

# The Burger Court Opinion Writing Database

## *United States v. Estate of Donnelly*

397 U.S. 286 (1970)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

February 14, 1970

Re: No. 104 - U. S. v. Donnelly

Dear Thurgood:

I join you.

  
W.E.B.

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE HUGO L. BLACK

February 13, 1970

Dear Thurgood:

Re: No. 104 - United States v.  
Estate of Thomas S.  
Donnelly, Sr., et al.

I agree.

Sincerely,



H. L. B.

Mr. Justice Marshall

cc: Members of the Conference

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Fortas  
Mr. Justice Marshall

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*Jay*  
*More for me*  
**SUPREME COURT OF THE UNITED STATES**

From: Douglas, J.

No. 104.—OCTOBER TERM, 1969

Circulated: 2/12/70

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

United States	}	On Writ of Certiorari to the
v.		United States Court of
Estate of Thomas S.		Appeals for the Sixth
Donnelly, Sr., et al.		Circuit.

[February —, 1970]

MR. JUSTICE DOUGLAS, dissenting.

Respondents are bona fide purchasers of real property located in Livingston County, Michigan. Their purchase was in August 1960 from one Donnelly against whom the United States had acquired a tax lien in 1950. By 26 U. S. C. § 3672 that lien is not valid against a purchaser until the notice is filed in the office "authorized" by state law. Where state law "authorized" no such office, notice of lien was to be filed in the office of the U. S. District Court for the judicial district in which the land is located. *Ibid.* Michigan law required the notice of lien to be filed with "a description of the land" in the Register of Deeds in the county where the land was located.

The United States refused to be bound by the requirement of Michigan law and filed notice of lien in the District Court.

Hence a title search in the accustomed way revealed no notice of lien, clouding Donnelly's title. Hence respondents purchased the land innocently and in good faith. Thereafter, on March 20, 1961, the United States filed its notice of lien with the Register of Deeds of Livingston County, as required by Michigan law.

On December 18, 1961, over a year after respondents' purchase, this Court held in *United States v. Union*

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Brennan ✓  
Mr. Justice Stewart  
Mr. Justice White  
~~Mr. Justice Goldberg~~  
Mr. Justice Marshall

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SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 104.—OCTOBER TERM, 1969 Circulated: \_\_\_\_\_

United States } On Writ of Certiorari to the  
v. } United States Court of  
Estate of Thomas S. } Appeals for the Sixth  
Donnelly, Sr., et al. } Circuit.

Resirculated: 2-18

[February —, 1970]

Mr. Justice DOUGLAS, with whom Mr. Justice BRENNAN and Mr. Justice STEWART concur, dissenting.

Respondents are bona fide purchasers of real property located in Livingston County, Michigan. Their purchase was in August 1960 from one Donnelly against whom the United States had acquired a tax lien in 1950. By § 3672 of the Internal Revenue Code of 1939 that lien is not valid against a purchaser until notice thereof is filed in the office "authorized" by state law. Where state law "authorized" no such office, notice of lien was to be filed in the office of the U. S. District Court for the judicial district in which the land is located. *Ibid.* Michigan law required the notice of lien to be filed with "a description of the land" in the Register of Deeds in the county where the land was located.

The United States refused to be bound by the requirement of Michigan law regarding a "description of the land" and filed notice of lien in the District Court.

Hence a title search in the accustomed way revealed no notice of lien, clouding Donnelly's title. Hence respondents purchased the land innocently and in good faith. Thereafter, on March 20, 1961, the United States filed its notice of lien with the Register of Deeds of Livingston County, as required by Michigan law.<sup>1</sup>

<sup>1</sup> Previously, on November 28, 1950, the United States had filed notice of its lien with the Register of Deeds of Wayne County.

Chang  
thru hand

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Brennan ✓  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Fortas  
Mr. Justice Marshall

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# SUPREME COURT OF THE UNITED STATES

No. 104.—OCTOBER TERM, 1969

From: Douglas, J.

United States  
v.  
Estate of Thomas S.  
Donnelly, Sr., et al.

On Writ of Certiorari to the  
United States Court of Appeals for the Sixth  
Circuit.

Circulated: 2/19/70

[February —, 1970]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE STEWART concur, dissenting.

Respondents are bona fide purchasers of real property located in Livingston County, Michigan. Their purchase was in August 1960 from one Donnelly against whom the United States had acquired a tax lien in 1950. By § 3672 of the Internal Revenue Code of 1939 that lien is not valid against a purchaser until notice thereof is filed in the office "authorized" by state law. Where state law "authorized" no such office, notice of lien was to be filed in the office of the U. S. District Court for the judicial district in which the land is located. *Ibid.* Michigan law required the notice of lien to be filed with "a description of the land" in the Register of Deeds in the county where the land was located.

The United States refused to be bound by the requirement of Michigan law regarding a "description of the law" and filed notice of lien in the District Court.

Hence a title search in the accustomed way revealed no notice of lien, clouding Donnelly's title. Hence respondents purchased the land innocently and in good faith. Thereafter, on March 20, 1961, the United States filed its notice of lien with the Register of Deeds of Livingston County, as required by Michigan law.<sup>1</sup>

<sup>1</sup> Previously, on November 28, 1950, the United States had filed notice of its lien with the Register of Deeds of Wayne County.

