

The Burger Court Opinion Writing Database

*St. Martin Evangelical Lutheran Church v.
South Dakota*
451 U.S. 772 (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

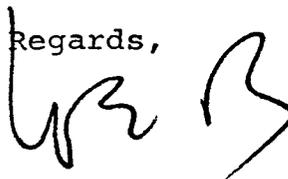
May 20, 1981

Re: No. 80-120 St. Martin Evangelical Lutheran
Church & Northwestern Lutheran Academy v.
South Dakota

Dear Harry:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'W. B.', written in a cursive style.

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 19, 1981

RE: No. 80-120 St. Martin Church v. South Dakota

Dear Harry:

I agree.

Sincerely,

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

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 30, 1981

Re: No. 80-120, St. Martin Lutheran Church
v. South Dakota

Dear Harry,

I am glad to join your opinion for the Court.

Sincerely yours,

D.S.
1.3.
—

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 30, 1981

Re: 80-120 - St. Martin
Evangelical Lutheran Church and
Northwestern Academy v. South Dakota

Dear Harry,

Please join me.

Sincerely yours,



Justice Blackmun

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 12, 1981

Re: No. 80-120- St. Martin Evangelical Lutheran
Church v. State of South Dakota

Dear Harry:

Please join me.

Sincerely,



T.M.

Justice Blackmun

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: APR 29 1981

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-120

St. Martin Evangelical Lutheran
 Church and Northwestern
 Lutheran Academy,
 Petitioners,
 v.
 State of South Dakota.

On Writ of Certiorari to
 the Supreme Court of
 South Dakota.

[May —, 1981]

JUSTICE BLACKMUN delivered the opinion of the Court.

Petitioners, St. Martin Evangelical Lutheran Church (St. Martin), at Watertown, S. D., and Northwestern Lutheran Academy (Academy), at Mobridge in that State, claim exemption with respect to their school employees from taxes imposed by the Federal Unemployment Tax Act (FUTA), 26 U. S. C. §§ 3301-3311 (1976 ed. and Supp. III), and by South Dakota's statutes complementary thereto, S. D. Comp. Laws Ann. § 61-1-1 *et seq.* (1978 rev. and 1980 Supp.). The exemption is claimed on both statutory and First Amendment grounds. The provisions primarily at issue are FUTA's § 3309 (b)¹ and South Dakota's § 61-1-10.4.²

¹Title 26 U. S. C. § 3309 (b) reads in pertinent part:

"This section shall not apply to service performed—

"(1) in the employ of (A) a church or convention or association of churches, or (B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

"(2) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order. . . ."

[Footnote 2 is on p. 2]

STYLISTIC CHANGES

and pp. 8, 10, 11, 15, 16

See...

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: APR 30 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-120

St. Martin Evangelical Lutheran
Church and Northwestern
Lutheran Academy,
Petitioners,
v.
State of South Dakota.

On Writ of Certiorari to
the Supreme Court of
South Dakota.

[May —, 1981]

JUSTICE BLACKMUN delivered the opinion of the Court.

Petitioners, St. Martin Evangelical Lutheran Church (St. Martin), at Watertown, S. D., and Northwestern Lutheran Academy (Academy), at Mobridge in that State, claim exemption with respect to their school employees from taxes imposed by the Federal Unemployment Tax Act (FUTA), 26 U. S. C. §§ 3301-3311 (1976 ed. and Supp. III), and by South Dakota's statutes complementary thereto, S. D. Comp. Laws Ann. § 61-1-1 *et seq.* (1978 rev. and 1980 Supp.). The exemption is claimed on both statutory and First Amendment grounds. The provisions primarily at issue are FUTA's § 3309 (b)¹ and South Dakota's § 61-1-10.4.²

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"(2) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order. . . ."

[Footnote 2 is on p. 2]

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 26, 1981

MEMORANDUM TO THE CONFERENCE

Re: Holds for No. 80-120 - Saint Martin Evangelical
Lutheran Church v. South Dakota

There is only one hold for Saint Martin. It is No. 80-922, Marshall, Secretary v. Alabama and Nevada.

