

The Burger Court Opinion Writing Database

Key v. Doyle

434 U.S. 59 (1977)

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

November 9, 1977

Re: 76-1057 - Key v. Doyle

Dear Potter:

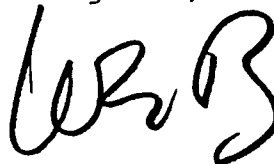
I found this case very close and it is even the more so after the two careful opinions have been developed.

I prefer the result you reach but I find Byron's analysis unanswerable.

I therefore come down finally to join Byron and add this:

"I join the dissenting opinion in this close case, mindful of what was said in Cohens v. Virginia, 19 U.S. at 404 (1921). Cohens v. Virginia was an early guideline in which the Court said: 'It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.'"

Regards,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

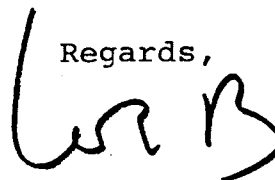
November 10, 1977

Dear Byron:

Re: 76-1057 Key v. Doyle

Given my often expressed aversion to unnecessary concurring opinions, on further reflection I have decided to drop my concurring opinion in this case.

Regards,

A handwritten signature in dark ink, appearing to be "W. B." or "Warren Burger", written in a cursive style.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

November 11, 1977

MEMORANDUM TO THE CONFERENCE:

As agreed at Conference, the following opinion
will be announced next week:

Monday, November 14, 1977

76-1057 - Key v. Doyle - PS

Absent dissent, we will proceed.

Regards,

WRB

cc: Mr. Cornio

Wm Brown
11/17/77

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 3, 1977

RE: No. 76-1057 Key v. Doyle

Dear Potter:

Please join me.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

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

From: Mr. Justice Stewart

Circulated: OCT 26 1977

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1057

John W. Key et al., Appellants,	} On Appeal from the District of Columbia Court of Appeals.
v.	
Michael M. Doyle et al.	

[October —, 1977]

MR. JUSTICE STEWART delivered the opinion of the Court.

Sally Lipscombe French died 20 days after executing a will leaving most of her estate to certain churches in the District of Columbia. Section 18-302 of the D. C. Code voids religious devises and bequests made within 30 days of death.¹ Prevented by this statutory provision from carrying out the terms of the will, the respondent as executor sought instructions in the Probate Division of the Superior Court of the District of Columbia. Both that court and the District of Columbia Court of Appeals held the statute unconstitutional.² The

¹ D. C. Code § 18-302 states:

"A devise or bequest of real or personal property to a minister, priest, rabbi, public teacher, or preacher of the gospel, as such, or to a religious sect, order or denomination, or to or for the support, use, or benefit thereof, or in trust therefor, is not valid unless it is made at least 30 days before the death of the testator."

This provision originated in the Organic Act of 1801, 2 Stat. 103, c. 15, § 2. It was amended by Congress as recently as 1965. 79 Stat. 688 (1965).

² The Superior Court opinion is unpublished. The opinion of the Court of Appeals appears, at 365 A. 2d 621 (1976).

Stressing that the statute "is directed only to religious groups and practitioners," the Superior Court held the statute to be "an invalid infringement of the free exercise of religion provisions of the First Amendment" and "invalid as a denial of due process guaranteed by the Fifth Amendment."

The D. C. Court of Appeals invalidated the statute only under the

✓ changes 1, 4, 6, 8

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: _____

2nd DRAFT

Recirculated: OCT 28 1977

SUPREME COURT OF THE UNITED STATES

No. 76-1057

John W. Key et al., Appellants, } On Appeal from the District
v. } of Columbia Court of
Michael M. Doyle et al. } Appeals.

[October —, 1977]

MR. JUSTICE STEWART delivered the opinion of the Court.

Sally Lipscombe French died 20 days after executing a will leaving most of her estate to certain churches in the District of Columbia. Section 18-302 of the D. C. Code voids religious devises and bequests made within 30 days of death.¹ Prevented by this statutory provision from carrying out the terms of the will, the appellee as executor sought instructions in the Probate Division of the Superior Court of the District of Columbia. Both that court and the District of Columbia Court of Appeals held the statute unconstitutional.² The

¹ D. C. Code § 18-302 states:

"A devise or bequest of real or personal property to a minister, priest, rabbi, public teacher, or preacher of the gospel, as such, or to a religious sect, order or denomination, or to or for the support, use, or benefit thereof, or in trust therefor, is not valid unless it is made at least 30 days before the death of the testator."