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

February nineteenth  
1970

7A  
Out  
104 file  
9 rec.  
- for  
Stewart

Dear Potter:

I have your suggestions respecting my dissent in No. 104 - U. S. v. Donnelly, and I have taken your pencilled notes and changed my opinion to follow your suggestions.

Perhaps your law clerks should be advised of the Supremacy Clause of the federal Constitution and our decisions holding that where a state law collides with a federal statute, the state statute gives way by virtue of preemption. You will recall the big hassle we had on that issue respecting the three-judge court problem when Felix and Charlie Whittaker were here.

I do not press the point or labor on it, but I have gone along with your suggestions because I think your proposed additions have helped the opinion considerably. You will shortly get a recirculation in the case.

William O. Douglas

Mr. Justice Stewart

GN  
TLC  
GDW

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

CHAMBERS OF  
JUSTICE JOHN M. HARLAN

February 18, 1970

Re: No. 104 - U. S. v. Donnelly

Dear Thurgood:

I thought I should let you know that I want to take some more time to study this case before adhering to my Conference vote to reverse. I have not yet come to rest on the matter.

Some of your former colleagues on the Second Circuit inquired about you last night at the City Bar affair, and asked me to give you their regards. It was a good occasion.

Sincerely,



Mr. Justice Marshall

March 12, 1970

Re: No. 104 - United States v. Donnelly

Dear Thurgood:

I thought I should let you know that I am now at rest on this case. I intend to join your opinion with a short concurring piece of my own, which I shall be circulating sometime early next week.

Sincerely,

J.M.H.

Mr. Justice Marshall

CC: The Conference

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall

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# SUPREME COURT OF THE UNITED STATES

No. 104.—OCTOBER TERM, 1969

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

Resigned: \_\_\_\_\_

United States  
v.  
Estate of Thomas S.  
Donnelly, Sr., et al.

} On Writ of Certiorari to the  
United States Court of  
Appeals for the Sixth  
Circuit.

[March —, 1970]

MR. JUSTICE HARLAN, concurring.

I fully agree that the Government is entitled to prevail in this case, but I would rest that conclusion on a broader ground than the Court's opinion might be taken to evince. More especially, I fear that certain distinctions suggested by the Court's opinion—*e. g.*, between clear and ambiguous statutes, decisions construing statutes for the first time, decisions overruling prior constructions of statutes—may point in the direction of a retroactivity quagmire in civil litigation not unlike that in which the Court has become ensnared in the criminal field. See my dissenting opinion in *Desist v. United States*, 394 U. S. 244, 256 (1969).

The impulse to make a new decisional rule nonretroactive rests, in civil cases at least, upon the same considerations that lie at the core of *stare decisis*, namely to avoid jolting the expectations of parties to a transaction. Yet once the decision to abandon precedent is made, I see no justification for applying principles determined to be wrong, be they constitutional or otherwise, to litigants who are in or may still come to court. The critical factor in determining when a new decisional rule should be applied to a transaction consummated prior to the decision's announcement is, in my view, the point at which the transaction has acquired that degree of

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

February 16, 1970

RE: No. 104 - United States v. Donnelly

Dear Bill:

Will you please join me in your  
dissent in the above.

Sincerely,

*Bill*  
W. JB. Jr.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 16, 1970

No. 104 -- U.S. v. Donnelly

Dear Bill,

I join your dissenting opinion in this  
case.

Sincerely yours,

P.S.  
✓

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 18, 1970

No. 104 - U. S. v. Donnelly

Dear Bill,

My law clerks have pointed out a factual inaccuracy in your dissenting opinion, which I have joined: It is probably not correct to say that the Michigan filing statute was held to be "unconstitutional" in Union Central. I should think that some of the language on page 2 of your dissenting opinion should be modified along the lines of my penciled notations on the enclosed copy.

Sincerely yours,

P.S.

Mr. Justice Douglas

February 12, 1970

Re: No. 104 - U. S. v. Donnelly

Dear Thurgood:

Please join me.

Sincerely,

B.R.W.

Mr. Justice Marshall

cc: The Conference

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Fortas

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SUPREME COURT OF THE UNITED STATES

From: Marshall, J.

No. 104.—OCTOBER TERM, 1969

Circulated: 2-1270

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

United States	}	On Writ of Certiorari to the
v.		United States Court of
Estate of Thomas S.		Appeals for the Sixth
Donnelly, Sr., et al.		Circuit.

[February —, 1970]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

In 1950, a tax liability of approximately \$26,000 was assessed against the taxpayer Donnelly, a resident of Michigan. Upon assessment, a statutory lien was created in favor of the United States "upon all property and rights to property, whether real or personal" belonging to the taxpayer. Internal Revenue Code of 1939, § 3670. Under § 3672 of the 1939 Code, such a lien could become effective against subsequent purchasers of Donnelly's property in either of two ways: (1) by filing notice of the lien in the state office in which filing of such notice was authorized by state law; or (2) if filing in a state office was not authorized by state law, by filing notice of the lien in the United States District Court for the district in which the property was located.<sup>1</sup>

<sup>1</sup> The Internal Revenue Code of 1939 provides:

"Sec. 3670. Property Subject to Lien.

"If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the