, Inc.

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

03:11 PM 85 MAY 28

27

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 22, 1985

83-2129 Schreiber v. Burlington Northern

Dear Chief:

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

Sincerely,

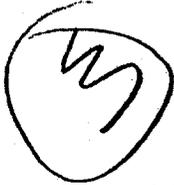


The Chief Justice

lfp/ss

cc: The Conference

APR 25 1985



CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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

May 22, 1985

Re: 83-2129 - Schreiber v. Burlington Northern

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

cc: The Conference

81 WA 55 6103

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 22, 1985

Re: 83-2129 - Schreiber v. Burlington
Northern, Inc.

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

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88 MAY 22 1985

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 21, 1985

No. 83-2129 Schreiber v. Burlington Northern

Dear Chief,

Please add at the end of the next draft of your opinion that I took no part in the consideration or decision of the above case.

Sincerely,



The Chief Justice

.97 MAY 25 1985

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