This provision originated in the Organic Act of 1801, 2 Stat. 103, c. 15, § 2. It was amended by Congress as recently as 1965. 79 Stat. 688 (1965).

² The Superior Court opinion is unpublished. The opinion of the Court of Appeals appears at 365 A. 2d 621 (1976).

Stressing that the statute "is directed only to religious groups and practitioners," the Superior Court held the statute to be "an invalid infringement of the free exercise of religion provisions of the First Amendment" and "invalid as a denial of due process guaranteed by the Fifth Amendment."

The D. C. Court of Appeals invalidated the statute only under the

To: 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: _____

Uncirculated: OCT 31 1977

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1057

John W. Key et al., Appellants, } On Appeal from the District
v. } of Columbia Court of
Michael M. Doyle et al. } Appeals.

[October —, 1977]

MR. JUSTICE STEWART delivered the opinion of the Court.

Sally Lipscombe French died 20 days after executing a will leaving most of her estate to certain churches in the District of Columbia. Section 18-302 of the D. C. Code voids religious devises and bequests made within 30 days of death.¹ Prevented by this statutory provision from carrying out the terms of the will, the appellee as executor sought instructions in the Probate Division of the Superior Court of the District of Columbia. Both that court and the District of Columbia Court of Appeals held the statute unconstitutional.² The

¹ D. C. Code § 18-302 states:

"A devise or bequest of real or personal property to a minister, priest, rabbi, public teacher, or preacher of the gospel, as such, or to a religious sect, order or denomination, or to or for the support, use, or benefit thereof, or in trust therefor, is not valid unless it is made at least 30 days before the death of the testator."

This provision originated in the Organic Act of 1801, 2 Stat. 103, c. 15, § 2. It was amended by Congress as recently as 1965. 79 Stat. 688 (1965).

² The Superior Court opinion is unpublished. The opinion of the Court of Appeals appears at 365 A. 2d 621 (1976).

Stressing that the statute "is directed only to religious groups and practitioners," the Superior Court held the statute to be "an invalid infringement of the free exercise of religion provisions of the First Amendment" and "invalid as a denial of due process guaranteed by the Fifth Amendment."

The D. C. Court of Appeals invalidated the statute only under the

SEE PAGES: 8, 9

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: _____

NOV 3 1977

Recirculated: _____

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1057

John W. Key et al., Appellants, | On Appeal from the District
 v. | of Columbia Court of
 Michael M. Doyle et al. | Appeals.

[October —, 1977]

MR. JUSTICE STEWART delivered the opinion of the Court.

Sallye Lipscomb French died 20 days after executing a will leaving most of her estate to certain churches in the District of Columbia. Section 18-302 of the D. C. Code voids religious devises and bequests made within 30 days of death.¹ Prevented by this statutory provision from carrying out the terms of the will, the appellee as executor sought instructions in the Probate Division of the Superior Court of the District of Columbia. Both that court and the District of Columbia Court of Appeals held the statute unconstitutional.² The

¹ D. C. Code § 18-302 (1973) states:

"A devise or bequest of real or personal property to a minister, priest, rabbi, public teacher, or preacher of the gospel, as such, or to a religious sect, order or denomination, or to or for the support, use, or benefit thereof, or in trust therefor, is not valid unless it is made at least 30 days before the death of the testator."

This provision originated in the Organic Act of 1801, 2 Stat. 103, c. 15, § 2. It was amended by Congress as recently as 1965. 79 Stat. 688 (1965).

² The Superior Court opinion is unpublished. The opinion of the Court of Appeals appears at 365 A. 2d 621 (1976).

Stressing that the statute "is directed only to religious groups and practitioners," the Superior Court held the statute to be "an invalid infringement of the free exercise of religion provisions of the First Amendment" and "invalid as a denial of due process guaranteed by the Fifth Amendment."

