

# The Burger Court Opinion Writing Database

*United States v. Cartwright*

411 U.S. 546 (1973)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



S

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

CHAMBERS OF  
THE CHIEF JUSTICE

January 22, 1973

Re: No. 71-1665 - U. S. v. Cartwright

Dear Bill:

On further reflection I have concluded  
that I will probably vote to affirm, but the  
assignment to Byron is fine in either case.

Regards,

WEB

Mr. Justice Douglas

WD

7

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

CHAMBERS OF  
THE CHIEF JUSTICE

May 3, 1973

109-7

Re: No. 71-1665 - United States v. Cartwright

Dear Potter:

Please join me in your dissent

Regards,

W. B.

Mr. Justice Stewart

Copies to the Conference

8  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

March 12, 1973

Dear Byron:

Please join me in your opinion  
in No. 71-1665 - U.S. v. Cartwright.

W. O. D.

Mr. Justice White

cc: Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 13, 1973

RE: No. 71-1665 - United States v. Cartwright

Dear Byron:

I agree.

Sincerely,

*WJ*

Mr. Justice White

cc: The Conference

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

2nd DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES MAR 12 1973

Circulated:

No. 71-1665

Recirculated:

United States, Petitioner,  
v.  
Douglas B. Cartwright, as Executor of the Estate of Ethel B. Bennett. } On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[February —, 1973]

MR. JUSTICE STEWART, dissenting.

This case presents a narrow issue of law regarding the valuation of certain assets—shares in an open-end investment company or “mutual fund”—for purposes of the Federal Estate Tax. The case turns upon a single question of law: whether or not § 20.2031-8 (b) of the Treasury Regulations, which provides a specific method for valuing such shares, represents a reasonable implementation of the legislation enacted by Congress.

On December 4, 1964, Mrs. Ethel Bennett died testate leaving, among other property, several thousand shares in three separate mutual funds. Each of the funds in question is managed by a firm known as Investors Diversified Services, Inc., and all are subject to regulation by the Securities and Exchange Commission under the Investment Company Act of 1940. In his tax return for the estate, the respondent, Mrs. Bennett’s executor, valued these shares at their so-called “net asset value,” that is, the amount at which the estate is entitled, as a matter of law, to have the shares redeemed by the issuer. The net asset value of a mutual fund share is calculated daily by the issuing company, and is equivalent to the fractional value per share of the fund’s total net assets on that day. In addition to serving as a gauge for the redemption value of fund shares already issued, net

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*Reuel J. W.*

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

From: White, J.

2nd DRAFT Circulated: 3-9-73

**SUPREME COURT OF THE UNITED STATES**

No. 71-1665

United States, Petitioner,  
 v.  
 Douglas B. Cartwright, as Executor of the Estate of Ethel B. Bennett. On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[March —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

The Internal Revenue Code of 1954 requires that, for estate tax purposes, the "value" of all property held by a decedent at the time of death be included in the gross estate. 26 U. S. C. § 2031. By regulation, the Secretary of the Treasury has determined that shares in open-end investment companies or mutual funds are to be valued at their public offering price or "asked" price at the date of death. Treas. Reg. § 20.2031-8 (b) (1963). The question this case presents is whether that determination is reasonable in the context of the market for mutual fund shares.

At the time of her death in 1964, Ethel B. Bennett owned approximately 6,700 shares of three mutual funds that are regulated by the Investment Company Act of 1940, 54 Stat. 789, as amended, 15 U. S. C. § 80a-1, *et seq.*<sup>1</sup> The 1940 Act seeks generally to regulate pub-

<sup>1</sup> The decedent owned 2,568.422 shares of Investors Mutual, Inc., in her own name, and 2,067.531 shares as trustee for her daughter. The decedent also owned 2,269.376 shares of Investors Stock Fund, Inc., and 1,869.159 shares of Investors Selective Fund, Inc.

For thorough discussions of the operations of open-end investment

*33 q 6 file*

*Please file*

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

4th DRAFT

From: White, J.

**SUPREME COURT OF THE UNITED STATES**

Circulated: \_\_\_\_\_

Recirculated: 3-16-73

No. 71-1665

United States, Petitioner,  
 v.  
 Douglas B. Cartwright, as Executor of the Estate of Ethel B. Bennett. } On Writ of Certiorari to the  
 United States Court of Appeals for the Second Circuit.

[March —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

The Internal Revenue Code of 1954 requires that, for estate tax purposes, the "value" of all property held by a decedent at the time of death be included in the gross estate. 26 U. S. C. § 2031. By regulation, the Secretary of the Treasury has determined that shares in open-end investment companies or mutual funds are to be valued at their public offering price or "asked" price at the date of death. Treas. Reg. § 20.2031-8 (b) (1963). The question this case presents is whether that determination is reasonable in the context of the market for mutual fund shares.

At the time of her death in 1964, Ethel B. Bennett owned approximately 8,700 shares of three mutual funds that are regulated by the Investment Company Act of 1940, 54 Stat. 789, as amended, 15 U. S. C. § 80a-1, *et seq.*<sup>1</sup> The 1940 Act seeks generally to regulate pub-

<sup>1</sup> The decedent owned 2,568.422 shares of Investors Mutual, Inc., in her own name, and 2,067.531 shares as trustee for her daughter. The decedent also owned 2,269.376 shares of Investors Stock Fund, Inc., and 1,869.159 shares of Investors Selective Fund, Inc.

For thorough discussions of the operations of open-end investment

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 13, 1973

Re: No. 71-1665 - U. S. v. Cartwright

Dear Byron:

Please join me.

Sincerely,



T.M.

Mr. Justice White

cc: Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 19, 1973

Re: No. 71-1665 - United States v. Cartwright

Dear Byron:

Please join me.

Sincerely,

*H. A. B.*

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 12, 1973

No. 71-1665 United States v. Cartwright

Dear Byron:

Please join me.

Sincerely,

*Lewis*

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

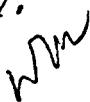
March 14, 1973

Re: No. 71-1665 - U. S. v. Cartwright

Dear Potter:

Please join me in your dissent.

Sincerely,



Mr. Justice Stewart

Copies to the Conference