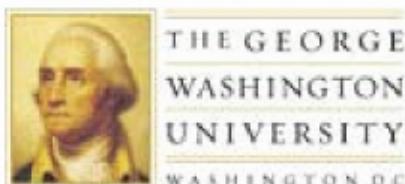


The Burger Court Opinion Writing Database

Leroy v. Great Western United Corp.
443 U.S. 173 (1979)

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 12, 1979

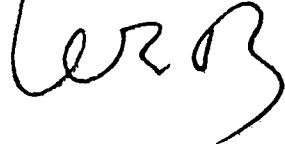
Dear John:

Re: 78-759 Leroy v. Great Western

I am satisfied to dispose of this case on venue grounds. I am equally satisfied that Texas had no jurisdiction.

I join.

Regards,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 1, 1979

Re: 78-759
Leroy v. Great Western United Corporation

Dear Thurgood,

Byron, you and I are in dissent in the above. Would you care to take on the dissent?

Sincerely,



Mr. Justice Marshall
cc Mr. Justice White

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

June 11, 1979

RE: No. 78-759 Leroy v. Great Western United Corporation

Dear Byron:

Please join me in the dissent you have prepared in the
above.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 22, 1979

Re: 78-759 - Leroy v. Great Western United Corp.

Dear John:

Although I could have and probably would have decided this case on the basis of no personal jurisdiction in Texas over the Idaho officials, I think your opinion is thoroughly convincing. I am happy to join it.

Sincerely yours,

? S,

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 23, 1979

MEMORANDUM TO THE CONFERENCE

Due to a mix-up, an earlier memorandum circulated today advised that I was considering a dissent in No. 78-1060, Great Western Sugar Co. v. Edward L. Nelson. In fact, the case is No. 78-759, Leroy v. Great Western United Corporation. Please substitute the attached corrected memorandum for the earlier one.

Sincerely,

B.R.W.

Barry R. White

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 23, 1979

Re: No. 78-759 — Leroy v. Great Western
United Corporation

Dear John:

I am considering a dissent in this
case.

Sincerely,

B.R.W.

Byron R. L.

Mr. Justice Stevens

Copies to the Conference

No. 78-759 — Leroy v. Great Western United Corporation

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

7 JUN 1979

Circulated: _____

Recirculated: _____

MR. JUSTICE WHITE, dissenting.

When Great Western proposed in Dallas, Texas, to make a cash tender offer for up to two million shares of Sunshine, officials in Idaho, Maryland, and New York indicated that the offer would be subject to the corporate takeover statute of each State. Having complied with the provisions of the Williams Act governing tender offers and believing that extraterritorial application of the additional requirements of the state statutes was preempted by and in conflict with the federal statute, Great Western brought suit in federal District Court for the Northern District of Texas for declaratory and injunctive relief against enforcement of the state statutes. Because I conclude that venue in that district and personal jurisdiction over the defendant state officials were authorized by § 27 of the Williams Act, 15 U.S.C. § 78aa, I disagree with the Court's

BRW
100
1
1, 3-5, footnotes renumbered

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: 12 JUN 1979

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-759

David H. Leroy, Attorney General of Idaho, et al.,
Appellants,
v.
Great Western United Corporation.

On Appeal from the United States Court of Appeals for the Fifth Circuit.

[June —, 1979]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN joins, dissenting.

When Great Western proposed in Dallas, Tex., to make a cash tender offer for up to two million shares of Sunshine, officials in Idaho, Maryland, and New York indicated that the offer would be subject to the corporate takeover statute of each State. Having complied with the provisions of the Williams Act governing tender offers and believing that extraterritorial application of the additional requirements of the state statute was pre-empted by and in conflict with the federal statute, Great Western brought suit in federal District Court for the Northern District of Texas for declaratory and injunctive relief against enforcement of the state statutes. Because I conclude that venue in that district and personal jurisdiction over the defendant state officials were authorized by § 27 of the Williams Act, 15 U. S. C. § 72aa, I disagree with the Court's disposition of this appeal and would reach the merits of Great Western's contention that Idaho's statute is pre-empted by the Williams Act.

I

The Williams Act was enacted in the form of a set of amendments to the Securities Exchange Act of 1934, which, like the Securities Act of 1933, contains its own venue provi-

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 21, 1979

Re: No. 78-759 - Leroy v. Great Western United Corp.

Dear Byron:

Please join me.

Sincerely,

T.M.

T.M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 12, 1979

Re: No. 78-759 - Leroy v. Great Western United
Corporation

Dear John:

Although my first preference was to decide the case on the personal jurisdiction issue, the route you have chosen is acceptable. My vote will give you a Court, and I therefore join your opinion.

Sincerely,

He S.

—

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 26, 1979

78-759 Leroy v. Great Western United Corp.

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 29, 1979

Re: No. 78-759 - Leroy v. Great Western United Corp.

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 22, 1979

MEMORANDUM TO THE CONFERENCE

Re: 78-759 - Leroy v. Great Western
United Corporation

Although I realize that a majority of the Court was prepared to reverse on the ground that there was no personal jurisdiction in Texas over the Idaho official, I am hopeful that you may find my reliance on the clear absence of proper venue acceptable. I did have some difficulty with the implications of a jurisdictional holding and believe it is proper to avoid that constitutional question when a simple statutory answer is available. I try to justify this approach in Part I on pages 6 and 7.

Respectfully,



To: The other Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: MAY 22 '79

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 78-759

David H. Leroy, Attorney General of Idaho, et al.,
Appellants,
v.
Great Western United Corporation.

On Appeal from the United States Court of Appeals for the Fifth Circuit.

[May —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

An Idaho statute imposes restrictions on certain purchasers of stock in corporations having substantial assets in Idaho. The questions presented by this appeal are whether the state agents responsible for enforcing the statute may be required to defend its constitutionality in a federal district court in Texas, and if so, whether the statute conflicts with the Williams Act amendments to the Securities Exchange Act of 1934,¹ and the Commerce Clause of the United States Constitution.²

Sunshine Mining and Metal Co. (Sunshine) is a "target company" within the meaning of the Idaho Corporate Takeover Act—a statute designed to regulate takeovers of corporations that have certain connections to the State.³ Sunshine's

¹ 82 Stat. 454, see 15 U. S. C. §§ 78m (d)-78m (e), 77n (d)-78n (f).

² "The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. . . ." U. S. Const., Art. I, § 8.

³ Chapter 15 of Title 30 of the Idaho Code is entitled "Corporate Takeovers." Its opening provision contains the following definition:

"Target company" means a corporation or other issuer of securities which is organized under the laws of this state or has its principal office in

P.9

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

From: Mr. Justice Stevens

Circulated: _____

Recirculated: JUN 11 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-759

David H. Leroy, Attorney General of Idaho, et al.,
Appellants,
v.
Great Western United Corporation. | On Appeal from the United States Court of Appeals for the Fifth Circuit.

[June —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

An Idaho statute imposes restrictions on certain purchasers of stock in corporations having substantial assets in Idaho. The questions presented by this appeal are whether the state agents responsible for enforcing the statute may be required to defend its constitutionality in a federal district court in Texas, and if so, whether the statute conflicts with the Williams Act amendments to the Securities Exchange Act of 1934,¹ and the Commerce Clause of the United States Constitution.²

Sunshine Mining and Metal Co. (Sunshine) is a "target company" within the meaning of the Idaho Corporate Take-over Act—a statute designed to regulate takeovers of corporations that have certain connections to the State.³ Sunshine's

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² "The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. . . ." U. S. Const., Art. I, § 8.

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