

MOTION FILED

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Supreme Court, U.S.
FILED

JUL 20 1971

E. ROBERT SEAVER, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. **53**, Original

STATE OF ALABAMA, One of the States of the United States, by and
Through GEORGE C. WALLACE, as Its Governor,
Plaintiff,

v.

JOHN B. CONNALLY, as Secretary of the Treasury of the United States,
and RANDOLPH W. THROWER, as Commissioner of
Internal Revenue of the United States,
Defendants.

MOTION FOR LEAVE TO FILE COMPLAINT
and
COMPLAINT

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Defendants.

MOTION FOR LEAVE TO FILE COMPLAINT

The State of Alabama, one of the States of the United States, by and through George C. Wallace, as its Governor, asks leave of the Court to file its complaint against John B. Connally, Secretary of the Treasury of the United States, and Randolph W. Thrower, Commissioner of In-

ternal Revenue of the United States, submitted herewith, pursuant to Rule 9, Supreme Court Rules.

J. Edward Manton
.....
John O. Harris
.....
Counsel for Plaintiff

This the 20 day of July, 1971

STATEMENT IN SUPPORT OF MOTION

This is an action by the State of Alabama, by and through its Governor, George C. Wallace, against John B. Connally, Secretary of the Treasury of the United States, and Randolph W. Thrower, Commissioner of Internal Revenue of the United States, proposed to be instituted in this Court under the authority of Article III, Section 2, Clause 2, of the Constitution of the United States. The purpose of the proposed action is to enjoin John B. Connally, as Secretary of the Treasury, and Randolph W. Thrower, as Commissioner of Internal Revenue, and each of them, from assessing and collecting federal income taxes from the citizens of the State of Alabama, and, in the alternative, to enjoin John B. Connally, as Secretary of the Treasury, and Randolph W. Thrower, as Commissioner of Internal Revenue, and each of them, from exempting the income of religious foundations, and similar organizations, from the federal tax on income.

Secretary Connally and Commissioner Thrower claim that the income of religious, charitable and educational foundations, and similar organizations, is exempt from the federal income tax by virtue of the provisions of Section 501 of the Internal Revenue Code (26 U.S.C. Sec. 501). While the State of Alabama is cognizant of the

benefits afforded society and the American public by organizations organized and operated solely for the purpose or purposes of holding religious services, maintaining places of worship, and engaging in truly public and charitable activities for the alleviation of human suffering and misery (such as the Red Cross, Salvation Army, March of Dimes Foundation, Heart Fund, and Cancer Societies), the State of Alabama contends that the said Section 501, by exempting the income of certain other organizations and foundations which are only superficially charitable, religious, educational or scientific in their operation, and which, in actuality, merely provide a tax shelter for the wealthy few, and by assessing and collecting taxes on the income of other individuals and organizations pursuant to the said Internal Revenue Code of 1954, effects an unjustifiable and discriminatory classification of persons for federal income tax purposes that is so gross as to render the collection of federal income taxes from non-exempt persons a confiscation of private property in violation of the Fifth Amendment to the Constitution of the United States. The State of Alabama also contends that inasmuch as the said Section 501 exempts from the federal income tax the income, including unrelated business income, of religious foundations, it thereby subsidizes religion and effects an establishment of religion in contravention of the First Amendment to the Constitution of the United States, and that the said Section 501 is therefore a nullity and cannot be lawfully enforced by Secretary Connally and Commissioner Thrower.

J. Edward Thornton
.....
John C. Harris
.....
Counsel for Plaintiff

This the 20. day of July, 1971

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STATE OF ALABAMA, One of the States of the United States, by and
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Plaintiff,

v.

JOHN B. CONNALLY, as Secretary of the Treasury of the United States,
and RANDOLPH W. THROWER, as Commissioner of
Internal Revenue of the United States,
Defendants.

COMPLAINT

The State of Alabama, one of the States of the United States, by and through George C. Wallace, as its Governor, brings this suit in equity against the defendants, John B. Connally, Secretary of the Treasury of the United States, and Randolph W. Thrower, Commissioner of Internal Revenue of the United States, and for its cause of action states:

COUNT ONE

I

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2 of the Constitution of the United States.

II

The plaintiff, the State of Alabama, brings this action at the direction of its Governor, George C. Wallace, a citizen and resident of the State of Alabama. The defendant John B. Connally is the Secretary of the Treasury of the United States and is a citizen of the State of Texas and a resident of Washington in the District of Columbia. The defendant Randolph W. Thrower is the Commissioner of Internal Revenue and is a citizen of the State of Georgia and a resident of Washington in the District of Columbia.

The said defendant John B. Connally, as Secretary of the Treasury of the United States, is charged with the supervision, administration and enforcement of the federal internal revenue laws pursuant to the provisions of Section 7801 of the Internal Revenue Code of 1954 (26 U.S.C., Sec. 7801). Randolph W. Thrower, as Commissioner of Internal Revenue, has such duties and powers in enforcement, administration and supervision of the federal internal revenue laws as may be prescribed by the Secretary of the Treasury, pursuant to Section 7802 of the Internal Revenue Code of 1954 (26 U.S.C., Sec. 7802).

III

Section 1 of the Internal Revenue Code of 1954 (26 U.S.C., Sec. 1) imposes a tax upon the income of every individual, trust, and estate, and Section 11 thereof (26 U.S.C., Sec. 11) imposes a tax upon the income of every corporation. Section 501 thereof (26 U.S.C., Sec. 501),

however, exempts certain organizations from the taxes imposed by Section 1 and Section 11; Section 501 provides, in pertinent part, as follows:

(a) **Exemption From Taxation.**—An organization described in subsection (c) or (d) of Section 401 (a) shall be exempt from taxation under the sub-title unless such exemption is denied under Section 502 or 503.

