



10-1975

Pennsylvania v. New Jersey

Lewis F. Powell Jr.

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Dismiss

This case & No 69 original
arise out of our decision in Austin v N.H.

~~N.J.~~ N.J. imposes an income

tax on income of its
residents derived in
other states (Pa, in this
case), & does not impose
a similar tax on income
of its residents earned in
N.J.

~~Pa~~ Pa claims the
N.J. tax on income earned
in Pa deprives it (Pa) of
revenue.

Set for
argument on
Motion for
Leave to File.

Hint
I agree - the jurisdictional
question is sticky, and
the Court should dispose
of it in an opinion
that will guide filings
in future cases.
Chris.

November 7, 1975 Conference

List 1, Sheet 4

No. 68 Orig

PENNSYLVANIA

v.

NEW JERSEY

Doubtful whether this
is a controversy bet. states
in Court. sense

Motion for Leave to
file Bill of Complaint

SUMMARY: Pennsylvania seeks declaratory and injunctive relief against enforcement of New Jersey's Transportation Benefits Tax Act which imposes a tax on certain nonresidents' New Jersey derived income. The complaint also seeks a money judgment against New Jersey. In No. 69 Orig., Maine, Massachusetts and

* / See also Motion for Leave to File Complaint in Maine et al v. New Hampshire, No. 69 Orig., List 1, Sheet 4 this Conference.



the New Hampshire Commuters Income Tax.

The plaintiff States rely on Austin v. New Hampshire, 420 U.S. 656 (1975), which declared the New Hampshire tax unconstitutional. They assert property interests in the "diversion of tax revenues" by New Jersey and New Hampshire and seek to invoke the original and exclusive jurisdiction of this Court over "controversies between two or more States."

Defendant New Jersey in No. 68 Orig. and Defendant New Hampshire in No. 69 Orig. both argue that the complaints do not present a controversy between States, but present claims cognizable only on complaint of the nonresident taxpayers.

FACTS: The New Jersey Transportation Benefits Tax was enacted in 1971. The law imposes a 2% tax upon certain income and gains derived by residents of New Jersey from sources within another state and upon income of nonresidents from sources within New Jersey if a "severe [area] transportation problem" is found to exist as has been found to exist in the New Jersey-Pennsylvania area.

Revenues are paid into a special transportation fund used exclusively to finance projects to help alleviate the transportation problems between New Jersey and Pennsylvania. Criminal sanctions for failure to file returns required by the Act and the withholding of taxes by New Jersey employers and provided for in the Act.

New Jersey residents taxed under the Act receive a credit against the New Jersey tax for income taxes paid to Pennsylvania which taxes its residents and New Jersey residents at a rate of 2% on income earned in Pennsylvania. New Jersey does not tax the domestic earned income of its residents.

Pennsylvania, which permits a tax credit to its residents for income taxes paid New Jersey, claims that since 1971 the New Jersey Act has deprived it of

Revenue (including approximately \$10 million)
The New Hampshire Commuters Income Tax imposed a tax on nonresidents' New Hampshire derived income in excess of \$2,000. The tax imposed a rate of 4% except that if the nonresident taxpayer's State of residence would impose a lesser tax had the income been earned in that State, the New Hampshire tax was reduced to the amount of the tax that the State of residence would impose. The New Hampshire tax also purported to impose a tax on the income earned by its residents outside the State, but then exempted such income from the tax in such a manner that no resident was taxed on his out-of-state income. New Hampshire does not tax the domestic earned income of its residents.

Maine taxpayers challenged the tax in the New Hampshire Supreme Court, arguing that the tax violated the Privileges and Immunities Clause of Act IV and the Equal Protection Clause. The N.H. SC upheld the tax. On appeal, this Court reversed, ^(in Customs) holding that the disparate treatment accorded nonresidents by the New Hampshire tax was violative of the Privileges and Immunities Clause. The Court did not reach the equal protection issue.

Maine, Massachusetts and Vermont approximate that the amount of revenues "diverted" to New Hampshire since enactment of the tax in 1970 through March 18, 1975, the day preceding the decision in Austin, totals in excess of \$13.7 million.

