

The Burger Court Opinion Writing Database

United States v. National Bank of Commerce

472 U.S. 713 (1985)

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, 1985

Re: No. 84-498 - United States v. National Bank
of Commerce

Dear Harry:

I join.

Regards,



Justice Blackmun

Copies to the Conference

.82 JUN 13 1985

RECORDED FROM THE COLLECTIONS OF THE FEDERAL BUREAU OF INVESTIGATION, DIVISION OF CONGRESS

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

CHAMBERS OF
THE CHIEF JUSTICE

June 19, 1985

File
Personal

Re: No. 84-498 - United States v. National Bank of Commerce

Dear Lewis:

I have taken another look at this case and the opinions that evolved. I had some problems with Harry's first draft, but the second reflected my views and notes at Conference.

There were two "tentative" votes (Bill Rehnquist and you), but mine was firm from the outset. (Sometimes in error, less often in doubt!)

Since time immemorial, joint property has been presumptively the property of the described joint tenants. Here the parties stipulated that there was no evidence on the "true" ownership; each party can exercise ownership dominion at any time; this hard fact supports the ownership presumption.

My own experience has led me to the view that clarity and certainty is more important than perfect justice in tax matters; Congress can change these things at will to correct "injustice" and I would leave it to the legislative process. In that respect, a 5-4 result may be some incentive, however mild.

I fear I must "stay put."

Regards,



Justice Powell

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 29, 1985

No. 84-498

United States v. National
Bank of Commerce

Dear Lewis,

Thurgood, John, you and I are in
dissent in the above. Would you be
willing to try your hand at the dissent?

Sincerely,



Justice Powell

Copies to: Justice Marshall
Justice Stevens

REPRODUCED FROM THE COLLECTIONS OF THE RESEARCH DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 10, 1985

No. 84-498

United States v. National Bank
of Commerce

Dear Harry,

I'll await Lewis's dissent in the
above.

Sincerely,

Bill

Justice Blackmun

Copies to the Conference

91 WIA 10 615-15

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 7, 1985

No. 84-498

United States v. National Bank
of Commerce

Dear Lewis,

Please join me.

Sincerely,

Bill

Justice Powell

Copies to the Conference

.82 100-1 10118

200
200

①

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 13, 1985

84-498 -

United States v. National Bank of Commerce

Dear Harry,

Please join me.

Sincerely,

Byron

Justice Blackmun

Copies to the Conference

51 117 5 188

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 10, 1985

Re: No. 84-498-U.S. v. Nat'l Bank of Commerce

Dear Harry:

I await the dissent.

Sincerely,

T.M.
T.M.

Justice Blackmun

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 10, 1985

Re: No. 84-498-U.S. v. Nat'l Bank of Commerce

Dear Lewis:

Please join me in your dissent.

Sincerely,

Jm.

T.M.

Justice Powell

cc: The Conference

RECORDED FROM THE COLLECTION OF THE FEDERAL BUREAU OF INVESTIGATION

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

From: **Justice Blackmun**

Circulated: MAY 09 1985

Recirculated: _____

HAB
I want the dissent
NY

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-498

**UNITED STATES, PETITIONER *v.* NATIONAL BANK
OF COMMERCE**

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

[May —, 1985]

JUSTICE BLACKMUN delivered the opinion of the Court.

Section 6331(a) of the Internal Revenue Code of 1954, as amended, 26 U. S. C. § 6331(a), provides that the Government may collect taxes of a delinquent taxpayer "by levy upon all property and rights to property . . . belonging to such person."¹ Section 6332(a) of the Code, 26 U. S. C. § 6332(a), then provides that "any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary, surrender such property or rights . . . to the Secretary."²

¹Section 6331(a) reads in pertinent part:

"If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax . . . by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person. . . ."

Section 7701(a)(11)(B) of the Code reads:

"The term 'Secretary' means the Secretary of the Treasury or his delegate."

