

The Burger Court Opinion Writing Database

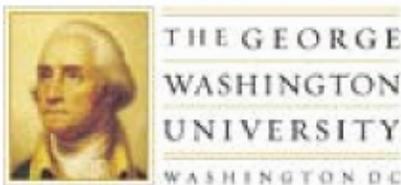
United States v. Davis

397 U.S. 301 (1970)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

March 19, 1970

Re: No. 282 - U. S. v. Davis

Dear Bill:

I join in your dissent.

W. E. B.

Mr. Justice Douglas

cc: The Conference

By
TCG
C. H. W.

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

March 12, 1970

Dear Thurgood:

Re: No. 282 - U. S. v. Davis, et ux.

I agree.

Sincerely,

Hugo
Hugo

Mr. Justice Marshall

BY
GDW
TCG

The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

No. 282.—OCTOBER TERM, 1969

United States, Petitioner, } On Writ of Certiorari to the
v. } United States Court of
Maclin P. Davis et ux. } Appeals for the Sixth
Circuit.

Mr. Douglas, J.
3/11/70

[March —, 1970]

MR. JUSTICE DOUGLAS, dissenting.

I agree with the District Court, 274 F. Supp. 466, and with the Court of Appeals, 408 F. 2d 1139, that respondent's contribution of working capital in the amount of \$25,000 in exchange for 100 shares of preferred stock with a par value of \$25 was made in order for the corporation to obtain a loan from the RFC and that the preferred stock was to be redeemed when the loan was repaid. For the reasons stated by the two lower courts, this redemption was not "essentially equivalent to a dividend," for the bona fide business purpose of the redemption belies the payment of a dividend. As stated by the Court of Appeals:

"Although closely-held corporations call for close scrutiny under the tax law, we will not, under the facts and circumstances of this case, allow mechanical attribution rules to transform a legitimate corporate transaction into a tax avoidance scheme."

When the Court holds it was a dividend, it effectively cancels § 302 (b)(1) from the Act. I would leave such revision to the Congress.

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
~~Mr. Justice Thomas~~
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

Author: Douglas, J.

No. 282.—OCTOBER TERM, 1969

Circulated: 3-14

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United States, Petitioner, } On Writ of Certiorari to the
v. } United States Court of
Maclin P. Davis et ux. } Appeals for the Sixth
Circuit.

[March —, 1970]

MR. JUSTICE DOUGLAS, dissenting.

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"Although closely-held corporations call for close scrutiny under the tax law, we will not, under the facts and circumstances of this case, allow mechanical attribution rules to transform a legitimate corporate transaction into a tax avoidance scheme."

When the Court holds it was a dividend, it effectively cancels § 302 (b)(1) from the Act. This result is not a matter of conjecture, for the Court says that in case of closely held or one-man corporations a redemption of stock is "always" equivalent to a dividend. I would leave such revision to the Congress.

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

No. 282.—OCTOBER TERM, 1969

From: Douglas, J.

Circulated: _____

United States, Petitioner, }
v. } On Writ of Certiorari to the
Maclin P. Davis et ux. } United States Court of
Appeals for the Sixth
Circuit.

Recirculated: 3/17/70

[March —, 1970]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN concurs, dissenting.

I agree with the District Court, 274 F. Supp. 466, and with the Court of Appeals, 408 F. 2d 1139, that respondent's contribution of working capital in the amount of \$25,000 in exchange for 100 shares of preferred stock with a par value of \$25 was made in order for the corporation to obtain a loan from the RFC and that the preferred stock was to be redeemed when the loan was repaid. For the reasons stated by the two lower courts, this redemption was not "essentially equivalent to a dividend," for the bona fide business purpose of the redemption belies the payment of a dividend. As stated by the Court of Appeals:

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BN
TCR
GDW

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

March 12, 1970

Re: No. 282 - United States v. Davis

Dear Thurgood:

I agree with your opinion.

Sincerely,
J. M. H.
J. M. H.

Mr. Justice Marshall

CC: The Conference

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U.S. DEPARTMENT OF JUSTICE

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. March 16, 1970

RE: No. 282 - United States v. Davis

Dear Bill:

Please join me in your dissent
in the above.

Sincerely,


W. JB. Jr.

Mr. Justice Douglas

cc: The Conference

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BN
GDW
TCG

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 13, 1970

No. 282, United States v. Davis

Dear Thurgood,

I am glad to join your opinion
for the Court in this case.

Sincerely yours,

P.S.
/

Mr. Justice Marshall

Copies to the Conference

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OFFICE OF THE CLERK OF THE SUPREME COURT

BY
GOW
TEG

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 16, 1970

Re: No. 282 - U. S. v. Davis

Dear Thurgood:

Please join me.

Sincerely,


B.R.W.

Mr. Justice Marshall

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

SECTION OF THE ARCHIVES

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas

1

SUPREME COURT OF THE UNITED STATES

No. 282.—OCTOBER TERM, 1969

From: Marshall, J.

Circulated: 3-11-7

Recirculated: _____

United States, Petitioner, } On Writ of Certiorari to the
v. } United States Court of
Maclin P. Davis et ux. } Appeals for the Sixth
Circuit.

[March —, 1970]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

In 1945, taxpayer and E. B. Bradley organized a corporation.¹ In exchange for property transferred to the new company, Bradley received 500 shares of common stock, and taxpayer and his wife similarly each received 250 such shares. Shortly thereafter, taxpayer made an additional contribution to the corporation, purchasing 1,000 shares of preferred stock at a par value of \$25 per share.

The purpose of this latter transaction was to increase the company's working capital and thereby to qualify for a loan previously negotiated through the Reconstruction Finance Corporation. It was understood that the corporation would redeem the preferred stock when the RFC loan had been repaid. Although in the interim taxpayer bought Bradley's 500 shares and divided them between his son and daughter, the total capitalization of the company remained the same until 1963. That year, after the loan was fully repaid and in accordance with the original understanding, the company redeemed taxpayer's preferred stock.

¹ References in this opinion to "taxpayer" are to Maclin P. Davis. His wife is a party solely because joint returns were filed for the year in question.

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STYLISTIC CHANGES THROUGHOUT.

4, 5, 6, 12

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 282.—OCTOBER TERM, 1969

Recirculated: MAR 17 1970

United States, Petitioner, }
 v. } On Writ of Certiorari to the
Maclin P. Davis et ux. } United States Court of
 } Appeals for the Sixth
 } Circuit.

[March —, 1970]

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