

# The Burger Court Opinion Writing Database

## *United States v. American College of Physicians*

475 U.S. 834 (1986)

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



To: Justice Brennan  
Justice White ✓  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **The Chief Justice**

Circulated: APRIL 9, 1936

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-1737

UNITED STATES, PETITIONER *v.* AMERICAN  
COLLEGE OF PHYSICIANS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FEDERAL CIRCUIT

[April —, 1936]

CHIEF JUSTICE BURGER, concurring.

Most medical journals are not comparable to magazines and newspapers engaged in profit-making enterprises. Their purpose is to assemble and make available to the profession relevant information bearing on patient care. The enormous expansion of medical knowledge makes it difficult for a general practitioner—or even a specialist—to keep fully current with the latest developments. In a sense these journals provide continuing education for physicians—a correspondence course not sponsored for profit but public health.

There is a public value in the widest possible circulation of such data, and advertizing surely tends to reduce the cost of publication and hence the cost to each subscriber. Plainly a regulation recognizing these realities would be appropriate. Such regulations, of course, are for the Executive Branch and the Congress, not the courts. I join the opinion because it reflects a permissible reading of the present Treasury Regulations.

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To: Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **The Chief Justice**

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

Recirculated: **APR 11 1986**

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1737

UNITED STATES, PETITIONER *v.* AMERICAN  
COLLEGE OF PHYSICIANS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FEDERAL CIRCUIT

[April —, 1986]

CHIEF JUSTICE BURGER, with whom JUSTICE POWELL  
joins, concurring.

Most medical journals are not comparable to magazines and newspapers published for profit. Their purpose is to assemble and disseminate to the profession relevant information bearing on patient care. The enormous expansion of medical knowledge makes it difficult for a general practitioner—or even a specialist—to keep fully current with the latest developments without such aids. In a sense these journals provide continuing education for physicians—a “correspondence course” not sponsored for profit but public health.

There is a public value in the widest possible circulation of such data, and advertizing surely tends to reduce the cost of publication and hence the cost to each subscriber, thereby enhancing the prospect of wider circulation. Plainly a regulation recognizing these realities would be appropriate. Such regulations, of course, are for the Executive Branch and the Congress, not the courts. I join the opinion because it reflects a permissible reading of the present Treasury Regulations.

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 3, 1986

No. 84-1737

United States v. American  
College of Physicians

Dear Thurgood,

Please join me.

Sincerely,



Justice Marshall

Copies to the Conference



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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 7, 1986

84-1737 -

United States v. American  
College of Physicians

Dear Thurgood,

Please join me.

Sincerely yours,

Justice Marshall

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Marshall**

Circulated: APR 2 1986

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-1737

UNITED STATES, PETITIONER *v.* AMERICAN  
COLLEGE OF PHYSICIANS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FEDERAL CIRCUIT

[April —, 1986]

JUSTICE MARSHALL delivered the opinion of the Court.

A tax-exempt organization must pay tax on income that it earns by carrying on a business not "substantially related" to the purposes for which the organization has received its exemption from federal taxation. The question before this Court is whether respondent, a tax-exempt organization, must pay tax on the profits it earns by selling commercial advertising space in its professional journal, *The Annals of Internal Medicine*.

### I

Respondent, the American College of Physicians, is an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code.<sup>1</sup> The purposes of the College, as stated in its Articles of Incorporation, are to maintain high standards in medical education and medical practice; to encourage research, especially in clinical medicine; and to foster measures for the prevention of disease and for the improvement of public health. App. 16a. The principal facts were stipulated at trial. In furtherance of its exempt purposes, respondent publishes *The Annals of Internal Medicine* (An-

<sup>1</sup>26 U. S. C. § 501(c)(3) exempts from taxation entities "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes," with certain restrictions on their activities, including prohibition of political activity.

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Marshall**

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**STYLISTIC CHANGES THROUGHOUT**

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1737

UNITED STATES, PETITIONER *v.* AMERICAN  
COLLEGE OF PHYSICIANS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FEDERAL CIRCUIT

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Stylistic  
changes

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Marshall

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

Recirculated: **APR 18 1986**

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1737

UNITED STATES, PETITIONER *v.* AMERICAN  
COLLEGE OF PHYSICIANS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FEDERAL CIRCUIT

[April —, 1986]

JUSTICE MARSHALL delivered the opinion of the Court.

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<sup>1</sup>Title 26 U. S. C. § 501(c)(3) exempts from taxation entities "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes," with certain restrictions on their activities, including prohibition of political activity.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 4, 1986

Re: No. 84-1737, United States v.  
American College of Physicians

Dear Thurgood:

Please join me.

Sincerely,

Justice Marshall

cc: The Conference



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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 8, 1986

84-1737 United States v. American College of Physicians

Dear Thurgood:

Please join me.

Sincerely,

Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 10, 1986

84-1737 United States v. American College of Physicians

Dear Chief:

Please join me in your concurring opinion.

Sincerely,

*Lewis*

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 4, 1986

Re: 84-1737 - United States v. American College  
of Physicians

Dear Thurgood:

Please join me.

Sincerely,

*WHR*

Justice Marshall

: The Conference



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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 3, 1986

Re: 84-1737 - U.S. v. American College of  
Physicians

Dear Thurgood:

Please join me.

Respectfully,

Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

April 3, 1986

No. 84-1737 United States v. American  
College of Physicians

Dear Thurgood,

Please join me.

Sincerely,



Justice Marshall

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