²Section 6332(a) reads:

"Except as otherwise provided in subsection (b), any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary, surrender such property or rights (or discharge such obligation) to the Secretary, except such part of the property or rights as is, at the time

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Pages: 10-12, 14-15, 17-19
Stylistic Changes

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

From: Justice Blackmun

Circulated: _____
Recirculated: JUN 12 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-498

UNITED STATES, PETITIONER *v.* NATIONAL BANK
OF COMMERCE

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

[June —, 1985]

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 19, 1985

Re: No. 84-498, United States v. National Bank of Commerce

Dear Lewis:

I am making only one change of substance in response to the third draft of your dissenting opinion. The change will be in my footnote 14 where I shall make the third sentence read: "It merely protects the Government's interests so that rights to the property may be determined in a postseizure proceeding." This may affect your footnote 11.

My page references to your opinion, of course, will have to be changed throughout.

Sincerely,



Justice Powell

82 JUN 19 11:38

cc: The Conference

STYLLISTIC CHANGES

4 p. 18

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

From: Justice Blackmun

Circulated: _____

Recirculated: JUN 20 1985

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-498

UNITED STATES, PETITIONER *v.* NATIONAL BANK
OF COMMERCE

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

[June —, 1985]

JUSTICE BLACKMUN delivered the opinion of the Court.

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¹Section 6331(a) reads in pertinent part:

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 20, 1985

Re: No. 84-498, United States v. National Bank of Commerce

Dear Lewis:

I contemplate no further changes in the writing other than a correction of a page reference on page 17. I take it, therefore, that the case is ready to come down next week.

Sincerely,



Justice Powell

cc: The Conference

82 WTSO B3MS

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 29, 1985

84-498 United States v. National Bank of Commerce

Dear Bill:

I would be happy to prepare a dissent in due time.

Sincerely,

Lewis

Justice Brennan

lfp/sss

cc: Justice Marshall
Justice Stevens

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 9, 1985

84-498 United States v. National Bank of Commerce

Dear Harry:

I will circulate a dissent in due time.

Sincerely,

Lewis

Justice Blackmun

lfp/ss

cc: The Conference

98 501-0 6301

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

From: Justice Powell

Circulated: JUN 6 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-498

UNITED STATES, PETITIONER *v.* NATIONAL BANK
 OF COMMERCE

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

[June —, 1985]

JUSTICE POWELL, dissenting.

The issue presented is whether the Internal Revenue Service (IRS) may lawfully seize a joint bank account for payment of a single codepositor's delinquent taxes when it does not know how much, if any, of the account belongs to the delinquent. As it seems to me that the Court today misreads the relevant statutory language, in effect overrules prior decisions of this Court, and substantially ignores the property rights of nondelinquent taxpayers, I dissent.

I

The parties have stipulated the following facts. On June 13, 1980, respondent bank held \$321.66 in a checking account and \$1,241.60 in a savings account, each in the names of "Roy Reeves or Ruby Reeves or Neva R. Reeves." App. 11-12. Under state law and by contract with the bank, each of these individuals could withdraw any amount from either account. Also on June 13, the IRS served a notice of levy on the bank demanding that it pay over all sums owed to Roy J. Reeves up to \$1,302.56, the balance of a tax assessment against him. It later issued a partial release of levy for monies in excess of \$856.61 and served a final demand for payment on the bank. The bank, however, refused to pay over this amount because it did not know how much of the money in the accounts belonged to Roy Reeves as opposed to Ruby and Neva. The

06/09

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 10 1985

Changes:
1, 8-9

~~LFP~~

Please join me in your dissent
2d
1st DRAFT

M

SUPREME COURT OF THE UNITED STATES

No. 84-498

UNITED STATES, PETITIONER v. NATIONAL BANK OF COMMERCE

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

[June —, 1985]

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

The issue presented is whether the Internal Revenue Service (IRS) may lawfully seize a joint bank account for payment of a single codepositor's delinquent taxes when it does not know how much, if any, of the account belongs to the delinquent. As it seems to me that the Court today misreads the relevant statutory language, in effect overrules prior decisions of this Court, and substantially ignores the property rights of nondelinquent taxpayers, I dissent.

