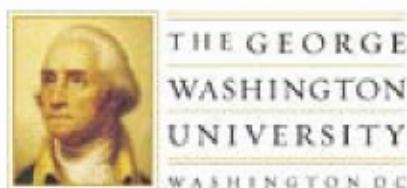


The Burger Court Opinion Writing Database

Hisquierdo v. Hisquierdo

439 U.S. 572 (1979)

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



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

CHAMBERS OF
JUSTICE POTTER STEWART

April 17, 1978

No. 77-533, Hisquierdo v. Hisquierdo

Dear John,

For the reasons expressed in your memorandum of today, I would be quite willing to vote to grant certiorari in this case. I would, however, vote for a remand for reconsideration in light of the new statute if the alternative were a denial of certiorari.

Sincerely yours,

PS,

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 19, 1978

No. 77-533 Hisquierdo v. Hisquierdo

Dear John:

In view of your memorandum of April 17, I will
vote to grant the above case.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

LFP/lab

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 17, 1978

MEMORANDUM TO THE CONFERENCE

Re: 77-533 - Hisquierdo v. Hisquierdo

Two weeks ago the Conference tentatively decided to grant, vacate, and remand for reconsideration in the light of a 1977 statute enacted when the case was pending before the California Supreme Court, and I was requested to prepare a draft order to that effect. I believe the following would suffice:

"The petition for writ of certiorari is granted. The judgment of the Supreme Court of the State of California is vacated. The case is remanded for reconsideration in the light of 42 U.S.C. § 662(c), added by Pub. L. 95-30, § 501(d), 91 Stat. 160."

Bill Rehnquist voted to deny certiorari and, I believe, intends to dissent from this disposition. Although I voted to grant, I am persuaded that the proposed disposition would be unwise.

Section 231m of the Railroad Retirement Act (45 U.S.C. § 231m) provides that Railroad Retirement annuities cannot be "anticipated." Section 459 of the Social Security Act (42 U.S.C. § 659) creates an exception to the "no anticipation rule" for garnishments of alimony or child support payments. The 1977 amendment (42 U.S.C. § 662(c)) narrows this exception by excluding payments pursuant to community property settlements from the definition of alimony.

The decision of the California Supreme Court rested on the premise that the basic "no anticipation rule" does not prevent the State from treating the right to future benefits as community property. Pet. App., at 6-7. Since the decision did not rest on the exception for alimony payments, the new statute which merely narrows that exception has no bearing on the reasoning or the holding of the Supreme Court. Accordingly, I think we should either grant or deny "plaino."

I still think the case should be granted. The Railroad Retirement Act is modeled on the Social Security Act. Both are closer to comprehensive social programs than to earned income, and I doubt that Congress intended to let state law redistribute the benefits of these programs. The administrative difficulties now being faced by the retirement board, the implicit threat to the enormous Social Security program, and the conflict with an appellate decision in Texas all militate in favor of a grant. I would not consider this merely a "local" question when more than a fifth of the nation's population lives in the community property states, with more arriving every year.

Respectfully,

A handwritten signature in black ink, appearing to read "John H. Harlan".