In this case, Alabama and Nevada decided, in contradistinction to South Dakota's action in St. Martin, not to tax parochial schools under FUTA, despite the Secretary of Labor's direction to do so. The Department of Labor then declined to certify the States' unemployment compensation plans, and they sought review in the Courts of Appeals. The proceedings were consolidated in the CA5, which ruled that many or most church-related schools continue to be exempt under 26 U.S.C. §3309(b)(1)(A) according to the statute's plain language because their employees are "in the employ" of a "church." Inasmuch as the CA5 adopted an analysis consonant with the Court's resolution of this issue in St. Martin, I shall vote to deny the petition for cert filed by the SG in this case.

H.A.B.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 30, 1981

80-120 St. Martin v. South Dakota

Dear Harry:

Please join me.

Sincerely,

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

Mr. Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 30, 1981

Re: No. 80-120 St. Martin Evangelical Lutheran
Church & Northwestern Lutheran Academy v. South Dakota

Dear Harry:

Please join me in your opinion for the Court.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 30, 1981

Re: 80-120 - St. Martin Evangelical Lutheran
Church and Northwestern Academy v.
South Dakota

Dear Harry:

Since I think the legislative history points in the other direction, I shall write briefly concurring in the judgment.

Respectfully,



Justice Blackmun

Copies to the Conference

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

From: Mr. Justice Stevens

Circulated: MAY 20 '81

Recirculated: _____

80-120 - St. Martin Evangelical Lutheran Church

& Northwestern Lutheran Academy v. South Dakota

JUSTICE STEVENS, concurring in the judgment.

The legislative history of the Unemployment Compensation Amendments of 1976, 90 Stat. 2670, persuades me that Congress did intend the repeal of 26 U.S.C. § 3309(b)(3) to remove the exemption from coverage under the Federal Unemployment Tax Act (FUTA) for all employees of private, nonprofit elementary and secondary schools. Not only do the Senate and House Committee Reports expressly so state,¹ but the estimate contained in the

¹ The House Report states:

"Section 115(b) also has the effect of requiring the State to pay unemployment compensation on the basis of services performed for all educational institutions. Under existing law, the State is only required to provide coverage of services performed for institutions of higher education." H.R. Rep. No. 94-755, 94th Cong., 1st Sess. 56 (1975).

See also *id.*, at 2, 6, 41. Similarly, the Senate Report provides:

"The bill would require the states to extend the coverage of their unemployment compensation programs to employees of nonprofit elementary and secondary schools

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

From: Mr. Justice Stevens

Circulated: _____

Recirculated: MAY 21 1981

PP 1-2

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-120

St. Martin Evangelical Lutheran
 Church and Northwestern
 Lutheran Academy,
 Petitioners,
 v.
 State of South Dakota

On Writ of Certiorari to
 the Supreme Court of
 South Dakota.

[May —, 1981]

JUSTICE STEVENS, concurring in the judgment,

The legislative history of the Unemployment Compensation Amendments of 1976, 90 Stat. 2667, persuades me that Congress did intend the repeal of 26 U. S. C. § 3309 (b)(3) to remove the exemption from coverage under the Federal Unemployment Tax Act (FUTA) for all employees of private, nonprofit elementary and secondary schools. Not only do the Senate and House Committee Reports expressly so state,¹ but the estimate contained in the Senate Report of the

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"Section 115 (b) also has the effect of requiring the State to pay unemployment compensation on the basis of services performed for all educational institutions. Under existing law, the State is only required to provide coverage of services performed for institutions of higher education." H. R. Rep. No. 94-755, 94th Cong., 1st Sess., 56 (1975).

See also *id.*, at 2, 6, 41. Similarly, the Senate Report provides:

"The bill would require the States to extend the coverage of their unemployment compensation programs to employees of nonprofit elementary and secondary schools (present law requires coverage for employees of institutions of higher education)." S. Rep. No. 94-1265, 94th Cong., 2d Sess., 2 (1976).

See also *id.*, at 7, 9-11.

In addition, the legislative history contains several references to the general congressional intention to extend the coverage of the FUTA to substantially all of the Nation's wage earners. See, *e. g.*, H. R. Rep. No.