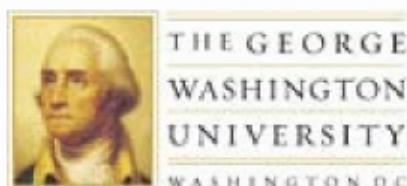


The Burger Court Opinion Writing Database

Austin v. New Hampshire

420 U.S. 656 (1975)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

150-A

March 13, 1975

Re: No. 73-2060 - Austin v. New Hampshire

Dear Thurgood:

I join in your proposed opinion dated
March 11, 1975.

Regards,

Wm. B.

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 6, 1975

RE: No. 73-2060 Austin v. New Hampshire

Dear Thurgood:

I agree.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 5, 1975

No. 73-2060 - Austin v. New Hampshire

Dear Thurgood,

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

Sincerely yours,

P.S.
P.S.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 6, 1975

Re: No. 73-2060 - Austin v. New Hampshire

Dear Thurgood:

Please join me.

Sincerely,

Byron

Mr. Justice Marshall

Copies to Conference

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

From: Marshall, J.

Circulated: MAR 4 1975

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-2060

Carl M. Austin et al.,
Appellants,
v.
State of New Hampshire
et al. } On Appeal from the Supreme
Court of New Hampshire.

[March —, 1975]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Appellants are residents of Maine who were employed in New Hampshire during the 1970 tax year and as such were subject to the New Hampshire Commuters Income Tax. On behalf of themselves and others similarly situated, they petitioned the New Hampshire Superior Court for a declaration that the tax violates the Privileges and Immunities and Equal Protection Clauses of the Constitutions of New Hampshire and of the United States. The cause was transferred directly to the New Hampshire Supreme Court, which upheld the tax. 114 N. H. 137, 316 A. 2d 165 (1974). We noted probable jurisdiction of the federal constitutional claims, — U. S. — (Oct. 15, 1974), and on the basis of the Privileges and Immunities Clause of Art. IV, we now reverse.

I

The New Hampshire Commuters Income Tax imposes a tax on nonresidents' New Hampshire derived income in excess of \$2,000.¹ The tax rate is 4% except that if the

¹ N. H. Rev. Stat. Ann. § 77-B:2 II provides:

"A tax is hereby imposed upon every taxable nonresident, which

W. W. Dagle
cc: 74

P. 9
10
12

Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Marshall, J.

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Recirculated: MAR 11 197

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-2060

Carl M. Austin et al.,
Appellants,
v.
State of New Hampshire
et al. } On Appeal from the Supreme
Court of New Hampshire.

[March —, 1975]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

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"A tax is hereby imposed upon every taxable nonresident, which

Wm. O. Dugay
Oct 17/77

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

From: Blackmun, J.

Circulated: 3/5/75

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 73-2060

Carl M. Austin et al.,
Appellants,
v.
State of New Hampshire
et al.

On Appeal from the Supreme
Court of New Hampshire.

[February —, 1975]

MR. JUSTICE BLACKMUN, dissenting.

For me, this is a noncase. I would dismiss the appeal for want of a substantial federal question. We have far more urgent demands upon our limited time than this kind of litigation.

Because the New Hampshire income tax statutes operate in such a way that no New Hampshire resident is ultimately subjected to the State's income tax, the case at first glance appears to have some attraction. That attraction, however, is superficial and, upon careful analysis, promptly fades and disappears entirely. The reason these appellants, who are residents of Maine, not of New Hampshire, pay a New Hampshire tax is because the Maine Legislature—the appellants' own duly elected representatives—has given New Hampshire the option to divert this increment of tax (on a Maine resident's income earned in New Hampshire) from Maine to New Hampshire, and New Hampshire willingly has picked up that option. All that New Hampshire has done is what Maine specifically permits and, indeed, invites it to do. If Maine should become disenchanted with its bestowed bounty, its legislature may change the Maine statute. The crux is the statute of Maine, not the statute of New Hampshire. The appellants, therefore, are really com-

Supreme Court of the United States
Washington, D. C. 20542

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 6, 1975

No. 73-2060 Austin v. New Hampshire

Dear Thurgood:

Please join me.

Sincerely,

Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 10, 1975

Re: No. 73-2060 - Austin v. New Hampshire

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to the Conference