* * *

(c) **List of Exempt Organizations.**—The following organizations are referred to in subsection (a):

* * *

(3) Corporations, and any community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

IV

The defendants, John B. Connally and Randolph W. Thrower, pursuant to their duties as Secretary of the Treasury of the United States and Commissioner of Internal Revenue, respectively, have enforced, are presently enforcing, and intend to enforce in the future, unless restrained by the Court, all provisions of the Internal Reve-

nue Code of 1954 (26 U.S.C., Sec. 1 *et seq.*), including the aforementioned Sections 1, 11, and 501, with the result that the organizations described in subsection (c) of the said Section 501 have avoided, are presently avoiding and will avoid payment of their proportionate share of the federal income tax burden, while other individuals, estates, trusts, and corporations, including those resident in, domiciled in, or otherwise located in the State of Alabama, have been, are, and will be forced to pay a disproportionate share of such federal income tax burden.

V

The exemption from federal income taxation provided for by subsection (c) of the said Section 501 and enforced by the defendants in their official capacities effects a classification of persons for federal income tax purposes that is so arbitrary, unjustifiable, and discriminatory as to constitute the assessment of federal income taxes against and collection of federal income taxes from non-exempt individuals, estates, trusts, and corporations a confiscation of private property in violation of the requirement of the Fifth Amendment to the Constitution of the United States that "No person shall . . . be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."

VI

The State of Alabama is directly interested in preventing any unlawful confiscation of the private property of its citizens, which unlawful confiscation is provided for by the Internal Revenue Code of 1954 as aforesaid; and the State of Alabama is also interested in protecting its citizens against risk of prosecution for failure to comply

with those provisions of the Internal Revenue Code of 1954 designed to provide the machinery for the confiscatory taking of private property thereby purportedly authorized.

VII

The actions of the defendants, in assessing and collecting taxes pursuant to the aforesaid provisions of the Internal Revenue Code of 1954, have caused and will continue to cause irreparable injury to the citizens of the State of Alabama, for which there is no adequate remedy at law.

VIII

Wherefore, the State of Alabama prays that a decree be entered enjoining and restraining the defendants, John B. Connally, as Secretary of the Treasury of the United States, and Randolph W. Thrower, as Commissioner of Internal Revenue, and each of them, their servants, agents, and employees, from proceeding to assess against or collect from the citizens of the State of Alabama the taxes sought to be imposed by Subtitle A of the Internal Revenue Code of 1954, and from requiring returns from such citizens, preparatory to the assessment and collection of such taxes, and from taking any and all other steps related to the enforcement of the said Subtitle A of the Internal Revenue Code of 1954.

COUNT TWO

IX

The State of Alabama adopts, asserts, and realleges all of the allegations in paragraphs numbered I through III as fully and to the same extent as if each of said paragraphs were set forth here anew.

X

The defendants, John B. Connally and Randolph W. Thrower, pursuant to their duties as Secretary of the Treasury of the United States and Commissioner of Internal Revenue, respectively, have enforced, are presently enforcing, and intend to enforce in the future, unless restrained by this Court, all provisions of the Internal Revenue Code of 1954 (26 U.S.C. Sec. 1 *et seq.*), including the aforementioned Section 501, with the result that numerous religious organizations, institutions, foundations, and similar associations located both within and without the State of Alabama, have avoided, are presently avoiding, and will avoid payment of their proportionate share of the federal income tax burden.

XI

To the extent that subsection (c) of the said Section 501 exempts religious institutions, organizations, foundations, and similar associations from payment of the federal tax on income assessed against and collected from other individuals, estates, trusts, and corporations, the said subsection (c) of the said Section 501 constitutes a subsidy to, and establishment of, such religious organizations, institutions, foundations, and similar associations by law made by the Congress in contravention of the requirement of the First Amendment to the Constitution of the United States that "Congress shall make no law respecting an establishment of religion . . ."

XII

The State of Alabama has a direct interest in protecting its citizens against the subsidizing and establishment of religion by law made by Congress.

XIII

The acts of the defendants, John B. Connally, as Secretary of the Treasury of the United States, and Randolph

W. Thrower, as Commissioner of Internal Revenue, in exempting the income of religious institutions, organizations, foundations, and similar associations located in the State of Alabama, and elsewhere, pursuant to the provisions of Section 501 of the Internal Revenue Code of 1954, and thereby subsidizing religious activities and establishing religion both within the State of Alabama and elsewhere have caused and will continue to cause irreparable injury to the citizens of the State of Alabama, for which there is no adequate remedy at law.

XIV

Wherefore, the State of Alabama prays that the said defendants, John B. Connally, as Secretary of the Treasury of the United States, and Randolph W. Thrower, as Commissioner of Internal Revenue, and each of them, be restrained and enjoined from exempting the income of religious institutions, foundations, organizations, and similar associations, whether located within or without the State of Alabama, from the federal tax on income pursuant to the provisions of the said Section 501.

J. Edward Stanton
John O. Harris
Counsel for Plaintiff

This the 20 day of July, 1971.

Certificate of Service

I hereby certify that on this the 19 day of July, 1971, copies of this Motion for Leave to File Complaint and Complaint were mailed, postage prepaid, to Messrs. John B. Connally, as Secretary of the Treasury of the United States, and Randolph W. Thrower, as Commissioner of

Internal Revenue, by addressing and mailing copies to The Solicitor General, Department of Justice, Washington, D. C. 20530. I further certify that all parties required to be served have been served.

J. Edward Thornton
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John O. Harris
.....

Counsel for Plaintiff

J. EDWARD THORNTON

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