

# The Burger Court Opinion Writing Database

## *Fair Assessment in Real Estate Association Inc. v. McNary*

454 U.S. 100 (1981)

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 12, 1981

Re: No. 80-427 - Fair Assessment in Real Estate Assn., In  
v. McNary

Dear Bill:

I join.

Regards,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

October 28, 1981

RE: No. 80-427 Fair Assessment in Real Estate Assn.  
v. McNary

Dear Bill:

I'll be writing separately in the above and will  
circulate in due course.

Sincerely,



Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

November 12, 1981

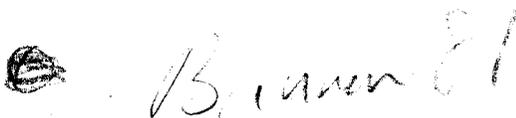
RE: No. 80-427 Fair Assessment in Real Estate Association  
v. McNary

Dear Sandra:

As promised, I enclose copy of my proposed concurring opinion in the above. I'll not circulate to the Conference until I've had your comments. During the day we will be proofreading it because there are some typos that need correction.

Sincerely,

Justice O'Connor

 Brennan

Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

FIRST DRAFT

From: Justice Brennan  
Circulated: 11/13  
Recirculated: \_\_\_\_\_

Fair Assessment in Real Estate Association, Inc., et al. v. Gene McNary, et. al. No. 80-427

JUSTICE BRENNAN, concurring in the judgment.

I agree that the judgment of the district court dismissing petitioners' complaint should be affirmed. But I arrive at that conclusion by a different route for I cannot agree that this case, and the jurisdiction of the federal courts over an action for damages brought pursuant to express congressional authority, is to be governed by applying a "principle of comity" grounded solely on this Court's notion of an appropriate division of responsibility between the federal and state judicial systems. Subject only to constitutional constraints, it is exclusively Congress' responsibility to determine the jurisdiction of the federal courts. Federal courts have historically acted within their assigned jurisdiction in accordance with established principles respecting the prudent exercise of equitable power. But this practice lends no credence to the authority which the Court asserts today to renounce jurisdiction over an entire class of damage actions brought pursuant to 42 U.S.C. §1983.

o Brennan 8/

12) 22

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

From: Justice Brennan

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

Recirculated: NOV 1

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0\$0427B, 11/14/81, rev. Wilma

1st PRINTED DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 80-427

FAIR ASSESSMENT IN REAL ESTATE ASSOCIATION, INC., ET AL., PETITIONERS *v.*  
GENE McNARY, ET AL.

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

[November —, 1981]

JUSTICE BRENNAN, concurring in the judgment.

I agree that the judgment of the district court dismissing petitioners' complaint should be affirmed. But I arrive at that conclusion by a different route for I cannot agree that this case, and the jurisdiction of the federal courts over an action for damages brought pursuant to express congressional authority, is to be governed by applying a "principle of comity" grounded solely on this Court's notion of an appropriate division of responsibility between the federal and state judicial systems. Subject only to constitutional constraints, it is exclusively Congress' responsibility to determine the jurisdiction of the federal courts. Federal courts have historically acted within their assigned jurisdiction in accordance with established principles respecting the prudent exercise of equitable power. But this practice lends no credence to the authority which the Court asserts today to renounce jurisdiction over an entire class of damage actions brought pursuant to 42 U. S. C. § 1983.

I

Petitioners J. David Cassilly and Lynn F. Cassilly are owners of of real property in St. Louis County, Missouri. Petitioner Fair Assessment in Real Estate, Inc. (FAIR) is a not-for-profit corporation formed by real estate taxpayers in

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

090427B, 11/19/81, 3rd rev., Dick

From: Justice Brennan

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

Recirculated: NOV 2 1981

2nd PRINTED DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-427

FAIR ASSESSMENT IN REAL ESTATE ASSOCIATION, INC., ET AL., PETITIONERS *v.*  
GENE McNARY, ET AL.

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

[November —, 1981]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL, JUSTICE STEVENS, and JUSTICE O'CONNOR, join, concurring in the judgment.

I agree that the judgment of the district court dismissing petitioners' complaint should be affirmed. But I arrive at that conclusion by a different route for I cannot agree that this case, and the jurisdiction of the federal courts over an action for damages brought pursuant to express congressional authority, is to be governed by applying a "principle of comity" grounded solely on this Court's notion of an appropriate division of responsibility between the federal and state judicial systems. Subject only to constitutional constraints, it is exclusively Congress' responsibility to determine the jurisdiction of the federal courts. Federal courts have historically acted within their assigned jurisdiction in accordance with established principles respecting the prudent exercise of equitable power. But this practice lends no credence to the authority which the Court asserts today to renounce jurisdiction over an entire class of damages actions brought pursuant to 42 U. S. C. § 1983.

