

# The Burger Court Opinion Writing Database

*Pennsylvania v. New York*

407 U.S. 206 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

May 31, 1972

No. 40. Orig. -- Pennsylvania v. New York

Dear Bill:

Please join me.

Regards,

WB

Mr. Justice Brennan

Copies to the Conference

(3)

Join w/3

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

April 19, 1972

Dear Bill:

In No. 40 Orig. - Pennsylvania v.  
New York, please join me.

W<sup>illiam</sup> O. Douglas

Mr. Justice Brennan

CC: The Conference

6-20-72

(Copy of handwritten note to Justice  
Powell)

Re No. 40 Orig. - Pennsylvania v. New York

Dear Lewis: You have convinced me I was in  
error in joining the Court's opinion. I  
now believe you are right. So please join  
me in your dissent.

WOD

Or-71 Allen Dulles

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Stewart  
Mr. Justice White  
✓Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 4-17-72

Recirculated: \_\_\_\_\_

No. 40, Orig.

Commonwealth of Pennsylvania,  
Plaintiff,  
v.  
State of New York et al.

} Bill of Complaint.

[April —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Pennsylvania and other States<sup>1</sup> except to, and New York supports, the Report of the Special Master filed in this original action brought by Pennsylvania against New York for a determination respecting the authority of the several States to escheat, or take custody of, unclaimed funds paid to the Western Union Telegraph Company for the purchase of money orders.<sup>2</sup> We overrule the exceptions and enter the decree recommended by the Special Master.<sup>3</sup>

<sup>1</sup> Of the remaining States party to this case, Florida has filed exceptions as defendant, and Connecticut and Indiana as intervening plaintiffs. New Jersey has filed a brief *amicus curiae* in support of Pennsylvania's position.

<sup>2</sup> We granted leave to file the complaint, 398 U. S. 956, permitted the State of Connecticut to intervene as a party plaintiff, and appointed Mr. John F. Davis as a Special Master to take evidence and make appropriate reports. 400 U. S. 811. Thereafter, California and Indiana were permitted to intervene as plaintiffs, and Arizona as a defendant. 400 U. S. 924, 1019.

<sup>3</sup> The exception of Indiana as to a typographical error in the recommended decree is sustained. The phrase "escheat of custodial taking" in paragraph 2, lines 4-5 of the decree should read "escheat or custodial taking."

Supreme Court of the United States  
Washington, D. C. 20543

JUSTICE W. BRENNAN, JR.

June 26, 1972

MEMORANDUM TO THE CONFERENCE

RE: No. 40 Original - Pennsylvania v. New York

Bill Douglas has asked me to advise the Conference that he withdraws his joinder to Lewis' dissenting opinion in this case inasmuch as it arrived after the case was handed down.

W. J. B. Jr.

cc:

Mr. Rodak  
Mr. Putzel.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

April 20, 1972

No. 40 Orig., Penna. v. New York

Dear Bill,

I am glad to join your opinion for the  
Court in this case.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

B

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 20, 1972

Re: No. 40, Orig. - Pennsylvania  
v. New York

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 20, 1972

Re: No. 40 Orig., Penna. v. New York

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 14, 1972

Re: No. 40 Orig. - Pennsylvania v. New York

Dear Lewis:

Please join me in your dissent.

Sincerely,

*H.A.B.*

Mr. Justice Powell

cc: The Conference

May 1, 1972

Re: 40 Orig. Pennsylvania v. New York

Dear Harry:

My notes indicate that you, Bill Rehnquist and I were the dissenters in the above case.

If you plan to write, I will happily await your opinion. If, however, in view of your heavy workload you would prefer that Bill Rehnquist or I draft a dissent, I am sure that I speak for Bill in saying that either of us will be glad to do so.

It would take me a couple of weeks to get to it, but if you prefer not to write I will be glad to give it a try.

Sincerely,

LFP

Mr. Justice Blackmun

cc: Mr. Justice Rehnquist

bc: Larry A. Hammond, Esquire



May 1, 1972

Re: 40 Orig. Pennsylvania v. New York

Dear Harry:

My notes indicate that you, Bill Rehnquist and I were the dissenters in the above case.

If you plan to write, I will happily await your opinion. If, however, in view of your heavy workload you would prefer that Bill Rehnquist or I draft a dissent, I am sure that I speak for Bill in saying that either of us will be glad to do so.

It would take me a couple of weeks to get to it, but if you prefer not to write I will be glad to give it a try.

Sincerely,

*Levin*

Mr. Justice Blackmun

cc: Mr. Justice Rehnquist

Bill - I'll gladly defer  
to you if you want to  
write. But since you  
are giving Gelbard a try, relieved  
me of a task I was considering  
undertaking, I'll do the one.

*Levin*

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

—  
No. 40, Orig.  
—

Circulated JUN 14 1972

Recirculated: \_\_\_\_\_

Commonwealth of Pennsylvania,  
Plaintiff,  
v.  
State of New York et al. } Bill of Complaint.

[June —, 1972]

MR. JUSTICE POWELL, dissenting.

The majority opinion today purports to apply the rule laid down in *Texas v. New Jersey*, 379 U. S. 674 (1965), to a fact situation not contemplated when that case was decided. In applying that rule to these new facts, it seems to me that the Court exalts the rule but derogates the reasons supporting it.

I

*Texas v. New Jersey*, a case decided within the Court's original jurisdiction, is a unique precedent. Disposition of that case necessarily required a departure from the Court's usual mode of decisionmaking. Our role in this country's scheme of government is ordinarily a restricted one, limited in large measure to the resolution of conflicts calling for the interpretation and application either of statutory acts or of provisions of the federal Constitution. In the performance of this function, an individual Justice's views as to what he might consider "fair" or "equitable" or "expeditions" are largely immaterial. Infrequently, however, we are called on to resolve disputes arising under the original jurisdiction of the Court (Art. III, § 2) in which our judgment is unaided by statutory or constitutional directives.

June 24, 1972

No. 40 Orig. Pennsylvania v. New York

The attached copy of my dissenting opinion in the above case has a longhand note on it from Mr. Justice Douglas, joining the opinion.

Mr. Justice Douglas left the Court early for his summer home in the State of Washington. Prior to his departure, he had joined in the majority opinion. This case was 'handed down' by the Court on June 19. Mr. Justice Douglas' attached note to me is dated June 18, but was not received until June 20. Thus, he was recorded as being with the majority.

As I dictate this memorandum I do not know how this matter will be resolved.

L. F. P., Jr.

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 3, 1972

Re: 40 Orig. - Pennsylvania v. New York

Dear Lewis:

I am delighted to leave the authoring of a dissent  
in this case in your good hands.

Sincerely,



Mr. Justice Powell

cc: Mr. Justice Blackmun

Supreme Court of the United States  
Washington, D. C. 20530

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 15, 1972

Re: No. 40 Original - Pennsylvania v. New York

Dear Lewis:

Please join me.

Sincerely,

Mr. Justice Powell

Copies to the Conference