CONTENTIONS: Plaintiffs: Pennsylvania (who amended its first complaint "once as a matter of course" under Fed. R. Civ. P. 15 (a)) contends that New Jersey's tax is unconstitutional under Austin. The Commonwealth brings this action on behalf of itself and "as ^{PARENTS PATRIAE} ~~parents patriae~~ on behalf of its citizens and residents." It lays its case under the Privilege and Immunity and Equal Protection Clauses.

plaintiff New England States appear "on behalf of themselves in their official and proprietary capacities" and lay their case for repayment under the Privilege and Immunities Clause, "federal common law and general principles of equity."

Both sets of plaintiff States make similar argument that they have standing to protect their proprietary interests and that this Court is the proper forum. They both acknowledge that under the 11th Amend. the original jurisdiction of this Court is not available where a State sues in an action which really is brought on behalf of designated individuals. They contend, however, that a genuine state interest exists in the recoupment of losses suffered due to the diversion of tax revenues by the defendant States New Jersey and New Hampshire. The plaintiff States argue that they are seeking to protect their inherent power to raise revenue and to redress direct injury to the economy of their States. The loss of millions of dollars in taxes, they maintain, is ^{as} ~~is~~ actionable as a State suing to enjoin the discharge of noxious fumes across the State's border, to enforce a boundary agreement ^{and} ~~as~~ to prevent the diversion of natural resources flowing from one State to another. Both sets of plaintiff States cite arguments by the attorneys general of New Jersey as amicus curiae and of New Hampshire in Austin that the real parties in interest in that case were the Plaintiff New England States. Finally, the Plaintiff States give four reasons why the case at law presents "the clearest example of a controversy between states, not individuals": (1) the judgment sought will benefit no particular individuals, but will protect the sovereign interests of Plaintiffs; (2) the funds produced will be applied to Plaintiffs' general governmental purposes; (3) the acts complained of were taken directly by the States of New Hampshire and New Jersey; (4) Plaintiffs do not seek relief from any particular individuals in the

controversy between States exist and there is no alternative forum but this Court to resolve the dispute.

Pennsylvania, without specific argument, seeks declaratory and injunctive relief against the enforcement of New Jersey's tax. Both sets of Plaintiffs seek to have Austin applied retroactively arguing (1) that the decision was "clearly fore-shadowed" and (2) no inequity would be imposed since there was no third party reliance. Both Pennsylvania and the Plaintiff New England States argue that they should not be penalized for not revoking their tax credit laws or by enacting retaliatory laws. Plaintiffs also argue that the taxes at issue were paid under duress, viz. criminal sanctions and withholding, that even if not paid under duress the common law rule denying recovery of illegal taxes is not applicable. Finally, both sets of Plaintiff States note the respective laws of New Jersey and New Hampshire recognizing that interest should be paid on taxes which were wrongfully collected.

Both sets of Plaintiff States seek an accounting, repayment of taxes diverted, interest and costs.

DEFENDANTS: New Jersey in No. 68 Orig. and New Hampshire in No. 69 Orig. have filed briefs in opposition to the motions for leave to file complaints. Both defendant States cite Massachusetts v. Missouri, 308 U.S. 1 (1939), where in an original action brought by Massachusetts to obtain a declaration that only Massachusetts could impose an inheritance tax on the estate of a domiciliary who had died with most of his assets in Missouri, the Court held that no controversy was presented between the states because their claims were not "mutually exclusive" in that "the validity of each claim is wholly independent of that of the other and, in light of our recent decisions, may constitutionally be pressed by

Thus, maintain the Defendant States, the Plaintiff States' rights to the revenue they claim to have lost are wholly independent of any aspect of New Hampshire or New Jersey law, including their validity. No principle of law, constitutional or otherwise, they urge, requires that the Plaintiff States forego the collection of revenue which is clearly within their constitutional power, solely because of the configuration or validity of the laws of another state. New Jersey also cites the language of Ohio v. Wyandotte Chemicals Corp. 401 U.S. 493, 497 (1971):

"As our social systems have grown more complex, the States have increasingly become enmeshed in a multitude of disputes with persons living outside their borders. Consider, for example, the frequency with which States and nonresidents clash over the application of state laws concerning taxes, motor vehicles, decedents' estates, business torts, government contracts and so forth. It would, indeed, be anomalous were this Court to be held out as a potential principal forum for settling such controversies."

New Jersey also argues that Pennsylvania is not a "person" entitled to assert rights under the Equal Protection Clause or a "citizens" entitled to the rights of the Privileges and Immunities Clause. It notes that Austin was successfully pursued by individual taxpayers "as has every other challenge brought before this Court to the validity of a tax on Privilege and Immunities or Equal Protection grounds."

