

1991

Wendell E. Brumley, et al. v. Utah State Tax Commission, et al. : Unknown

Utah Supreme Court

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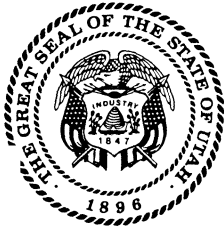
Jan Graham; Attorney General; L.A. Dever; Brian L. Tarbet; John C. McCarrey; Assistant Attorneys General; Attorneys for Appellants.

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BRIEF.

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June 22, 1992

JOSEPH E. TESCH
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FILED

JUN 22 1992

CLERK SUPREME COURT
UTAH

Geoffrey J. Butler
Clerk of the Court
Supreme Court of Utah
332 State Capitol
Salt Lake City, Utah 84114

Re: Brumley et al. vs. Utah State Tax Commission et
al., No. ~~910103~~ 910242

Dear Mr. Butler:

This letter is in reference to the U.S. Supreme Court's Order granting cert. in the Virginia case. Harper et al. v. Virginia Dept. of Taxation, No. 91-794. The Court granted petition for cert. on the issue: "whether this court's decision in Davis v. Michigan Dept. of Treasury, 489 U.S. 803 (1989), may under any circumstances be "applied" non-retroactively so as to defeat federal retirees, entitlement to refunds of unconstitutional state taxes imposed on their federal annuities."

I have also enclosed a copy of the Memorandum to Counsel Cases Granted Review on May 18, 1992. Hopefully that memorandum will give the Court some indication of the U.S. Supreme Court's scheduling in the Virginia matter.

Very truly yours,

Brian L. Tarbet
Assistant Attorney General
Attorney for Defendants

BLT:ds

Enclosure

cc: Jack C. Helgesen
Richard W. Jones
Attorneys for Plaintiffs/Cross-Appellants

Lee Dever

NOTE: Although this case will not be argued until next term, the Court directs that briefs be filed during its recess.

OFFICE OF THE CLERK

Supreme Court of the United States

WASHINGTON, D. C. 20543

MEMORANDUM TO COUNSEL IN CASES GRANTED REVIEW ON

May 18, 1992

The attention of counsel of record in cases granted review on the above date is directed to the following:

1. Unless expedited by the Court, your case will probably be calendared for oral argument in the November session of the Court. Counsel will be advised several weeks in advance of the date of argument.
2. The petitioner's or appellant's brief on the merits is due 45 days from May 18, 1992. The respondent's or appellee's brief on the merits is due 30 days after receipt of the brief of the petitioner or appellant. Rule 25.
3. If the certified record of the proceedings below has not been transmitted to this Court, the Clerk will in the near future request the clerk of the court having possession of the record to certify and transmit it pursuant to Rule 12.5. The Clerk will delay making this request for a reasonable period of time to permit counsel to have access to the record locally for purposes of preparing the joint appendix.
4. The joint appendix must be printed and filed on or before July 2, 1992. Counsel for the petitioner or appellant is primarily responsible for preparing and printing the joint appendix. Work should begin *immediately*. The Court strongly urges counsel to agree quickly on the contents of the joint appendix. See Rule 26.2.
5. If no agreement on the contents of the joint appendix is reached, counsel for the petitioner or appellant must designate those portions of the record to be printed by June 1, 1992, and counsel for the respondent or appellee must cross-designate by June 11, 1992. These dates *must* be adhered to. Counsel for the petitioner or appellant should keep the Clerk advised of the date any agreement is reached, or the dates when the designation and cross-designation are actually made, as well as the date when the designated portions of the record are sent to the printer. Copies of the designations need not be forwarded to the Clerk.
6. In designating the portions of the record to be printed counsel should remember that the entire record is always available to the Court for reference and examination. Only those portions of the record directly relevant to the issues being briefed should be printed. The briefs of the parties can always cite and rely upon portions of the record that have not been designated for printing in the joint appendix. See Rule 26.2.

7. Rule 26.4 permits the deferral of the preparation of the joint appendix until after the briefs have been filed, either by agreement of counsel or Court order. *This provision should be sparingly used.* It is appropriate only when the portions of a bulky record that need to be printed in the joint appendix cannot be determined until the issues have been sharpened in the parties' briefs. The Clerk should be notified immediately if counsel plan to use this procedure.
8. In preparing and printing the joint appendix counsel for the petitioner or appellant should follow the instructions contained in the attached memorandum on "Printing the Joint Appendix."
9. The form and content of the briefs on the merits and the joint appendix are governed by Rules 24 and 33. If printed by standard typographic processes, or their equivalent, the briefs may not exceed 50 pages. If reproduced in typewritten form, the briefs may not exceed 110 pages and must comply with the same requirements as to size of type and over-all page size for type-set briefs as provided in subparagraphs (c) and (d) of Rule 33.1. Typewritten briefs must be double spaced, but indented quotations and footnotes may be single spaced.
10. The brief on the merits for petitioner or appellant must have a *light* blue cover; the brief for the respondent or appellee must have a *light* red cover. A reply brief, if any, must have a yellow cover.
11. A reply brief must be filed in the Clerk's office within 30 days of the receipt of the brief for the respondent or appellee, or actually received by the Clerk one week before argument, whichever is earlier. See Rule 25.3.
12. Unless otherwise ordered by the Court counsel on each side will be allowed 30 minutes to argue and only one attorney may argue for each side. See Rule 28.3 and Rule 28.4.

Note: The Clerk's staff is ready and willing to provide assistance and advice on these procedures and on the application of the Rules to each case. Copies of the Rules are available from the Clerk.

Telephone Mrs. Sandy Nelsen (202) 479-3014 or FTS 989-3014 for further information.