

## IN MEMORY OF JUDGE WILLIAM J. HOLLOWAY, JR.

In the spring of 2010, my husband, Martin D. Ginsburg, wrote a speech intended for presentation to the Tenth Circuit Judicial Conference.<sup>1</sup> It was titled: “How the 10th Circuit Court of Appeals Got My Wife Her Good Job.” In it, he told of a case titled *Moritz v. Commissioner of Internal Revenue*.<sup>2</sup> The appellant, Charles E. Moritz, was denied a \$600 dependent care deduction under former § 214 of the Internal Revenue Code, even though the operative facts of his case fit the statute perfectly. That is, in all respects save one. Mr. Moritz was an editor and traveling salesman for a book company. His 89-year-old dependent mother lived with him in Denver, and, in order to be gainfully employed during the year, Moritz paid an unrelated individual (an experienced nurse) more than \$600 to take care of his mother when he was away at work. The exception that proved fatal to Moritz’s petition in the Tax Court: the deduction was available to women of any classification (divorced, widowed, or single), but it did not cover a single man who had never married. Charles E. Moritz, who took great care of his mother, was a never married man.

As volunteer lawyers for the American Civil Liberties Union, my husband and I represented Moritz on appeal to the Tenth Circuit. We had the great good fortune to draw a panel that included Circuit Judges Doyle and Holloway, and District Judge Daugherty. Judge Holloway, writing for a unanimous court, reversed the judgment of the Tax Court and held that the denial of the \$600 deduction to Moritz violated his right to the equal protection of the laws. The year was 1972, when the unconstitutionality of gender-based differentials in the law was still a novel idea in the nation’s courts. Judge Holloway’s fine opinion marked the path later followed by other federal courts.

The brief my husband and I addressed to the Tenth Circuit served as a model for briefs I later filed in the Supreme Court in the course of the

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1. Marty died several weeks before the Conference. I read the speech, instead, just as he had written it.

2. 469 F.2d 466 (10th Cir. 1972), *cert. denied*, 412 U.S. 906 (1973).

1970s. It may be, however, that Judge Holloway—a jurist learned in the law but blessed with laudable common sense—was impressed from the start by the one-page brief Moritz filed, *pro se*, in the Tax Court. It conveyed: “If I were a dutiful daughter instead of a dutiful son, I would have been granted the deduction. This makes no sense.”

How did Judge Holloway’s opinion contribute to the good job I now hold? The Government petitioned for certiorari urging that the Tenth Circuit’s decision cast a cloud of unconstitutionality over dozens of federal statutes that, like former § 214 of the Internal Revenue Code, treated men and women differently, solely on the basis of sex. In those pre-personal computer days, there was no easy way for us to test the Government’s assertion, but the Solicitor General took care of that by attaching to his cert. petition a list—generated by the Department of Defense’s mainframe computer—of federal statutes that differentiated on the basis of sex. Over the balance of the decade, in Congress, federal courts, and the Supreme Court, aided by the ACLU’s Women’s Rights Project, I successfully urged the unconstitutionality of those statutes.

In the 1993–1994 Term, my first as a member of the Supreme Court, I was assigned to serve as Circuit Justice for the courts composing the Tenth Circuit. At the 1994 Circuit Judicial Conference held in Denver, I met a remarkable woman named Jean Seth, wife of Circuit Judge Oliver Seth. Among other ventures, Jean was the first person ever to establish an art gallery on Canyon Road in Santa Fe. Jean knew of my love of opera, and invited me to include the Santa Fe Opera in my summer plans. The next summer, and every summer after, Santa Fe was on my summer schedule, with Jean as my host and social planner. When Oliver Seth died, Judge Holloway regularly called Jean, at least once a month, to inquire about her health and wellbeing. He was that kind of caring human. Because we shared affection for Jean, Bill Holloway and I occasionally corresponded. I came to appreciate ever more his wisdom, goodness, and humanity. Although he is no longer in our midst, his well-written and well-reasoned opinions, and his courteous and gentle manner, will continue to inspire and guide his colleagues on the federal bench, as well as legions of lawyers, in years to come.

The Honorable Ruth Bader Ginsburg  
Associate Justice, Supreme Court of the United States