

The Burger Court Opinion Writing Database

Cory v. White

457 U.S. 85 (1982)

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

May 20, 1982

Re: 80-1556 Cory v. White

Dear Byron:

I join.

Regards,



Justice White

Copies to the Conference

85 MAY 20 10 25

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

CHAMBERS OF
THE CHIEF JUSTICE

18

June 4, 1982

Re: No. 80-1556 - Cory v. White
No. 88 Orig. - California v. Texas

Dear Byron:

I join your opinion as revised.

Regards,

A handwritten signature in black ink, appearing to be 'WJW', written in a cursive style.

Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 31, 1982

No. 80-1556 Cory v. White
88 Orig. California v. Texas

Dear Byron,

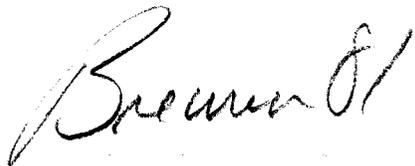
Although I am still inclined to agree with your disposition of these cases, I do not think that I can agree with your analysis of the Eleventh Amendment issues. Although the distinctions you note with respect to Edelman and Worcester have some force, I must surely await the dissent before recanting the view I stated in this case the last time it was here.

But is it necessary to discuss this issue at all? If this case is within our exclusive original jurisdiction, doesn't that, without more, defeat the district court's jurisdiction. And if it is necessary to show some additional reason why the district court lacked jurisdiction, isn't the lack of diversity, by virtue of the change in California law affecting the interest of the nominal party in that State, enough?

Sincerely,


W.J.B., Jr.

Justice White



Supreme Court of the United States
Washington, D. C. 20543CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 10, 1982

RE: No. 80-1556 Cory v. White
No. 88 Orig. California v. Texas

Dear Lewis:

I am still pretty much at sea in these cases. I voted with Byron but I must say your dissent gives me pause. I do think I am more with you than with him on the Eleventh Amendment analysis, but the constitutionalization of domicile that your approach suggests is so foreign to what Joe Beale taught you and me (and of course Beale's teaching underlies Worcester County) that I am troubled about taking so large a step. In any event, where would you stop your approach beyond domicile where, as here, each state's law is that there can be domicile in only one state?

Suppose two states imposed a sales tax on the same purchase. Would that in your view offend due process? And does your rationale give any significance to the fact that Texas already has a judicial judgment that Hughes was domiciled in that state? California has merely asserted a claim that conflicts with that judgment. Or would it be enough to prompt interpleader that two states merely assert conflicting claims? And if that is so, would it be enough if one state asserts that the decedent was a domiciliary and could be taxed and the administrator asserts that Nevada was the true domicile? Nevada asserts no claim here, although the administrator contends that Hughes was domiciled in that state. Can the administrator that easily convert that issue into a federal one?

Finally, at page 11, is the last complete sentence on the page beginning "Because the officials" inconsistent with your basic premise? If there's a federal question it would seem to me that diversity is immaterial.

Sincerely,



Justice Powell



Supreme Court of the United States
Washington, D. C. 20543CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 19, 1982

RE: No. 80-1556 Cory v. White
No. 88 Orig. California v. Texas

Dear Lewis:

I gather from the votes of the last day or two that you are not going to be able to get a Court in the above on your opinion. While I thought that was possible, I had hoped you and I could arrive at some accommodation. Since, however, Worcester is not to be overruled, I think I'll just circulate a concurrence stating for that reason I agree with Byron that we ought exercise original jurisdiction.

Thank you so very much for trying to respond to my worries.

Sincerely,

Bill

Justice Powell


Brennan 5/1

To: The Chief Justice
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Brennan**

Circulated: 5/27/82

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1556

KENNETH CORY, CONTROLLER OF THE STATE OF
 CALIFORNIA, ET AL., PETITIONERS, *v.*
 MARK WHITE, ATTORNEY GENERAL OF
 THE STATE OF TEXAS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE FIFTH CIRCUIT

[May —, 1982]

JUSTICE BRENNAN concurring in the judgment.