New Jersey, who distinguishes its tax from that at issue in Austin, also argues that the present action is a device to circumvent the anti-injunction statute, 28 U.S.C. 1341. New Hampshire adds the arguments that the forms^{et} taxpayers under the Commuters Income Tax are necessary parties to the actions which necessarily defeats original jurisdiction and that, in any event, the doctrine of laches should be applied to bar the suit because the Plaintiff States have been grossly negligent and in bad faith in failing to take steps to halt the taxes they now complain

of.

DISCUSSION: The Court must resolve the jurisdictional question. The other issues can be referred to Special Masters if the motions of the Plaintiff States are granted.

Plaintiffs' jurisdictional arguments are by analogy. They cite no case law on point in their favor. Massachusetts v. Missouri is strong precedent that the Court lacks original jurisdiction. There is also the Court's traditional reluctance to become involved in matters such as these, as persuasively put in Wyandotte.

Although the motions probably could be denied summarily, argument would appear appropriate.

There are responses.

10/29/75

Ginty

BMT

BOBTAIL BENCH MEMORANDUM

TO: Justice Powell

FROM: Carl R. Schenker

DATE: December 2, 1975

No. Orig. 68 Pennsylvania v. New Jersey
No. Orig. 69 Maine, et al. v. New Hampshire

Leave to file the complaints should be denied.

There is jurisdiction here if but only if there is (1) a "controversy" between (2) "states." Neither requirement is met.

A. "Controversy"

The complaining states lost some tax revenues because they allowed their residents a tax credit for the unconstitutionally discriminatory taxes those residents were required to pay to the defendant states. But the complaining states were under no constitutional requirement to allow that credit; they could have gone ahead and taxed their residents. Under the precedents of this Court, the ability of the complaining states to collect taxes notwithstanding the taxation of the defendant states means there is no "controversy" here.

The crucial case is Massachusetts v. Missouri, 308 U.S. 1 (1939). There two states wanted to tax the estate of a decedent. The Court denied leave to file an original complaint for lack of a "controversy". The rationale was that the two states were

each constitutionally authorized to tax the estate and the estate was sufficiently large to accommodate each claim. Under such circumstances, there is no "controversy" because the states are not harming each other by their parallel, but not conflicting, demands. In short, there was no factual exclusivity between the claims of the two states, so there was no "controversy" between them for purposes of this Court's jurisdiction.

This case is slightly different in that the complaining states have allowed a tax credit, so there is a legal exclusivity of the claims according to the laws of the complaining states. In Texas v. Florida, 306 U.S. 398 (1939), the Court took jurisdiction of a case where the state laws, but not the Constitution, made the competing tax claims legally exclusive.* But great reliance was placed on the fact that the claims were also factually exclusive, because the competing claims in total exceeded the estate. Because each state could constitutionally impose the tax it claimed, the estate might be devoured and nothing left for some of the four claimants. In Massachusetts v. Missouri, Texas was distinguished as a case where legal and factual exclusivity conjoined. Thus, I think that Massachusetts should be viewed as controlling here. Since there is no factual exclusivity of the ability of the complaining states to tax, there is no jurisdiction.

I might note in passing that this is a desirable

* Four states wanted to tax a decedent's estate. But the laws of each allowed taxation only if the decedent was domiciled in the state. Thus, according to states laws, there was only 1 state entitled to tax. But full faith and credit would not have required any one state to abide by another's determination of domicile.

outcome. The complaining states here have made the political choice to allow their residents taxed elsewhere a tax credit. Presumably they made this choice to encourage the residents not to migrate to the state where income is earned to avoid double taxation. There seems no pressing need for this Court to rush in and save the complaining states from that political decision.

B. Between "states"

The complaining states press their "right" to the taxes they would have collected had their residents not taken the tax credit for the unconstitutional taxes imposed by the defendant states. But the complaining states have no "right" to those tax proceeds. If the defendant states had taxed their own residents equally with the residents of the complaining states, taxes could have been imposed validly on the nonresidents. Thus, the only substantive right involved here is the right of the residents of the complaining states not to be taxed discriminatorily by the defendant states vis-a-vis the residents of the defendant states.

Plainly the complaining states are trying to assert a right that is entirely "personal" to their residents. It is well established that original jurisdiction does not exist for the state to press the claims of its individual residents.