The D. C. Court of Appeals invalidated the statute only under the

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

October 26, 1977

Re: No. 76-1057 - Key v. Doyle

Dear Potter:

I shall shortly circulate a dissent in
this case.

Sincerely,



Mr. Justice Stewart

Copies to Conference

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice Marshall
 Mr. Justice Blackman
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: Mr. Justice White

Circulated: 10-28-77

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 76-1057

John W. Key et al., Appellants, } On Appeal from the District
 v. } of Columbia Court of
 Michael M. Doyle et al. } Appeals.

[October —, 1977]

MR. JUSTICE WHITE, dissenting.

In *Palmore v. United States*, 411 U. S. 389 (1973), this Court held that provisions of the District of Columbia Code enacted by the U. S. Congress were not "state laws" within the meaning of 28 U. S. C. § 1257 (2) and that a decision of the D. C. Court of Appeals upholding such provisions was reviewable in this Court only on certiorari. Today, this Court holds that an act of Congress relating exclusively to the District of Columbia is also not a "statute of the United States" within the meaning of 28 U. S. C. § 1257 (1). Thus, even where the D. C. Court of Appeals strikes down such a congressional enactment on federal constitutional grounds, there is no right of direct appeal to this Court, review being limited to this Court's discretionary acceptance of a writ of certiorari. Because I believe that this holding is inconsistent with the prior decisions of this Court and contrary to the congressional scheme determining Supreme Court jurisdiction, I dissent from the majority opinion.

I

In the early years of the judicial system, all cases from the federally created court in the District of Columbia involving more than a specified jurisdictional amount were appealable to the United States Supreme Court.¹ In 1885, the jurisdic-

¹ See 2 Stat. 105-106 (1801) (judgments of the Circuit Court of the District of Columbia in excess of \$100 could be reviewed by appeal or writ of error); 3 Stat. 261 (1816) (raising jurisdictional amount to

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 3, 4, 7, 8

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

From: Mr. Justice White

Circulated: _____

Recirculated: 4-1-77

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1057

John W. Key et al., Appellants, | On Appeal from the District
v. | of Columbia Court of
Michael M. Doyle et al. | Appeals.

[October —, 1977]

MR. JUSTICE WHITE, dissenting.

In *Palmore v. United States*, 411 U. S. 389 (1973), this Court held that provisions of the District of Columbia Code enacted by the U. S. Congress were not "state laws" within the meaning of 28 U. S. C. § 1257 (2) and that a decision of the D. C. Court of Appeals upholding such provisions was reviewable in this Court only on certiorari. Today, this Court holds that an act of Congress relating exclusively to the District of Columbia is also not a "statute of the United States" within the meaning of 28 U. S. C. § 1257 (1). Thus, even where the D. C. Court of Appeals strikes down such a congressional enactment on federal constitutional grounds, there is no right of direct appeal to this Court, review being limited to this Court's discretionary acceptance of a writ of certiorari. Because I believe that this holding is inconsistent with the prior decisions of this Court and contrary to the congressional scheme determining Supreme Court jurisdiction, I dissent from the majority opinion.

I

In the early years of the judicial system, all cases from the federally created court in the District of Columbia involving more than a specified jurisdictional amount were appealable to the United States Supreme Court.¹ In 1885, the jurisdic-

¹ See 2 Stat. 105-106 (1801) (judgments of the Circuit Court of the District of Columbia in excess of \$100 could be reviewed by appeal or writ of error); 3 Stat. 261 (1816) (raising jurisdictional amount to

To: The Chief Justice ✓
 Mr. Justice Brennan ✓
 Mr. Justice Stewart ✓
 Mr. Justice Marshall ✓
 Mr. Justice Blackmun ✓
 Mr. Justice Powell ✓
 Mr. Justice Thurgood Marshall ✓
 Mr. Justice Stevens ✓

3rd DRAFT

From: Mr. Justice White

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 76-1057

Recirculated: 11-3-77

John W. Key et al., Appellants, } On Appeal from the District
 v. } of Columbia Court of
 Michael M. Doyle et al. } Appeals.

