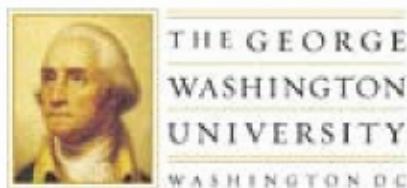


The Burger Court Opinion Writing Database

United States v. Freed
401 U.S. 601 (1971)

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

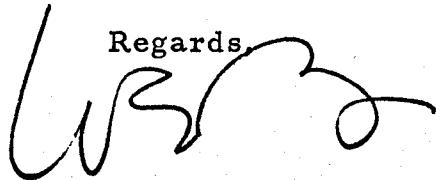
February 19, 1971

Re: No. 345 - U. S. v. Freed

Dear Bill:

Please join me.

Regards



Mr. Justice Douglas

cc: The Conference

B

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

February 5, 1971

Dear Bill,

Re: No. 345 - United States v. Freed

I agree.

Sincerely,


H. L. B.

Mr. Justice Douglas

cc: Members of the Conference

File
Cir 2/1/71

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 345.—OCTOBER TERM, 1970

United States, Appellant,) On Appeal From the United
v.) States District Court for
Donald Freed and Shirley) the Central District of
Jean Sutherland.) California.

[February —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Following our decision in *Haynes v. United States*, 390 U. S. 85, Congress revised the National Firearms Act with the view of eliminating the defects in it which were revealed in *Haynes*.¹

At the time of *Haynes* "only weapons used principally by persons engaged in unlawful activities would be subjected to taxation." *Id.*, at 87. Under the Act, as amended, all possessors of firearms as defined in the Act² are covered, except the Federal Government. 26 U. S. C. Supp. V § 5861.

At the time of *Haynes* any possessor of a weapon included in the Act was compelled to disclose the fact of his possession by registration at any time he had acquired possession, a provision which we held meant that a possessor must furnish potentially incriminating information which the Federal Government made available to state, local, and other federal officials. *Id.*, at 95-100.

¹ See S. Rep. No. 1501, 90th Cong., 2d Sess. 26, 42, 48, 52; H. Rep. No. 1956, 90th Cong., 2d Sess. 35.

² 26 U. S. C. § 5845 (b) defines "destructive device" to include "grenades" which are involved in the present case.

file
Rec'd 2/2/71

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 345.—OCTOBER TERM, 1970

United States, Appellant,) On Appeal From the United
v.) States District Court for
Donald Freed and Shirley } the Central District of
Jean Sutherland.) California.

[February —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Following our decision in *Haynes v. United States*, 390 U. S. 85, Congress revised the National Firearms Act with the view of eliminating the defects in it which were revealed in *Haynes*.¹

At the time of *Haynes* "only weapons used principally by persons engaged in unlawful activities would be subjected to taxation." *Id.*, at 87. Under the Act, as amended, all possessors of firearms as defined in the Act² are covered, except the Federal Government. 26 U. S. C. Supp. V § 5841.

At the time of *Haynes* any possessor of a weapon included in the Act was compelled to disclose the fact of his possession by registration at any time he had acquired possession, a provision which we held meant that a possessor must furnish potentially incriminating information which the Federal Government made available to state, local, and other federal officials. *Id.*, at 95–100.

¹ See S. Rep. No. 1501, 90th Cong., 2d Sess. 26, 42, 48, 52; H. Rep. No. 1956, 90th Cong., 2d Sess. 35.

² 26 U. S. C. § 5845 (a) defines "destructive device" to include "grenades" which are involved in the present case.

WY

file
recd
2-2

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 345.—OCTOBER TERM, 1970

United States, Appellant, v. Donald Freed and Shirley Jean Sutherland, On Appeal From the United States District Court for the Central District of California.

[February —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Following our decision in *Haynes v. United States*, 390 U. S. 85, Congress revised the National Firearms Act with the view of eliminating the defects in it which were revealed in *Haynes*.¹

At the time of *Haynes* “only weapons used principally by persons engaged in unlawful activities would be subjected to taxation.” *Id.*, at 87. Under the Act, as amended, all possessors of firearms as defined in the Act² are covered, except the Federal Government. 26 U. S. C. Supp. V § 5841.

At the time of *Haynes* any possessor of a weapon included in the Act was compelled to disclose the fact of his possession by registration at any time he had acquired possession, a provision which we held meant that a possessor must furnish potentially incriminating information which the Federal Government made available to state, local, and other federal officials. *Id.*, at 95–100.

¹ See S. Rep. No. 1501, 90th Cong., 2d Sess. 26, 42, 48, 52; H. Rep. No. 1956, 90th Cong., 2d Sess. 35.

² 26 U. S. C. § 5845 (f) defines “destructive device” to include “grenades” which are involved in the present case.

(WV)

File
Rec'd
2/9/71

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 345.—OCTOBER TERM, 1970

United States, Appellant, } On Appeal From the United
v. } States District Court for
Donald Freed and Shirley } the Central District of
Jean Sutherland. } California.

[February —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Following our decision in *Haynes v. United States*, 390 U. S. 85, Congress revised the National Firearms Act with the view of eliminating the defects in it which were revealed in *Haynes*.¹

At the time of *Haynes* "only weapons used principally by persons engaged in unlawful activities would be subjected to taxation." *Id.*, at 87. Under the Act, as amended, all possessors of firearms as defined in the Act² are covered, except the Federal Government. 26 U. S. C. Supp. V § 5841.