In *California v. Texas*, 437 U. S. 601 (1978), I joined in the judgment of the Court denying California's motion for leave to file an original complaint. I was of the view that California's motion should be denied, "at least until such time as it is shown that . . . a statutory interpleader action cannot or will not be brought." *Id.*, at 602. I also stated that I was "not so sure as" Justice Stewart and JUSTICE POWELL that *Texas v. Florida*, 306 U. S. 398 (1939), had been wrongly decided. 437 U. S., at 601. See *id.*, at 606 (Stewart, J., concurring); *id.*, at 615 (POWELL, J., concurring).

Substantially for the reasons set forth in the opinion of the Court, it is now clear to me that so long as *Worcester County Trust Co. v. Riley*, 302 U. S. 292 (1937), remains good law, an interpleader suit in the district court is not a practical solution to the problem of potential double taxation presented in cases such as these. As JUSTICE POWELL persuasively argues in Part B of his dissenting opinion, later cases, construing the Due Process Clause, have undermined *Worcester County's* holding that the unfairness of double taxation on the basis of conflicting determinations of domicile does not rise to constitutional dimensions. And JUSTICE POWELL is surely

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 1, 1982

No. 80-1556 Cory v. White
No. 88 Orig. California v. Texas

Dear Byron:

I'll stick with my concurrence in Cory v. White
but please join me in your Per Curiam in No. 88 Orig.
California v. Texas.

Sincerely,



Justice White

cc: The Conference

STYLISTIC CHANGES THROUGHOUT.

To: The Chief Justice
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Brennan**

Circulated: _____

Recirculated: **JUN 9 1982**

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1556

KENNETH CORY, CONTROLLER OF THE STATE OF
 CALIFORNIA, ET AL., PETITIONERS, *v.*
 MARK WHITE, ATTORNEY GENERAL OF
 THE STATE OF TEXAS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE FIFTH CIRCUIT

[May —, 1982]

JUSTICE BRENNAN concurring in the judgment.

In *California v. Texas*, 437 U. S. 601 (1978), I joined in the judgment of the Court denying California's motion for leave to file an original complaint. I was of the view that California's motion should be denied, "at least until such time as it is shown that . . . a statutory interpleader action cannot or will not be brought." *Id.*, at 602. I also stated that I was "not so sure as" Justice Stewart and JUSTICE POWELL that *Texas v. Florida*, 306 U. S. 398 (1939), had been wrongly decided. 437 U. S., at 601. See *id.*, at 606 (Stewart, J., concurring); *id.*, at 615 (POWELL, J., concurring).

Substantially for the reasons set forth in the opinion of the Court, it is now clear to me that so long as *Worcester County Trust Co. v. Riley*, 302 U. S. 292 (1937), remains good law, an interpleader suit in the district court is not a practical solution to the problem of potential double taxation presented in cases such as these. As JUSTICE POWELL persuasively argues in Part III of his dissenting opinion, later cases, construing the Due Process Clause, have undermined *Worcester County's* holding that the unfairness of double taxation on the basis of conflicting determinations of domicile does not rise to constitutional dimensions. And JUSTICE POWELL is surely

✓

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 27, 1982

MEMORANDUM TO THE CONFERENCE

Re: 80-1556 - Cory v. White

88 Orig - California v. Texas

Although the Conference discussion and vote, as revealed by my notes, are not all that clear, the bottom line for at least five Justices was that the interpleader, Cory v. White, No. 80-1556, should not go forward and that California's renewed Motion for Leave to File, No. 88 Original, should be granted at some point.

I have drafted the enclosed Per Curiam in the interpleader case. This draft determines not only that the case is barred by the Eleventh Amendment under Worcester County Trust Co. v. Riley, 302 U.S. 292 (1937), but that it is also a controversy between two states within the exclusive jurisdiction of this Court. How acceptable this may be, I am not sure. I am open to suggestions.

The other part of the package is a suggested Per Curiam granting California's Motion for Leave to File its complaint against Texas in No. 88 Original.

Byron

To: The Chief Justice
 Justice Brennan
 ✓ Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice White**

Circulated: 27 MAR 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1556

KENNETH CORY, CONTROLLER OF THE STATE OF
 CALIFORNIA, ET AL., PETITIONERS, *v.* MARK
 WHITE, ATTORNEY GENERAL OF THE
 STATE OF TEXAS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE FIFTH CIRCUIT

[March —, 1982]

PER CURIAM.

