



10-1973

## Kahn v. Shevin

Lewis F. Powell Jr.

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Court Fla. Supreme Ct.  
 Argued ..... 19...  
 Submitted ..... 19...

Voted on....., 19...  
 Assigned ..... 19...  
 Announced ..... 19...

*Oliver*  
 No. 73-78

MEL KAHN, ETC., Appellant  
 vs.  
 ROBERT L. SHEVIN, ET AL.

7/6/73 Cert. filed.

*Noted*

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
.....													
Rehnquist, J. ....						✓							
Powell, J. ....						✓							
Blackmun, J. ....				✓									
Marshall, J. ....						✓							
White, J. ....				✓									
Stewart, J. ....						✓							
Brennan, J. ....				✓									
Douglas, J. ....				✓									
Burger, Ch. J. ....						✓							

*Sumner at trial*

Dismiss

Fla. statute held ~~const.~~ by Fla S/Ct exempted \$500 of a widow's property from taxation but ~~not~~ provided no exemption ~~for~~ for widowers.

Appellant, a widow, claims this is sex discrimination & denial of E/P.

Those who believe sex is a suspect class will, on logic (?) of their position in Frontier, Note & Reverse this case.

In my view the economic differences between

No. 73-78 most widows & widows in justification Equal Protection attack on Florida statute exempting Widows (but not widowers) from certain taxes  
Kahn v. Shevin, et al for the classification  
Appeal from Florida Supreme Court

This is truly an appeal, since the highest state court upheld a state statute against the claim that the statute was in violation of the U. S. Constitution. It is about 2 months nonjurisdictionally out of time, since the requisite materials were not docketed in this court until about 5 months after the entry of the judgment below. However, the notice of appeal was filed with the court below within 90 days of the judgment at issue, so jurisdictional timeliness requirements have been met. Some attention will have to be paid to time questions in this one, as it may be a "note."

Appellant is a widower. Appellees are the Florida Attorney General

and other state officers. The state statute that has provoked this litigation ,  
 Fla. Stat. §196.202, provides:

Property of widows, blind persons, and persons totally and permanently disabled -- Property to the value of five hundred dollars (\$500) of every widow, blind person, or totally and permanently disabled person who is a bona fide resident of this state shall be exempt from taxation.

Appellant brought an equal protection attack in state court against this statute, claiming impermissible sex discrimination. Citing Reed v. Reed, 404 U.S. 71 (1971) (C.J. Burger), the state trial court declared the statute unconstitutional. The highest state court reversed. According to that court, "[a]ll that is required to uphold the classification of widow or widower contained in the statute in question is that it be shown that it rests upon some ground of difference having a fair and substantial relation to the object of the legislation." (Citing Reed). The state court thought that the disparity between the economic capabilities of a man and a woman justified the differences drawn in the statute. The court also pointed out that this was a benign intent statute, designed to extend more favorable treatment to women rather than to discriminate against them. The court cited a CA 2 case approving another statute with the benign intent of favoring women.

Appellant points out in his 5 page JS that the statute does not distinguish between all widows and all widowers but between widows with property and widowers. He claims there is no rational basis for this distinction.

This case should test the mettle of those Justices in Frontiero who

Don't  
 tell  
 Billy Jean

*Cheney!*  
 expressed the view that sex distinctions are suspect classifications. The state might have some difficulty in this case, carrying the heavy burden of justification required by the upper tier of two-tier analysis. Yet, this statute clearly was meant to assist the weaker sex, rather than to discriminate against it, and the statute does not give one a sense of injustice.

Under a less strict standard of review, the statute is probably supportable on economic disparity and benign intent grounds. Furthermore, this is a state tax statute, an area where the states are traditionally allowed maximum leeway in drawing lines.

Note that in addition to the male/female problem, the statute is under inclusive in a more general sense. That is, widows, the blind, and the disabled are probably not the only three classes who might need property tax relief. What about (in addition to widowers) nearly destitute marrieds, etc. *like low class?* However, we have been provided only one statute. Other statutes in an overall scheme may draw broader lines.

