

The Burger Court Opinion Writing Database

Bob Jones University v. Simon
416 U.S. 725 (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

May 8, 1974

Re: 72-1470 - Bob Jones University v. Shultz

Dear Lewis:

Please join me.

Regards,

WRB

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

March 8, 1971

Dear Lewis:

In 72-1470, Bob Jones University
v. Shultz and in 72-1371, Alexander v.
Americans United please note that I took
no part in the decision of the cases.
As your records will show, I did not vote
on the merits and will not.


WILLIAM O. DOUGLAS

Mr. Justice Powell
cc: The Conference

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

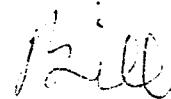
CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. March 11, 1974

RE: No. 72-1470 Bob Jones University v.
George P. Shultz, et al.

Dear Lewis:

I agree.

Sincerely,



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. 72-1470, Bob Jones University v.
Shultz

Dear Lewis,

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

Sincerely yours,

?S.
P.

Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20530

CHAMBERS OF
JUSTICE BYRON R. WHITE

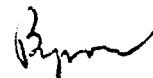
March 14, 1974

Re: No. 72-1470 - Bob Jones University v.
Shultz

Dear Lewis:

Join me, please.

Sincerely,



Mr. Justice Powell

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 11, 1974

Re: No. 72-1470 -- Bob Jones University v. Shultz

Dear Lewis:

Please join me.

Sincerely,

J. M.
T. M.

Mr. Justice Powell

cc: The Conference

To: The United States
Mr. Justice Douglass
Mr. Justice Gray
Mr. Justice Harlan
Mr. Justice Miller
Mr. Justice Peckham
Mr. Justice Sutherland
Mr. Justice Shiras

1st DRAFT

From: [Singer](#)

ATES Circulation

4/17/13

No. 72-1470

Recirculation

Bob Jones University,
Petitioner,
v.
George P. Shultz, Secretary
of Treasury, et al. } On Writ of Certiorari to
the United States Court
of Appeals for the Fourth
Circuit.

[April —, 1974]

MR. JUSTICE BLACKMUN, concurring in the result.

I concur in the Court's judgment and agree with much of the reasoning in its opinion for this case. As the Court notes, *ante*, pp. 12-13, the University's obtaining an injunction would directly prevent the collection of what it says are \$750,000 in income tax for 1971 and of over \$500,000 for 1972. On the basis of this fact alone, the "purpose" of the suit is indeed to restrain "the assessment and collection of [a] tax," and brings 26 U. S. C. § 7421 (a) into play.

Since the anti-injunction statute is applicable, we must consider whether the University comes within the statute's exception recognized in *Enochs v. Williams Packing & Navigation Co.*, 370 U. S. 1 (1962). As to this, I join Part IV of the Court's opinion to the effect that it has not been shown that "under no circumstances could the Government ultimately prevail." *Id.*, at 7.

*V.F.P.
Petition for
Review filed*

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

Circulated: MAR 8 1974

No. 72-1470

Recirculated: _____

Bob Jones University,
Petitioner,
v.
George P. Shultz, Secretary
of Treasury et al.

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

(March --, 1974)

MR. JUSTICE POWELL delivered the opinion of the Court.

This case and *Alexander v. "Americans United" Inc.* post, p. --, involve the application of the Anti-Injunction Act, § 7421 (a) of the Internal Revenue Code of 1954 (the Code), 26 U. S. C. § 7421 (a), to the ruling letter program of the Internal Revenue Service (the Service) for organizations claiming tax-exempt status under Code § 501 (c)(3), 26 U. S. C. § 501 (c)(3). The question presented is whether, prior to the assessment and collection of any tax, a court may enjoin the Service from revoking a ruling letter declaring that petitioner qualifies for tax-exempt status and from withdrawing advance assurance to donors that contributions to petitioner will constitute charitable deductions under Code § 170 (e)(2), 26 U. S. C. § 170 (e)(2). We hold that it may not.