In this case, both Texas and California assert the right to levy state death taxes on the estate of Howard Hughes. The laws of each state impose an inheritance tax on the real and tangible personal property located within its borders, and upon the intangible personalty, wherever situated, of a person domiciled in the state at the time of death. Under the laws of Texas and California, an individual has but one domicile at any time. Taxing officials in each state assert that Howard Hughes was domiciled in their state at the time of his death. The issue before us is whether the Federal Interpleader Act, 28 U. S. C. §1335, provides a jurisdictional basis for resolution of inconsistent death tax claims by the officials of two states.

I

This case is the sequel to *California v. Texas*, 437 U. S. 601 (1978). There, California petitioned for leave to file a complaint against Texas under this Court's original jurisdiction. At that time, we denied the motion. In concurring opinions, however, four Justices suggested that a determination of Hughes' domicile might be obtained in federal district

To: The Chief Justice
 Justice Brennan
 ✓ Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

pp. 1, 5-6, 8

From: **Justice White**

Circulated: _____

Recirculated: 21 MAY 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1556

KENNETH CORY, CONTROLLER OF THE STATE OF
 CALIFORNIA, ET AL., PETITIONERS, *v.*
 MARK WHITE, ATTORNEY GENERAL OF
 THE STATE OF TEXAS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE FIFTH CIRCUIT

[May —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

In this case, both Texas and California assert the right to levy state death taxes on the estate of Howard Hughes. The laws of each state impose an inheritance tax on the real and tangible personal property located within its borders, and upon the intangible personalty, wherever situated, of a person domiciled in the state at the time of death. Under the laws of Texas and California, an individual has but one domicile at any time. Taxing officials in each state assert that Howard Hughes was domiciled in their state at the time of his death. The issue before us is whether the Federal Interpleader Act, 28 U. S. C. §1335, provides a jurisdictional basis for resolution of inconsistent death tax claims by the officials of two states.

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This case is the sequel to *California v. Texas*, 437 U. S. 601 (1978). There, California petitioned for leave to file a complaint against Texas under this Court's original jurisdiction. At that time, we denied the motion. In concurring opinions, however, four Justices suggested that a determination of Hughes' domicile might be obtained in federal district

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 27, 1982

Re: 80-1556 - Cory v. White
88 Original - California v. Texas

Dear Chief,

I would prefer that the above cases go
over for another week.

Sincerely yours,



The Chief Justice

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 28, 1982

MEMORANDUM TO THE CONFERENCE

Re: 80-1556 - Cory v. White
88 Original - California v. Texas

The upshot of Bill Brennan's concurrence in the judgment, which I did not see until I returned to my office after conference yesterday, and Bill Rehnquist's partial withdrawal from his previous join was that there was not a court for the entire opinion in Cory. Hoping to avoid our publishing another plurality opinion, I have revised both Cory and the per curiam in 88 Original. I am ending Cory at page 6 with a refusal to overrule Worcester and incorporating the essence of the remainder of that draft in the per curiam in 88 Original. Perhaps Bill Rehnquist can remain in agreement with the six pages of Cory and Bill Brennan can put up with the additions to the per curiam. The revisions will be around shortly, I hope.

88 Original

Byron

To: The Chief Justice
 Justice Brennan
 ✓ Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice White**

p. 6, pp. 7-9 eliminated &
 incorporated into 88 Orig.

Circulated: _____

Recirculated: 2/3/80 MAY 1982

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1556

KENNETH CORY, CONTROLLER OF THE STATE OF
 CALIFORNIA, ET AL., PETITIONERS, *v.*
 MARK WHITE, ATTORNEY GENERAL OF
 THE STATE OF TEXAS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE FIFTH CIRCUIT

[June —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

In this case, both Texas and California assert the right to levy state death taxes on the estate of Howard Hughes. The laws of each state impose an inheritance tax on the real and tangible personal property located within its borders, and upon the intangible personalty, wherever situated, of a person domiciled in the state at the time of death. Under the laws of Texas and California, an individual has but one domicile at any time. Taxing officials in each state assert that Howard Hughes was domiciled in their state at the time of his death. The issue before us is whether the Federal Interpleader Act, 28 U. S. C. §1335, provides a jurisdictional basis for resolution of inconsistent death tax claims by the officials of two states.

