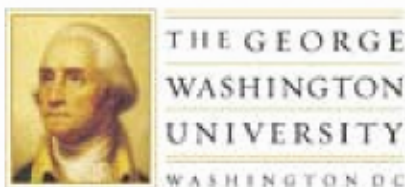


# The Burger Court Opinion Writing Database

## *Boston Stock Exchange v. State Tax Commission*

429 U.S. 318 (1977)

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

January 6, 1977

Re: 75-1019 Boston Stock Exchange v. State Tax Commission

Dear Byron:

I join.

Regards,

WRB

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 27, 1976

RE: No. 75-1019 Boston Stock Exchange et al. v.  
State Tax Commission, et al.

Dear Byron:

I agree.

Sincerely,

*Bill*

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 3, 1977

No. 75-1019, Boston Stock Exchange  
v. State Tax Comm'n

Dear Byron,

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

Sincerely yours,

PS,  
1/

Mr. Justice White

Copies to the Conference

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

From: Mr. Justice White

Circulated: 12-22-76

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-1019

Boston Stock Exchange et al.,	} On Appeal from the Court of Appeals of New York.
Appellants,	
v.	
State Tax Commission et al.	

[January —, 1977]

MR. JUSTICE WHITE delivered the opinion of the Court.

In this case we are asked to decide the constitutionality of a recent amendment to New York State's longstanding tax on securities transactions. Since 1905, New York has imposed a tax ("transfer tax") on securities transactions, if part of the transaction occurs within the State. In 1968, the state legislature amended the transfer tax statute so that transactions involving an out-of-state sale are now taxed more heavily than most transactions involving a sale within the State. In 1972, appellants, six "regional" stock exchanges located outside New York,<sup>1</sup> filed an action in state court against the State Tax Commission of New York and its members. The Exchanges' complaint alleged that the 1968 amendment unconstitutionally discriminates against interstate commerce by imposing a greater tax burden on securities transactions involving out-of-state sales than on transactions of the same magnitude involving in-state sales.<sup>2</sup> The

<sup>1</sup> Appellants are the Boston Stock Exchange, Detroit Stock Exchange, Pacific Coast Stock Exchange, Cincinnati Stock Exchange, Midwest Stock Exchange, and the PBW (Philadelphia-Baltimore-Washington) Stock Exchange. The Exchanges provide facilities for their members to effect the purchase and sale of securities for their own accounts and the accounts of their customers.

<sup>2</sup> In the courts below the Exchanges also contended that the amendment to the transfer tax was unconstitutional under the Privileges and

STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 4, 12, 13, 14,

15 & 16

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice Marshall ✓  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Burger ✓  
 Mr. Justice Stevens

2nd DRAFT

From: Mr. Justice White

SUPREME COURT OF THE UNITED STATES

Circulated: \_\_\_\_\_

Recirculated: 12-28-76

No. 75-1019

Boston Stock Exchange et al.,	} On Appeal from the Court of Appeals of New York.
Appellants,	
v.	
State Tax Commission et al.	

[January —, 1977]

MR. JUSTICE WHITE delivered the opinion of the Court.

In this case we are asked to decide the constitutionality of a recent amendment to New York State's longstanding tax on securities transactions. Since 1905, New York has imposed a tax ("transfer tax") on securities transactions, if part of the transaction occurs within the State. In 1968, the state legislature amended the transfer tax statute so that transactions involving an out-of-state sale are now taxed more heavily than most transactions involving a sale within the State. In 1972, appellants, six "regional" stock exchanges located outside New York,<sup>1</sup> filed an action in state court against the State Tax Commission of New York and its members. The Exchanges' complaint alleged that the 1968 amendment unconstitutionally discriminates against interstate commerce by imposing a greater tax burden on securities transactions involving out-of-state sales than on transactions of the same magnitude involving in-state sales.<sup>2</sup> The

<sup>1</sup> Appellants are the Boston Stock Exchange, Detroit Stock Exchange, Pacific Coast Stock Exchange, Cincinnati Stock Exchange, Midwest Stock Exchange, and the PBW (Philadelphia-Baltimore-Washington) Stock Exchange. The Exchanges provide facilities for their members to effect the purchase and sale of securities for their own accounts and the accounts of their customers.

<sup>2</sup> In the courts below the Exchanges also contended that the amendment to the transfer tax was unconstitutional under the Privileges and

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 5-6, 18

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice White  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: \_\_\_\_\_

Recirculated: 1-7-77

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-1019

Boston Stock Exchange et al.,	} On Appeal from the Court of Appeals of New York.
Appellants,	
v.	
State Tax Commission et al.	

[January —, 1977]

MR. JUSTICE WHITE delivered the opinion of the Court.

In this case we are asked to decide the constitutionality of a recent amendment to New York State's longstanding tax on securities transactions. Since 1905, New York has imposed a tax ("transfer tax") on securities transactions, if part of the transaction occurs within the State. In 1968, the state legislature amended the transfer tax statute so that transactions involving an out-of-state sale are now taxed more heavily than most transactions involving a sale within the State. In 1972, appellants, six "regional" stock exchanges located outside New York,<sup>1</sup> filed an action in state court against the State Tax Commission of New York and its members. The Exchanges' complaint alleged that the 1968 amendment unconstitutionally discriminates against interstate commerce by imposing a greater tax burden on securities transactions involving out-of-state sales than on transactions of the same magnitude involving in-state sales.<sup>2</sup> The

<sup>1</sup> Appellants are the Boston Stock Exchange, Detroit Stock Exchange, Pacific Coast Stock Exchange, Cincinnati Stock Exchange, Midwest Stock Exchange, and the PBW (Philadelphia-Baltimore-Washington) Stock Exchange. The Exchanges provide facilities for their members to effect the purchase and sale of securities for their own accounts and the accounts of their customers.

<sup>2</sup> In the courts below the Exchanges also contended that the amendment to the transfer tax was unconstitutional under the Privileges and

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 27, 1976

Re: No. 75-1019, Boston Stock Exchange v. State Tax Commission

Dear Byron:

Please join me.

Sincerely,

  
T. M.

Mr. Justice White

cc: The Conference



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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 7, 1977

Re: No. 75-1019 - Boston Stock Exchange v. State Tax  
Commission

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Dear Byron:

Please join me.

Sincerely,

*Harry*

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Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 28, 1976

No. 75-1019 Boston Stock Exchange v.  
State Tax Commission

Dear Byron:

Please join me.

Sincerely,

*Lewis*

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

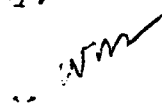
December 30, 1976

Re: No. 75-1019 - Boston Stock Exchange v. State Tax  
Commission

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

December 22, 1976

Re: 75-1019 - Boston Stock Exchange v. State  
Tax Commission

Dear Byron:

Please join me.

Respectfully,



Mr. Justice White

Copies to the Conference