The two women's rights, pregnancy cases already granted and calendared for argument this fall are not controlling here. See Cleveland Bd of Ed. v. LaFleur, No. 72-777 and Cohen v. Chesterfield County School Bd., No. 72-1129. The fact situations are too different.

Call for a response. AWAIT DISCUSSION.

Owens

Dismiss  
for  
WANT

DISCUSS

See my notes attached.

Fla. law exempts prop. of  
widows from taxation up to \$500  
but no comparable deduction for  
widowers.

No. 73-78

RESPONSE RECEIVED

Kahn v. Shevin

In its motion to dismiss or affirm, the state argues that in the tax area the states have maximum room to operate under the Equal Protection clause. The state notes that the Court has not yet ~~■~~ elevated sex classifications to upper tier analysis. The state argues that the statute under attack has a rational basis, submitting data showing that widows are far more prone to poverty than widowers. The state cites CA authority upholding federal social security provisions giving women favored treatment. For these reasons and because this appeal is so far nonjurisdictionally out of time, I think your original disposition is correct--dismiss for want.



No. 73-78 Kahn v. Shevin

1. Sex is not a suspect classification for the reasons we discussed in the pregnant teachers cases, and
2. this case involves matters of state tax policy, where the Court has traditionally adopted a hands-off posture. Therefore,
3. the Florida tax exemption for widows (but not widowers) must be sustained if it has an ~~an~~ articulated or obvious rational basis.
4. Such a basis exists here because the state is engaged in an obvious effort to counterbalance the economic disparities to which women have been subjected. (N.b.--Even if sex is a suspect classification, this may be a compelling state need. Furthermore, this is a case of benign treatment, not deprivation, for those who have historically been subjected to discrimination. E.g., DeFunis v. Odegaard. Query where that leaves the upper tier votes?)
5. The ACLU's argument that the case be remanded to the state courts to allow them to reinterpret their statute so that it will reach men~~s~~ and women is silly. The state <sup>court</sup> has already had that opportunity and has refused to do so. That is a state law holding that binds this ~~the~~ Court on the question of the correct reading of the state statute.

RE 2/25/74]

Supreme Court of the United States  
Memorandum

....., 10.....

Where females are  
head of families --  
35.8% of families  
are below poverty level.

Where male heads  
9.8% below poverty  
level.

AG's brief - p 11



Jack  
the  
man

Fla. 500 <sup>for</sup> exemption for women.

Mar Ruth Ginsberg (Rab) - ACLU

By defining surviving spouse as widow, ~~we~~ women are stigmatized as being in class apart such as blind, insane, etc.

Altho discriminating vs. men, the more subtle discrimination is against women - by implication that they are not as self sufficient as men.

→ | The classification that is suspect is "sex"  
- regardless of whether women or men.  
Wom. - attempt to benefit women is equally  
invidious or classifications which appear to  
discrimination vs them. all classification  
of sex - however apparently beneficent -  
is suspect & in end hurts women.

Mr. Quibery (Pehr)

This statute connotes the capabilities  
& contributions of women

McKenzie (in Fla)

Provisions attached are in Fla. Const  
& also statute

It is a self-executing mandatory  
exemption of \$500 of a widow's prop.  
from ad valorem taxes. (Not a  
deduction).

Rational basis test.

⊗ Purpose of classification: to grant  
some relief to widows

→ → See statistic on p 11 of A G's Brief.

Appears to be to 3

The Chief Justice

Affirm  
Probably more widows  
in Fla - a retirement  
house.  
If "compelling state int."  
test is applied, reversal  
is indicated.

Douglas, J. Affirm (Wow!)

Under Fontano sex is  
suspect class, but Bill says  
this does not necessarily  
amount to.  
In a way, sale of liquor  
to Indians was common.  
They are suspect class but  
this classification was OK.  
Most women are very poor.  
Every law relating  
to sex need not ~~be~~  
treat women & men alike.  
Bill says he shall  
regard ~~women~~ as "suspect  
class" but would not  
apply it inflexible.

