

# The Burger Court Opinion Writing Database

*United States v. Basye*

410 U.S. 441 (1973)

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

February 23, 1973

Re: No. 71-1022 - U. S. v. Basye

Dear Lewis:

Please join me.

Regards,

WRB

Mr. Justice Powell

Copies to the Conference

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REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF COMMERCE

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

February 9, 1973

Dear Lewis:

You have written a fine opinion  
in 71-1022, U.S. v. Basye.

I voted the other way and that  
is where I am, on balance.

I do not desire to write. Would  
you kindly add at the end of your opinion  
merely that I dissent?

William O. Douglas

*W. O. Douglas*

Mr. Justice Powell

cc: The Conference

B  
M

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. February 12, 1973

RE: No. 71-1022 United States v. Basye

Dear Lewis:

I passed at conference but your excellent  
opinion completely persuades me. I am happy  
to join.

Sincerely,

*Bill*

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 16, 1973

71-1022, United States v. Basye

Dear Lewis,

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

Sincerely yours,

P. G.  
/

Mr. Justice Powell

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U.S. DEPT. OF JUSTICE

B

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

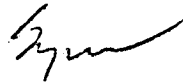
February 12, 1973

Re: No. 71-1022 - United States v. Basye

Dear Lewis:

Please join me in your opinion in this  
case.

Sincerely,



Mr. Justice Powell

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

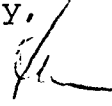
February 12, 1973

Re: No. 71-1022 - U. S. v. Basye

Dear Lewis:

Please join me.

Sincerely,



T.M.

Mr. Justice Powell

cc: Conference

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U.S. SUPREME COURT RECORDS

7  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 9, 1973

Re: No. 71-1022 - U.S. v. Basye

Dear Lewis:

Please join me.

The result reached is, in my view, clearly correct. I was troubled mildly by your footnote 13 on page 12. My trouble is attributable to my dissent in Commissioner v. First Security Bank of Utah and to the fact that you utilize cases here (pages 9 and 10 of the opinion) which are among those I felt governed the Utah case. 405 U.S. at 423, notes. I cannot agree with the distinction drawn in footnote 13 between this case and the Utah case, but I suppose that the footnote is merely reciting what the Court held in the Utah case, and I must be content.

Sincerely,

H. A. B.

Mr. Justice Powell

cc: The Conference

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SECRET  
U.S. DEPARTMENT OF JUSTICE



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

*Please join me*

2nd DRAFT

From: Powell, J.

SUPREME COURT OF THE UNITED STATES

Circulated: FEB 9 1973

No. 71-1022

Recirculated:

United States, Petitioner, } On Writ of Certiorari to the  
 v. } United States Court of Ap-  
 James A. Basye et al. } peals for the Ninth Circuit.

[February —, 1973]

MR. JUSTICE POWELL delivered the opinion of the Court.

This is a partnership income tax case brought here by the United States on a petition for writ of certiorari from the Court of Appeals for the Ninth Circuit. Respondents, physicians and partners in a medical partnership, filed suit in the District Court for the Northern District of California seeking the refund of income taxes previously paid pursuant to a deficiency assessed by the Commissioner of Internal Revenue. The case was heard on an agreed statement of facts and the District Court ruled in respondents' favor. 295 F. Supp. 1289 (1968). The Government appealed to the Ninth Circuit and that court affirmed the lower court's judgment. 450 F. 2d 109 (1971). We agreed to hear this case to consider whether, as the Government contends, the decision below is in conflict with precedents of this Court. 405 U. S. 1039 (1972). Because we find that the decision is incompatible with basic principles of income taxation as developed in our prior cases, we reverse.

I

Respondents, each of whom is a physician,<sup>1</sup> are partners in a limited partnership known as Permanente

<sup>1</sup> Technically, the married respondents' spouses are also parties because they filed joint income tax returns for the years in question

3 — P. 16 + minor stylistic changes

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

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.

From: Powell, J.

Circulated:

Recirculated FEB 26 1973

# SUPREME COURT OF THE UNITED STATES

No. 71-1022

United States, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of Ap-  
James A. Basye et al. } peals for the Ninth Circuit.

[February 27, 1973]

MR. JUSTICE POWELL delivered the opinion of the Court.

This is a partnership income tax case brought here by the United States on a petition for writ of certiorari from the Court of Appeals for the Ninth Circuit. Respondents, physicians and partners in a medical partnership, filed suit in the District Court for the Northern District of California seeking the refund of income taxes previously paid pursuant to a deficiency assessed by the Commissioner of Internal Revenue. The case was heard on an agreed statement of facts and the District Court ruled in respondents' favor. 295 F. Supp. 1289 (1968). The Government appealed to the Ninth Circuit and that court affirmed the lower court's judgment. 450 F. 2d 109 (1971). We agreed to hear this case to consider whether, as the Government contends, the decision below is in conflict with precedents of this Court. 405 U. S. 1039 (1972). Because we find that the decision is incompatible with basic principles of income taxation as developed in our prior cases, we reverse.

## I

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<sup>1</sup>Technically, the married respondents' spouses are also parties because they filed joint income tax returns for the years in question

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 12, 1973

Re: No. 71-1022 -- United States v. Basye

Dear Lewis:

Please join me.

Sincerely,

WHR

Mr. Justice Powell

cc: The Conference

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SECTION OF ADVISORY