

# The Burger Court Opinion Writing Database

*Tully v. Griffin, Inc.*

429 U.S. 68 (1976)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

October 20, 1976

RE: 75-831 - Tully v. Griffin, Inc.

Dear Bill:

Will you undertake a dissent in this case?

Regards,

WRB

Mr. Justice Brennan

cc: Mr. Justice Marshall  
Mr. Justice Blackmun

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

CHAMBERS OF  
THE CHIEF JUSTICE

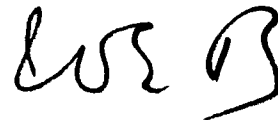
November 4, 1976

RE: 75-831 - James H. Tully, Jr., et al. v. Griffin, Inc.

Dear Potter:

I have a feeling New York will lose on the merits ultimately, but I am now satisfied to join your November 2, 1976, proposed opinion.

Regards



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

October 20, 1976

MEMORANDUM TO: The Chief Justice  
Mr. Justice Marshall  
Mr. Justice Blackmun

RE: No. 75-831 Tully v. Griffin, Inc.

My records show that the four of us are in dissent but I expect we should await the Chief's views of who should undertake this dissent. May we hear from you at your convenience.

W.J.B.Jr-

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

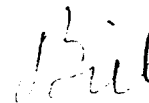
October 21, 1976

RE: No. 75-831 Tully v. Griffin, Inc.

Dear Chief:

I will undertake the dissent in the above  
as requested in your note of October 20.

Sincerely,



The Chief Justice

cc: Mr. Justice Marshall  
Mr. Justice Blackmun

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

October 28, 1976

MEMORANDUM TO THE CONFERENCE

RE: No. 75-831 Tulley v. Griffin

I initially voted to dissent in this case because I was persuaded by the opinion of the three-judge district court that there was at least "some uncertainty" whether the petitioner could challenge the New York tax other than through the administrative proceeding under Article 78 of New York's Civil Practice Law and Rules or, even assuming the availability of an action for declaratory judgment, obtain preliminary relief pending a New York court's decision. 404 F. Supp., at 745-747. I have now had an opportunity to study more thoroughly the New York cases and have decided that Potter's reading of them, not that of the district court, is correct. I am now satisfied that First National City Bank v. City of New York Finance Admin., Richfield Oil Corp. v. City of Syracuse and Dun & Bradstreet, Inc. v. City of New York, cited by Potter at page 7 of his opinion, hold that a taxpayer is in no way confined to the Article 78 procedure, notwithstanding the "exclusive remedy" language of New York Tax Law Sec. 1140, when the claim is that the tax is unconstitutional. Moreover, I agree with Potter that Stacy v. State and Dun & Bradstreet, Inc. v. City of New York, cited at page 8, authorize preliminary relief against the collection of allegedly improper taxes. Accordingly, I shall not dissent but join Potter's opinion.

W.J.B. Jr.

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

CHAMBERS OF  
JUSTICE POTTER STEWART

October 8, 1976

Re: No. 75-831, Tully v. Griffin, Inc. and  
No. 74-799, U.S. v. Foster Lumber Co.

Dear Chief,

I was asked to assign the opinions in both of these cases, which were the subjects of closely divided Conference votes. Having in mind my dismal track record as an assignor (see, e.g., U.S. v. Glaxco Group Ltd., 410 U.S. 52), I have decided to undertake both opinions myself, rather than inflict them upon any of my colleagues in the fragile majorities.

Sincerely yours,

PS:  
1.

The Chief Justice

Copies to the Conference

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

From: Mr. Justice Stewart

Circulated: OCT 22 1976

1st DRAFT

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## SUPREME COURT OF THE UNITED STATES

No. 75-831

James H. Tully, Jr., et al., Appellants, v. Griffin, Inc.	}	On Appeal from the United States District Court for the District of Vermont.
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[November —, 1976]

MR. JUSTICE STEWART delivered the opinion of the Court.

The question in this case is whether New York provides a "plain, speedy and efficient" remedy to an out-of-state corporation that seeks to challenge New York's assessment of sales taxes against it. The United States District Court for the District of Vermont held that New York does not provide such a remedy, and enjoined the collection of the New York taxes. 404 F. Supp. 738. We noted probable jurisdiction of the appeal, 424 U. S. 907.