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June 18, 1985

84-498 U.S. v. National Bank of Commerce

Dear Chief:

As you were good enough in our conversation last night to say you would take a careful look at my dissent in this case, I am delivering a personal copy of it to you with this letter. I circulated the third draft this morning. It is too long, and has some repetition - as a result of my trying to get it out quickly.

There are several points that one should keep in mind in reading my dissent. The levy on the joint savings accounts was made under §6331 that authorizes "levy upon", and "sale" of, "all property and rights to property . . . belonging to" the delinquent taxpayer. The ultimate question in this case is whether on the record before us the taxpayer, Roy Reeves, had any "property" interest in these joint accounts. Or, as §6331 provides, whether the levy was on property or a right to property "belonging to" the delinquent taxpayer. It is critical to bear in mind that, by a stipulation, it was agreed that the record contains no "evidence as to the ownership of the monies in the subject bank accounts . . ." App. 17.

In some states, possibly in a majority of the states, state law recognizes that a party to a joint bank account does have such an ownership interest, i.e., that presumptively all of the monies in the accounts "belong to" each co-depositor. This is not the law in Arkansas. Arkansas decisions make perfectly clear, as CA8 agreed in this case, that the mere fact that an individual is a co-depositor does not under state law mean that he has any property interest in the account. Rather, Arkansas law provides only that each co-depositor has the right to withdraw all or any part of a joint account without proof of any ownership. For the rule in Arkansas, see my n. 7, p. 9.

Harry does not dispute that Arkansas confers only the right to withdraw. His opinion simply would hold that federal law overrides it, despite what this Court has held in three Supreme Court decisions. See cases cited in the

last paragraph in note 7 of my opinion. Also see the quote from Aquilino v. U.S., 363 U.S. 509, 513 (1960), at p. 13.

If you have time to read the decisions of this Court in Mansfield (my opinion p. 6), and in Rogers (my opinion p. 7), I think you will agree that the rationale of these two cases in effect is overruled by HAB's opinion. Finally, the decisions of CA3 and CA6 (written by Potter Stewart), and CA8 in this case, clearly support my dissent, not HAB's opinion. The Granger case from CA3 is almost directly in point. These cases are summarized briefly in n. 8, p. 11 of my opinion.

It also is important to bear in mind that neither §6331, nor any regulation, provides for notice to the co-depositors. None was given in the case. The administrative remedy provided by §6331 was available only for nine months after the levy, and the burden and expense of it is shifted to the co-depositors. Although the statutory language, in light of Arkansas law, controls this case as CA8 found, the absence of notice raises a substantial due process issue.

Thank you for being willing to consider again your position in this case.

Sincerely,

The Chief Justice

lfp/ss

06/17

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

changes:
1, 3, 6-17

From: Justice Powell

Circulated: _____

Recirculated: JUN 18 1985

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-498

**UNITED STATES, PETITIONER v. NATIONAL BANK
OF COMMERCE**

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

[June —, 1985]

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

The issue presented is whether the Internal Revenue Service (IRS) may lawfully seize a joint bank account for payment of a single codepositor's delinquent taxes when it does not know how much, if any, of the account belongs to the delinquent. As it seems to me that the Court today misreads the relevant statutory language, in effect overrules prior decisions of this Court, and substantially ignores the property rights of nondelinquent taxpayers, I dissent.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 20, 1985

84-498 United States v. National Bank of Commerce

Dear Harry:

I am circulating a fourth draft of my dissent in this case.

As I indicated, the third draft had some repetitious language that I have now eliminated or moved in part to footnotes. I do not think I have changed the substance in any respect.

In short, unless you have a different view, the case is ready to come down.