Brennan, J. Reverse

Need not reach  
"suspect class" issue.  
Reed v. Reed controls,  
then ~~the~~ law  
is over-include and include  
rich as well as poor.

Stewart, J. Reverse

Not in favor of deciding  
which part of 14th apply.  
Any law which  
violates unduly any  
protected const. right  
is presumptively valid.  
Also contains, under  
14th amend, classification  
of blacks, aliens, etc  
are also presumptively valid.  
This is tax law.  
Can't try to distinguish  
between rich & poor.  
Blind people receive  
benefits regardless of  
wealth; ~~reverse~~ same is  
true as to many tax  
classifications.

White, J.

Reverse

Byron gave no  
reason - simply  
said he would  
"reverse"

Marshall, J.

Reverse

Blackmun, J. Affirm

Would apply middle tier  
basis. Logically this  
would lead to reversal  
but this would create  
harm

Powell, J.

Affirm

Agree with Potter.

Rehnquist, J.

Affirm

Unbelievable. Join. Pin  
him down while you've got  
the chance. Jack

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.  
Date: 3-12  
Recd. culled:

No. 78-78

Mel Kahn, Etc., Appellant,  
v.  
Robert L. Shevin et al. } On Appeal from the Supreme Court of Florida.

[March —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Since at least 1885, Florida has provided for some form of property tax exemption for widows.<sup>1</sup> The current law granting all widows an annual \$500 exemption, Fla. Stat. § 196.191 (7), has been essentially unchanged since 1941.<sup>2</sup> Appellant Kahn is a widower who lives in Florida and applied for the exemption to the Dade County Tax Assessor's Office. It was denied because the statute offers no analogous benefit for widowers. Kahn then sought a

<sup>1</sup> Article IX, § 9 of the 1885 Florida constitution provided that: "There shall be exempt from taxation property to the value of two hundred dollars to every widow that has a family dependent on her for support, and to every person that has lost a limb or been disabled in war or by misfortune."

<sup>2</sup> In 1941 Fla. Stat. § 192.06 (7) exempted "[p]roperty to the value of five hundred dollars to every widow . . ." The current provision, challenged here, provides that: "The following property shall be exempt from taxation:

"(7) Property to the value of five hundred dollars to every widow and to every person who is a bona fide resident of the state and has lost a limb or been disabled in war or military hostilities or by misfortune."

declaratory judgment in the Circuit Court for Dade County, Florida, and that court held the statute violative of the Equal Protection Clause of the Fourteenth Amendment because the classification "widow" was based upon gender. The Florida Supreme Court reversed, finding the classification valid because it has a "fair and substantial relation to the object of the legislation,"<sup>3</sup> that object being the reduction of "the disparity between the economic capabilities of a man and a woman." Kahn appealed here, 28 U. S. C. § 1257 (2), and we noted probable jurisdiction, — U. S. —. We affirm.

There can be no dispute that the financial difficulties confronting the lone woman in Florida or in any other State exceed those facing the man. Whether from overt discrimination or from the socialization process of a male dominated culture, the job market is inhospitable to the woman seeking any but the lowest paid jobs.<sup>4</sup> There are of course efforts underway to remedy this situation. On the federal level Title VII of the Civil Rights Act of 1964 prohibits covered employees and labor unions from discrimination on the basis of sex, 42 U. S. C. §§ 2000e-2 (a), (b), (c), as does the Equal Pay Act of 1963, 29 U. S. C. § 206 (d). But firmly entrenched practices are resistant to such pressures, and indeed, data compiled by the Woman's Bureau of the United States Department of Labor shows that in 1972 woman working full time had a median income which was only 57.9% of the male median—a figure actually six points lower than had been

<sup>3</sup> Quoting *Reed v. Reed*, 404 U. S. 71, 76.