### I

The appellee, Griffin, Inc., is a Vermont corporation that operates a furniture store in Arlington, Vt., six miles from the New York-Vermont border. It advertises on radio and television and in newspapers that serve the Albany-Schenectady-Troy area of New York, and makes substantial sales at its place of business to customers from that State. It regularly delivers furniture to the New York buyers in its own trucks, and its employees on occasion also enter New York to repair furniture it has sold.

In February 1973, the New York Department of Tax and Finance determined that Griffin was "doing business" in New York and thus was required to collect state and local sales taxes from its New York customers. The Department sent a



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

From: Mr. Justice Stewart

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

Recirculated: OCT 26 1976

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-831

James H. Tully, Jr., et al., Appellants, v. Griffin, Inc.	}	On Appeal from the United States District Court for the District of Vermont.
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p. 1, 4

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

From: Mr. Justice Stewart

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3rd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 75-831

James H. Tully, Jr., et al., Appellants, v. Griffin, Inc.	}	On Appeal from the United States District Court for the District of Vermont.
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[November —, 1976]

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HAB

75-831

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

CHAMBERS OF  
JUSTICE POTTER STEWART

November 22, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 76-239, Bamford v. Garrett, previously held for  
No. 75-831, Tully v. Griffin

This case appears on page 17 of the Conference List for Wednesday, November 24. Petitioners are homeowners in a predominantly non-white section of Reading, Pennsylvania. They brought suit in a federal district court under the civil rights acts, contending that local tax assessors had intentionally assigned higher values to their property than had been assigned to similar properties in white areas. They sought an injunction requiring the defendants to assess all residential property in the county on a nondiscriminatory basis.

The District Court dismissed the suit under 28 U.S.C. § 1341. CA 3 reversed. It recognized that § 1341 applies even to suits under the civil rights acts claiming constitutional violations, but held that Pennsylvania law did not provide a "plain, speedy and efficient remedy." The court analyzed the applicable Pennsylvania precedents and found substantial uncertainty whether Pennsylvania would allow these plaintiffs to bring an equitable action on the ground that the method of assessment was unconstitutional. Administrative appeal with judicial review also was thought inadequate because it was designed for the individual taxpayer to appeal his individual assessment. Pennsylvania

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

October 29, 1976

Re: No. 75-831 - Tully v. Griffin, Inc.

Dear Potter:

I join.

Sincerely,



Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

October 26, 1976

Re: No. 75-831, Tully v. Griffin, Inc.

Dear Potter:

I shall await the dissent.

Sincerely,

*T.M.*  
T. M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

October 28, 1976

Re: No. 75-831, Tully v. Griffin, Inc.

Dear Potter:

I surrender -- I give up. Please join me.

Sincerely,

*TM*

T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

October 26, 1976

Re: No. 75-831 - Tully v. Griffin, Inc.

Dear Potter:

I shall await the dissent.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

October 28, 1976

Re: No. 75-831 - Tully v. Griffin

Dear Potter:

I, too, have given this case further study and, like Bill Brennan, have now concluded that your side of the case is the better one. I thus am glad to join you.

Sincerely,



Mr. Justice Stewart

cc: The Conference



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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

October 26, 1976

No. 75-831 Tully v. Griffin

Dear Potter:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

October 26, 1976

Re: No. 75-831 - Tully v. Griffin

Dear Potter:

Congratulations on circulating the first opinion in an argued case this Term. Please join me.

Sincerely,

*WHR*

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

October 26, 1976

Re: 75-831 - Tully v. Griffin

Dear Potter:

Your opinion is most persuasive. I will either join it, or write a brief concurrence. However, I would like to see what the dissent says about the New York cases cited on page 7 before I come to a final conclusion.

Respectfully,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

October 28, 1976

Re: 75-831 - Tully v. Griffin

Dear Potter:

Please join me.

Sincerely,

A handwritten signature, likely of John Paul Stevens, consisting of stylized initials 'JP' followed by a surname.

Mr. Justice Stewart

Copies to the Conference