

# The Burger Court Opinion Writing Database

*Will v. Calvert Fire Insurance Co.*  
437 U.S. 655 (1978)

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

June 14, 1978

Re: 77-693 - Will v. Calvert Fire Insurance Co. et al.

MEMORANDUM TO THE CONFERENCE:

I enclose Wang draft of a brief dissent. Unless Mr. Putzel thinks otherwise, it seems to me this would more logically follow Bill Brennan's dissent than otherwise.

Regards,

URB

To: Mr. Justice Brennan  
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: JUN 14 1978

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

Re: 77-693 - Will v. Calvert Fire Insurance Co. et al.

I am in general agreement with Mr. Justice Brennan's dissenting opinion. I write separately only to emphasize that I consider it unnecessary to determine in the context of this case whether it would ever be appropriate to give res judicata effect to a state court judgment implicating a claim over which the federal courts have been given exclusive jurisdiction. Our concern here is simply with the propriety of a federal court delaying adjudication of such a claim in deference to a state court proceeding. As Mr. Justice Brennan correctly notes, whatever the proper resolution of the res judicata issue, a federal court remains under an obligation to expeditiously consider and resolve those claims which Congress explicitly reserved to the federal courts. With this minor caveat, I join Mr. Justice Brennan in his dissent.

To: Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Marshall  
Mr. Justice Stevens

From: The Chief Justice

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

Recirculated: JUN 15 1978

PRINTED  
1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-693

Hubert L. Will, Judge, United States  
District Court, Northern Dis-  
trict of Illinois, Petitioner,  
v.  
Calvert Fire Insurance Company  
et al.

On Writ of Certiorari  
to the United States  
Court of Appeals for  
the Seventh Circuit.

[June —, 1978]

MR. CHIEF JUSTICE BURGER, dissenting.

I am in general agreement with MR. JUSTICE BRENNAN's dissenting opinion. I write separately only to emphasize that I consider it unnecessary to determine in the context of this case whether it would ever be appropriate to give res judicata effect to a state court judgment implicating a claim over which the federal courts have been given exclusive jurisdiction. Our concern here is simply with the propriety of a federal court delaying adjudication of such a claim in deference to a state court proceeding. As MR. JUSTICE BRENNAN correctly notes, whatever the proper resolution of the res judicata issue, a federal court remains under an obligation to expeditiously consider and resolve those claims which Congress explicitly reserved to the federal courts. With this minor caveat, I join MR. JUSTICE BRENNAN in his dissent.

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 18, 1978

RE: No. 77-693 Will v. Calvert Fire Insurance Co.

Dear Chief:

I will undertake the dissent in the above.

Sincerely,

*Bill*

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 Egan

Circulated: 6/12/17

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

SUPREME COURT OF THE UNITED STATES

No. 77-693

Hubert L. Will, Judge, United States District Court, Northern District of Illinois, Petitioner, v. Calvert Fire Insurance Co. et al. ) On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

[June   , 1978]

MR. JUSTICE BRENNAN, dissenting.

This case falls within none of the three general abstention categories, and the Court therefore strains to bring it within the principles that govern in a very narrow class of "exceptional" situations that involve "the contemporaneous exercise of concurrent jurisdictions."

Colorado River Water Conservation District v. United States, 424 U.S. 800, 813-818 (1976). In so straining, the Court reaches a result supported by neither policy nor

To: The Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
 Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice P. B. Wright  
Mr. Justice Stevens

From: Mr. Justice Brennan

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

15 JUN 1978

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

**2nd DRAFT**

**SUPREME COURT OF THE UNITED STATES**

**No. 77-693**

Hubert L. Will, Judge, United States  
District Court, Northern Dis-  
trict of Illinois, Petitioner,  
v.  
Calvert Fire Insurance Company  
et al.

On Writ of Certiorari to  
United States Court  
of Appeals for the  
Seventh Circuit.

[June —, 1978]

MR. JUSTICE BRENNAN, with whom THE CHIEF JUSTICE, *Mr. JUSTICE*, and MR. JUSTICE POWELL join, dissenting.