I

This case is the sequel to *California v. Texas*, 437 U. S. 601 (1978). There, California petitioned for leave to file a complaint against Texas under this Court's original jurisdiction. At that time, we denied the motion. In concurring opinions, however, four Justices suggested that a determination of Hughes' domicile might be obtained in federal district

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 3, 1982

Re: 80-1556 - Cory v. White

Dear Chief,

Because Lewis Powell and Bill Rehnquist have changes to make in their writing in this case, I had thought the decision this morning was that the announcement of our decision would go over for another week. I would think that would be the better course.

Sincerely yours,

Byron

The Chief Justice

Copies to the Conference

cpm

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HAL

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 18, 1982

MEMORANDUM TO THE CONFERENCE

Cases held for No. 80-1556: Cory v. White

No. 80-1501: Sullivan et al. v. First Tennessee Bank
No. 80-1528: Smith et al. v. First Tennessee Bank

When Mr. Lula Sullivan Torian died, she left her farm in Mississippi to a group of beneficiaries from Mississippi and some \$636,000 in cash and securities to a group from Arkansas. These two groups are the petitioners in these cases. Respondent bank, the executor of the will, probated her will first in Mississippi and then filed an accounting in Arkansas.

The Mississippi beneficiaries sought a determination in Mississippi as to whether Arkansas or Mississippi law would apply in the allocation of liability for death taxes, including federal estate taxes. Mississippi law provides that, unless the will specifies otherwise, the personal estate bears the burden of such taxation and real property is taxed only if the personal estate is inadequate to cover all taxes. Arkansas, in contrast, apportions the burden of taxation among all the beneficiaries.

With the Arkansas beneficiaries participating, the Mississippi court ruled, and its Supreme Court affirmed, that Mississippi law should be followed, a ruling which meant that the Arkansas beneficiaries would bear the burden of estate taxes amounting to some \$228,000.00 due on the passage of the farm to the Mississippi beneficiaries. The bank paid the amount of estate taxes and only then sought credit for that amount in the Arkansas probate proceeding. The bank argued that the Mississippi judgment was entitled to full faith and credit. The Arkansas probate court disagreed, ruling that the Mississippi court was entitled to full faith and credit only insofar as it affected Mississippi property. The Arkansas Supreme Court agreed, reasoning that the Mississippi court lacked jurisdiction over the personal assets. The bank filed for certiorari, which was denied over the dissent of Justices Blackmun, Powell, and myself. 439 U.S. 883 (1978).

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 19, 1982

Re: Nos. 80-1556 and 88 Orig. - Cory v. White

Dear Lewis:

Please join me in your dissent.

Sincerely,



T.M.

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 17, 1982

Re: No. 80-1556 - Cory v. White

Dear Byron:

I think you have parsed this one just about right. I disagreed with Potter's analysis in the first phase of this litigation, 437 U.S. 601, and I disagree with it now. Further, I think the case has progressed to the point where movement is indicated. I am, therefore, glad to join your proposed opinion.

I realize that this was assigned to you as a Per Curiam, but it is an argued case and a full opinion has been developed. Why should it not bear your name?

Sincerely,



Justice White

cc: The Conference

85 WJ 13 1 17

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 2, 1982

Re: No. 80-1556 - Cory v. White
No. 88 Original - California v. Texas

Dear Byron:

I am still with you.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 29, 1982

80-1556 Cory v. White
88 Orig. California v. Texas

Dear Byron:

In view of my having joined Potter's opinion in California v. Texas, 437 U.S. 601 (1978), and my brief concurrence therein, I would find it more than a little difficult to join your opinion.

Accordingly, I will try my hand at a dissent. It will take a while.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall ✓
 Justice Blackmun
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Powell**

Circulated: **MAY 6 1982**

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1556 AND 80-88, Original

KENNETH CORY, CONTROLLER OF THE STATE OF
 CALIFORNIA ET AL., PETITIONERS, *v.* MARK
 WHITE, ATTORNEY GENERAL OF THE
 STATE OF TEXAS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE FIFTH CIRCUIT

California v. Texas

Original

[May —, 1982]

JUSTICE POWELL, dissenting.

