

# The Burger Court Opinion Writing Database

## *Board of Governors, FRS v. Investment Company Institute*

450 U.S. 46 (1981)

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

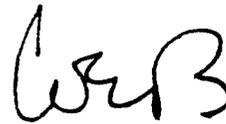
February 2, 1981

RE: 79-927 - Board of Governors of the Federal Reserve System  
v. Investment Company Institute

Dear John:

I join.

Regards,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

January 6, 1981

RE: No. 79-927 Board of Governors of the Federal  
Reserve System v. Investment Company Institute

Dear John:

I agree.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 5, 1981

Re: No. 79-927, Gobs., FRS v. Investment  
Co. Inst.

Dear John,

Please note the following at the foot of  
your opinion for the Court:

Justice Stewart took no part in the  
consideration or decision of this  
case.

Sincerely yours,

*P.S.*

Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 7, 1981

Re: 79-927 - Board of Governors of  
the Federal Reserve System v.  
Investment Company Institute

Dear John,

Please join me.

Sincerely yours,



Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 26, 1981

Re: No. 79-927 - Board of Governors v. Investment  
Company Institute

Dear John;

Please join me.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 12, 1981

Re: No. 79-927 - Board of Governors v. Investment Company Institute

Dear John:

My dissent in Investment Company Institute v. Camp necessarily prompts my vote here to reverse. I therefore am glad to join your opinion.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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79-927

I read my law book

Supreme Court of the United States

Memorandum

Sept 8 1907

Harry:

I am not sure of answer to your question. If the Fund itself, in which I owned shares, were a party here I think I would recuse.

Here, as I understand it, Resp. is a trade association serving the industry. I would

not dis-  
guise  
U.S. Chamber of  
Commerce on the  
Nat. Mfg. Assoc  
were a party.

I think I will  
listen to argument &  
decide later whether to  
withdraw. If we  
both ~~would~~ need,  
them will be no  
problem. But in view  
of what WHP said, I  
do want to take a  
final look.

Lewis

We might discuss this

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

October 15, 1980

79-927 Board of Governors of Federal Reserve System  
v. Investment Company Institute

Dear Chief:

It had not occurred to me that there may be a reason to disqualify in this case until Bill Rehnquist stated, just as we were going on the bench after lunch, his reason for disqualification.

The only party before us is Investment Company Institute. I had thought that it was analogous to the National Manufacturers Association, the National Chamber of Commerce and other large trade associations. Although I do not recall a specific case, I would not have thought disqualification was required when only such an association is the party. A contrary view, pushed to its limit, would require many federal judges owning corporate securities to disqualify whenever the U.S. Chamber of Commerce (for example) is a party, as it has thousands of members.

In any event, since returning to my Chambers this afternoon I have been in touch with our bank in Richmond with the following result. Some of our funds are invested in Federal Tax Free Money Market Trust, used primarily (I am told) as a reservoir for uninvested funds, yielding a high tax-free return. Our bank, after investigation, has just informed me that this trust is a member of Investment Company Institute. Accordingly, I will not participate in any further consideration or in the decision of this case.

One bank stated that the one closed end investment company that we hold is not a member of this institute. It could be argued, I suppose, that since there is competition between the closed and open end companies, this also would disqualify me. But I do not have to reach that question. The disqualification ramifications, unless lines are drawn at some rational point, will present increasingly serious

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problems for the federal courts. The sale of all corporate securities owned would not resolve the problem where a judge or his wife (or a minor child) is an income beneficiary of a trust. The problem arising from trust income would remain. I have been told that if one relinquishes his right to receive income to which he is legally entitled, it would be treated by the IRS as a gift to the other beneficiaries.

One may hope that the Committee of the Judicial Conference that you appointed to study this problem will come up with some helpful recommendations that Congress may be willing to accept.

Sincerely,

*Lewis*

The Chief Justice

cc: The Conference

lfp/ss

Supreme Court of the United States  
Memorandum

....., 19 .....

If IDF or MIT held  
stock in SOCAL (this case)  
I would not be disqualified -  
but IDF & MIT are members of  
the Assoc which is itself  
petitioner in this case - or  
think that is different

WHR

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 6, 1981

79-927 Board of Governors v. Investment Company Institute

Dear John:

Please show on the next draft of your opinion that I took no part in the decision of this case.

Sincerely,



Mr. Justice Stevens

lfp/ss

cc: The Confernce

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 6, 1981

Re: No. 79-927, Govs., FRS v. Investment Co. Inst.

Dear John:

Please note the following at the foot of your  
opinion for the Court:

Justice Rehnquist took no part in the  
consideration or decision of this case.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

to Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: JAN 5 '81

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

~~2nd~~  
1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 79-927

Board of Governors of the Federal Reserve System, Petitioner, v. Investment Company Institute.	}	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.
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[January —, 1981]

JUSTICE STEVENS delivered the opinion of the Court.

In 1956 Congress enacted the Bank Holding Company Act to control the future expansion of bank holding companies and to require divestment of their nonbanking interests.<sup>1</sup> The Act, however, authorizes the Federal Reserve Board (the Board) to allow holding companies to acquire or retain ownership in companies whose activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto."<sup>2</sup> In 1972 the Board amended its

<sup>1</sup> The stated purpose of the Bank Holding Company Act of 1956 was "to define bank holding companies, control their future expansion, and require divestment of their nonbanking interests." 70 Stat. 133.

<sup>2</sup> Section 4 of the statute as originally enacted provided, in pertinent part:

"(a) Except as otherwise provided in this Act, no bank holding company shall—

"(1) after the date of enactment of this Act acquire direct or indirect ownership or control of any voting shares of any company which is not a bank, or . . .

"(c) The prohibitions in this section shall not apply—

"(6) to shares of any company all the activities of which are of a financial, fiduciary, or insurance nature and which the Board after due notice and hearing, and on the basis of the record made at such hearing, by order

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

7. 14, 31

*Stylistic changes*

From: Mr. Justice Stevens

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

2nd

~~2nd~~ DRAFT

Recirculated: JAN 23 '81

## SUPREME COURT OF THE UNITED STATES

No. 79-927

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