[October —, 1977]

MR. JUSTICE WHITE, with whom MR. JUSTICE BLACKMUN
 and MR. JUSTICE POWELL join, dissenting.

In *Palmore v. United States*, 411 U. S. 389 (1973), this Court held that provisions of the District of Columbia Code enacted by the U. S. Congress were not "state laws" within the meaning of 28 U. S. C. § 1257 (2) and that a decision of the D. C. Court of Appeals upholding such provisions was reviewable in this Court only on certiorari. Today, this Court holds that an act of Congress relating exclusively to the District of Columbia is also not a "statute of the United States" within the meaning of 28 U. S. C. § 1257 (1). Thus, even where the D. C. Court of Appeals strikes down such a congressional enactment on federal constitutional grounds, there is no right of direct appeal to this Court, review being limited to this Court's discretionary acceptance of a writ of certiorari. Because I believe that this holding is inconsistent with the prior decisions of this Court and contrary to the congressional scheme determining Supreme Court jurisdiction, I dissent from the majority opinion.

I

In the early years of the judicial system, all cases from the federally created court in the District of Columbia involving more than a specified jurisdictional amount were appealable to the United States Supreme Court.¹ In 1885, the jurisdic-

¹ See 2 Stat. 105-106 (1801) (judgments of the Circuit Court of the District of Columbia in excess of \$100 could be reviewed by appeal or writ of error); 3 Stat. 261 (1816) (raising jurisdictional amount to

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

From: Mr. Justice White

Circulated: _____

Recirculated: 11-11-77

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1057

John W. Key et al., Appellants, } On Appeal from the District
v. } of Columbia Court of
Michael M. Doyle et al. } Appeals.

[November —, 1977]

MR. JUSTICE WHITE, with whom THE CHIEF JUSTICE, MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL join, dissenting.

In *Palmore v. United States*, 411 U. S. 389 (1973), this Court held that provisions of the District of Columbia Code enacted by the U. S. Congress were not "state laws" within the meaning of 28 U. S. C. § 1257 (2) and that a decision of the D. C. Court of Appeals upholding such provisions was reviewable in this Court only on certiorari. Today, this Court holds that an act of Congress relating exclusively to the District of Columbia is also not a "statute of the United States" within the meaning of 28 U. S. C. § 1257 (1). Thus, even where the D. C. Court of Appeals strikes down such a congressional enactment on federal constitutional grounds, there is no right of direct appeal to this Court, review being limited to this Court's discretionary acceptance of a writ of certiorari. Because I believe that this holding is inconsistent with the prior decisions of this Court and contrary to the congressional scheme determining Supreme Court jurisdiction, I dissent from the majority opinion.

¶

I

In the early years of the judicial system, all cases from the federally created court in the District of Columbia involving more than a specified jurisdictional amount were appealable to the United States Supreme Court.¹ In 1885, the jurisdic-

¹See 2 Stat. 105-106 (1801) (judgments of the Circuit Court of the District of Columbia in excess of \$100 could be reviewed by appeal or writ of error); 3 Stat. 261 (1816) (raising jurisdictional amount to

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 1, 1977

Re: No. 76-1057, Key v. Doyle

Dear Potter:

Please join me.

Sincerely,

T.M.

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 27, 1977

Re: No. 76-1057 - Key v. Doyle

Dear Potter:

I shall await the dissent.

Sincerely,

H.A.B.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 31, 1977

Re: No. 76-1057 - Key v. Doyle

Dear Byron:

Please join me in your dissent.

Sincerely,

HA B.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 27, 1977

No. 76-1057 Key v. Doyle

Dear Potter:

In accord with my vote at the Conference, I will
await Byron's dissent.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Confernce]

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 2, 1977

No. 76-1057 Key v. Doyle

Dear Byron:

Please join me in your dissenting opinion.

Sincerely,

Lewis

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

October 26, 1977

Re: No. 76-1057 - Key v. Doyle

Dear Potter:

Please join me.

Sincerely,

Wm

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, 1977

Re: 76-1057 - Key v. Doyle

Dear Potter:

Please join me.

Respectfully,



Mr. Justice Stewart

Copies to the Conference