

PATRIOTIC MILLIONAIRES

November 16, 2023

The Honorable Chief Justice John Roberts
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543
VIA Email

An Open Letter to the Supreme Court

Dear Chief Justice Roberts and Associate Justices Thomas, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh, Barrett, and Jackson:

With oral arguments for *Moore v. United States* fast approaching, it is imperative to consider whether the case should move forward.

In short, it should not. Given events leading up to and following the grant of certiorari, the appropriate action is a dismissal due to certiorari having been improvidently granted. Anything short of that action will damage the credibility of the Court, perhaps irreparably.

Four factors lead us to this conclusion. **First**, the petitioners and their counsel misrepresented the factual background of the case to you (and to the Federal District and Circuit Courts). Specifically, petitioners led you to believe that they invested \$40,000 in their friend's foreign corporation, KisanKraft, in 2006; that the \$40,000 was a significant sum to them; that they never received any distributions, dividends, or other payments from KisanKraft; and that they had no role in KisanKraft's management.

Recently, an investigation of records by journalists at [Tax Notes](#) revealed that the factual background presented to you is not remotely accurate. Specifically, KisanKraft's public filings in India state that petitioners purchased their shares in three stages for a total of about \$130,000; that they loaned an additional \$245,000 to the company, for a total commitment of almost \$400,000; that they received interest at the rate of 12 percent per annum on their loan; that they were reimbursed a total of approximately \$14,000 by KisanKraft for travel expenses related to four trips to India; that they sold shares in the company in 2019; and, perhaps most egregiously, that petitioner Charles Moore served as a director of KisanKraft for five years ending in 2017.

Petitioners' counsel have been notified of the errors in their factual statements to this Court and have been urged to correct the record. To date, no correcting pleading has been filed and no mention of the errors was made in the petitioners' recently-filed reply brief. We note that under Ethical Rule 3.3 of the District of Columbia Bar's Rules of Professional Conduct, petitioners' counsel, upon discovering that factual assertions they presented were incorrect, are obligated to notify this Court.

Second, the petitioners and their counsel made disingenuous and misleading arguments in their petition for grant of certiorari, in their reply, and in their brief on the merits. The nature of petitioners' arguments is outlined at length in briefs filed by the Solicitor General and several of the *amici*. Just one of many examples is the quote from *Maryland Cas. Co. v. United States*, 52 Ct. Cl. 201 (Ct. Cl. 1917), which *intentionally omits a clause of a sentence for the clear purpose of effecting a 180-degree change in the inference intended by the original author*. The petition, citing the *Maryland Cas. Co.* case, reads: "The word 'income'...has a settled legal meaning" and was "uniformly construed" by "courts...to include only the receipt of actual cash as opposed to contemplated revenue due but unpaid." The petition omits the final, critical, clause of the sentence, which reads: "unless a contrary purpose is manifest from the language of the statute." This was not the typical "spin" lawyers put on legal precedent. It is deception, plain and simple.

Third, recent reporting has revealed multiple potential conflicts of interest where billionaire benefactors of three justices on this Court have a substantial interest in the case. Those benefactors are major funders and board members of the Competitive Enterprise Institute, which filed the case on petitioners' behalf, as well as other organizations filing amicus briefs in support of petitioners. More significantly, those benefactors stand to benefit enormously if the Court were to rule in a way that preempts the taxation of unrealized gains or extreme wealth, as petitioners have urged.

Fourth, this case was an odd candidate for granting certiorari in the first place, given the tiny fraction of cases the Court is able to review. The tax which petitioners are challenging is a one-time transitional tax. It will have no future impact on taxpayers. Moreover, the universe of taxpayers impacted by the alleged constitutional defect in the tax is miniscule. Ninety-nine percent of the tax was paid by corporations, to which the application of the tax cannot be claimed is unconstitutional. Of the individuals who paid the tax, many were not impacted financially, as they reaped an offsetting benefit in the form of reduced tax when they received distributions from or sold shares in the foreign corporations of which they were stockholders. Indeed, petitioners themselves likely received an offsetting benefit when they sold shares in KisanKraft in 2019. Finally, there was no split in Circuit Court decisions requiring resolution by the Court.

In conclusion, the confluence of these four factors cries out for prompt action from the Court. We assume you were not aware of petitioners' factual misrepresentations and deceptive arguments at the time certiorari was granted. We also assume you were not aware of the indirect influence of those who have made substantial gifts to or otherwise assisted many of you.

But we do assume you were well aware at the time certiorari was granted that this case, involving a one-time tax with no reach and no conflicting Circuit Court decisions, was barely worthy of your time and attention. Knowing what you now know, the only rational course is to dismiss the case for certiorari having been improvidently granted.

We understand that important constitutional questions are sometimes resolved in the context of seemingly minor controversies. But when those minor controversies are concocted, when the factual background and legal arguments presented to you are known to have been disingenuous, when those behind the effort to place the controversy before you are closely connected with several of you, and when the public's confidence in the integrity of the Court already stands at an all-time low, propriety and precedent dictate that you show the utmost restraint by dismissing the case. We urge you to do so.

Sincerely,
The Patriotic Millionaires