<sup>4</sup> In 1970 while 40% of males in the work force earned over \$10,000, and 70% over \$7,000, 45% of women working full time earned less than \$5,000, and 73.9% earned less than \$7,000. U. S. Department of Commerce, Bureau of the Census: Current Population Reports, P-60, No. 80.

achieved in 1955.<sup>6</sup> Other data points in the same direction.<sup>7</sup> The disparity is likely to be exacerbated for the widow. While the widower can usually continue in

<sup>6</sup> The Women's Bureau provides the following data:

Year	Median earnings		Women's median earnings as percent of men's
	Women	Men	
1972	85,903	110,202	67.9
1971	5,593	9,399	59.5
1970	5,323	8,966	59.4
1969	4,977	8,227	60.5
1968	4,457	7,664	58.2
1967	4,150	7,182	57.8
1966	3,973	6,848	58.0
1965	3,823	6,376	60.0
1964	3,690	6,106	60.6
1963	3,561	5,978	60.6
1962	3,446	5,794	59.5
1961	3,351	5,644	59.4
1960	3,293	5,417	60.8
1959	3,193	5,209	61.3
1958	3,102	4,927	63.0
1957	3,008	4,713	63.8
1956	2,827	4,466	63.3
1955	2,719	4,252	63.9

Note.—Data for 1962-72 are not strictly comparable with those for prior years, which are for wage and salary income only and do not include earnings of self-employed persons.

Source: Table prepared by Women's Bureau, Employment Standards Administration, U. S. Department of Labor, from data published by Bureau of the Census, U. S. Department of Commerce.

<sup>7</sup> For example, in 1972 the median income of women with four years of college was \$8,736—exactly \$100 more than the median income of men who had never even completed one year of high school. Of those employed as managers or administrators, the women's median income was only 62.2% of the men's, and in the professional and technical occupations the figure was 67.5%. Thus the disparity extends even to women occupying jobs usually thought



the occupation which preceded his spouse's death in many cases the widow will find herself suddenly forced into a job market with which she is unfamiliar, and in which, because of her former economic dependency, she will have fewer skills to offer.<sup>7</sup>

There can be no doubt therefore that Florida's differing treatment of widows and widowers "rest[s] upon some ground of difference having a fair and substantial relation to the object of the legislation." *Reed v. Reed*, 404 U. S. 71, 76, quoting *Royster Guano Co. v. Virginia*, 253 U. S. 412, 415.

This is not a case like *Frontiero v. Richardson*, 411 U. S. 677, where the Government denied its female employees both substantive and procedural benefits granted males "solely for administrative convenience." *Id.*, at 690 (emphasis in original).<sup>8</sup> We deal here with a state tax law reasonably designed to further the state policy of cushioning the financial impact of spousal loss upon the sex for whom that loss imposes a disproportionately heavy burden. We have long held that "[w]here taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and

of as well paid. Tables prepared by the Women's Bureau, Employment Standards Administration, U. S. Department of Labor.

<sup>7</sup> It is still the case that in the majority of families where both spouses are present, the woman is not employed. A Ferris, *Indicators of Trends in the Status of American Women 95* (1971).

<sup>8</sup> And in *Frontiero* the plurality opinion also noted that the statutes there were "not in any sense designed to rectify the effects of past discrimination against women. On the contrary, these statutes seize upon a group—women—who have historically suffered discrimination in employment, and rely upon the effects of this past discrimination as a justification for heaping on additional economic disadvantages." *Frontiero v. Richardson*, 411 U. S. 677, 688 n. 22 (citations omitted).

drawing lines which in their judgment produce reasonable systems of taxation." *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U. S. 356, 359. A state tax law is not arbitrary although it "discriminate[s] in favor of a certain class . . . if the discrimination is founded upon a reasonable distinction, or difference in state policy." *Allied Stores v. Bowers*, 358 U. S. 522, 528. This principle has weathered nearly a century of Supreme Court adjudication,<sup>6</sup> and it applies here as well. The statute before us is well within those limits.

*Affirmed.*

<sup>6</sup> See *Bell's Gap R. Co. v. Pennsylvania*, 134 U. S. 232, 237; *Madden v. Kentucky*, 309 U. S. 83, 87-88; *Lawrence v. State Tax Comm'n*, 298 U. S. 276; *Royster Guano v. Virginia*, 253 U. S. 412.

