

The Burger Court Opinion Writing Database

Kahn v. Shevin

416 U.S. 351 (1974)

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

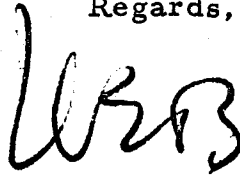
April 9, 1974

Re: No. 73-78 - Kahn v. Shevin

Dear Bill:

Please join me.

Regards,

A handwritten signature in dark ink, appearing to be "WEB", written in a cursive, stylized script.

Mr. Justice Douglas

Copies to the Conference

To : The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-78

3-12

Mel Kahn, Etc., Appellant,
 v.
 Robert L. Shevin et al.

On Appeal from the Supreme Court of Florida.

[March —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Since at least 1885, Florida has provided for some form of property tax exemption for widows.¹ The current law granting all widows an annual \$500 exemption, Fla. Stat. § 196.191 (7), has been essentially unchanged since 1941.² Appellant Kahn is a widower who lives in Florida and applied for the exemption to the Dade County Tax Assessor's Office. It was denied because the statute offers no analogous benefit for widowers. Kahn then sought a

¹ Article IX, § 9 of the 1885 Florida constitution provided that: "There shall be exempt from taxation property to the value of two hundred dollars to every widow that has a family dependent on her for support, and to every person that has lost a limb or been disabled in war or by misfortune."

² In 1941 Fla. Stat. § 192.06 (7) exempted "[p]roperty to the value of five hundred dollars to every widow" The current provision, challenged here, provides that: "The following property shall be exempt from taxation:

"(7) Property to the value of five hundred dollars to every widow and to every person who is a bona fide resident of the state and has lost a limb or been disabled in war or military hostilities or by misfortune."

To : The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas; J.

Circulate: _____

No. 73-78

Recirculated: 4-11-74

Mel Kahn, Etc., Appellant, }
 v. } On Appeal from the Su-
 Robert L. Shevin et al. } preme Court of Florida.

[March —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Since at least 1885, Florida has provided for some form of property tax exemption for widows.¹ The current law granting all widows an annual \$500 exemption, Fla. Stat. § 196.191 (7), has been essentially unchanged since 1941.² Appellant Kahn is a widower who lives in Florida and applied for the exemption to the Dade County Tax Assessor's Office. It was denied because the statute offers no analogous benefit for widowers. Kahn then sought a

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² In 1941 Fla. Stat. § 192.06 (7) exempted "[p]roperty to the value of five hundred dollars to every widow . . ." The current provision, challenged here, provides that: "The following property shall be exempt from taxation:

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5

To The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice
Mr. Justice
Mr. Justice

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

Circulate:

No. 73-78

Recirculated: 4-19

Mel Kahn, Etc., Appellant,
v.
Robert L. Shevin et al. } On Appeal from the Supreme Court of Florida.

[April 24, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Since at least 1885, Florida has provided for some form of property tax exemption for widows.¹ The current law granting all widows an annual \$500 exemption, Fla. Stat. § 196.191 (7), has been essentially unchanged since 1941.² Appellant Kahn is a widower who lives in Florida and applied for the exemption to the Dade County Tax Assessor's Office. It was denied because the statute offers no analogous benefit for widowers. Kahn then sought a

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² In 1941 Fla. Stat. § 192.06 (7) exempted "[p]roperty to the value of five hundred dollars to every widow" The current provision, challenged here, provides that: "The following property shall be exempt from taxation:

"(7) Property to the value of five hundred dollars to every widow and to every person who is a bona fide resident of the state and has lost a limb or been disabled in war or military hostilities or by misfortune."

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

April 22, 1974

MEMORANDUM TO THE CONFERENCE:

In Re: 73-78 Kahn v. Shevin.

