

# The Burger Court Opinion Writing Database

*Alexander v. "Americans United" Inc.*  
416 U.S. 752 (1974)

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

April 9, 1974

Personal

Re: No. 72-1371 - Alexander v. Americans United  
No. 72-1470 - Bob Jones University v. Schultz

Dear Lewis:

I will defer action in these cases until I see  
the dissent.

Regards,

Mr. Justice Powell

WCB

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

CHAMBERS OF  
THE CHIEF JUSTICE

May 8, 1974

Re: 72-1371 - Alexander v. "Americans United"

Dear Lewis:

Please join me.

Regards,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 11, 1974

RE: No. 72-1371 Alexander v. "Americans  
United, Inc. et al.

Dear Lewis:

I agree.

Sincerely,

*Bill*

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

March 11, 1974

Re: No. 72-1371, Commissioner v.  
"Americans United" Inc.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 14, 1974

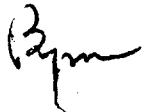
Re: No. 72-1371 - Alexander v. "Americans  
United" Inc.

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Dear Lewis:

Join me, please.

Sincerely,



Mr. Justice Powell

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 11, 1974

Re: No. 72-1371 -- Commissioner v. "Americans United"  
Inc.

Dear Lewis:

Please join me.

Sincerely,

*T.M.*  
T. M.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 11, 1974

Dear Lewis:

Re: No. 72-1371 - Alexander v. "Americans United"

In due course I shall be writing a dissent in this case.

I hope you will give me a few days for this.

Sincerely,



Mr. Justice Powell

Copies to the Conference

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

## 2nd DRAFT

## SUPREME COURT OF THE UNITED STATES: Blackmun, J.

No. 72-1371

Circulated: 4/17/74

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

Donald C. Alexander, Commis- } On Writ of Certiorari  
 sioner of Internal Reve- } to the United States  
 nue, Petitioner, } Court of Appeals for  
 v. } the District of Colum-  
 "Americans United" Inc. } bia Circuit.

[April —, 1974]

MR. JUSTICE BLACKMUN, dissenting.

Finding myself in solitary dissent in this "tax" case, I am somewhat diffident about expressing views contrary to those the Court apparently has reached so easily. I do so only because I am disturbingly aware of the overwhelming power of the Internal Revenue Service. This power is such that its mere exercise often freezes tax status so as to endanger the existence of philanthropic organizations and the public benefits they secure, merely because the path to judicial review is so discouragingly long and expensive. I write primarily, therefore, to express what I feel is a needed word of caution about governmental power where the means to challenge that power are unfavorable and unsatisfactory at best.

## I

"Americans United" Inc. (AU) is a District of Columbia nonprofit educational corporation organized in 1948. For almost 18 years AU was formally recognized by the Service as exempt from federal income tax under § 501 (c)(3) of the Internal Revenue Code of 1954, 26 U. S. C. § 501 (c)(3),<sup>1</sup> and its predecessor, § 101 (6) of the Internal Revenue Code of 1939.

<sup>1</sup> AU's exemption ruling, under § 101 (6) of the 1939 Code, was

✓ LFP  
Please sign me  
2

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

From: Powell, J.

**SUPREME COURT OF THE UNITED STATES**

Circulated: MAR 8 1974

No. 72-1371

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

Donald C. Alexander, Commis-  
sioner of Internal Reve-  
nue, Petitioner.

v  
"Americans United" Inc. et al.

On Writ of Certiorari  
to the United States  
Court of Appeals for  
the District of Colum-  
bia Circuit.

[March — 1974]

MR. JUSTICE POWELL delivered the opinion of the Court.

Respondent is a nonprofit, educational corporation organized under the laws of the District of Columbia as "Protestants and Other Americans United for Separation of Church and State." Its purpose is to defend and maintain religious liberty in the United States by the dissemination of knowledge concerning the constitutional principle of the separation of church and State. In 1950, the Internal Revenue Service issued a ruling letter that respondent qualified as a tax-exempt organization under the predecessor provision to § 501 (c)(3) of the Internal Revenue Code of 1954 (the Code), 26 U. S. C. § 501 (c) (3).<sup>1</sup> As a result, the Service treated contributions to

<sup>1</sup> The predecessor provision of Code § 501 (c)(3) was § 101 (6) of the Internal Revenue Code of 1939. Section 501 (c)(3) describes the following as organizations exempt from federal income taxes by virtue of § 501 (a):

"Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literacy or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying

**March 11, 1974**

**No. 72-1371 Alexander v. "Americans United"**

**Dear Harry:**

**Please take as long as you like with your dissent.  
There is no reason to rush or to feel under any pressure.**

**Sincerely,**

**Mr. Justice Blackmun**

**LFP/gg**

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

P. 10

**SUPREME COURT OF THE UNITED STATES**

Powell, J.

No. 72-1371

Circulated:

Recirculated:

**MAR 15 1974**

Donald C. Alexander, Commissioner of Internal Revenue, Petitioner,  
 v.  
 "Americans United" Inc. et al.

On Writ of Certiorari  
 to the United States  
 Court of Appeals for  
 the District of Columbia Circuit.

[March —, 1974]

MR. JUSTICE POWELL delivered the opinion of the Court.

Respondent is a nonprofit, educational corporation organized under the laws of the District of Columbia as "Protestants and Other Americans United for Separation of Church and State." Its purpose is to defend and maintain religious liberty in the United States by the dissemination of knowledge concerning the constitutional principle of the separation of church and State. In 1950, the Internal Revenue Service issued a ruling letter that respondent qualified as a tax-exempt organization under the predecessor provision to § 501 (c)(3) of the Internal Revenue Code of 1954 (the Code), 26 U. S. C. § 501 (c) (3).<sup>1</sup> As a result, the Service treated contributions to

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P.10

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

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

From: Powell, J.

Circulated:

No. 72-1371

Recirculated: APR 19 1974

Donald C. Alexander, Commissioner of Internal Revenue, Petitioner,  
v.  
"Americans United" Inc.

On Writ of Certiorari  
to the United States  
Court of Appeals for  
the District of Columbia Circuit.

(April — 1974)

MR. JUSTICE POWELL delivered the opinion of the Court.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 15, 1974

Re: No. 72-1371 - Alexander v. "Americans United"

Dear Lewis:

Please join me in your opinion for the Court.

Sincerely,

*WW*

Mr. Justice Powell

Copies to the Conference