I

Petitioners J. David Cassilly and Lynn F. Cassilly are owners of of real property in St. Louis County, Missouri.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

October 28, 1981

Re: 80-427 - Fair Assessment in  
Real Estate Association, Inc. v. McNary

Dear Bill,

Please join me.

Sincerely yours,



Justice Rehnquist

Copies to the Conference

cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

October 30, 1981

Re: No. 80-427 - Fair Assessment in Real Estate  
Assn. v. McNary

Dear Bill:

I await further writing.

Sincerely,



T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 16, 1981

Re: · No. 80-427 - Fair Assessment in Real Estate  
Association, Inc. v. McNary

Dear Bill:

Please join me.

Sincerely,

*JM*  
T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 5, 1981

Re: No. 80-427, Fair Assessment in Real Estate Ass'n v. McNary

Dear Bill:

I have refrained from joining your proposed opinion for the Court in this case because I am troubled by three aspects of it:

1. I mentioned at Conference that I was not ready to espouse a per se rule, even based on principles of comity, with respect to all § 1983 claims that do not require detailed scrutiny of tax assessment practices. An example of this would be a claim based on intentional race discrimination in assessment. There the federal interest is a strong one, and the outcome would not hinge on questions of substantive state tax law. I would be content if you could keep the door open this far by way of a footnote. My alternative, of course, would be to indulge, as we often do, in a separate concurrence "reading" the majority opinion in that fashion.

2. I find somewhat troublesome the first full paragraph on page 10 of your opinion. You observe there that the legislative history of § 1341 suggests a congressional intent to preclude all federal court review of state tax laws. I suspect that this statement is really unnecessary, because on pages 4-5, you state that "all we need decide here" is that the principle of comity controls, and thus reserve the question of the effect of the Tax Injunction Act on this case. Further, I am not at all sure that the page 10 material is entirely correct. The portion of H.R. Rep. No. 1503 you quote is merely a general description of the bill. Page 3 of that Report quotes the legal brief on the bill that indicates that federal courts could continue to consider some tax refund claims. I therefore would prefer to delete all of the paragraph on page 10 except for its final sentence.

3. My major concern is as to Part IIID, which is the section on Younger abstention. It seems to me that this, too, is unnecessary and that the opinion could move from Part IIIC right into Part IV. I am not prepared to join what I think is the implication of Part IIID that Younger applies to all types of civil cases and to cases which, as here, do not require enjoining pending state court proceedings. At least I read Part IIID to extend Younger beyond this Court's previous cases. See, for example, what you said in your opinion for the Court in Huffman v. Pursue, Ltd., 420 U.S., at 604.

Sincerely,



Justice Rehnquist  
cc: The Conference

November 10, 1981

Re: No. 80-427 - Fair Assessment in Real Estate  
Association, Inc. v. McNary

Dear Bill:

Thank you for your letter of November 9 and for your considering the concerns I expressed in my note of November 5.

What you propose answers nearly all of my concerns. If you could add the word "some" in the fourth line of the revision proposed in the center of page 2 of your letter (so that the line reads "have been extended to some state civil actions"), you have my vote.

Sincerely,

HAB

Justice Rehnquist

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 12, 1981

Re: No. 80-427 - Fair Assessment v. McNary

Dear Bill:

Please join me in your third draft circulated  
November 10.

Sincerely,



Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

October 30, 1981

80-427 Fair Assessment in Real Estate Association, Inc. v.  
Gene McNary

Dear Bill:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lewis".

Justice Rehnquist

Copies to the Conference

LFP/vde

November 12, 1981

80-427 Fair Assessment in Real Estate v. McNary

Dear Bill:

The changes proposed in your 3rd draft are satisfactory with me.

Sincerely,

Justice Rehnquist

lfp/ss

cc: Justice White

✓  
Pp 3, 69

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

0\$0427H, Wilma 10-26-81

From: Justice Rehnquist

Circulated: OCT 27 1981

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1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 80-427

FAIR ASSESSMENT IN REAL ESTATE ASSOCIATION, INC., ET AL., PETITIONERS *v.*  
GENE McNARY, ET AL.

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

[November —, 1981]

JUSTICE REHNQUIST delivered the opinion of the Court.