The Court today decides two cases arising from the same set of facts. The first case, No. 80-1556, *Cory v. White*, involves the claim of two States to tax the estate of the late Howard Hughes. Both of the claiming States, Texas and California, concede that Hughes could have had only one domicile at the time of his death. The administrator of the Hughes estate, who invoked the Federal Interpleader Act¹ to escape multiple taxation, agreed and accordingly sought to litigate domicile in one proceeding. The administrator, however, alleged in his complaint that Hughes was not a domiciliary of *either* California or Texas, but rather of the State of Nevada. App. 10.²

Although the litigation was instituted by the administrator of the Hughes estate—who argues that the estate is liable *neither* to California nor to Texas—the Court decides today

¹28 U. S. C. § 1335.

²Nevada imposes no estate tax and therefore has not appeared as a party.

P. 1

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: _____

Recirculated: ^{MAY} 10 1982 _____

SECOND DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 80-1556 AND 88 Original

KENNETH CORY, CONTROLLER OF THE STATE OF CALIFORNIA, ET AL., PETITIONERS,
80-1556
v.
MARK WHITE, ATTORNEY GENERAL OF THE STATE OF TEXAS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

88 Original
STATE OF CALIFORNIA
v.
STATE OF TEXAS ET AL.

ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

[May —, 1982]

JUSTICE POWELL, with whom JUSTICE STEVENS joins, dissenting.

The Court today decides two cases arising from the same set of facts. The first case, No. 80-1556, *Cory v. White*, involves the claim of two States to tax the estate of the late Howard Hughes. Both of the claiming States, Texas and California, concede that Hughes could have had only one domicile at the time of his death. The administrator of the Hughes estate, who invoked the Federal Interpleader Act¹ to escape multiple taxation, agreed and accordingly sought to litigate domicile in one proceeding. The administrator, how-

¹28 U. S. C. § 1335.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 17, 1982

80-1556, Cory v. White

Dear Bill:

Thank you for your letter of May 10. This case also is a difficult one for me in many regards. As I have emphasized in the opinion, our federal system has created a potential unfairness in this case for which I think it must provide a remedy. But I also am reluctant to encourage exercise of this Court's original jurisdiction in cases of this kind--especially since the unfairness is nearly as great in cases in which the competing claims would take less than 100% of the full estate.

Your insightful questions have moved me to make two changes on the last page of my draft opinion. I have rewritten two sentences in the first full paragraph on page 11. This change omits a needless reference to diversity of citizenship, about which you raised a question. I also have omitted a footnote suggesting that the administrator, as an interested stakeholder, could count as a "claimant" for diversity purposes. This change is prompted by your implicit concern--which I share--that the administrator could not attack a single State's attempt to impose a tax by contending that Hughes was a domiciliary of Nevada. As I believe that Nevada is the only State not to impose an estate tax of some kind, this problem should not be recurring.

You also asked whether I attached significance to the fact that Texas already has obtained a judgment. As written the opinion does not do so. Pending your advice, I am inclined to think that this factor is not essential. In ordinary interpleader actions the stakeholder need not wait until a judgment is obtained; I do not see why the answer should be different in this unique context.

The context is, of course, unique. That is why I think it may be prudent not to reach--at least in the opinion--your broader queries as to the limits of the holding for which I argue in Part III. As written, I do not think the opinion would reach far beyond its facts--involving conflicting claims of domicile by two States, both of which concede that there can be domicile in one State only. Our cases have recognized that taxation can be based on many forms of protection afforded by the States. And I see no need to reach out to decide a case in which more than one

Brewer J

State claimed a nexus to tax at death, based on the different legal protections that they may have afforded a decedent during his lifetime. What is peculiar about this case is that both States are attempting to impose an unapportioned tax, based on the same asserted basis of domicile. Both agree that the result would be unfair; and as I have argued, it certainly would be incompatible with the structural principles of our federal system and the "fundamental" right to travel. There is not necessarily a burden on the right to travel when a person is taxed for the benefits he receives from several States. But the burden is undeniable when two States claim to impose an unapportioned tax for provision of the same benefit.

Implicit in this response is an answer to your hypothetical about two States' imposition of a sales tax on the same sale. The outcome would depend on the nexus asserted between the taxing State and the taxable event. In a proper case my draft opinion certainly would not bar one State from imposing a "sales" tax on a transaction while another assessed a "use" tax, both payable by the purchaser. In this hypothetical case--as in nearly every other of significant practical possibility--there is no inherent incompatibility between the asserted bases for taxation.