At the time of *Haynes* any possessor of a weapon included in the Act was compelled to disclose the fact of his possession by registration at any time he had acquired possession, a provision which we held meant that a possessor must furnish potentially incriminating information which the Federal Government made available to state, local, and other federal officials. *Id.*, at 95-100.

¹ See S. Rep. No. 1501, 90th Cong., 2d Sess. 26, 42, 48, 52; H. Rep. No. 1956, 90th Cong., 2d Sess. 35.

² 26 U. S. C. § 5845 (f) defines "destructive device" to include "grenades" which are involved in the present case.

BB 6/8
R.D. 6/1
J. 6/10 1/3
J. 6/10 1/3

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

6th DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 2/24/71

No. 345.—OCTOBER TERM, 1970

United States, Appellant, } On Appeal From the United
v. } States District Court for
Donald Freed and Shirley } the Central District of
Jean Sutherland. } California.

[February —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Following our decision in *Haynes v. United States*, 390 U. S. 85, Congress revised the National Firearms Act with the view of eliminating the defects in it which were revealed in *Haynes*.¹

At the time of *Haynes* "only weapons used principally by persons engaged in unlawful activities would be subjected to taxation." *Id.*, at 87. Under the Act, as amended, all possessors of firearms as defined in the Act² are covered, except the Federal Government. 26 U. S. C. Supp. V § 5841.

At the time of *Haynes* any possessor of a weapon included in the Act was compelled to disclose the fact of his possession by registration at any time he had acquired possession, a provision which we held meant that a possessor must furnish potentially incriminating information which the Federal Government made available to state, local, and other federal officials. *Id.*, at 95-100.

¹ See S. Rep. No. 1501, 90th Cong., 2d Sess. 26, 42, 48, 52; H. Rep. No. 1956, 90th Cong., 2d Sess. 35.

² 26 U. S. C. § 5845 (f) defines "destructive device" to include "grenades" which are involved in the present case.

February 4, 1971

Re: No. 345 - United States v. Freed

Dear Bill:

I am glad to join your opinion.

Sincerely,

J. M. H.

Mr. Justice Douglas

CC: The Conference

25
VJ

B /

To: The Chief Justice
Mr. Justice Black
✓Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

No. 345.—OCTOBER TERM, 1970

Circulated: 2/19/71

United States, Appellant, } On Appeal From the *Reargued:* _____
v. } United States District Court for
Donald Freed and Shirley } the Central District of
Jean Sutherland. } California.

[February —, 1971]

MR. JUSTICE BRENNAN, concurring in the judgment of reversal.

I agree that the Amendments to the National Firearms Act, 26 U. S. C. §§ 5841–5861 (Supp. V 1970), do not violate the Fifth Amendment privilege against self-incrimination, and join Part I of the opinion of the Court. However, I do not join Part II of the opinion; although I reach the same result as the Court on the intent the Government must prove to convict, I do so by another route.

I join Part I on my understanding of the Act's new immunity provision. 26 U. S. C. § 5848 (Supp. V 1970). The amended registration provisions of the National Firearms Act do not pose any realistic possibility of self-incrimination of the transferee under federal law. An effective registration of a covered firearm will render the transferee's possession of that firearm legal under federal law. It is only appellees' contention that registration or application for registration will incriminate them under California law that raises the Fifth Amendment issue in this case. Specifically, appellees assert that California law outlaws possession of hand grenades and that registration under federal law would, therefore, incriminate them under state law. Assuming that appellees correctly interpret California law, I think that the Act's immunity provision suffices to supplant the

WV

6
2nd DRAFT

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
✓Mr. Justice Marshall
Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

No. 345.—OCTOBER TERM, 1970

Circulated:

United States, Appellant, v. Donald Freed and Shirley Jean Sutherland. On Appeal From the United States District Court for the Central District of California.

[March —, 1971]

MR. JUSTICE BRENNAN, concurring in the judgment of reversal.

I agree that the Amendments to the National Firearms Act, 26 U. S. C. §§ 5841–5872 (Supp. V, 1970), do not violate the Fifth Amendment's privilege against self-incrimination, and join Part I of the opinion of the Court. However, I do not join Part II of the opinion; although I reach the same result as the Court on the intent the Government must prove to convict, I do so by another route.

I join Part I on my understanding of the Act's new immunity provision. 26 U. S. C. § 5848 (Supp. V, 1970). The amended registration provisions of the National Firearms Act do not pose any realistic possibility of self-incrimination of the transferee under federal law. An effective registration of a covered firearm will render the transferee's possession of that firearm legal under federal law. It is only appellees' contention that registration or application for registration will incriminate them under California law that raises the Fifth Amendment issue in this case. Specifically, appellees assert that California law outlaws possession of hand grenades and that registration under federal law would, therefore, incriminate them under state law. Assuming that appellees correctly interpret California law, I think that the Act's immunity provision suffices to supplant the

CHAMBERS OF
JUSTICE POTTER STEWART

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

February 2, 1971

Re: No. 345, United States v. Freed

Dear Bill:

I am glad to join your opinion for the Court in this
case.

Sincerely yours,

P. S.

Mr. Justice Douglas

cc: The Conference

TM
joined 2/3

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 3, 1971

Re: No. 345 - United States v. Freed

Dear Bill:

Please join me.

Sincerely,



B.R.W.

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 2, 1971

Re: No. 345 - United States v. Freed

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Douglas

cc: The Conference

February 6, 1971

Re: No. 245 - U. S. v. Freed and Sutherland

Dear Bill:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Douglas

cc: The Conference