Sally - 9've  
joined.  
5/14

To : The Chief Justice  
Mr. Just  
M. J. 1  
M. Jus  
. Just  
. u.  
J  
u

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-75

J.  
(3-12)

Mel Kahn, Etc., Appellant,  
v.  
Robert L. Shevin et al. } On Appeal from the Su-  
preme Court of Florida.

[March —, 1974]

Received  
3/12  
Included  
to join

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Since at least 1885, Florida has provided for some form of property tax exemption for widows.<sup>1</sup> The current law granting all widows an annual \$500 exemption, Fla. Stat. § 196.191 (7), has been essentially unchanged since 1941.<sup>2</sup> Appellant Kahn is a widower who lives in Florida and applied for the exemption to the Dade County Tax Assessor's Office. It was denied because the statute offers no analogous benefit for widowers. Kahn then sought a

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<sup>7</sup> For example, in 1972 the median income of women with four years of college was \$8,789—exactly \$100 more than the median income of men who had never even completed one year of high school. Of those employed as managers or administrators, the women's median income was only 53.2% of the men's, and in the professional and technical occupations the figure was 67.5%. Thus the disparity extends even to women occupying jobs usually thought

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This is not a case like *Frontiero v. Richardson*, 411 U. S. 677, where the Government denied its female employees both substantive and procedural benefits granted males "solely for administrative convenience." *Id.*, at 690 (emphasis in original).<sup>6</sup> We deal here with a state tax law reasonably designed to further the state policy of cushioning the financial impact of spousal loss upon the sex for whom that loss imposes a disproportionately heavy burden. We have long held that "[w]here taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and

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<sup>6</sup> And in *Frontiero* the plurality opinion also noted that the statutes there were "not in any sense designed to rectify the effects of past discrimination against women. On the contrary, these statutes seize upon a group—women—who have historically suffered discrimination in employment, and rely upon the effects of this past discrimination as a justification for heaping on additional economic disadvantages." *Frontiero v. Richardson*, 411 U. S. 677, 689 n. 22 (citations omitted).

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*Affirmed.*

<sup>6</sup> See *Bell's Gap R. Co. v. Pennsylvania*, 134 U. S. 232, 237; *Madden v. Kentucky*, 300 U. S. 83, 87-88; *Lawrence v. State Tax Comm'n*, 280 U. S. 276; *Royster Guano v. Virginia*, 253 U. S. 412.



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

CHAMBERS OF  
JUSTICE POTTER STEWART

March 12, 1974

No. 73-78 - Kahn v. Shevin

Dear Bill,

I am glad to join your opinion for  
the Court in this case.

Sincerely yours,

P.S.  
/

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

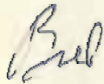
March 13, 1974

RE: No. 73-78 Kahn v. Shevin

Dear Bill:

I shall in due course write something  
in this case.

Sincerely,



Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 14, 1974

Re: No. 73-78 -- Kahn v. Shevin

Dear Bill:

I shall await further writings in this one.

Sincerely,

*TM*  
T. M.

Mr. Justice Douglas

cc: The Conference

March 15, 1974

No. 73-78 Kohn v. Shevin

Dear Bill:

Please join me.

Sincerely,

Mr. Justice Douglas

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 18, 1974

Re: No. 73-78 - Kahn v. Shevin

Dear Bill:

I shall withhold my vote until I see the dissent to  
be forthcoming in this case.

Sincerely,



Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 18, 1974

Re: No. 73-78 - Kahn v. Shevin

Dear Bill:

Please join me.

Sincerely,

*WHR*

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 9, 1974

Re: No. 73-76 -- Kahn v. Shevin

Dear Bill:

Please join me.

Sincerely,

T. M.

Mr. Justice Brennan

cc: The Conference



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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 9, 1974

Re: No. 73-78 - Kahn v. Shevin

Dear Bill:

Please join me.

Sincerely,

Harry

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

April 9, 1974

Re: No. 73-78 - Kahn v. Shevin

Dear Bill:

Please join me.

Regards,

WRB

Mr. Justice Douglas

Copies to the Conference

