

# The Burger Court Opinion Writing Database

*California v. Texas*

437 U.S. 601 (1978)

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



Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: The Chief Justice

Circulated: APR 19 1970

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76, Orig.

State of California, Plaintiff,  
v.  
State of Texas. } On Motion for Leave to File Bill  
of Complaint.

[April —, 1978]

PER CURIAM.

The motion for leave to file a bill of complaint is denied.

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

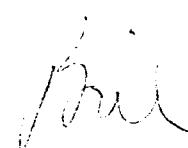
April 14, 1978

RE: No. 76 Orig. California v. Texas

Dear Chief:

I agree.

Sincerely,



The Chief Justice

cc: The Conference

To: The Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Brennan

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

Recirculated: 

No. 76 Orig., California v. Texas

MR. JUSTICE BRENNAN, concurring.

I agree with MR. JUSTICE STEWART and MR. JUSTICE POWELL that "in light of Edelman v. Jordan, 415 U.S. 651 (1974), this Court's decision in Worcester County Trust Co. v. Riley, 302 U.S. 292 (1937), can no longer be regarded as a bar against the use of federal interpleader by estates threatened with double death taxation because of possible inconsistent adjudications of domicile."

Opinion of MR. JUSTICE POWELL, post, at 1.

I am not so sure as they that Texas v. Florida, 306 U.S. 398 (1939), was wrongly decided. But, whatever the case, I would still deny California's motion to file a bill of complaint at this time. If we have jurisdiction at all, that jurisdiction certainly does not attach until it can be shown that two states may possibly be able to obtain conflicting adjudications of domicile. That showing has not been made at this time in this case, since

To: The Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice O'Connor  
Mr. Justice Rehnquist

## 1st DRAFT

THE EAST ASIAN ECONOMY

**SUPREME COURT OF THE UNITED STATES**

No. 76, Orig.

6/12/78

State of California, Plaintiff,  
v.  
State of Texas. } On Motion for Leave to File Bill  
of Complaint.

[June —, 1978]

MR. JUSTICE BRENNAN, concurring.

I agree with MR. JUSTICE STEWART and MR. JUSTICE POWELL that "in light of *Edelman v. Jordan*, 415 U. S. 651 (1974), this Court's decision in *Worcester County Trust Co. v. Riley*, 302 U. S. 292 (1937), can no longer be regarded as a bar against the use of federal interpleader by estates threatened with double death taxation because of possible inconsistent adjudications of domicile." Opinion of MR. JUSTICE POWELL, *post*, at 1.

I am not so sure as they that *Texas v. Florida*, 306 U. S. 398 (1939), was wrongly decided. But, whatever the case, I would still deny California's motion to file a bill of complaint at this time. If we have jurisdiction at all, that jurisdiction certainly does not attach until it can be shown that two States may possibly be able to obtain conflicting adjudications of domicile. That showing has not been made at this time in this case, since it may well be possible for the Hughes estate to obtain a judgment under the Federal Interpleader Statute, 28 U. S. C. § 1335, from a United States District Court, which would be binding on both California and Texas. In this event, the precondition for our original jurisdiction would be lacking. Accordingly, I would deny California's motion at least until such time as it is shown that such a statutory interpleader action cannot or will not be brought.

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 14, 1978

No. 76 ORIG., California v. Texas

Memorandum to the Conference

In due course, I shall circulate a  
concurring opinion.

P. S.  
P. S.

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

No. 76 Original, CALIFORNIA v. TEXAS

From: Mr. Justice Stewart

Circulated: 4/2/78

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

MR. JUSTICE STEWART, concurring.

California seeks to invoke the original and exclusive jurisdiction of this Court to settle a dispute with the State of Texas over the question of which State has the power to collect death taxes from the estate of the late Howard Robard Hughes. The Court today, without explanation of any kind, evidently concludes that California's complaint does not state a claim within our original and exclusive jurisdiction. This conclusion seems to me squarely contrary to a long-standing precedent of this Court, the case of Texas v. Florida, 306 U.S. 398. I have joined in the order denying California's motion for leave to file this complaint only because I think Texas v. Florida was wrongly decided and should be overruled.

I

According to the complaint, California imposes an inheritance tax on the real and tangible personal property located within its borders, and upon the intangible personality wherever situated, of a person domiciled in the State at the time of his death, and Texas follows precisely

SEE PAGES: 1, 10, 13

Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Stewart

2d  
1st DRAFT

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

Encirculated: 15 JUN 1978

**SUPREME COURT OF THE UNITED STATES**

No. 76, Orig.

State of California, Plaintiff,  
v.  
State of Texas. } On Motion for Leave to File Bill  
of Complaint.

[June —, 1978]

MR. JUSTICE STEWART, with whom MR. JUSTICE POWELL and MR. JUSTICE STEVENS join, concurring.

California seeks to invoke the original and exclusive jurisdiction of this Court to settle a dispute with the State of Texas over the question of which State has the power to collect death taxes from the estate of the late Howard Robard Hughes. The Court today, without explanation of any kind, evidently concludes that California's complaint does not state a claim within our original and exclusive jurisdiction. This conclusion seems to me squarely contrary to a longstanding precedent of this Court, the case of *Texas v. Florida*, 306 U. S. 398. I have joined in the order denying California's motion for leave to file this complaint only because I think *Texas v. Florida* was wrongly decided and should be overruled.