In this action we are required to reconcile two somewhat intermittent and conflicting lines of authority as to whether a damages action may be brought under 42 U. S. C. § 1983 to redress the allegedly unconstitutional administration of state tax systems. The United States District Court for the Eastern District of Missouri held that such suits were barred by both 28 U. S. C. § 1341 (the Tax Injunction Act) and the principle of comity, and the Court of Appeals for the Eighth Circuit affirmed by an equally divided court sitting en banc.<sup>1</sup> We granted certiorari to resolve a conflict among the Courts of Appeals,<sup>2</sup> and we now affirm. Before setting forth the facts, we think that a description of the past and at times divergent decisions of this Court may shed light upon the proper disposition of this case.

<sup>1</sup> *Fair Assessment in Real Estate Association, Inc. v. McNary*, 478 F. Supp. 1231 (1979), *affirmed*, 622 F. 2d 415 (1980).

<sup>2</sup> Compare *Fulton Market Storage Co. v. Cullerton*, 582 F. 2d 1071 (CA7 1978), *cert. denied*, 439 U. S. 1121 (1979), with *Fair Assessment in Real Estate Association, Inc. v. McNary*, *supra*, *Ludwin v. City of Cambridge*, 592 F. 2d 606 (CA1 1979), and *Bland v. McHann*, 463 F. 2d 21 (CA5 1972), *cert. denied*, 410 U. S. 966 (1973).

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pp: # all pages  
except 5,8

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

0\$0427H, Wilma 10-26-81

From: Justice Rehnquist

OCT 28 1981  
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2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-427

FAIR ASSESSMENT IN REAL ESTATE ASSOCIATION, INC., ET AL., PETITIONERS *v.*  
GENE McNARY, ET AL.

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

[November —, 1981]

JUSTICE REHNQUIST delivered the opinion of the Court.

In this action we are required to reconcile two somewhat intermittent and conflicting lines of authority as to whether a damages action may be brought under 42 U. S. C. § 1983 to redress the allegedly unconstitutional administration of a state tax system. The United States District Court for the Eastern District of Missouri held that such suits were barred by both 28 U. S. C. § 1341 (the Tax Injunction Act) and the principle of comity, and the Court of Appeals for the Eighth Circuit affirmed by an equally divided court sitting en banc.<sup>1</sup> We granted certiorari to resolve a conflict among the Courts of Appeals,<sup>2</sup> and we now affirm. Before setting forth the facts, we think that a description of the past and at times divergent decisions of this Court may shed light upon the proper disposition of this case.

<sup>1</sup> *Fair Assessment in Real Estate Association, Inc. v. McNary*, 478 F. Supp. 1231 (1979), *affirmed*, 622 F. 2d 415 (1980).

<sup>2</sup> Compare *Fulton Market Storage Co. v. Cullerton*, 582 F. 2d 1071 (CA7 1978), *cert. denied*, 439 U. S. 1121 (1979), with *Fair Assessment in Real Estate Association, Inc. v. McNary*; *supra*, *Ludwin v. City of Cambridge*, 592 F. 2d 606 (CA1 1979); and *Bland v. McHann*, 463 F. 2d 21 (CA5 1972), *cert. denied*, 410 U. S. 966 (1973).

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

November 9, 1981

Re: No. 80-427 Fair Assessment in Real Estate Assn.,  
Inc. v. McNary

Dear Harry:

Thanks for your detailed letter of November 5th regarding my proposed opinion for the Court in this case. I think I can largely accommodate your requests, though not accommodate them in their entirety without limiting the decision to the facts of this case, a result which I know neither you nor I would think is a proper exercise of our discretionary jurisdiction. Since Lewis and Byron have already joined the opinion, I would also feel obligated to show the changes made in response to your suggestions to them before recirculating, but it seems to me simpler to first see if the proposed changes would satisfy you.

As to the suggestion contained in your paragraph No. 1, I would be perfectly content to add to the present footnote No. 4, beginning on page 6 of the third draft, the following language:

"We need not decide in this case whether the comity spoken of would also bar a claim under § 1983 which requires no scrutiny whatever of state tax assessment practices, such as a facial attack on tax laws colorably claimed to be discriminatory as to race."