Carl

I am inclined to think there is no original jurisdiction. Pa. has no cause of action (no "controversy" in Const. sense) vs N.J.

(1) Pa lost revenue only because it voluntarily allowed tax credit.

~~(2) I have no opinion~~

(2) Only "controversy" is between taxpayers who paid the invalid N.J. taxes, and the state of N.J.

Silver (Dep. AG for Pa) (An able advocate, who made a good, lawlike argument)

(Despite good argument, I'm not yet persuaded ~~by~~ - altho he prompts me to take a harder look)

Skillman (Asst AG of N.J.)

Relies on Mass v. U.S.

(Each of those states could impose an estate tax) ~~whereas~~

Argues primarily that Pa doesn't have "standing" to sue on behalf of ~~the~~ individual taxpayers.

Skellman (cont.)

White asked if U.J. would object to our deciding case on merits - as if a motion to dismiss had been filed by U.J.

Brennan asked if there would be any role for a Master. Skellman responded ~~that~~ "Yes" - that there are factual issues.

White asked whether we cannot hold that Complaint fails to state a cause of action? (No such motion has yet been made)

Silver (rebuttal)

The U.J. tax is levied only
vs ~~PA~~ ^{PA} residents who earn money
in ~~PA~~ ^{U.J.}

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 4, 1975

68 Orig. Pennsylvania v. New Jersey
69 Orig. Maine v. New Hampshire

Dear Chief:

It occurred to me only after the arguments in the above cases that Jo owns some general obligation bonds of the State of Pennsylvania.

Although the statute requires disqualification where there is "ownership of government securities" only if the outcome "could substantially affect the value of the securities", I would feel more comfortable if I remained out of these cases in which the State of Pennsylvania is itself a party claiming \$29 million and the state is the obligor on the bonds.

Fortunately, my remaining out of these cases will leave seven members of the Court and thus assure a majority one way or the other.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

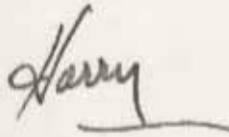
April 14, 1976

Re: No. 68 Orig. - Pennsylvania v. New Jersey
No. 69 Orig. - Maine v. New Hampshire

Dear Chief:

When these matters came up originally at conference I voted, I believe alone, to deny leave to file. I am still of that view and would join a plain and unembellished denial or one patterned after Arizona v. California.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 14, 1976

RE: Nos. 68 Orig. Pennsylvania v. New Jersey
69 Orig. Maine v. New Hampshire

Dear Chief:

If the final disposition is a "denial plaino", as you suggest, will you please add in each case:

"Mr. Justice Brennan would grant leave to file."

Sincerely,

Bill

The Chief Justice

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

April 14, 1976

Re: Nos. 68 Orig. - Pennsylvania v. New Jersey
69 Orig. - Maine v. New Hampshire

MEMORANDUM TO THE CONFERENCE:

At Conference there was at least one question raised as to explicating our denial of the motion for leave to file the bills of complaint in these two cases.

It appears that a simple order has regularly been used without more.

In Arizona v. California, 377 U.S. 926 (1964), the order recited Massachusetts v. Missouri, 308 U.S. 1.

My inclination is for a "bare bones" denial or, as John Harlan put it, "denial plaino."

Absent dissent, it will be the latter.

Regards,

Les B

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 15, 1976

Re: No. 68, Orig. - Commonwealth of Pennsylvania
v. New Jersey

Dear Chief:

I agree.

Sincerely,



The Chief Justice

Copies to Conference

Sally - Write
of Stewart to
show me "Out"

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

From: Mr. Justice Stewart

Circulated: JUN 3 1976

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 68 and 69, Orig.

Commonwealth of Pennsylvania, Plaintiff,
68, Orig. v.
State of New Jersey.

State of Maine, Commonwealth of Massachusetts,
and State of Vermont,
Plaintiffs,
69, Orig. v.
State of New Hampshire.

On Motions for Leave to
File Bill of Complaint.

[June —, 1976]

MR. JUSTICE STEWART, concurring.

Although I agree with the judgments of the Court in both of these cases, I think it appropriate to explain the reasons for my agreement.

In *Austin v. New Hampshire*, 420 U. S. 656 (1975), decided last Term, the Court held that the New Hampshire Commuters Income Tax violated the Privileges and Immunities Clause of the Constitution. That law imposed a 4% tax on the New Hampshire-derived income of nonresidents. Although the law also imposed a tax on the income earned by New Hampshire residents outside the State, it then exempted such income from the tax if the income were either taxed or not taxed by the State from which it was derived. Since New Hampshire also did not tax the domestic income of its residents, the net effect of the Commuters Income Tax was to tax only the incomes of nonresidents working in New Hampshire.

