

The Burger Court Opinion Writing Database

United States v. Byrum

408 U.S. 125 (1972)

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

June 13, 1972

Re: No. 71-308 - U. S. v. Byrum

Dear Lewis:

At Conference I was inclined to reverse and was so
recorded. Your opinion has persuaded me. I am satisfied
that the mere existence of factors susceptible of potential
abuse should not result in striking down the program involved
in this case.

Regards,

WRB

* Hence, please join me.

Mr. Justice Powell

Copies to the Conference

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U. S. SUPREME COURT

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 19, 1972

Dear Lewis:

Please join me in your opinion
in No. 71-308 -- U. S. v. Byrum.

WOD
William O. Douglas

Mr. Justice Powell

CC: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 13, 1972

RE: No. 71-308 - United States v. Byrum

Dear Byron:

Please join me in your dissenting
opinion in the above.

Sincerely,

EW

Mr. Justice White
cc The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 18, 1972

71-308 - - U. S. v. Byrum

Dear Lewis,

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

Sincerely yours,

P.S.

Mr. Justice Powell

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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 6-13-72

No. 71-308

Recirculated:

United States, Petitioner, }
v. } On Writ of Certiorari to
Marian A. Byrum, Executrix } the United States Court
Under the Last Will and } of Appeals for the Sixth
Testament of Milliken } Circuit.
C. Byrum. }

[June —, 1972]

MR. JUSTICE WHITE, dissenting.

I think the majority is wrong in all substantial respects.

I

The tax code commands the payment of an estate tax on transfers effective in name and form during life if the now deceased settlor retained during his life either (1) "the possession or enjoyment of" the property transferred or (2) the right to designate the persons who would enjoy the transferred property or the income therefrom. 26 U. S. C. §§ 2036 (a)(1) and (2). Our cases explicate this congressional directive to mean that if one wishes to avoid a tax at death he must be self-abnegating enough to totally surrender his property interest during life.

"[A]n estate tax cannot be avoided by any trust transfer except by a bona fide transfer in which the settlor, absolutely, unequivocally, irrevocably, and without possible reservation parts with his title and all of his possession and all of his enjoyment of the transferred property." *Commissioner v. Estate of Church*, 335 U. S. 632, 645 (1949).

In this case the taxpayer's asserted alienation doesn't measure up to this high standard. Byrum enjoyed the

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL


May 23, 1972

Re: No. 71-308 - U. S. v. Byrum

Dear Lewis:

Please join me.

Sincerely,


T.M.

Mr. Justice Powell

cc: Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 14, 1972

Re: No. 71-308 - U.S. v. Byrum

Dear Byron:

Please join me in your dissent.

Sincerely,

H. G. D.

Mr. Justice White

cc: The Conference

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U.S. SUPREME COURT RECORDS

Please join me
MM

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
~~Mr. Justice Marshall~~
Mr. Justice Blackmun
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-308

From: Powell, J.

Circulated: **MAY 18 1972**

Recirculated: _____

United States, Petitioner,	}	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.
v.		
Marian A. Byrum, Executrix		
Under the Last Will and Testament of Milliken		
C. Byrum.		

[May —, 1972]

MR. JUSTICE POWELL delivered the opinion of the Court.

Decedent, Milliken C. Byrum, created in 1958 an irrevocable trust to which he transferred shares of stock in three closely held corporations. Prior to transfer, he owned at least 71% of the outstanding stock of each corporation. The beneficiaries were his children or, in the event of their death before the termination of the trust, their surviving children. The trust instrument specified that there be a corporate trustee. Byrum designated as sole trustee an independent corporation, Huntington National Bank. The trust agreement vested in the trustee broad and detailed powers with respect to the control and management of the trust property. These powers were exercisable in the trustee's sole discretion, subject to certain rights reserved by Byrum: (i) to vote the shares of unlisted stock held in the trust estate; (ii) to disapprove the sale or transfer of any trust assets, including the shares transferred to the trust; (iii) to approve investments and reinvestments; and (iv) to remove the trustee and "designate another corporate trustee to serve as successor." Until the

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OFFICE OF THE CLERK OF THE SUPREME COURT

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19, 20, 21, 23, 24, 25, 26

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
— Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-308

From: Powell, J.

Circulated:

Recirculated: JUN 23 1972

United States, Petitioner,	} On Writ of Certiorari to	
v.		the United States Court
Marian A. Byrum, Executrix		of Appeals for the Sixth
Under the Last Will and		Circuit.
Testament of Milliken		
C. Byrum.		

[June 26, 1972]

MR. JUSTICE POWELL delivered the opinion of the Court.

Decedent, Milliken C. Byrum, created in 1958 an irrevocable trust to which he transferred shares of stock in three closely held corporations. Prior to transfer, he owned at least 71% of the outstanding stock of each corporation. The beneficiaries were his children or, in the event of their death before the termination of the trust, their surviving children. The trust instrument specified that there be a corporate trustee. Byrum designated as sole trustee an independent corporation, Huntington National Bank. The trust agreement vested in the trustee broad and detailed powers with respect to the control and management of the trust property. These powers were exercisable in the trustee's sole discretion, subject to certain rights reserved by Byrum: (i) to vote the shares of unlisted stock held in the trust estate; (ii) to disapprove the sale or transfer of any trust assets, including the shares transferred to the trust; (iii) to approve investments and reinvestments; and (iv) to remove the trustee and "designate another corporate trustee to serve as successor." Until the

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

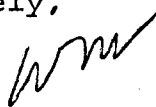
June 19, 1972

Re: No. 71-308 - U. S. v. Byrum

Dear Lewis:

Please join me in your opinion for the Court in
this case.

Sincerely,



Mr. Justice Powell

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U.S. SUPREME COURT ADVANCE