

The Burger Court Opinion Writing Database

Armco Inc. v. Hardesty

467 U.S. 638 (1984)

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
THE CHIEF JUSTICE

September 13, 1984

Re: 83-297 - Armco, Inc. v. Hardesty

Dear Lewis:

I agree with your September 12 memo on this case.

Regards,

A handwritten signature in dark ink, appearing to read 'WRB', is written over the typed name 'Justice Powell'.

Justice Powell

Copies to the Conference

September 13, 1984

83-297 Armco, Inc. v. Hardesty

MEMORANDUM TO THE CONFERENCE:

The appellee State Tax Commissioner of West Virginia petitions the Court for an order "clarifying" its opinion of June 12, 1984 by "directing that its decision herein be applied prospectively to all taxpayers, with the exception of appellant Armco." Petition for Rehearing at 1-2.

Our traditional practice has been not to address questions of possible retroactive application when we resolve the underlying merits of a dispute, but to leave those questions for future litigation. See cases cited in Appellant's Response at 3 n.2. Although we have on rare occasions decided the retroactivity questions together with the underlying merits, see, e.g., Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982), the instant case does not warrant a departure from our traditional practice.

First, Armco already has received the relief it sought in this litigation; there is no dispute that it is entitled to a refund of its taxes. Petition at 2. As Armco suggests, "[t]o decide the [retroactivity] issue in advance, in a proceeding where one party has no financial interest in its outcome, presents obvious procedural difficulties." Appellant's Response at 4. Armco goes so far as to suggest that "no case or controversy is presented by the question of retroactivity raised in the Petition." Id., at 4. We need not address this contention to agree that, solely as a matter of sound appellate practice, it makes little sense to tackle a question of allegedly "catastrophic" significance, Petition at 14, where one side has no concrete interest in the outcome and will suffer absolutely no injury by an adverse decision. I know of no precedent for such a practice.

Second, the question whether other West Virginia taxpayers are entitled to a refund as a result of our decision is, in the first instance at least, a matter of state law for the state courts to decide. The gravamen of the Commissioner's argument is that additional refunds would "not serve the interests of justice" and would "impose substantial hardship" on the State. Id., at 13. These concerns presumably are accounted

for in the State's statute of limitations, its payment-under-protest rules, and perhaps in its case precedent concerning the retroactivity of changes in state tax laws. For all we know (the parties have not addressed the issue), similarly situated taxpayers may now under state law be entitled to a refund as a matter of course. If this is so, I can conceive of no federal interest that would require West Virginia to reweigh the equities of its own imposed liability. If this is not so, and if disgruntled taxpayers believe they are entitled as a federal matter to their refunds notwithstanding the state's rules, there will be time enough for us to address the issue in subsequent litigation.

These concerns about the import of state law, and my conviction that the West Virginia courts should address state-tax refund issues in the first instance, are of course not novel. Less than three months ago, for example, we concluded in Bacchus Imports, Ltd. v. Dias, 52 U.S.L.W. 4979 (June 29, 1984):

"These refund issues, which are essentially issues of remedy for the imposition of a tax that unconstitutionally discriminated against interstate commerce, were not addressed by the state courts. Also, the Federal constitutional issues involved may well be intertwined with, or their consideration obviated by, issues of state law. Also, resolution of those issues, if required at all, may necessitate more of a record than so far has been made in this case. We are reluctant, therefore, to address them in the first instance." Id., at 4983.

We noted in a footnote that "[i]t may be, for example, that given an unconstitutional discrimination, a full refund is mandated by state law." Id., at 4983 n. 14. Because we have no answer to that question in the case before us, we should not depart from the prudent reasoning of Bacchus Imports.