This case falls within none of the three general abstention categories, and the Court therefore strains to bring it within the principles that govern in a very narrow class of "exceptional" situations that involve "the contemporaneous exercise of concurrent jurisdictions." *Colorado River Water Conservation District v. United States*, 424 U. S. 800, 813-818 (1976). In so straining, the Court reaches a result supported by neither policy nor precedent, ignores difficult legal issues, misapprehends the significance of the proceedings below, and effectively overrules a decision that has stood unquestioned for nearly 70 years. Moreover, there lurks an ominous potential for the abdication of federal court jurisdiction in the Court's disturbing indifference to "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them," *id.*, at 817—for obedience to that obligation becomes all the more important when, as here, Congress has made that jurisdiction *exclusive*. I dissent.

**I**

Because this case came to the Court of Appeals on respondents' motion for a writ of mandamus to compel Judge

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

CHAMBERS OF  
JUSTICE POTTER STEWART

✓

April 24, 1978

Re: No. 77-693, Will v. Calvert Fire Ins. Co.

Dear Chief,

After our Conference discussion of this case last Friday, you asked me to assign the Court opinion. I have asked Bill Rehnquist to undertake it, and I am sure that the opinion that he produces will be, to borrow your words, brilliant and persuasive.

Sincerely yours,

P. S.

The Chief Justice

Copies to the Conference

I'm tentatively  
in dissent but  
probably will not  
~~write~~ write.

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 17, 1978

No. 77-693, Will v. Calvert Fire Ins. Co.

Dear Bill,

I am glad to join your opinion for the Court.

Sincerely yours,

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 17, 1978

Re: 77-693 - Will v. Calvert Fire  
Insurance Company

Dear Bill,

Please join me.

Sincerely yours,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 17, 1978

Re: No. 77-693 - Will v. Calvert Fire Ins. Co.

Dear Bill:

Your note 5 confuses me. Can you help me?

Sincerely,

*T.M.*  
T.M.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 23, 1978

Re: No. 77-693 - Will v. Calvert Fire Ins. Co.

Dear Bill:

Your memorandum of May 22 convinces me that the best I can do is to join in the judgment.

Sincerely,

*T.M.*

T.M.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 15, 1978

Re: No. 77-693 - Will v. Calvert

Dear Bill:

Please join me.

Sincerely,

*T.M.*  
T.M.

Mr. Justice Brennan

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: MAY 25 1978

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

No. 77-693 - Will v. Calvert Fire Ins. Co.

MR. JUSTICE BLACKMUN, concurring in the judgment.

The Court's opinion, ante, p. 6, appears to me to indicate that it now regards as fully compatible the Court's decisions in Brillhart v. Excess Ins. Co., 316 U.S. 491 (1942), a diversity case, and Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976), a federal issue case. I am not at all sure that this is so. I -- as were Mr. Justice Stewart and Mr. Justice Stevens -- was in dissent in Colorado River, and if the holding in that case is what I think it is, the Court cut back on Mr. Justice Frankfurter's rather sweeping language in Brillhart, 316 U.S., at 494-495. <sup>\*/</sup>

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

From: Mr. Justice Blackmun

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

Recirculated: MAY 30 1978

1st PRINTED DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-693

Hubert L. Will, Judge, United States  
District Court, Northern Dis-  
trict of Illinois, Petitioner,  
*v.*  
Calvert Fire Insurance Company  
et al.

On Writ of Certiorari to  
United States Court  
of Appeals for the  
Seventh Circuit.

[June —, 1978]

MR. JUSTICE BLACKMUN, concurring in the judgment.

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\*\*"Although the District Court had jurisdiction of the suit under the Federal Declaratory Judgments Act, it was under no compulsion to exercise that jurisdiction. The petitioner's motion to dismiss the bill was addressed to the discretion of the court. . . . The motion rested upon the claim that, since another proceeding was pending in a state court in which all the matters in controversy between the parties could be fully adjudicated, a declaratory judgment in the federal court was unwarranted. The correctness of this claim was certainly relevant in determining whether the District Court should assume jurisdiction and proceed to determine the rights of the parties. Ordinarily it would be uneconomical as well as vexatious for a federal court to proceed in a declaratory judgment suit where another suit is pending in a state court presenting the same issues, not governed by federal law, between the same parties. Gratuitous interference with the orderly and comprehensive disposition of a state court litigation should be avoided."

