

# The Burger Court Opinion Writing Database

## *Department of Transportation v. Paralyzed Veterans of America*

477 U.S. 597 (1986)

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 11, 1986

85-289 - U.S. Department of Transportation v.  
Paralyzed Veterans

Dear Lewis:

I join.

Regards,

Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 8, 1986

No. 85-289

United States Department  
of Transportation  
v. Paralyzed Veterans

Dear Thurgood and Harry,

We three are in dissent in the above. I'll try my hand at it. It may be, depending on what the majority circulates, that the dissent could be as brief as an affirmance on the opinion of the Court of Appeals.

Sincerely,

*Bill*

Justice Marshall

Justice Blackmun

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 5, 1986

U.S. Department of Transportation v. Paralyzed  
Veterans, 85-289

Dear Thurgood and Harry:

As you recall, I originally indicated that I would circulate a short dissent in this case in which I stated that I would affirm on the basis of the decision of the Court of Appeals. Upon reading Lewis' draft opinion, that is still my inclination. Would either of you be interested in undertaking a more substantive dissent? If so, I will gladly forgo my dissent.

Sincerely,



Justice Marshall  
Justice Blackmun

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 24, 1986

No. 85-289

United States Department  
of Transportation, et al.  
v. Paralyzed Veterans  
of America, et al.

Dear Thurgood,

Please join me in your dissent in  
the above case.

Sincerely,



Justice Marshall

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 2, 1986

85-289 - United States DOT v.  
Paralyzed Veterans of America

Dear Lewis,

Please join me.

Sincerely yours,



Justice Powell

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

From: **Justice Marshall**

Circulated: **JUN 23 1986**

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 85-289

UNITED STATES DEPARTMENT OF TRANSPORTATION, ET AL., PETITIONERS *v.* PARALYZED VETERANS OF AMERICA ET AL.

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

[June —, 1986]

JUSTICE MARSHALL, dissenting.

The Court starts from the proposition that no federal funds under the Airport and Airway Improvement Act of 1982, 49 U. S. C. § 2201 *et seq.*, are disbursed directly to commercial airlines. It infers that commercial airlines therefore do not "receive" federal financial assistance. And it concludes that § 504 of the Rehabilitation Act of 1973 is therefore wholly inapplicable to those airlines. That reasoning misperceives the proper inquiry under § 504.

Section 504 provides that "[n]o otherwise qualified handicapped individual . . . shall, solely because of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency . . . ." 29 U. S. C. § 794. The appropriate question is thus not whether commercial airlines "receive" federal financial assistance. Rather, it is whether commercial airlines are in a position to "exclud[e] handicapped persons] from the participation in, . . . den[y them] the benefits of, or . . . subjec[t them] to discrimination under" a program or activity receiving federal financial assistance or conducted by an Executive agency. I believe that they are, and I therefore dissent.

STYLISTIC CHANGES THROUGHOUT

+ P. 1

To: The Chief Justice  
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

No. 85-289

UNITED STATES DEPARTMENT OF TRANSPORTATION, ET AL., PETITIONERS v. PARALYZED VETERANS OF AMERICA ET AL.

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

[June —, 1986]

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

The Court starts from the proposition that no federal funds under the Airport and Airway Improvement Act of 1982, 49 U. S. C. App. § 2201 *et seq.*, are disbursed directly to commercial airlines. It infers that commercial airlines therefore do not "receive" federal financial assistance. And it concludes that § 504 of the Rehabilitation Act of 1973 is therefore wholly inapplicable to those airlines. That reasoning misperceives the proper inquiry under § 504.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 22, 1986

Re: No. 85-239, United States Department of Transportation  
v. Paralyzed Veterans

Dear Bill:

This is a belated response to your inquiry of June 5. I, for one, would have been content to join a short dissent to the effect that I would affirm on the basis of the opinion of the Court of Appeals. I now understand, however, that Thurgood is preparing a more detailed dissent, so I shall wait for it.