Finally, you refer to our mentor in conflicts of laws, Joe Beale, whose views may be reflected to some extent in Worcester County. But that case purported also to be a constitutional decision, and cannot be squared on principle with more recent cases. As my dissent points out, a number of cases since Worcester have made clear that - under both the Due Process and Commerce Clauses - state taxation must be related rationally to "values connected with the taxing state". See cases cited p. 8-10. These cases, plus the effect of Edelman, have left Worcester wholly without a principled rationale.

I appreciate your sharing your thoughts with me. I would be happy to discuss any further ideas that you might have concerning this troublesome case.

Sincerely,



Justice Brennan

lfp/ss

10, 11

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall ✓
 Justice Blackmun
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Powell**

Circulated: _____

Recirculated: MAY 17 1982

THIRD DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 80-1556 AND 88 Original

KENNETH CORY, CONTROLLER OF THE STATE OF CALIFORNIA, ET AL., PETITIONERS,

80-1556

v.

MARK WHITE, ATTORNEY GENERAL OF THE STATE OF TEXAS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

STATE OF CALIFORNIA

88 Original

v.

STATE OF TEXAS ET AL.

ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

[May —, 1982]

JUSTICE POWELL, with whom JUSTICE STEVENS joins, dissenting.

The Court today decides two cases arising from the same set of facts. The first case, No. 80-1556, *Cory v. White*, involves the claim of two States to tax the estate of the late Howard Hughes. Both of the claiming States, Texas and California, concede that Hughes could have had only one domicile at the time of his death. The administrator of the Hughes estate, who invoked the Federal Interpleader Act¹ to escape multiple taxation, agreed and accordingly sought to litigate domicile in one proceeding. The administrator, how-

¹28 U. S. C. § 1335.

stylistic changes throughout
1, 5

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: _____

Recirculated: MAY 25 1982

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1556

KENNETH CORY, CONTROLLER OF THE STATE OF
CALIFORNIA, ET AL., PETITIONERS, v. MARK
WHITE, ATTORNEY GENERAL OF THE
STATE OF TEXAS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

[May —, 1982]

JUSTICE POWELL, with whom JUSTICE STEVENS and JUSTICE MARSHALL join, dissenting.

The Court today decides two cases arising from the same set of facts. The first case, No. 80-1556, *Cory v. White*, involves the claim of two States to tax the estate of the late Howard Hughes. Both of the claiming States, Texas and California, concede that Hughes could have had only one domicile at the time of his death. The administrator of the Hughes estate, who invoked the Federal Interpleader Act¹ to escape multiple taxation, agreed and accordingly sought to litigate domicile in one proceeding. The administrator, however, alleged in his complaint that Hughes was not a domiciliary of either California or Texas, but rather of the State of Nevada. App. 10.²

Although the litigation was instituted by the administrator of the Hughes estate—who argues that the estate is liable neither to California nor to Texas—the Court decides today

¹28 U. S. C. § 1335.

²Nevada imposes no estate tax and therefore has not appeared as a party.

omission

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 25, 1982

80-1556 Cory v. White

88 Orig. California v. Texas

Dear Thurgood:

It has just come to my attention that in today's circulation of my opinions in these two cases, your name inadvertently was misplaced. This, of course, will be corrected.

The "paper chase" has gotten me a bit groggy.

Sincerely,



Justice Marshall
Copies to the Conference

LFP/vde

1-4

footnotes renumbered
 Section I B omitted

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall ✓
 Justice Blackmun
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice Powell

Circulated: _____

Recirculated: JUN 4 1982

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1556

KENNETH CORY, CONTROLLER OF THE STATE OF
 CALIFORNIA, ET AL., PETITIONERS, v. MARK
 WHITE, ATTORNEY GENERAL OF THE
 STATE OF TEXAS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE FIFTH CIRCUIT

[June —, 1982]

JUSTICE POWELL, with whom JUSTICE MARSHALL and
 JUSTICE STEVENS join, dissenting.

The Court today decides two cases arising from the same set of facts, No. 80-1556, *Cory v. White*, ante, and No. 88 Orig., *California v. Texas*, post, at —. Both cases involve the efforts of officials of California and Texas to tax the intangible property of the late Howard Hughes. Each State asserts its right to tax the Hughes' estate on the basis of Hughes' domicile. Yet both recognize that Hughes could have had only one domicile at the time of his death.