The Court in Bacchus Imports remanded to the state court for a determination of these potentially dispositive issues, and the Commissioner here suggests in the alternative that such a remand might be appropriate. In Bacchus Imports, however, there are unsettled questions whether the appellants themselves are entitled to refunds. Id., at 4983. They can therefore be expected on remand adequately to protect the interests of similarly situated taxpayers. In the present case, on the other hand, there is no dispute that Armco will receive its full refund. It is similarly situated to no one, and on remand would merely be acting in an amicus curiae capacity. If other state taxpayers really have \$50 million riding on the outcome of the retroactivity question, see Petition at 14, it would be unfair to them to require their interests to be

represented by Armco. This would also be unfair to Armco, which understandably protests the suggestion that after five years of litigation it "should now be asked to embark on a new round of litigation in the courts of West Virginia in order to ascertain whether other taxpayers are entitled to refunds as a result of this decision." Appellant's Response at 16 (emphasis added). Because the question of entitlements to refunds should be decided in the first instance by the courts of West Virginia, that decision should be made in the normal course of subsequent litigation involving state taxpayers who are interested in the outcome.

I would therefore vote to deny the petition.

W.J.B., Jr.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

August 3, 1984

Re: No. 83-297-Armco, Inc. v. Hardesty, Tax
Commissioner of West Virginia

MEMORANDUM TO THE CONFERENCE

I agree with LFP's recommendations in this case.

Sincerely,

T.M.
T.M.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

September 17, 1984

Re: No. 83-297-Armco, Inc. v. Hardesty

MEMORANDUM TO THE CONFERENCE

I agree with Bill Brennan.

Sincerely,



T.M.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

August 7, 1984

MEMORANDUM TO THE CONFERENCE

Re: No. 83-297 - Armco v. Hardesty

I agree with Lewis that we call for a response to this petition for rehearing so that the matter may be acted upon at our September 24 conference without further delay.



cc: Mr. Alexander L. Stevas
Clerk of the Court

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

September 20, 1984

Memorandum to the Conference

Re: No. 83-297, Armco, Inc. v. Hardesty

After having reviewed the petition for rehearing and the response thereto, my vote is merely to deny the petition for rehearing.

H.A.B.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

August 3, 1984

83-297 Armco, Inc. v. Hardesty, Tax Commissioner
of West Virginia

MEMORANDUM TO THE CONFERENCE:

We have a petition for rehearing in this case decided on June 12, 1984, in which I wrote the opinion. We invalidated West Virginia's gross receipts tax on businesses selling tangible property at wholesale, but exempted in-state manufacturers from the tax. We found that the tax discriminated against interstate commerce, and reversed the decision of the West Virginia Supreme Court of Appeals.

The State's petition for a rehearing requests that we either make clear that our opinion is prospective only or that we remand the case to the State Court for determination of this question. The petition notes that if the decision were construed retroactively, it could cost the State some \$50 million in revenues and result in numerous claims for refunds.

I think the State makes a valid request. We should have remanded to the State Court for a determination of the effect of our decision. We did this in substance in Bacchus Imports, Ltd. v. Dias, No. 82-1565, decided June 29.

My suggestion is that we call for a response promptly so that we can act on the petition at our September 24 Conference. Normally, we would defer a vote on calling for a response until the Conference. In this case, however, the State's petition indicates that until the question of retroactivity is resolved, our decision will present a problem in determining the State's budget.

I enclose a brief memo prepared by my Clerk.


L.F.P., Jr.

lfp/ss

lgs August 3, 1984

MEMORANDUM TO JUSTICE POWELL

From: Lynda

Re: No. 83-297 Armco, Inc. v. Hardesty

Petr Hardesty requests that the Court grant his petn to clarify its opinion of June 12, 1984 by specifying that the decision is to have prospective effect (except as to Armco) so that the State of West Virginia will not be burdened by potential refund claims of \$50 million. Petr states that this case meets the three criteria set forth in Chevron Oil Co. v. Huson, 404 U.S. 97, 106 (1971), for determining whether a rule should be given prospective effect. Those criteria are: (1) that the decision establish a new principle of law by overruling past clear precedent or by deciding an issue of first impression whose resolution was not clearly foreshadowed; (2) that the prospective effect will not retard operation of the rule upheld (here, the Commerce Clause); and (3) that retrospective effect would produce substantial inequitable results.

