

KENNEDY, J., concurring

**SUPREME COURT OF THE UNITED STATES**

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No. 09–223

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RICHARD A. LEVIN, TAX COMMISSIONER OF OHIO,  
PETITIONER *v.* COMMERCE ENERGY, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SIXTH CIRCUIT

[June 1, 2010]

JUSTICE KENNEDY, concurring.

The Court’s rationale in *Hibbs v. Winn*, 542 U. S. 88 (2004), seems to me still doubtful. Nothing in the Court’s opinion today expands *Hibbs*’ holding further, however, and on that understanding I join the opinion of the Court.