As to your paragraph No. 2, I would propose revising the first full paragraph on page 10 to read as follows:

"Neither the legislative history of the Act nor that of its precursor, 28 U.S.C. § 1342, suggests that Congress intended that federal court deference in state tax matters be limited to the

actions enumerated in those sections. See H. R. Rep. No. 1503, 75th Cong., 1st Sess., 1 (1937); 81 Cong. Rec. 1415 (1937). Thus, the principle of comity which pre-dated the Act was not restricted by its passage." OK

As to your paragraph No. 3, I fully agree with you that the opinion in Huffman v. Pursue, Ltd., indicates that Younger abstention does not embrace all civil cases. But I do think the elimination of Part III D would take some of the meat out of the opinion, and that a revision of that paragraph could meet what I understand to be your objection. This revision would leave all of Part III D in place up to the close of the quote from Younger, and then revise the second paragraph of that part, located on page 12, to read as follows:

some → "The principles of federalism recognized in Younger have not been limited to federal court interference in state criminal proceedings, but have been extended to state civil actions. E.g., Huffman v. Pursue, Ltd., 420 U.S. 592 (1975). Although these modern expressions of comity have been limited in their application to federal cases which seek to enjoin state judicial proceedings, a limitation which we do not abandon here, they illustrate the principles that bar petitioners' suit under § 1983. As we said in Rosewell, supra, 'the reasons supporting federal noninterference [with state taxation] are just as compelling today as they were in 1937.' 450 U.S. at \_\_\_\_\_. As will be seen in the next section, petitioners' § 1983 action would be no less disruptive of Missouri's tax system than would the historic equitable efforts to enjoin the collection of taxes, efforts which were early held to be barred by considerations of comity."

I would then proceed to Part IV of the opinion. If these changes satisfy the major concerns which you expressed in your letter of November 5th, I will show them to Lewis and Byron to make certain that the additions to the opinion would not cause either of them to "jump ship." I do think it is important to get a Court opinion in this case because it is so very easy to allege "discrimination," racial or otherwise, and if such an allegation comes before a

sympathetic judge the entire system of state or local  
taxation can be brought to a halt for a lengthy period of  
time.

Sincerely,

*Wm*

Justice Blackmun

Supreme Court of the United States  
Washington, D. C. 20541

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

*Mary - what do you  
think? The changes marked  
November 10, 1981*

Re: No. 80-427 Fair Assessment in Real Estate  
Association, Inc. v. McNary

*seen  
unobjectionable  
Not sure I  
see need or  
purpose of  
one  
on p 12*

Dear Byron and Lewis:

Accompanying this letter is a third draft of the opinion which both of you have joined. As you are probably aware from his letter of November 5, Harry requested that I consider certain amendments to the opinion. I have proposed several changes and Harry has informed me that they satisfy his concerns. Those changes are marked in red on the draft accompanying this letter. If you have any difficulty with them, or with any of the other changes in the new draft, please inform me.

Sincerely,

*W*

*I agree.  
note on back.  
Mary*

Justice White

Justice Powell

pp. 1, 4, 6, 7, 9, 10, 12

Full

0\$0427H, rev. 11/10/81 spw

Sent to BRW &  
me before circulation  
for our approval  
of changes. They look OK  
to me.

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-427

FAIR ASSESSMENT IN REAL ESTATE ASSOCIA-  
TION, INC., ET AL., PETITIONERS v.  
GENE McNARY, ET AL.

LFP  
11/11/81

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

[November —, 1981]

JUSTICE REHNQUIST delivered the opinion of the Court.

In this action we are required to reconcile two somewhat intermittent and conflicting lines of authority as to whether a damages action may be brought under 42 U. S. C. § 1983 to redress the allegedly unconstitutional administration of a state tax system. The United States District Court for the Eastern District of Missouri held that such suits were barred by both 28 U. S. C. § 1341 (the Tax Injunction Act) and the principle of comity, and the Court of Appeals for the Eighth Circuit affirmed by an equally divided court sitting en banc.<sup>1</sup> We granted certiorari to resolve a conflict among the Courts of Appeals,<sup>2</sup> and we now affirm. Before setting forth the facts, we think that a description of the past and at times divergent decisions of this Court may shed light upon the proper disposition of this case.

<sup>1</sup> *Fair Assessment in Real Estate Association, Inc. v. McNary*, 478 F. Supp. 1231 (1979), *affirmed*, 622 F. 2d 415 (1980).

<sup>2</sup> Compare *Fulton Market Storage Co. v. Cullerton*, 582 F. 2d 1071 (CA7 1978), *cert. denied*, 439 U. S. 1121 (1979), with *Fair Assessment in Real Estate Association, Inc. v. McNary*, *supra*; *Ludwin v. City of Cambridge*, 592 F. 2d 606 (CA1 1979); and *Bland v. McHann*, 463 F. 2d 21 (CA5 1972), *cert. denied*, 410 U. S. 966 (1973).