Petr contends that this case meets all of those requirements. First, it contends that the Court's decision overruled Columbia Gas Transmission Corp. v. Rose, 459 U.S. 807 (1982), which dismissed a taxpayer's appeal for want of a substantial federal question. Petr contends that Rose constituted a ruling on the merits under Hicks v. Miranda, 422 U.S. 332 (1975). Moreover, petr claims, Armco was a sharp break with the past because the tax scheme invalidated has been substantially the same since 1933.

Second, petr contends that prospective operation will not retard the operation of the Commerce Clause since there was no evidence that the tax had ever actually hindered free trade. Finally, applying the decision retroactively will impose a substantial hardship on West Virginia because it relied on the presumptively valid tax scheme in preparing its budget. If the decision is applied retroactively, West Virginia anticipates that it will have to refund approximately \$50 million in revenues from taxes collected over the past three fiscal years; such refunds would have a catastrophic effect on the state's finances. Although recognizing Armco's right to recover the fruits of its lawsuit, the fact that Armco never demonstrated actual monetary harm weighs in favor of applying the Court's decision prospectively.

In the alternative, petr asks that the Court remand the case to the state court for a determination of whether the decision should be applied prospectively, in order to avoid the litigation over the question that is sure otherwise to result. Petr acknowledges that the Chevron test requires a balancing of the facts in each situation and that additional evidence may be needed before a proper determination may be made. In a similar case just decided, Bacchus Imports, LTD. v. Dias, No. 82-1565 (Decided June 29, 1984), the Court, after holding a Hawaii excise tax unconstitutional as discriminatory under the Commerce Clause, remanded to the state court for a determination of whether refunds should be permitted because that determination had not been made by the state court and additional development of the

ord might therefore be necessary. Petr presents a good case for prospective application under Chevron, and a decision now would undoubtedly preclude much additional litigation which the state seems sure will result.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

August 6, 1984

Re: No. 83-297 Armco, Inc. v. Hardesty, Tax Commissioner
of West Virginia

MEMORANDUM TO THE CONFERENCE

I agree with Lewis that we should call for a response on
the motion for rehearing.

Sincerely,

WHR/jb.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

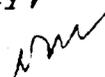
September 13, 1984

Re: No. 83-297 Armco, Inc. v. Hardesty

MEMORANDUM TO THE CONFERENCE

I agree with Lewis' proposal that we issue an order in this case applying the Court's decision only prospectively.

Sincerely,

A handwritten signature in cursive script, appearing to be 'WHR', is written below the typed name 'Sincerely,'.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

September 13, 1984

MEMORANDUM TO THE CONFERENCE

Re: 83-297 - Armco, Inc. v. Hardesty

In my opinion the retroactivity question is sufficiently difficult and important to require argument before it is decided. I am somewhat skeptical of counsel's unsupported assertion that \$50,000,000 in refunds are at stake. I would suppose the state's statute of limitations would provide adequate protection against any unfair retroactive application of the decision. As presently advised I would therefore simply deny the petition for rehearing.

Respectfully,



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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

August 3, 1984

No. 83-297 Armco, Inc. v. Hardesty, Tax
Commissioner of West Virginia

MEMORANDUM TO THE CONFERENCE

I agree with Lewis that we should call for
a response on the motion for rehearing.

Sincerely,

Sandra

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

September 14, 1984

Re: 83-297 - Armco Inc. v. Hardesty

MEMORANDUM TO THE CONFERENCE:

I have reviewed the State's petition for rehearing and the response and have considered Lewis' suggestion that we decide summarily that our opinion is not retroactive. I am reluctant to go along with that proposal because we have only unsupported allegations of potential liability, and there is no entity with an adverse interest in that issue on the other side. As Bill Brennan observes, the State's own laws may determine many of the limitations issues.

My vote is to deny the petition or, if a majority prefer, to remand it to the State court.

Sincerely,



SO'C/mrd