

The Burger Court Opinion Writing Database

United States v. Hemme

476 U.S. 558 (1986)

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

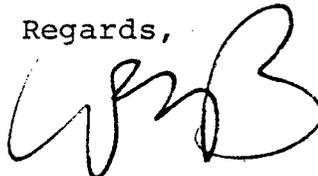
May 26, 1986

84-1944 - United States v. Alvin Hemme, et al.

Dear Thurgood:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'WMB', written in a cursive style.

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 20, 1986

No. 84-1944

United States v. Hemme

Dear Thurgood,

Please join me.

Sincerely,



Justice White

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 14, 1986

84-1944 - United States v. Hemme

Dear Thurgood,

Please join me.

Sincerely yours,



Justice Marshall

Copies to the Conference

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

From: **Justice Marshall**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1944

UNITED STATES, ET AL, APPELLANTS *v.*
ALVIN HEMME ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF ILLINOIS

[May —, 1986]

JUSTICE MARSHALL delivered the opinion of the Court.

Appellees, the trustee of the revocable living trust of Charles W. Hirschi and transferees of Hirschi's property, seek a refund of \$6,000 in estate taxes, on the ground that a statutory transitional rule, enacted to bridge the old and new regimes for the federal taxation of gifts and estates, is unconstitutional.

I

Prior to 1977, the gift tax and the estate tax were imposed, calculated, and collected separately. The gift tax, imposed on donors of certain gifts, permitted each taxpayer to a lifetime exemption of \$30,000 to be deducted from amounts otherwise taxable. 26 U. S. C. §2521 (1970 ed.). This so-called "specific exemption" could be claimed, in whole or in part, at any time during the taxpayer's lifetime. *Ibid.* The estate tax, too, provided certain relief for modest estates. In determining the amount subject to estate tax, the estate was entitled to deduct a "specific exemption" of \$60,000. §2052 (1970 ed.).

In considering tax reform in 1976, Congress determined that several changes were necessary to ease the burden of estate and gift taxes on taxpayers of modest means. See H. R. Rep. No. 94-1380, p. 11 (1976). One such change was to transform what had been tax deductions into tax credits so

STYLISTIC CHANGES THROUGHOUT

+ pp. 1, 10

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

From: Justice Marshall

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1944

UNITED STATES, ET AL, APPELLANTS *v.*
ALVIN HEMME ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF ILLINOIS

[May —, 1986]

JUSTICE MARSHALL delivered the opinion of the Court.

Appellees, identified as the trustee of the "revocable living trust" of Charles W. Hirschi and transferees of Hirschi's property, seek a refund of \$6,000 in estate taxes, on the ground that the Government's interpretation of a statutory transitional rule, enacted to bridge the old and new regimes for the federal taxation of gifts and estates, violates both the statute and the Constitution.

I

Prior to 1977, the gift tax and the estate tax were imposed, calculated, and collected separately. The gift tax, imposed on donors of certain gifts, permitted each taxpayer a lifetime exemption of \$30,000 to be deducted from amounts otherwise taxable. 26 U. S. C. § 2521 (1970 ed.). This so-called "specific exemption" could be claimed, in whole or in part, at any time during the taxpayer's lifetime. *Ibid.* The estate tax, too, provided certain relief for modest estates. In determining the amount subject to estate tax, the estate was entitled to deduct a "specific exemption" of \$60,000. § 2052 (1970 ed.).

In considering tax reform in 1976, Congress determined that several changes were necessary to ease the burden of estate and gift taxes on taxpayers of modest means. See H. R. Rep. No. 94-1380, p. 11 (1976). One such change was

P. 4

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

From: Justice Marshall

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1944

UNITED STATES, ET AL, APPELLANTS *v.*
ALVIN HEMME ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF ILLINOIS

[June —, 1986]

JUSTICE MARSHALL delivered the opinion of the Court.

Appellees, identified as the trustee of the "revocable living trust" of Charles W. Hirschi and transferees of Hirschi's property, seek a refund of \$6,000 in estate taxes, on the ground that the Government's interpretation of a statutory transitional rule, enacted to bridge the old and new regimes for the federal taxation of gifts and estates, violates both the statute and the Constitution.

I

Prior to 1977, the gift tax and the estate tax were imposed, calculated, and collected separately. The gift tax, imposed on donors of certain gifts, permitted each taxpayer a lifetime exemption of \$30,000 to be deducted from amounts otherwise taxable. 26 U. S. C. § 2521 (1970 ed.). This so-called "specific exemption" could be claimed, in whole or in part, at any time during the taxpayer's lifetime. *Ibid.* The estate tax, too, provided certain relief for modest estates. In determining the amount subject to estate tax, the estate was entitled to deduct a "specific exemption" of \$60,000. § 2052 (1970 ed.).

In considering tax reform in 1976, Congress determined that several changes were necessary to ease the burden of estate and gift taxes on taxpayers of modest means. See H. R. Rep. No. 94-1380, p. 11 (1976). One such change was

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 19, 1986

MEMORANDUM TO THE CONFERENCE

Also on form
Case held for 84-1944, United States v. Hemme
No. 85-132, Hemme v. United States

In this cross-appeal, Mr. Hemme asserts an alternative ground for affirmance of the District Court's judgment, which this Court has voted to reverse. The District Court ruled entirely in Hemme's favor, entering judgment for him and against the Government. App. 7a, No. 84-1944. While Hemme, as an appellee, would be entitled to raise arguments in addition to those relied upon by the District Court in support of the judgment below, he may not appeal to this Court a judgment entirely favorable to him. See Public Service Comm'n v. Brashear Freight Lines, Inc., 306 U.S. 204, 206-207 (1939).

I believe we need not decide whether to consider the issue presented in the cross-appeal, which was not raised or passed upon below, because the Court is without jurisdiction to hear a cross-appeal from the prevailing party. I will vote to dismiss for want of jurisdiction.

Sincerely,

J.M.
T.M.



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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 23, 1986

Re: No. 84-1944, United States v. Hemme

Dear Thurgood:

Please join me.

Sincerely,

Justice Marshall

cc: The Conference

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CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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

May 22, 1986

84-1944 United States v. Hemme

Dear Thurgood:

Please join me.

Sincerely,

Justice Marshall

lfp/ss

cc: The Conference



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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 13, 1986

Re: No. 84-1944 United States v. Hemme

Dear Thurgood,

Please join me.

Sincerely,

Justice Marshall

cc: The Conference



CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

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

May 12, 1986

84-1944

Re: United States v. Hemme, et al.

Dear Thurgood:

Please join me.

Respectfully,

Justice Marshall

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12)

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 13, 1986

No. 84-1944 United States v. Hemme

Dear Thurgood,

Please join me.

Sincerely,



Justice Marshall

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