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

From: Mr. Justice Blackmun

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

**2nd DRAFT**

Recirculated: **MAY 31 1978**

## SUPREME COURT OF THE UNITED STATES

No. 77-693

Hubert L. Will, Judge, United States  
District Court, Northern Dis-  
trict of Illinois, Petitioner,  
v.  
Calvert Fire Insurance Company  
et al. } On Writ of Certiorari to  
United States Court  
of Appeals for the  
Seventh Circuit.

[June —, 1978]

MR. JUSTICE BLACKMUN, concurring in the judgment.

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\*“Although the District Court had jurisdiction of the suit under the Federal Declaratory Judgments Act, it was under no compulsion to exercise that jurisdiction. The petitioner's motion to dismiss the bill was addressed to the discretion of the court. . . . The motion rested upon the claim that, since another proceeding was pending in a state court in which all the matters in controversy between the parties could be fully adjudicated, a declaratory judgment in the federal court was unwarranted. The correctness of this claim was certainly relevant in determining whether the District Court should assume jurisdiction and proceed to determine the rights of the parties. Ordinarily it would be uneconomical as well as vexatious for a federal court to proceed in a declaratory judgment suit where another suit is pending in a state court presenting the same issues, not governed by federal law, between the same parties. Gratuitous interference with the orderly and comprehensive disposition of a state court litigation should be avoided.”

June 16, 1978

Re: No. 77-693 - Will v. Calvert Fire Ins. Co.

Dear Bill:

I have given earnest consideration to the contents of your letter of June 15 to me. With Thurgood's defection, I fully understand, and appreciate, your desire to command a court.

I know I disappoint you, but I have concluded that I shall stick to my separate concurrence in the judgment, and that I am not able to join your opinion, even though it were revised in the manner set forth in your letter. I reach this conclusion because I feel that Brillhart is a diversity case not applicable here, and that in any event Colorado River cut back on FF's sweeping language. Your proposed revision still relies on Brillhart.

I am somewhat comforted, and I hope you are, with the fact that at least you have a court for the reversal of the CA 7.

In order to focus our differences more acutely, I shall make one addition to the last sentence of the first paragraph of my opinion. After the words "it is" in the paragraphs next to the last line, I shall add "and if one assumes, as I do not, that Brillhart has any application here,".

Sincerely,

HAB

Mr. Justice Rehnquist

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 16, 1978

MEMORANDUM TO THE CONFERENCE

Re: No. 77-693 - Will v. Calvert Fire Ins. Co.

In my separate concurrence I am making one change in the last sentence of the first paragraph. It occurs in the next to the last line. After the words "it is" I am adding "and if one assumes, as I do not, that Brillhart has any application here,".

H. A. B.

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

From: Mr. Justice Blackmun

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

Recirculated: JUN 19 1973

### 3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 77-693

Hubert L. Will, Judge, United States  
District Court, Northern Dis-  
trict of Illinois, Petitioner,  
v.  
Calvert Fire Insurance Company  
et al. } On Writ of Certiorari  
to the United States  
Court of Appeals for  
the Seventh Circuit.

[June —, 1978]

MR. JUSTICE BLACKMUN, concurring in the judgment.

The Court's opinion, *ante*, p. 6, appears to me to indicate that it now regards as fully compatible the Court's decisions in *Brillhart v. Excess Ins. Co.*, 316 U. S. 491 (1942), a diversity case, and *Colorado River Water Conservation Dist. v. United States*, 424 U. S. 800 (1976), a federal issue case. I am not at all sure that this is so. I—as were MR. JUSTICE STEWART and MR. JUSTICE STEVENS—was in dissent in *Colorado River*, and if the holding in that case is what I think it is, and if one assumes, as I do not, that *Brillhart* has any application here, the Court cut back on Mr. Justice Frankfurter's rather sweeping language in *Brillhart*, 316 U. S., at 494–495.\*

\*"Although the District Court had jurisdiction of the suit under the Federal Declaratory Judgments Act, it was under no compulsion to exercise that jurisdiction. The petitioner's motion to dismiss the bill was addressed to the discretion of the court. . . . The motion rested upon the claim that, since another proceeding was pending in a state court in which all the matters in controversy between the parties could be fully adjudicated, a declaratory judgment in the federal court was unwarranted. The correctness of this claim was certainly relevant in determining whether the District Court should assume jurisdiction and proceed to determine the rights of the parties. Ordinarily it would be uneconomical as well as vexatious for a federal court to proceed in a declaratory judgment suit

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 18, 1978

No. 77-693 Will v. Calvert Fire Ins. Co.