Section 501 (a) of the Code exempts from federal income taxes organizations described in § 501 (c)(3). The latter provision encompasses:

"Corporations, and any community chest, fund, or foundation, organized and operated exclusively for

pp 7, 17, 20, 21, 22, 24

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brenn
Mr. Justice Stewa
Mr. Justice White
Mr. Justice Marsh
Mr. Justice Black
Mr. Justice Rehnq

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

Circulated:

No. 72-1470

Recirculated: MAR 18 197

Bob Jones University,
Petitioner, } On Writ of Certiorari to
v. } the United States Court
George P. Shultz, Secretary } of Appeals for the Fourth
of Treasury, et al. } Circuit.

[March —, 1974]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case and *Alexander v. "Americans United" Inc.*, *post*, p. —, involve the application of the Anti-Injunction Act, § 7421 (a) of the Internal Revenue Code of 1954 (the Code), 26 U. S. C. § 7421 (a), to the ruling letter program of the Internal Revenue Service (the Service) for organizations claiming tax-exempt status under Code § 501 (c)(3), 26 U. S. C. § 501 (c)(3). The question presented is whether, prior to the assessment and collection of any tax, a court may enjoin the Service from revoking a ruling letter declaring that petitioner qualifies for tax-exempt status and from withdrawing advance assurance to donors that contributions to petitioner will constitute charitable deductions under Code § 170 (c)(2), 26 U. S. C. § 170 (c)(2). We hold that it may not.

I

Section 501 (a) of the Code exempts from federal income taxes organizations described in § 501 (c)(3). The latter provision encompasses:

"Corporations, and any community chest, fund, or foundation, organized and operated exclusively for

*Check
charges*

3rd DRAFT

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

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

No. 72-1470

Circulated:

Recirculated: APR 19 1974

Bob Jones University,
Petitioner,
v.
George P. Shultz, Secretary
of Treasury et al.

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

[March — 1974]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case and *Alexander v. "Americans United" Inc.*, post, p. —, involve the application of the Anti-Injunction Act, § 7421 (a) of the Internal Revenue Code of 1954 (the Code), 26 U. S. C. § 7421 (a), to the ruling letter program of the Internal Revenue Service (the Service) for organizations claiming tax-exempt status under Code § 501 (c)(3), 26 U. S. C. § 501 (c)(3). The question presented is whether, prior to the assessment and collection of any tax, a court may enjoin the Service from revoking a ruling letter declaring that petitioner qualifies for tax-exempt status and from withdrawing advance assurance to donors that contributions to petitioner will constitute charitable deductions under Code § 170 (c)(2), 26 U. S. C. § 170 (c)(2). We hold that it may not.

Section 501 (a) of the Code exempts from federal income taxes organizations described in § 501 (c)(3). The latter provision encompasses:

"Corporations, and any community chest, fund, or foundation, organized and operated exclusively for

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 14, 1974

No. 73-170 Crenshaw County Private School
Foundation v. Simon (Cert to CA5)

MEMORANDUM TO THE CONFERENCE:

This petition has been held for Bob Jones University v. Simon, No. 72-1470 and Alexander v. Americans United, No. 72-1371, opinions handed down on May 15, 1974. Under these opinions, the petition should be denied.

Petitioner, a nonprofit educational corporation, brought suit in USDC seeking to enjoin the IRS from withdrawing a ruling letter declaring that petitioner qualified as a charitable organization exempt from income taxation under IRC § 501(c)(3). The Service threatened to revoke tax-exempt status on the ground that petitioner discriminated on the basis of race in admitting students. Petitioner alleged irreparable injury in the form of irretrievably lost contributions if it were forced to resort to post-revocation procedures to recover its ruling letter. The USDC denied relief on the basis of Enochs v. Williams Packing Co., 370 U.S. 1 (1962). CA 5 affirmed on the same ground.

Petitioner does not allege that revocation of its ruling will subject it to income tax. Its suit is addressed to the impact of the IRS' actions on its contributors and on the flow of contributions to it. The case is therefore on all fours with Alexander v. Americans United.

L. F. P.
L.F.P., Jr.

ss

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 15, 1974

Re: No. 72-1470 - Bob Jones University v. Shultz

Dear Lewis:

Please join me in your opinion for the Court.

Sincerely,

WR

Mr. Justice Powell

Copies to the Conference