3  
7 1, 4, 6, 7, 9, 10, 12

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

080427H, rev. 11/10/81 spw

From: Justice Rehnquist

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

3rd DRAFT

Recirculated: 401 11 1981

**SUPREME COURT OF THE UNITED STATES**

No. 80-427

FAIR ASSESSMENT IN REAL ESTATE ASSOCIATION, INC., ET AL., PETITIONERS v. GENE McNARY, ET AL.

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

[November —, 1981]

JUSTICE REHNQUIST delivered the opinion of the Court.

In this action we are required to reconcile two somewhat intermittent and conflicting lines of authority as to whether a damages action may be brought under 42 U. S. C. § 1983 to redress the allegedly unconstitutional administration of a state tax system. The United States District Court for the Eastern District of Missouri held that such suits were barred by both 28 U. S. C. § 1341 (the Tax Injunction Act) and the principle of comity, and the Court of Appeals for the Eighth Circuit affirmed by an equally divided court sitting en banc.<sup>1</sup> We granted certiorari to resolve a conflict among the Courts of Appeals,<sup>2</sup> and we now affirm. Before setting forth the facts, we think that a description of the past and at times divergent decisions of this Court may shed light upon the proper disposition of this case.

<sup>1</sup> *Fair Assessment in Real Estate Association, Inc. v. McNary*, 478 F. Supp. 1231 (1979), *affirmed*, 622 F. 2d 415 (1980).

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

October 8, 1981

MEMORANDUM TO THE CONFERENCE

Re: No. 80-427 - Fair Assessment In Real  
Estate Assn. v. McNary

Dear Chief:

After further reflection, I have decided that my  
vote is to reverse the judgment of the Court of  
Appeals.

Respectfully,



The Chief Justice

Copies to the Conference

*Bruner J.*

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

November 16, 1981

Re: 80-427 - Fair Assessment v. McNary

Dear Bill:

Please join me in your separate opinion. I originally had a somewhat different view of the case but am now convinced that your analysis is correct.

Respectfully,



Justice Brennan

Copies to the Conference

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

October 19, 1981

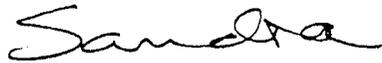
No. 80-427 Fair Assessment v. McNary

Dear Chief,

When we discussed this case at conference, we had been told at oral argument that the petitioners had exhausted their remedies as to some of their claims. A closer inspection of the petitioners' complaint, however, reveals that state administrative remedies were left unexhausted in all of the tax years for which the petitioners claimed damages. Petitioners did not initiate administrative proceedings for the 1975 and 1976 tax years. They appealed to the County Board of Equalization for the 1977 tax year, had some success, and did not pursue their appeal to the State Tax Commission. They initiated the present action while their administrative appeal for the 1978 tax year was still pending before the State Tax Commission.

✓ On further reflection, therefore, I would now vote to affirm on the basis suggested by Bill Brennan that state administrative (but not judicial) remedies must be exhausted before a section 1983 action may be brought to recover damages resulting from the unconstitutional collection of state taxes. While this Court's past decisions can be read as holding that administrative exhaustion generally is not a jurisdictional prerequisite to a §1983 action in federal court, I agree with Bill that an exception to this general rule is appropriate in cases involving state taxes.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

October 29, 1981

No. 80-427 Fair Assessment in Real Estate Assn. v. McNary

Dear Bill,

I will either join Bill Brennan on the basis of failure to exhaust state administrative remedies or will be writing separately in the referenced case.

Sincerely,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

November 12, 1981

No. 80-427 Fair Assessment in Real Estate Assoc.  
v. McNary

---

Dear Bill,

Your draft of a dissent in the referenced case is exceedingly well researched and written. I have no substantive suggestions for improvement. I do suggest for your consideration a slight modification of the second sentence of the opening paragraph as follows:

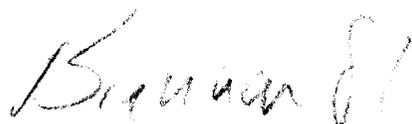
"But I arrive at that conclusion by a different route for I cannot agree that this case, and the jurisdiction of the federal courts of an action at law for damages brought pursuant to express Congressional authority, is to be governed by applying the 'principle of comity' grounded solely on this Court's notion of an appropriate division of responsibility between the federal and state judicial systems."

Thank you for sharing the advance copy with me.

Sincerely,



Justice Brennan



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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

November 16, 1981

No. 80-427 Fair Assessment in Real Estate  
Association, Inc. v. McNary

Dear Bill,

Please join me in your concurring opinion  
in the referenced case.

Sincerely,



Justice Brennan

Copies to the Conference