

The Burger Court Opinion Writing Database

United States v. American Bar Endowment

477 U.S. 105 (1986)

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



5

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

CHAMBERS OF
THE CHIEF JUSTICE

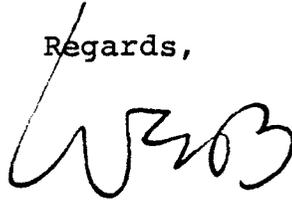
June 11, 1986

85-599 - U.S. v. American Bar Endowment

Dear Thurgood:

I join.

Regards,



Justice Marshall

Copies to the Conference

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


CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 3, 1986

No. 85-599

United States v. American
Bar Endowment, et al.

Dear Thurgood,

I agree.

Sincerely,

Bul

Justice Marshall

Copies to the Conference

W

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 30, 1986

85-599 - United States v.
American Bar Endowment

Dear Thurgood,

Please join me.

Sincerely yours,



Justice Marshall

Copies to the Conference

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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: MAY 29 1986

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-599

UNITED STATES, PETITIONER *v.* AMERICAN BAR
ENDOWMENT ET AL.

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

[June —, 1986]

JUSTICE MARSHALL delivered the opinion of the Court.

The first issue in this case is whether income that a tax-exempt charitable organization derives from offering group insurance to its members constitutes “unrelated business income” subject to tax under sections 511 through 513 of the Internal Revenue Code (Code), 26 U. S. C. §§511-513 (1982). The second issue is whether the organization’s members may claim a charitable deduction for the portion of their premium payments that exceeds the actual cost to the organization of providing insurance.

I

Respondent American Bar Endowment (ABE) is a corporation exempt from taxation under § 501(c)(3) of the Code, which, with certain exceptions not relevant here, exempts organizations “organized and operated exclusively for . . . charitable . . . or educational purposes.” ABE’s primary purposes are to advance legal research and to promote the administration of justice, and it furthers these goals primarily through the distribution of grants to other charitable and educational groups. All members of the American Bar Association (ABA) are automatically members of ABE. The ABA is exempt from taxation as a “business league” under § 501(c)(6).

P. 14

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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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-599

UNITED STATES, PETITIONER *v.* AMERICAN BAR
ENDOWMENT ET AL.

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

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Style changes throughout

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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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-599

UNITED STATES, PETITIONER *v.* AMERICAN BAR
ENDOWMENT ET AL.

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

[June —, 1986]

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ABE raises money for its charitable work by providing group insurance policies, underwritten by major insurance

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 3, 1986

Re: No. 85-599, United States v. American Bar Endowment

Dear Thurgood:

Please join me.

Sincerely,



Justice Marshall

cc: The Conference

*April
Argument*

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 9, 1986

MEMORANDUM TO THE CONFERENCE

85-599 United States v. American Bar Endowment

Since I served as President of the American Bar Founda-
tion, I will not participate in this case.

L.F.P.
L.F.P., JR.

cc - Joseph F. Spaniol, Jr.
Clerk of the Court

LFP/vde

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 29, 1986

85-599 United States v. American Bar Endowment

Dear Thurgood:

Please add at the end of the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

Lewis

Justice Marshall

lfp/ss

cc: The Conference



CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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

May 30, 1986

Re: No. 85-599 United States v. American Bar Endowment

Dear Thurgood,

Please join me.

Sincerely,

Wm

Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 30, 1986

Re: 85-599 - United States v. American Bar
Endowment

Dear Thurgood:

This case continues to trouble me. I think I will try my hand at writing out a dissent before coming finally to rest.

Respectfully,



Justice Marshall

Copies to the Conference

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

From: Justice Stevens

Circulated: JUN 17 1986

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-599

UNITED STATES, PETITIONER *v.* AMERICAN BAR
ENDOWMENT ET AL.

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

[June —, 1986]

JUSTICE STEVENS, dissenting.

The charitable work of the American Bar Endowment is funded, in large part, through a procedure in which the Endowment provides insurance policies for participating American Bar Association members, and the members assign the dividends to the ABE. The primary question presented is whether that assignment of dividends is taxable as an unrelated "trade or business."

"The problem at which the tax on unrelated business income is directed . . . is primarily that of unfair competition."¹ The unrelated business tax was adopted in 1950, and substantially revised in 1969. It is useful to recall the kind of situation that gave rise to the unrelated business tax. Perhaps the best-known case involved the C.F. Mueller Company. The Mueller company was a longstanding macaroni

¹H. R. Rep. 2319, p.36 (1950). See also *United States v. American College of Physicians*, — U. S. —, — (1986) ("Congress perceived a need to restrain the unfair competition fostered by the tax laws"); *ante*, at 9 ("The undisputed purpose of the unrelated business income tax was to prevent tax-exempt organizations from competing unfairly with businesses whose earnings were taxed"); Treas. Reg. § 1.513-1(b) (Congress enacted the unrelated business tax "to eliminate a source of unfair competition by placing the unrelated business activities of certain exempt organizations upon the same tax basis as the nonexempt business endeavors with which they compete").

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

STANDARD BUSINESS PAPER

From: Justice Stevens

Circulated: _____

Recirculated: JUN 20 1986

2nd Draft

SUPREME COURT OF THE UNITED STATES

No. 85-599

UNITED STATES, PETITIONER *v.* AMERICAN BAR
ENDOWMENT ET AL.

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

[June 23, 1986]

JUSTICE STEVENS, dissenting.

The charitable work of the American Bar Endowment is funded, in large part, through a procedure in which the Endowment provides insurance policies for participating American Bar Association members, and the members assign the dividends to the ABE. The primary question presented is whether that assignment of dividends is taxable as an unrelated "trade or business."

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¹ H. R. Rep. 2319, p. 36 (1950). See also *United States v. American College of Physicians*, 475 U. S. —, — (1986) ("Congress perceived a need to restrain the unfair competition fostered by the tax laws"); *ante*, at 9 ("The undisputed purpose of the unrelated business income tax was to prevent tax-exempt organizations from competing unfairly with businesses whose earnings were taxed"); Treas. Reg. § 1.513-1(b), 26 CFR § 1.513-1(b) (1985) (Congress enacted the unrelated business tax "to eliminate a source of unfair competition by placing the unrelated business activities of certain exempt organizations upon the same tax basis as the non-exempt business endeavors with which they compete").

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 29, 1986

No. 85-599 U. S. v. American Bar Endowment

Dear Thurgood,

Please add at the end of the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,



Justice Marshall

Copies to the Conference