Sincerely,

Lewis

Justice Blackmun

lfp/ss

cc: The Conference

.92 0130 8435

06/19

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

Changes: 13-15
and stylistic
changes throughout

From: Justice Powell

Circulated: _____

Recirculated: JUN 20 1985

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-498

**UNITED STATES, PETITIONER v. NATIONAL BANK
OF COMMERCE**

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

[June —, 1985]

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

The issue presented is whether the Internal Revenue Service (IRS) may lawfully seize a joint bank account for payment of a single codepositor's delinquent taxes when it does not know how much, if any, of the account belongs to the delinquent. As it seems to me that the Court today misreads the relevant statutory language, in effect overrules prior decisions of this Court, and substantially ignores the property rights of nondelinquent taxpayers, I dissent.

I

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⁹⁹The IRS may reach funds like these by following the procedure prescribed by § 7403. And, of course, Congress, if it wishes, may authorize collection of funds under a levy-type procedure, provided it observes constitutional requirements, particularly that of notice. As I would find the statutory language dispositive (as did the Court of Appeals), I do not address the due process claim relied on by the District Court.

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06/20

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

*Style book
changes.*

From: **Justice Powell**

Circulated: _____

Recirculated: JUN 21 1985

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-498

**UNITED STATES, PETITIONER v. NATIONAL BANK
OF COMMERCE**

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

[June —, 1985]

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

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 19, 1985

Re: No. 84-498 United States v. National Bank
of Commerce

Dear Chief,

I "passed" at Conference on Wednesday in this case, and now after further study have concluded that I will vote to reverse. This is on the assumption that the levy in question here was simply a provisional remedy akin to a writ of garnishment, and that in a later wrongful levy action brought by a claimant to the money on deposit the claimant should prevail against the government if the claimant's title to the money is superior to that of the taxpayer.

Sincerely,


The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 10, 1985

Re: 84-498 - United States v. National Bank of Commerce

Dear Harry:

As you know, my vote to reverse in this case was tentative, and I will await the dissent before finally coming to rest.

Sincerely,



Justice Blackmun

cc: The Conference

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21



CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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

June 18, 1985

Re: No. 84-498 United States v. National Bank of Commerce

Dear Harry,

This case remains a close one for me, but I now join your opinion.

Sincerely,

Justice Blackmun

cc: The Conference

82 18 5190

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 10, 1985

Re: 84-498 - United States v. National
Bank of Commerce

Dear Harry:

Before I realized that Lewis would be writing in this case, I prepared the enclosed exhaustive analysis of the issues as a possible dissent. I will, no doubt, withdraw it after Lewis circulates.

Respectfully,



Justice Blackmun

Copies to the Conference

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

From: Justice Stevens

Circulated: MAY 10 1985

Recirculated: _____

84-498 - United States v. National Bank of Commerce

JUSTICE STEVENS, dissenting.

If Smith is in possession of a parking ticket that gives him a right to withdraw Jones' car, may the IRS levy on the car because Smith has not paid his taxes? I think not. The fact that the garage is not liable for honoring the ticket has nothing to do with the case.

I agree with Justice (then Judge) Stewart's reasoning in United States v. Stockyards Bank of Louisville, 231 F.2d 621 (CA6 1956), and believe that it controls the analysis in this case. I would therefore affirm the judgment of the Court of Appeals.

84 MAY 10 6 15

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(N)

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 6, 1985

Re: 84-498 - United States v. National
Bank of Commerce

Dear Lewis:

Please join me.

Respectfully,



Justice Powell

Copies to the Conference

82 JUN -9 5 7:13

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 9, 1985

No. 84-498 U. S. v. National Bank of Commerce

Dear Harry,

I may eventually join your opinion, but, for now, I will wait and see the dissent before finally deciding.

Sincerely,

Sandra

Justice Blackmun

84 MAY 10 10 30 AM '85

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 12, 1985

No. 84-498 United States v. National
Bank of Commerce

Dear Harry,

Please join me.

Sincerely,

Sandra

Justice Blackmun
82 JUN 15 6 150

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