

## **04-1544 MARSHALL V. MARSHALL**

DECISION BELOW:392 F3d 1118

LOWER COURT CASE NUMBER: 02-56002, 02-56067

### **QUESTIONS PRESENTED:**

In *Markham v. Allen*, 326 U.S. 490, 494 (1946), this Court held that Congress did not confer on the federal courts jurisdiction to "probate a will or administer an estate." In the intervening sixty years, some federal circuits have hewn closely to *Markham*, while others have significantly expanded the scope of the so-called "probate exception," holding that it ousts otherwise proper federal jurisdiction even over claims between parties that are "ancillary" or "related" to probate. Here, the Court of Appeals aligned itself with circuits that have broadly applied the probate exception, holding that although bankruptcy jurisdiction over petitioner's claim was otherwise proper under 28 U.S.C. § 1334, that jurisdiction could not be exercised because petitioner's claim was "probate related."

These decisions represent an irreconcilable split among the circuits over the scope of the probate exception. Accordingly, the questions presented are:

1. What is the scope of the probate exception to federal jurisdiction?
2. Did Congress intend the probate exception to apply where a federal court is not asked to probate a will, administer an estate, or otherwise assume control of property in the custody of a state probate court?
3. Did Congress intend the probate exception to apply to cases arising under the Constitution, laws, or treaties of the United States (28 U.S.C. § 1331), including the Bankruptcy Code (28 U.S.C. § 1334), or is it limited to cases in which jurisdiction is based on diversity of citizenship?
4. Did Congress intend the probate exception to apply to cases arising out of trusts, or is it limited to cases involving wills?

CERT. GRANTED 9/27/2005