Harry Blackmun's memo that I received this morning concerning Footnote 10 on page 5 is very well taken. He got a draft that slipped out by error--it was not supposed to be circulated. I redrafted it Saturday morning and left instructions for the new draft to be circulated but there was some delay in the print shop and it did not get around until this morning.

W O D

William O. Douglas

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NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

file
rec'd
4-22

SUPREME COURT OF THE UNITED STATES

No. 73-78

Mel Kahn, Etc., Appellant,
v.
Robert L. Shevin et al. } On Appeal from the Supreme Court of Florida.

[April 24, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Since at least 1885, Florida has provided for some form of property tax exemption for widows.¹ The current law granting all widows an annual \$500 exemption, Fla. Stat. § 196.191 (7), has been essentially unchanged since 1941.² Appellant Kahn is a widower who lives in Florida and applied for the exemption to the Dade County Tax Assessor's Office. It was denied because the statute offers no analogous benefit for widowers. Kahn then sought a

¹ Article IX, § 9 of the 1885 Florida constitution provided that: "There shall be exempt from taxation property to the value of two hundred dollars to every widow that has a family dependent on her for support, and to every person that has lost a limb or been disabled in war or by misfortune."

² In 1941 Fla. Stat. § 192.06 (7) exempted "[p]roperty to the value of five hundred dollars to every widow" The current provision, challenged here, provides that: "The following property shall be exempt from taxation:

"(7) Property to the value of five hundred dollars to every widow and to every person who is a bona fide resident of the state and has lost a limb or been disabled in war or military hostilities or by misfortune."

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

file
May 8, 1974

MEMORANDUM TO THE CONFERENCE:

Re: Robinson v. Bd of Regents of Eastern Ky. University, 73-22
Lilly v. Lilly, 73-1130

These cases, on page 20 of the conference list for May 10, were held for decision in Kahn v. Shevin, 73-78. As explained below I believe that neither of these cases is governed by our opinion in Kahn.

Robinson involves dormitory hours regulations at a state university. All first semester women are required to be in their rooms by midnight on Sunday through Thursday, and by 2:00 a.m. on Fridays and Saturdays. After the first semester women with parental consent can regulate their own hours upon payment of a \$10 fee, said to be necessary to defer the higher security costs for dorms which house women and remain open all night. All male students, regardless of age or class year, are allowed to regulate their own hours without payment of any fee. The Court of Appeals sustained the regulations on the ground that they were rationally related to safety because women are more subject to late night physical assault than men. The petitioner argues that the school may not prevent women from being the judge of their

their own safety while extending that right to men.

Lilly involves a circuit court divorce decree which was affirmed without opinion by the Supreme Court of Virginia. The husband appeals here contending that the relevant Virginia code sections violate the equal protection clause because they the trial court to compel the husband to pay the wife's legal fees, and to pay alimony, while not affording the husband any possibility of such rights of payment from the wife. From the papers submitted by the parties it appears that in this case the wife was awarded alimony payments, certain attorney's fees, and court costs, and that she is a college graduate who was gainfully employed prior to marriage. According to the appellee although she secured employment after separation her choice of employment was limited by considerations of "transporation, child care and finances."

In Kahn we relied on the traditional latitude allowed states in designing their tax laws to sustain a statute granting exemptions to widows but not widowers. Neither of the two held cases, of course, involve state tax laws in which "states have large leeway in making classifications and drawing lines." Unlike Kahn the divorce decree involved in Lilly necessarily results from a case by case judicial determination, but here that judicial determination is confined by the legislative rule allowing payments only to the wife. The case thus bears more resemblance to Reed v. Reed, 404 U.S. 71, where a probate court was required by statute to prefer men in the appointment of administrators. The question then would be whether the

rule here "rests upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." Id. at 76.

Robinson is different not only because the state power to tax is not at issue, but also because this sex based classification, unlike Kahn, is not designed to cushion the adverse impact of prior discrimination against women.

It therefore is my view that each of these cases stands or falls on its own without regard to Kahn v. Shevin.