The resident State of the plaintiff in *Austin* was Maine,

and it provided a credit for income taxes paid to other States. Thus, New Hampshire's beggar-thy-neighbor tax rendered the total state tax liability of nonresidents unchanged, but diverted to New Hampshire tax revenues from the treasury of Maine. We held New Hampshire's taxing scheme unconstitutional since the tax "[fell] exclusively on the income of nonresidents . . . and [was] not offset even approximately by other taxes imposed upon residents alone." 420 U. S., at 665 (note deleted).

The complaints in these two cases, which seek to invoke our original jurisdiction, filed by Pennsylvania against New Jersey, and by Maine, Massachusetts, and Vermont against New Hampshire, are based upon our decision in *Austin, supra*, holding the New Hampshire Commuters Income Tax unconstitutional.

In Original No. 68, Pennsylvania contends that the New Jersey Transportation Benefits Tax Act, N. J. Stat. Ann. 54:8A-58 *et seq.* is infirm under the Privileges and Immunities Clause as interpreted in *Austin, supra*, and the Equal Protection Clause of the Fourteenth Amendment. According to the complaint filed by Pennsylvania, the New Jersey tax fatally resembles the tax we held unconstitutional in *Austin*. Like New Hampshire, New Jersey does not tax the domestic income of its residents. Under the Transportation Benefits Tax Act, however, New Jersey does tax the New Jersey-derived income of nonresidents. And while that Act imposes an equivalent tax on the income of New Jersey residents earned outside the State, it exempts such income to the extent it is taxed by the State in which it is earned. Finally, like Maine in the *Austin* case, Pennsylvania permits a tax credit to any of its residents for income taxes paid to other States, including, of course, New Jersey. Pennsylvania, suing on behalf of itself and as *parens patriae* on behalf of its citizens, seeks declaratory and injunctive

relief and, apparently, an accounting for the taxes that New Jersey's allegedly unconstitutional tax has diverted from the Pennsylvania treasury.

Plaintiffs in Original No. 69, Maine, Massachusetts, and Vermont, explicitly premise their suit on the decision in *Austin, supra*. They seek on behalf of themselves an accounting for the taxes, alleged to amount to over \$3.5 million, that New Hampshire's unconstitutional Commuters Income Tax diverted from their respective treasuries.

It has long been the rule that in order to engage this Court's original jurisdiction, a plaintiff State must first demonstrate that the injury for which it seeks redress was directly caused by the actions of another State. As Chief Justice Hughes noted on behalf of the Court in *Massachusetts v. Missouri*, 308 U. S. 1, 15 (1937), "[t]o constitute a [justiciable] controversy, it must appear that the complaining State has suffered a wrong through the actions of the other State, furnishing ground for judicial redress. . . ."

In *Massachusetts v. Missouri, supra*, Massachusetts filed suit *inter alia* against Missouri, seeking a declaration that only it (Massachusetts) could impose an inheritance tax on the estate of a Massachusetts domiciliary who had died with most of his assets located in several revocable Missouri trusts. The assets located in Massachusetts were insufficient to pay that State's inheritance taxes. Missouri also claimed the exclusive right to impose its tax on the Missouri trusts. In language that is particularly appropriate for our disposition ~~of~~ of these cases, the Court denied leave to file the complaint:

"Missouri, in claiming a right to recover taxes from the . . . trustees, or in taking proceedings for collection, is not injuring Massachusetts. By the

allegations, the property held in Missouri is amply sufficient to answer the claims of both States and recovery by either does not impair the exercise of any right the other may have. It is not shown that there is danger of the depletion of a fund or estate at the expense of the complainant's interest. It is not shown that the tax claims of the two States are mutually exclusive. On the contrary, the validity of each claim is wholly independent of that of the other. . . ." *Id.*, at 15.

In neither of the suits at bar ~~have~~ the defendant States^a inflicted any injury upon the plaintiff States through the imposition of the taxes held, in No. 69, and alleged, in No. 68, to be unconstitutional. The injury to the plaintiff States ~~was~~ self-inflicted, resulting from decisions by their respective state legislatures. Nothing required Maine, Massachusetts, and Vermont to extend a tax credit to their residents for income taxes paid to New Hampshire, and nothing prevents Pennsylvania from withdrawing that credit for taxes paid to New Jersey. No State can be heard to complain about damage inflicted by its own hand.

