

The Burger Court Opinion Writing Database

United States v. Lee

455 U.S. 252 (1982)

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



To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: The Chief Justice

Circulated: DEC 5 1981

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-767

UNITED STATES, APPELLANT *v.* EDWIN D. LEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF PENNSYLVANIA

[December —, 1981]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We noted probable jurisdiction to determine whether imposition of social security taxes is unconstitutional as applied to persons who object on religious grounds to receipt of public insurance benefits and to payment of taxes to support public insurance funds. — U. S. — (1981). The District Court concluded that the Free Exercise Clause prohibits forced payment of social security taxes when payment of taxes and receipt of benefits violates the taxpayer's religion. We reverse.

I

Appellee, a member of the Old Order Amish, is a self-employed farmer and carpenter. From 1970 to 1977, appellee employed several other Amishmen to work on his farm and in his carpentry shop. He did not file the quarterly social security tax returns required of employers, withhold social security tax from his employees or pay the employer's share of social security taxes.¹

¹The Social Security Act and its subsequent amendments provide a system of old age and unemployment benefits. 26 U. S. C. § 3101 *et seq.* These benefits are supported by various taxes, including, relevant to this appeal, the Federal Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act (FUTA) tax. FICA is an tax paid in part by employees through withholding, 26 U. S. C. § 3101, and in part by employers through an excise tax. 26 U. S. C. § 3111. FUTA is an excise tax imposed only on employers. 26 U. S. C. § 3301. Both taxes are based on

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

CHAMBERS OF
THE CHIEF JUSTICE

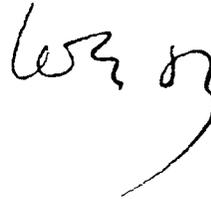
December 8, 1981

Re: No. 80-767 - United States v. Lee

Dear Lewis:

Regarding your December 8 memo, what I was aiming at was that judges cannot evaluate "sin" in this context. All the District Judge did was state a fact, that the Amish consider payment of the tax a sin. However, I can and will clarify this point with a slight change.

Regards,



Justice Powell

Copies to the Conference

CHANGES THROUGHOUT

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: The Chief Justice

Circulated: _____

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

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I

Appellee, a member of the Old Order Amish, is a self-employed farmer and carpenter. From 1970 to 1977, appellee employed several other Amish to work on his farm and in his carpentry shop. He failed to file the quarterly social security tax returns required of employers, withhold social security tax from his employees or pay the employer's share of social security taxes.¹

¹The Social Security Act and its subsequent amendments provide a system of old age and unemployment benefits. 26 U. S. C. § 3101 *et seq.* These benefits are supported by various taxes, including, relevant to this appeal, the Federal Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act (FUTA) tax. FICA is an tax paid in part by employees through withholding, 26 U. S. C. § 3101, and in part by employers through an excise tax. 26 U. S. C. § 3111. FUTA is an excise tax imposed only on employers. 26 U. S. C. § 3301. Both taxes are based on

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 30, 1981

RE: No. 80-767 United States v. Lee

Dear Chief:

I agree.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 14, 1981

RE: 80-767 - U.S. v. Lee

Dear Chief:

I agree.

Sincerely yours,



The Chief Justice

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bkh

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 29, 1982

Re: No. 80-767 - United States v. Lee

Dear Chief:

Please join me.

Sincerely,

T.M.
T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

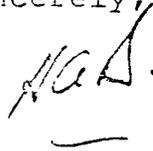
December 30, 1981

Re: No. 80-767 - United States v. Lee

Dear Chief:

Please join me.

Sincerely,

Handwritten signature of H.A. Blackmun, consisting of the initials 'H.A.' followed by a stylized 'B.' and a horizontal line underneath.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 8, 1981

80-767 United States v. Lee

Dear Chief:

Please join me in your opinion.

I do, however, make one suggestion. On page 4 the opinion states that "[i]t is not within the judicial function and judicial competence . . . to determine" whether it is a "sin" for the Amish to pay these taxes.

The difficulty with putting it this way is that the District Court did make a finding that the Amish believe it to be a sin to pay, and this was urged by the Amish in brief and in oral argument. Moreover, I do not understand that the government challenges the fact that the Amish believe it to be a sin. The government argues, rather, that the "payment of Social Security taxes will not threaten the integrity of the Amish religious belief or observance".

I should think it necessary for us to say only that the District Court found payment to be a sin, and the government does not challenge that finding.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

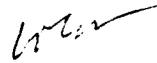
December 10, 1981

Re: No. 80-767 United States v. Lee

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 7, 1982

Re: 80-767 - United States v. Lee

Dear Chief:

With apologies for being so slow, I can now say that I have decided to write a separate concurrence. I will try not to hold you up too long.

Respectfully,



The Chief Justice

Copies to the Conference

Justice
Brennan
White
Marshall
Blackmun
Powell
Rehnquist
O'Connor

Justice Stevens

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-767

UNITED STATES *v.* LEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

[January —, 1982]

JUSTICE STEVENS, concurring in the judgment.

The clash between appellee's religious obligation and his civic obligation is irreconcilable. He must violate either an Amish belief or a federal statute. According to the Court, the religious duty must prevail unless the Government shows that enforcement of the civic duty "is essential to accomplish an overriding governmental interest." *Ante*, at 5. That formulation of the constitutional standard suggests that the Government always bears a heavy burden of justifying the application of neutral general laws to individual conscientious objectors. In my opinion, it is the objector who must shoulder the burden of demonstrating that there is a unique reason for allowing him a special exemption from a valid law of general applicability.

Congress already has granted the Amish a limited exemption from social security taxes. See 26 U. S. C. §1402(g). As a matter of administration, it would be a relatively simple matter to extend the exemption to the taxes involved in this case. As a matter of fiscal policy, an enlarged exemption probably would benefit the social security system because the nonpayment of these taxes by the Amish would be more than offset by the elimination of their right to collect benefits. In view of the fact that the Amish have demonstrated their capacity to care for their own, the social cost of eliminating this relatively small group of dedicated believers would be mini-

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 10, 1981

No. 80-767 United States v. Edwin D. Lee

Dear Chief,

Please join me in your opinion in the referenced case.

Sincerely,



The Chief Justice

Copies to the Conference

P.S. A fine, clear, direct
opinion!