I agree

5/10/74

RR

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 13, 1974

RE: No. 73-78 Kahn v. Shevin

Dear Bill:

I shall in due course write something
in this case.

Sincerely,



Mr. Justice Douglas

cc: The Conference

Amended
4-4-74

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-78

Mel Kahn, Etc., Appellant,
v.
Robert L. Shevin et al. } On Appeal from the Supreme Court of Florida.

[April —, 1974]

MR. JUSTICE BRENNAN, dissenting.

The Court rejects widower Kahn's claim of denial of equal protection on the ground that the limitation in § 196.191 (7), which provides an annual \$500 property tax exemption to widows, is a legislative classification that bears a fair and substantial relation to "the state policy of cushioning the financial impact of spousal loss upon the sex for whom that loss imposes a disproportionately heavy burden." *Ante*, p. 4. In my view, however, a legislative classification that distinguishes potential beneficiaries solely by reference to their gender-based status as widows or widowers, like classifications based upon race,¹ alienage,² and national origin,³ must be subjected to close judicial scrutiny, because it focuses upon generally immutable characteristics over which individuals have little or no control, and also because gender-based classifications too often have been inexcusably utilized to stereotype and stigmatize politically powerless segments of society. See *Frontiero v. Richardson*, 411

¹ See *Loving v. Virginia*, 388 U. S. 1, 11 (1967); *McLaughlin v. Florida*, 379 U. S. 184, 191-192 (1964); *Bolling v. Sharpe*, 347 U. S. 497, 499 (1954).

² See *Graham v. Richardson*, 403 U. S. 365, 372 (1971).

³ See *Oyama v. California*, 332 U. S. 633, 644-646 (1948); *Korematsu v. United States*, 323 U. S. 214, 216 (1944); *Hirabayashi v. United States*, 320 U. S. 81, 100 (1943).

Mr. Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-78

Circulated: APR 4 1974

Mel Kahn, Etc., Appellant,
v.
Robert L. Shevin et al. } On Appeal from the Su-
preme Court of Florida.

Recirculated:

[April —, 1974]

MR. JUSTICE BRENNAN, dissenting.

The Court rejects widower Kahn's claim of denial of equal protection on the ground that the limitation in § 196.191.(7), which provides an annual \$500 property tax exemption to widows, is a legislative classification that bears a fair and substantial relation to "the state policy of cushioning the financial impact of spousal loss upon the sex for whom that loss imposes a disproportionately heavy burden." *Ante*, p. 4. In my view, however, a legislative classification that distinguishes potential beneficiaries solely by reference to their gender-based status as widows or widowers, like classifications based upon race,¹ alienage,² and national origin,³ must be subjected to close judicial scrutiny, because it focuses upon generally immutable characteristics over which individuals have little or no control, and also because gender-based classifications too often have been inexcusably utilized to stereotype and stigmatize politically powerless segments of society. See *Frontiero v. Richardson*, 411

¹ See *Loving v. Virginia*, 388 U. S. 1, 11 (1967); *McLaughlin v. Florida*, 379 U. S. 184, 191-192 (1964); *Bolling v. Sharpe*, 347 U. S. 497, 499 (1954).

² See *Graham v. Richardson*, 403 U. S. 365, 372 (1971).

³ See *Oyama v. California*, 332 U. S. 633, 644-646 (1948); *Korematsu v. United States*, 323 U. S. 214, 216 (1944); *Hirabayashi v. United States*, 320 U. S. 81, 100 (1943).

Circulated
4-15-74

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-78

Mel Kahn, Etc., Appellant,
v.
Robert L. Shevin et al. } On Appeal from the Supreme Court of Florida.

[April —, 1974]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL joins, dissenting.

