

The Burger Court Opinion Writing Database

National Geographic Society v. California Board of Equalization

430 U.S. 551 (1977)

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



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

CHAMBERS OF
THE CHIEF JUSTICE

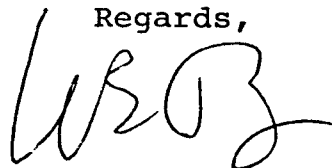
March 29, 1977

RE: 75-1868 - National Geographic Society v.
California Board of Equalization

Dear Bill:

At the end of your opinion, I would appreciate
your noting that I took no part in the consideration
or decision of this case.

Regards,



Mr. Justice Brennan

Copies to the Conference

To: The Chief Justice
Mr. Justice Lamer
Mr. Justice Gauthier
Mr. Justice LeBel
Mr. Justice Deschamps
Mr. Justice Binnie
Mr. Justice Rothstein
Mr. Justice Karakatsani

3/25/77

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1868

National Geographic Society,
Appellant,
v.
California Board of
Equalization.

On Appeal from the Supreme
Court of California.

[March —, 1977]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Appellant National Geographic Society, a nonprofit scientific and educational corporation of the District of Columbia, maintains two offices in California that solicit advertising copy for the Society's monthly magazine, the "National Geographic Magazine." However, the offices perform no activities related to the Society's operation of a mail order business for the sale from the District of Columbia of maps, atlases, globes and books. Orders for these items are mailed from California directly to appellant's Washington, D. C., headquarters on coupons or forms enclosed with announcements mailed to Society members and magazine subscribers or on order forms contained in the Magazine. Deliveries are made by mail from the Society's Washington, D. C., or Maryland offices. Payment is either by cash mailed with the order or after a mailed billing following receipt of the merchandise. Such mail order sales to California residents during the period involved in this suit aggregated \$83,596.48.

California Taxation and Revenue Code § 6203 requires every “retailer engaged in business in this state and making sales of tangible personal property for storage, use or other consumption in this state” to collect from the purchaser a

To: The Chief Justice
Mr. Justice Gauthier
Mr. Justice Wilson
Mr. Justice Lamer
Mr. Justice La Forest
Mr. Justice Gonthier
Mr. Justice Binnie
Mr. Justice Deschamps
Mr. Justice LeBel
Mr. Justice Rothstein
Mr. Justice Souter
Mr. Justice Alito
Mr. Justice Kennedy
Mr. Justice Stevens
Mr. Justice Ginsburg
Mr. Justice Breyer
Mr. Justice Sotomayor
Mr. Justice Kagan
Mr. Justice Thomas
Mr. Justice Scalia
Mr. Justice Roberts
Mr. Justice Chief Justice

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California Taxation and Revenue Code § 6203 requires every “retailer engaged in business in this state and making sales of tangible personal property for storage, use or other consumption in this state” to collect from the purchaser a

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 13, 1977

MEMORANDUM TO THE CONFERENCE

RE: Case Held for No. 75-1868 National Geographic v. California Board of Equalization

No. 76-968 Popular Science Publishing Co. v. California Board of Equalization

The facts in this case are substantially similar to those in National Geographic. Appellant, Popular Science, is a New York corporation maintaining its principal place of business in New York. During 1965, appellant published the monthly magazines "Popular Science" and "Outdoor Life" and also sponsored the Popular Science Book Club and the Outdoor Life Book Club which periodically offered book club members books dealing with subjects similar to those treated in the two magazines. Book club memberships were solicited entirely by mail from New York, and book sales in California were made from orders sent to New York in response to brochures mailed to members, including Californians. Appellant also maintained a separate division which produced and sold instructional films and other educational aids,

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 28, 1977

Re: No. 75-1868, National Geographic Soc.
v. Equalization Board

Dear Bill,

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

Sincerely yours,

PS,
✓

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 29, 1977

Re: No. 75-1868 - National Geographic Society
v. California Board
of Equalization

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 28, 1977

Re: No. 75-1868, National Geographic Society v. California Board
of Equalization

Dear Bill:

Please join me.

Sincerely,

TM
T.M.

Mr. Justice Brennan

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: 3/29/77

Recirculated: _____

No. 75-1868 - National Geographic Society v. Equalization Board

MR. JUSTICE BLACKMUN, concurring in the result.

I am not at all convinced that the Court's facile distinction of Miller Bros. Co. v. Maryland, 347 U.S. 340 (1954), on the ground that in that case "the seller obviously could not know whether the goods sold over-the-counter in Delaware were transported to Maryland prior to their use," ante, p. 8, and that there was a "lack of certainty there that the merchandise sold over-the-counter to Maryland customers in Delaware was ever transported to Maryland prior to its use," ante, p. 10, is a proper and acceptable distinction. I thought that one of the factual difficulties of Miller, in the focus of the present case, was the Delaware seller's own delivery of goods to Maryland, some by common carrier and some by the seller's own truck. 347 U.S., at 341 and 342. For example, Miller Bros. stipulated that over a four-and-a-half year period, it used its own truck to deliver approximately \$8,000 worth of goods to customers in Maryland.

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

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 4/1/77

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1868

National Geographic Society,
 Appellant,
 v.
 California Board of
 Equalization.

On Appeal from the Supreme
 Court of California.

[April —, 1977]

MR. JUSTICE BLACKMUN, concurring in the result.

I am not at all convinced that the Court's facile distinction of *Miller Bros. Co. v. Maryland*, 347 U. S. 340 (1954), on the ground that in that case "the seller obviously could not know whether the goods sold over-the-counter in Delaware were transported to Maryland prior to their use," *ante*, p. 8, and that there was a "lack of certainty there that the merchandise sold over-the-counter to Maryland customers in Delaware was transported to Maryland prior to its use," *ante*, p. 10-11, is a proper and acceptable distinction. I thought that one of the factual difficulties of *Miller*, in the focus of the present case, was the Delaware seller's own *delivery* of goods to Maryland, some by common carrier and some by the seller's own truck. 347 U. S., at 341 and 342. Indeed, *Miller Bros.* stipulated that during the taxable period, it delivered or paid a common carrier to deliver \$9,500 worth of merchandise to customers in Maryland (\$8,000 through use of its truck, \$1,500 by common carrier). *Id.*, at 350-351. *Miller Bros.* exhibited no uncertainty as to the destination of those goods.

The Court appears to find an additional distinction in the fact that the goods in *Miller Bros.* were "sold to residents of Maryland at Miller's Delaware store," *ante*, p. 10. If the Court intends thereby to rest a distinction on the fact that the sales were made out-of-State, I am at a loss to follow its

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

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CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 1, 1977

No. 75-1868 National Geographic Society v.
California Board of Equalization

Dear Bill:

Please join me.

Sincerely,

L. F. Powell

Mr. Justice Brennan

Copies to the Conference

LFP/lab

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 28, 1977

Re: 75-1868 - National Geographic Society
v. California Board of Equalization

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Brennan

Copies to the Conference