I

According to the complaint, California imposes an inheritance tax on the real and tangible personal property located within its borders, and upon the intangible personality wherever situated, of a person domiciled in the State at the time of his death, and Texas follows precisely the same policy.<sup>1</sup>

<sup>1</sup> Tangible personal property and realty are constitutionally subject to taxation only at the place of situs. See *Union Refrigerator Transit Co. v. Kentucky*, 199 U. S. 194; *City Bank Farmers Trust Co. v. Schnader*, 293 U. S. 112. As will be developed more fully, *infra*, at —, intangible personal property may, at least theoretically, be taxed only at the place of the owner's domicile. *First National Bank v. Maine*, 284 U. S. 312.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 16, 1978

Re: 76 Original - State of California  
v. State of Texas

Dear Chief,

I agree with the order denying the  
motion for leave to file.

Sincerely yours,



The Chief Justice

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 9, 1978

Re: No. 76, Orig. - California v. Texas

Dear Chief:

I agree with your Per Curiam.

Sincerely,

*T.M.*  
T.M.

The Chief Justice

cc: The Conference

✓  
Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 13, 1978

Re: No. 76 Orig. - California v. Texas

Dear Chief:

I join the one-line per curiam.

Sincerely,



The Chief Justice

cc: The Conference

April 6, 1978

76 Orig. California v. Texas

Dear Potter:

At the Conference I did not record a final vote because I wished to study further the statutory interpleader approach that you and I both presented. I did say that unless the Court takes that approach (which I believe will require overruling both Worcester County Trust and Texas v. Florida, I will dissent from the Court's decision not to take jurisdiction. If Texas v. Florida remains as a precedent, I do not see any defensible ground for not following it in this case.

Since the Conference, I had concluded that I would write a memorandum on the statutory interpleader approach. Until we see the form of the Court's denial of California's petition, I am not clear as to what my bottom line will be. If the Court simply denies the petition without an opinion, I would dissent from that denial and am inclined to suggest a reargument on the status of Worcester County Trust and Texas v. Florida. A reargument probably would not be strictly necessary, since the validity of Worcester County would not affect the majority vote in any event. But reargument at least would highlight the route you and I think the estate should pursue. If someone does write an opinion for the Court, I will have to see what is written.

I set forth the foregoing to let you know my present thinking. It has come to my attention through our clerks (Bob Comfort and Ellen Borgersen) that you also are having a memorandum prepared that will suggest the overruling of Worcester County Trust and Texas v. Florida. If, in light of what I have said above, you think we are essentially together, I will await your memorandum unless you prefer for me to go ahead - which I would be happy to do.

Sincerely,

Mr. Justice Stewart

lfp/ss

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 14, 1978

No. 76 Orig. California v. Texas

Dear Chief:

I will await the circulation of Potter's concurring opinion. I also probably will dissent from the Court's action.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

To: The Chief Justice,  
Mr. Justice BREWSTER  
Mr. Justice STEWART  
Mr. Justice MARSHALL  
Mr. Justice FORD  
Mr. Justice POWELL  
Mr. Justice REHNQVIST  
Mr. Justice BLACKMUN  
Mr. Justice THOMAS

From: Mr. Justice POWELL  
8 JUN 1976

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

No. 76 Orig. California v. Texas

MR. JUSTICE POWELL, concurring.

I join the excellent opinion of MR. JUSTICE STEWART and write simply to emphasize his conclusion that, in light of Edelman v. Jordan, 415 U.S. 651 (1974), this Court's decision in Worcester County Trust Co. v. Riley, 302 U.S. 292 (1937), can no longer be regarded as a bar against the use of federal interpleader by estates threatened with double death taxation because of possible inconsistent adjudications of domicile.

Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated:

1st DRAFT

Recirculated: 1-2 JUN 1978

## SUPREME COURT OF THE UNITED STATES

No. 76, Orig.

State of California, Plaintiff, }  
v. } On Motion for Leave to File Bill  
State of Texas. } of Complaint.

[June —, 1978]

MR. JUSTICE POWELL, concurring.

I join the excellent opinion of MR. JUSTICE STEWART and write simply to emphasize his conclusion that, in light of *Edelman v. Jordan*, 415 U. S. 651 (1974), this Court's decision in *Worcester County Trust Co. v. Riley*, 302 U. S. 292 (1937), can no longer be regarded as a bar against the use of federal interpleader by estates threatened with double death taxation because of possible inconsistent adjudications of domicile.

As Professor Zechariah Chafee, the father of federal statutory interpleader pointed out, “[i]t is our federal system which creates the possibility of double taxation. Somewhere within that federal system we should be able to find remedies for the frictions which that system creates.” Chafee, Federal Interpleader Since the Act of 1936, 49 Yale L. J. 377, 388 (1940). The Worcester County Court, much to Professor Chafee's regret, 49 Yale L. J., at 388, held that the Eleventh Amendment precluded resort to federal interpleader as a remedy for the particularly unfair “friction” that can result from conflicting adjudications of domicile in death taxation cases.

But as noted by MR. JUSTICE STEWART, *ante*, at Worcester County has been effectively undercut by subsequent developments. *Edelman* made it clear that the Eleventh Amendment bars only suits “by private parties seeking to impose a liability which must be paid from public funds in the state treasury,” 415 U. S., at 633, and not actions which may have

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 13, 1978

Re: No. 76 Orig., State of California v. State of Texas

Dear Chief:

Please join me in your per curiam.

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 14, 1978

Re: 76 Original - California v. Texas

Dear Chief:

I shall await Potter's concurring opinion.

Respectfully,

J. P. S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 9, 1978

Re: 76 Original - California v. Texas

Dear Potter:

Please join me in your concurring opinion.

Respectfully,



Mr. Justice Stewart

Copies to the Conference