

22-800 MOORE V. UNITED STATES

DECISION BELOW: 36 F.4TH 930

LOWER COURT CASE NUMBER: 20-36122

QUESTION PRESENTED:

The Sixteenth Amendment authorizes Congress to lay "taxes on incomes ... without apportionment among the several States." Beginning with *Eisner v. Macomber*, 252 U.S. 189 (1920), this Court's decisions have uniformly held "income," for Sixteenth Amendment purposes, to require realization by the taxpayer. In the decision below, however, the Ninth Circuit approved taxation of a married couple on earnings that they undisputedly did not realize but were instead retained and reinvested by a corporation in which they are minority shareholders. It held that "realization of income is not a constitutional requirement" for Congress to lay an "income" tax exempt from apportionment. App.12. In so holding, the Ninth Circuit became "the first court in the country to state that an 'income tax' doesn't require that a 'taxpayer has realized income.'" App.38 (Bumatay, J., dissenting from denial of rehearing en banc).

The question presented is:

Whether the Sixteenth Amendment authorizes Congress to tax unrealized sums without apportionment among the states.

CERT. GRANTED 6/26/2023