In order to avoid multiple taxation that all agree would be unfair, the administrator of the Hughes estate invoked the Federal Interpleader Act¹ as a means of litigating Hughes' domicile in one federal proceeding. The administrator alleged in his complaint, however, that Hughes was not a domiciliary of either California or Texas, but rather of the State of Nevada. App. 10.²

In *Cory v. White*, ante, the Court holds today that this in-

¹28 U. S. C. § 1335.

²Nevada imposes no estate tax and therefore has not appeared as a party.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

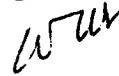
April 1, 1982

Re: No. 80-1556 Cory v. White

Dear Byron,

Please join me.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

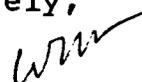
May 21, 1982

Re: No. 80-1556 Cory v. White
No. 88 Orig. California v. Texas

Dear Byron:

As you have undoubtedly noted, when I joined your circulation in Cory v. White, I did not join your circulation in California v. Texas. I had thought at the time that there was nothing in your Cory opinion that was inconsistent with my declining to join your circulation in California v. Texas. One of my law clerks has called my attention to the fact that there is language beginning on page 6 of Cory that lends support to the idea that there is a presently justiciable controversy between California and Texas within the original jurisdiction of this Court. I have therefore decided to file the enclosed separate statement in the two cases.

Sincerely,



Justice White

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

Circulated: MAY 21 1982

Recirculated: _____

Re: No. 80-1566, Cory v. White
No. 88 Orig., California v Texas

JUSTICE REHNQUIST, concurring in part and dissenting in part.

I join the opinion of the Court in No. 80-1556, except that portion beginning on p. 6 which concludes that the suit is a controversy between two States within this Court's exclusive original jurisdiction. For the reasons stated in Part I of JUSTICE POWELL's dissent, which I join, I disagree with that portion of the Cory opinion, and with the Court's decision granting leave to file a bill of complaint in No. 88 Original.

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

Circulated: _____

Recirculated: 5/24/82

Printed
1st DRAFT
^

SUPREME COURT OF THE UNITED STATES

Nos. 80-1556 & 88 Orig.

KENNETH CORY, CONTROLLER OF THE STATE OF CALIFORNIA, ET AL., PETITIONERS

80-1556

v.

MARK WHITE, ATTORNEY GENERAL OF THE STATE OF TEXAS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

STATE OF CALIFORNIA, PLAINTIFF

88 Orig.

v.

STATE OF TEXAS ET AL.

ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

[May —, 1982]

JUSTICE REHNQUIST, concurring in part and dissenting in part.

I join the opinion of the Court in No. 80-1556, except that portion beginning on p. 6 which concludes that the suit is a controversy between two States within this Court's exclusive original jurisdiction. For the reasons stated in Part I of JUSTICE POWELL'S dissent, which I join, I disagree with that portion of the *Cory* opinion, and with the Court's decision granting leave to file a bill of complaint in No. 88 Original.

.85 MAY 24 1982

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 4, 1982

Re: No. 80-1556 Cory v. White

Dear Byron:

I join your recirculation in this case in toto.
I withdraw my previous separate statement applying to
this case and to No. 88 Orig., State of California v.
State of Texas.

Sincerely,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 30, 1982

Re: 80-1556 - Cory v. White
88 Orig. - California v. Texas

Dear Byron:

Having joined Potter in California v. Texas, I shall wait for Lewis' dissent.

Respectfully,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 6, 1982

Re: 80-1556 - Cory v. White
88 Original - California v. Texas

Dear Lewis:

Please join me in your dissenting opinion.

Respectfully,



Justice Powell

Copies to the Conference

18 SEP 2-1981 SP

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

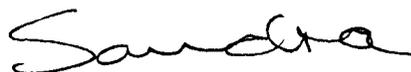
March 31, 1982

No. 80-1556 Cory v. White
88 Orig. California v. Texas

Dear Byron,

I agree with your proposed Per Curiam in
the referenced cases.

Sincerely,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 1, 1982

No. 80-1556 Cory v. White
No. 88 Orig. California v. Texas

Dear Byron,

I am still in agreement.

Sincerely,

Sandra

Justice White

Copies to the Conference