



Benjamin Franklin, 1826 (lithograph by J. B. Mauzaisse)

BENJAMIN FRANKLIN

In this world nothing can be said to be certain, except death and taxes.

United States v. Estate of Romani, 523 U.S. 517, 520 n.2 (1988) (Stevens, J.) (quoting Benjamin Franklin's November 13, 1789 letter to Jean Baptiste LeRoy, as published in 10 *The Writings of Benjamin Franklin* 69 (A. Smyth ed. 1907)).

In 1985, a private creditor recorded a \$400,000 judgment lien against Francis Romani's Pennsylvania real estate. Soon thereafter, the federal government recorded \$490,000 in tax liens against the same property. All of the debts remained uncollected until 1992, when Romani died, and his real estate was valued at only \$53,000.

The shortfall triggered a \$53,000 collection dispute between the private creditor and the federal government. The central issue involved an inconsistency between two federal statutes. One was the federal priority statute, 31 U.S.C. § 3713, which provided the federal government "shall be paid first" when a decedent's estate cannot pay all of its debts. The other was the Federal Tax Lien Act, 26 U.S.C. § 6321, which declared that a federal tax lien "shall not be valid" against a previously recorded judgment lien.

The federal government's attempt to rely on the first statute, while ignoring the second, raised the ire of Justice Stevens, who opined that the government's aggressive collection tactics "gave new meaning to Franklin's aphorism," quoted above. Writing for the unanimous Court, Justice Stevens concluded the Federal Tax Lien Act blocked the government's collection efforts, thus proving that while death is inevitable, taxes are not.



John Lennon, as pictured in an advertisement for Imagine from Billboard, Sept. 18, 1971 (photograph by Peter Fordham)

JOHN LENNON

Imagine there's no countries
It isn't hard to do
Nothing to kill or die for
And no religion too
Imagine all the people
Living life in peace.

Pleasant Grove City v. Summum, 555 U.S. 460, 475 n.2 (2009) (Alito, J.) (quoting John Lennon, "Imagine," on *Imagine* (Apple Records 1971)).

In 1971, the Fraternal Order of Eagles donated a Ten Commandments monument for permanent placement in Pioneer Park, Pleasant Grove City, Utah. In 2003, and again in 2005, the Gnostic Christian organization Summum offered to place its own stone monument in the park, which would be similar to the Ten Commandments monument, but instead the inscription would be "the Seven Aphorisms of Summum." Pleasant Grove denied the requests. Summum sued and alleged Pleasant Grove violated the Free Speech Clause by accepting a Ten Commandments monument while rejecting one for the Seven Aphorisms. A unanimous Supreme Court ruled for Pleasant Grove.

The central issue was whether a donated permanent monument in a public park was "private speech," which is subject to the Free Speech Clause, or "government speech," which is not. Writing for the Court, Justice Alito explained that when a government accepts a permanent monument (even one donated by a private citizen), it is "government speech," so the Free Speech Clause does not apply.

In such circumstances, to avoid the "government speech" doctrine from being used as a "subterfuge" to favor certain private speech, Summum argued that governments should be required to state, explicitly, the "message" they are promoting. The Court rejected the idea because of the difficulty of knowing a monument's true "message."

In support of that determination, Justice Alito relied on the New York Central Park's John Lennon monument, which states simply: "Imagine." According to Justice Alito, the "message" for some might be to "imagine" the musical contributions lost when Lennon was murdered, while for others the "message" would be the lyrics of Lennon's famous ballad, quoted above.