Pennsylvania, in attempting to establish its entitlement to taxes collected by New Jersey from its residents, has alleged that the New Jersey Transportation Benefits Tax Act violates both the Privileges and Immunities Clause and the Equal Protection Clause. Maine, Massachusetts, and Vermont claim that New Hampshire's withholding of taxes collected under its unconstitutional commuters tax violates the Privileges and Immunities Clause. The short answer to these contentions is that both Clauses protect people, not States.

What I have said disposes of the claims brought by the plaintiff States on their own behalf. In addition,

has

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were

to

however, Pennsylvania has filed a claim against New Jersey as *parens patriae* on behalf of its citizens.

The Court has recognized the legitimacy of *parens patriae* suits. See *Hawaii v. Standard Oil Co.*, 405 U. S. 251, 257-260 (1972); *Louisiana v. Texas*, 176 U. S. 1, 17 (1900). It has, however, become settled doctrine that a State has standing to sue only when its sovereign or quasi-sovereign interests are implicated and it is not merely litigating as a volunteer the personal claims of its citizens. Compare, *e. g.*, *Oklahoma ex rel. Johnson v. Cook*, 304 U. S. 387 (1938); *Oklahoma v. Atchison, Topeka & Santa Fe Ry.*, 220 U. S. 277 (1911); *Kansas v. United States*, 204 U. S. 331 (1907) (States may not invoke the original jurisdiction of the Supreme Court to prosecute purely personal claims of their citizens), with, *e. g.*, *North Dakota v. Minnesota*, 263 U. S. 365 (1923); *Pennsylvania v. West Virginia*, 262 U. S. 553 (1923); *New York v. New Jersey*, 256 U. S. 296 (1921); *Georgia v. Tennessee Copper Co.*, 206 U. S. 230 (1907); *Kansas v. Colorado*, 206 U. S. 46 (1907) (original jurisdiction sustained for States protecting quasi-sovereign interests).

This rule is a salutary one. For if, by the simple expedient of bringing an action in the name of a State, this Court's original jurisdiction could be invoked to resolve what are, after all, suits to redress private grievances, our docket would be swamped. And, more important, the critical distinction, articulated in Art. III, § 2, of the Constitution, between suits brought by "Citizens" and those brought by "States" would evaporate.

Pennsylvania's *parens patriae* suit against New Jersey represents nothing more than a collectivity of private suits against New Jersey for taxes withheld from private parties. No sovereign or quasi-sovereign interests of Pennsylvania are implicated. I therefore agree that Pennsylvania's motion for leave to file suit as *parens*

68 & 89, Orig.—CONCUR

6 PENNSYLVANIA v. NEW JERSEY

patriae on behalf of its citizens is also properly denied.

both For these reasons, I join the judgment of the Court - 5
in ~~each~~ of these cases.

June 3, 1976

No. 68 Orig. Pennsylvania v. New Jersey
No. 69 Orig. Maine v. New Hampshire

Dear Chief:

Please show at the end of your Per Curiam that I
took no part in the decision of these cases.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

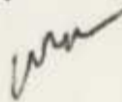
June 3, 1976 ✓

Re: Nos. 68 and 69 Orig. - Pennsylvania v. New Jersey;
and Maine v. New Hampshire

Dear Potter:

Please join me in your concurring opinion in these cases.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 8, 1976

68 Orig. - Pennsylvania v. New Jersey
69 Orig. - Maine v. New Hampshire

Dear Chief,

Needless to say, I agree with the Per
Curiam you have circulated in this case.

Sincerely yours,

P.S.
/

The Chief Justice

Copies to the Conference

THE C. J.

W. O. D.

W. J. B.

P. S.

B. R. W.

T. M.

H. A. B.

L. F. P.

W. H. R.

P.C.

1st draft

4/15/76

2nd draft

4/15/76

4th draft

6/7/76

discussing
statement
6/13/76

concerning
opinion
1st draft
6/3/76

agree
with CG
4/15/76

join CG
6/14/76

concerning
opinion
6/18/76

out

~~discussing~~
join PS
6/3/76

join CG
6/13/76

join VJB
6/18/76

68 Orig. Pennsylvania v. N.J.