Dear Bill:

In accord with my Conference vote, I will await  
Bill Brennan's dissent in this case.

Sincerely,

*L. Lewis*

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 13, 1978

No. 77-693 Will v. Calvert

Dear Bill:

Please add my name to your dissenting opinion.

At my request Bob Comfort has talked to Steve Reiss about a couple of changes in verbiage (on pp. 2 and 12 of your draft of June 12) that I understand are entirely agreeable to you.

Sincerely,

*Lewis*

Mr. Justice Brennan

lfp/ss

cc: The Conference

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

From: Mr. Justice Rehnquist  
MAY 17 1979  
Circulated.

Circulated: MAY 17 1978

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

77-693

Hubert L. Will, Judge, United States  
District Court, Northern Dis-  
trict of Illinois, Petitioner,  
*v.*  
Calvert Fire Insurance Company  
et al.

On Writ of Certiorari to  
United States Court  
of Appeals for the  
Seventh Circuit.

[May —, 1978]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

On August 15, 1977, the Court of Appeals for the Seventh Circuit granted a petition for writ of mandamus ordering petitioner, a Judge of the United States District Court for the Northern District of Illinois, "to proceed immediately" to adjudicate a claim based upon the Securities Exchange Act of 1934 and brought by respondent, Calvert Fire Insurance Co., against American Mutual Reinsurance Co., despite a substantially identical proceeding between the same parties in the Illinois state courts. 560 F. 2d 792, 797. The Court of Appeals felt that our recent decision in *Colorado River Conservation Dist. v. United States*, 424 U. S. 800 (1976), compelled the issuance of the writ. We granted certiorari to consider the propriety of the use of mandamus to review a District Court's decision to defer to concurrent state proceedings, and we now reverse.

1

Respondent Calvert writes property and casualty insurance. American Mutual operates a reinsurance pool whereby a number of primary insurers protect themselves against unanticipated losses. Membership in the pool requires both the pay-

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 22, 1978

Re: No. 77-693 - Will v. Calvert Fire Insurance Co.

Dear Thurgood:

Your note of May 17th expressed concern about footnote 5 in my circulating draft in this case. I simply intended the citation in that footnote to Thermtron as an example of the proper use of mandamus, and the comment about the dissent in that case in the second sentence of the footnote was intended to point out that even the dissenters (the Chief and Potter joining my unsuccessful effort) did not deny that mandamus would have been appropriate there had it not been for the express congressional prohibition against what we thought to be any review of remand orders. As testimony to the fact that the footnote is not an effort to re-fight the Thermtron battle, I offer as Exhibit 1 the join letter in this case from the Honorable Byron R. White, who authored Thermtron. If I can make any changes in the footnote which would make it more appealing to you, without making it less appealing to those who have already joined, I will be glad to undertake the effort.

Sincerely,

*W.H.R.*

Mr. Justice Marshall

Copies to the Conference

## Supreme Court of the United States

## Memorandum

6-15

, 1978 on hand

Harry

I hear by the Clerk's  
grapevine that TM is  
thinking of changing his vote  
in Ward v. Calvert from  
concurring in the judgment to  
joining WJB's dissent. This  
will not change the result,  
but may make the Ct  
uncertain as to exactly what  
to do, since your concurrence  
indicates a remand. If I  
were to change my vote

Supreme Court of the United States  
Memorandum

, 19

majority as a  
point out what you do  
in your concurrence -  
that he will didn't have  
"Colorado River" before him  
when he ruled, & that he  
would undoubtedly want  
to consider it upon what  
he most takes up the case  
is there any possibility that  
you could form my opinion  
myself. *W.W.*

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 15, 1978

9  
Re: No. 77-603 Will v. Calvert Fire Insurance

Dear Harry:

What follows is a proposed change in my presently circulating opinion in this case, with an effort to incorporate the view expressed in your separate concurrence while still making a Court opinion for a mandate from this Court to the Court of Appeals to reverse outright its issuance of the writ of mandamus. If you wish any revisions, or would prefer some other treatment of the matter, I am, needless to say, most willing to try to accommodate. The change I now contemplate would be in the text of my first draft which circulated May 17th, at page 7 beginning with the last three words on that page. The text would be revised to read this way:

"That language underscores our conviction that a District Court should exercise discretion with this factor in mind, but it does not convert what Brillhart held to be a discretionary decision into an inflexible obligation which may be enforced by mandamus. Judge Will's stay order was issued prior to this Court's decision in Colorado River. He did not have such guidance as that case affords in this area, and conceivably had he had such guidance he might have reached a different result with respect to the

disposition of this case. But seizing upon the phrase 'unflagging obligation' in the Colorado River opinion, which upheld the correctness of a District Court's final decision to dismiss because of concurrent jurisdiction, does not make out a claim for the extraordinary writ of mandamus in a case such as this where the District Court may arguably have reached the wrong conclusion, but has rendered no final decision."

I would then propose to take up with the text of my opinion as is beginning with the first full paragraph on page 8 "We think it of considerably more importance . . ."

Please let me have your thoughts.

Sincerely,

*Wm*

Mr. Justice Blackmun

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 16, 1978

MEMORANDUM TO THE CONFERENCE

Re: No. 77-693 Will v. Calvert Fire Insurance Co.

Because of the final tally in this case, I find it necessary to make the same sort of change in the heading of the opinion as Byron did in Wise v. Lipscomb. The heading will now read:

"MR. JUSTICE REHNQUIST ANNOUNCED THE JUDGMENT OF THE COURT, AND DELIVERED AN OPINION IN WHICH MR. JUSTICE STEWART, MR. JUSTICE WHITE, AND MR. JUSTICE STEVENS CONCURRED."

Sincerely,



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

From: Mr. Justice Rehnquist

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

Recirculated: JUN -

## 2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-693

Hubert L. Will, Judge, United States  
District Court, Northern Dis-  
trict of Illinois, Petitioner,  
*v.*  
Calvert Fire Insurance Company  
et al.

On Writ of Certiorari  
to the United States  
Court of Appeals for  
the Seventh Circuit.

[May —, 1978]

MR. JUSTICE REHNQUIST announced the judgment of the Court, and delivered an opinion in which MR. JUSTICE STEWART, MR. JUSTICE WHITE, and MR. JUSTICE STEVENS joined.

On August 15, 1977, the Court of Appeals for the Seventh Circuit granted a petition for writ of mandamus ordering petitioner, a Judge of the United States District Court for the Northern District of Illinois, "to proceed immediately" to adjudicate a claim based upon the Securities Exchange Act of 1934 and brought by respondent, Calvert Fire Insurance Co., against American Mutual Reinsurance Co., despite the pendency of a substantially identical proceeding between the same parties in the Illinois state courts. 560 F. 2d 792, 797. The Court of Appeals felt that our recent decision in *Colorado River Conservation Dist. v. United States*, 424 U. S. 800 (1976), compelled the issuance of the writ. We granted certiorari to consider the propriety of the use of mandamus to review a District Court's decision to defer to concurrent state proceedings, and we now reverse.

1

Respondent Calvert writes property and casualty insurance. American Mutual operates a reinsurance pool whereby a num-

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 23, 1978

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 77-693, Will v. Calvert Fire Insurance Co.

Two cases from the Ninth Circuit have been held pending the decision in this case. Since both involve appeals from outright dismissals, rather than applications for mandamus, the decision in Will sheds very little light on their proper disposition.

1. No. 77-1298 Krain v. Regents of the University of California. Petitioner was dismissed by respondents after his third year of residence at the UCLA School of Medicine. He then brought an action against the school authorities in state court, apparently based upon common law breach of contract and libel, and possibly upon constitutional claims.

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 17, 1978

Re: 77-693 - Will v. Calvert Fire Ins. Co.

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Rehnquist  
Copies to the Conference