The Court rejects widower Kahn's claim of denial of equal protection on the ground that the limitation in § 196.191 (7), which provides an annual \$500 property tax exemption to widows, is a legislative classification that bears a fair and substantial relation to "the state policy of cushioning the financial impact of spousal loss upon the sex for whom that loss imposes a disproportionately heavy burden." *Ante*, p. 4. In my view, however, a legislative classification that distinguishes potential beneficiaries solely by reference to their gender-based status as widows or widowers, like classifications based upon race,¹ alienage,² and national origin,³ must be subjected to close judicial scrutiny, because it focuses upon generally immutable characteristics over which individuals have little or no control, and also because gender-based classifications too often have been inexcusably utilized to stereotype and stigmatize politically powerless segments of society. See *Frontiero v. Richardson*, 411

¹ See *Loving v. Virginia*, 388 U. S. 1, 11 (1967); *McLaughlin v. Florida*, 379 U. S. 184, 191-192 (1964); *Bolling v. Sharpe*, 347 U. S. 497, 499 (1954).

² See *Graham v. Richardson*, 403 U. S. 365, 372 (1971).

³ See *Oyama v. California*, 332 U. S. 633, 644-646 (1948); *Korematsu v. United States*, 323 U. S. 214, 216 (1944); *Hirabayashi v. United States*, 320 U. S. 81, 100 (1943).

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 12, 1974

No. 73-78 - Kahn v. Shevin

Dear Bill,

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

Sincerely yours,

P.S.
/

Mr. Justice Douglas

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Mr. Justice Douglas
~~Mr. Justice Brennan~~
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 4-19-74

No. 73-78

Recirculated:

Mel Kahn, Etc., Appellant,
v.
Robert L. Shevin et al. } On Appeal from the Supreme
Court of Florida.

[April —, 1974]

MR. JUSTICE WHITE, dissenting.

The Florida tax exemption at issue here is available to all widows but not to widowers. The presumption is that all widows are financially more needy and less trained or less ready for the job market than men. It may be that most widows have been occupied as housewife, mother and homemaker and are not immediately prepared for employment. But there are many rich widows who need no largess from the State; many others are highly trained and have held lucrative positions long before the death of their husbands. At the same time, there are many widowers who are needy and who are in more desperate financial straits and have less access to the job market than many widows. Yet none of them qualifies for the exemption.

I find the discrimination invidious and violative of the Equal Protection Clause. There is merit in giving poor widows a tax break, but gender-based classifications are suspect and require more justification than the State has offered.

I perceive no purpose served by the exemption other than to alleviate current economic necessity, but the State extends the exemption to widows who do not need the help and denies it to widowers who do. It may be administratively inconvenient to make individual determinations of entitlement and to extend the exemption

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 14, 1974

Re: No. 73-78 -- Kahn v. Shevin

Dear Bill:

I shall await further writings in this one.

Sincerely,



T.M.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 9, 1974

Re: No. 73-78 -- Kahn v. Shevin

Dear Bill:

Please join me.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

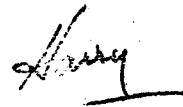
March 18, 1974

Re: No. 73-78 - Kahn v. Shevin

Dear Bill:

I shall withhold my vote until I see the dissent to
be forthcoming in this case.

Sincerely,



Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 9, 1974

Re: No. 73-78 - Kahn v. Shevin

Dear Bill:

Please join me.

Sincerely,

Harry

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 22, 1974

Re: No. 73-78 - Kahn v. Shevin

Dear Bill:

I have just received the proposed final draft circulated on Saturday. I am somewhat disturbed by the addition to footnote 10 on page 5. Am I correct in thinking that the reference there to Roe v. Wade, 410 U.S. 113, is not consistent with what was said in footnote 67 at page 165 of that opinion?

Sincerely,



Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 15, 1974

No. 73-78 Kahn v. Shevin

Dear Bill:

Please join me.

Sincerely,

L. Powell

Mr. Justice Douglas

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 18, 1974

Re: No. 73-78 - Kahn v. Shevin

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

Copies to the Conference