Sincerely,

Justice Brennan

cc: Justice Marshall

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

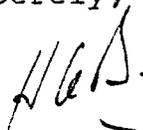
June 24, 1986

Re: No. 85-289, United States Department of  
Transportation v. Paralyzed Veterans

Dear Thurgood:

Please join me in your dissenting opinion.

Sincerely,



Justice Marshall

cc: The Conference

05/28

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

From: **Justice Powell**

Circulated: MAY 29 1988

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 85-289

UNITED STATES DEPARTMENT OF TRANSPORTATION, ET AL., PETITIONERS *v.* PARALYZED VETERANS OF AMERICA ET AL.

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

[June —, 1986]

JUSTICE POWELL delivered the opinion of the Court.

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against handicapped persons in any program or activity receiving federal financial assistance. The United States provides financial assistance to airport operators through grants from a Trust Fund created by the Airport and Airway Development Act of 1970. The Government also operates a nationwide air traffic control system. This case presents the question whether, by virtue of such federal assistance, § 504 is applicable to commercial airlines.<sup>1</sup>

I

Respondents successfully challenged regulations promulgated by the Civil Aeronautics Board (CAB) to implement § 504 of the Rehabilitation Act of 1973, 29 U. S. C. § 791 *et seq.* (1982). To understand respondents' arguments, it is necessary to review the process by which the regulations were promulgated.

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<sup>1</sup>As used herein, the term "airport operator" refers to the various entities that own or manage airports and that have authority to apply for planning or development grants from the Trust Fund. "Commercial airlines" refers to all passenger carriers formerly certificated by the Civil Aeronautics Board.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 30, 1986

85-289 United States Department of Transportation v. Paralyzed Veterans of America

Dear John:

I will be happy to make the change you suggest. You are right.

Sincerely,



Justice Stevens

LFP/vde

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06/20

stylistic changes throughout

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

From: **Justice Powell**

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 85-289

UNITED STATES DEPARTMENT OF TRANSPORTATION, ET AL., PETITIONERS *v.* PARALYZED VETERANS OF AMERICA ET AL.

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

[June —, 1986]

JUSTICE POWELL delivered the opinion of the Court.

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against handicapped persons in any program or activity receiving federal financial assistance. The United States provides financial assistance to airport operators through grants from a Trust Fund created by the Airport and Airway Development Act of 1970. The Government also operates a nationwide air traffic control system. This case presents the question whether, by virtue of such federal assistance, § 504 is applicable to commercial airlines.<sup>1</sup>

I

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<sup>1</sup> As used herein, the term "airport operator" refers to the various entities that own or manage airports and that have authority to apply for planning or development grants from the Trust Fund. "Commercial airlines" refers to all passenger carriers formerly certificated by the Civil Aeronautics Board.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 30, 1986

Re: No. 85-289 Department of Transportation v. Paralyzed  
Veterans of America

Dear Lewis,

Please join me.

Sincerely,

Justice Powell

cc: The Conference



CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

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

May 29, 1986

Re: 85-289 -- United States DOT v. Paralyzed Veterans

Dear Lewis:

Please join me.

Respectfully,

Justice Powell

Copies to the Conference

70 Mike

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

*make the  
modest change.*

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 30, 1986

Re: 85-289 - United States Department of  
Transportation, et al. v. Paralyzed  
Veterans of America

Dear Lewis:

In the next to the last sentence on page 5 of your opinion, you state that the air traffic control system is "in place at most airports." I'm inclined to believe that statement is not factually correct, because there are so very many small airports which are entirely uncontrolled. Perhaps you should substitute the phrase "in place at all major airports" or something similar.

Respectfully,



Justice Powell

*Dear John.*

*I will be happy to  
make the change you  
suggest. You are right.*

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 4, 1986

Re: 85-289 U.S. Department of Transportation v.  
Paralyzed Veterans

Dear Lewis,

Please join me.

Sincerely,

*Sandra*

Justice Powell

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