

IN THE SUPREME COURT OF THE UNITED STATES

No. 17-419

JAMES DAWSON AND ELAINE DAWSON, PETITIONERS

v.

DALE W. STEAGER, WEST VIRGINIA STATE TAX COMMISSIONER, ET AL.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Acting Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae supporting petitioners and requests that the United States be allowed ten minutes of argument time. Petitioners have consented to an allocation of ten minutes of their argument time to the United States.

This case presents the question whether the doctrine of intergovernmental tax immunity, as codified in 4 U.S.C. 111, prohibits the State of West Virginia from exempting from taxation the retirement benefits of certain former state law-enforcement

officers, without allowing the same exemption for the retirement benefits of former officers of the United States Marshals Service. The United States has a substantial interest in ensuring that its employees and retirees -- who number in the hundreds of thousands nationwide -- receive equitable tax treatment from the States. At the Court's invitation, the United States filed a brief as amicus curiae at the petition stage of this case.

On September 4, 2018, the United States filed a brief as amicus curiae supporting petitioners. In its brief, the United States argues that 4 U.S.C. 111(a) prohibits a State from subjecting federal employees or retirees to heavier taxation than similarly situated state employees or retirees. U.S. Br. 9-16. In the decision below, the Supreme Court of Appeals of West Virginia acknowledged that the State's tax code provides a more generous tax exemption to multiple categories of retired state law-enforcement officers than to any retired federal law-enforcement officers like petitioner James Dawson, but the court below did not identify any significant differences between state and federal law-enforcement officers that would justify the disparate tax treatment. U.S. Br. 16-19. Although the court below offered various reasons for upholding West Virginia's taxation scheme, the United States' amicus curiae brief argues that none of those reasons can be reconciled with the text of Section 111 or with this Court's intergovernmental-tax-immunity precedents.

The United States has participated in oral argument as amicus curiae in other cases involving intergovernmental tax immunity. See Jefferson County v. Acker, 527 U.S. 423 (1999); Barker v. Kansas, 503 U.S. 594 (1992); Davis v. Michigan Department of the Treasury, 489 U.S. 803 (1989). In this case, the United States is well positioned to address the application of constitutional and statutory principles and this Court's precedents to the West Virginia tax statute at issue. Division of argument will therefore materially assist the Court in its consideration of the case.

Respectfully submitted.

JEFFREY B. WALL
Acting Solicitor General*
Counsel of Record

SEPTEMBER 2018

* The Solicitor General is recused in this case.