



NO. 88, ORIGINAL

IN THE
Supreme Court of the United States
OCTOBER TERM, 1982

STATE OF CALIFORNIA,
Plaintiff

v.

STATE OF TEXAS, ET AL.,
Defendants

**ANSWER OF DEFENDANTS AVIS HUGHES
MCINTYRE AND T. NORTON BOND,
EXECUTOR OF THE ESTATE OF
RUSH HUGHES, DECEASED**

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Defendants, Avis Hughes McIntyre and T. Norton Bond, Executor of the Estate of Rush Hughes, file this Answer and allege as follows:

1. Based on the court's opinion in *California v. Texas et al.*, 120 S.Ct. 2335 (1982), the Defendants McIntyre and Bond admit the allegations contained in paragraph 1 except that the Defendants McIntyre and Bond do not have sufficient information and are therefore unable to either admit or deny the allegations that neither Texas nor California is or will become a party to the proceedings in the other's courts.

2. (a) The Defendants McIntyre and Bond admit the allegations contained in paragraph 2(a).

(b) The Defendants McIntyre and Bond admit the allegations contained in paragraph 2(b).

(c) Based on the Court's opinions in *Cory v. White, et al.*, 102 S.Ct. 2325 (1982) and *California v. Texas, et al.*, 102 S.Ct. 2335 (1982), the Defendants McIntyre and Bond admit the allegations contained in paragraph 2(c).

3. The Defendants McIntyre and Bond admit the allegations contained in paragraph 3, but deny that Mr. Hughes died domiciled in California.

4. The Defendants McIntyre and Bond admit the allegations contained in paragraph 4.

5. The Defendants McIntyre and Bond admit the allegations contained in paragraph 5.

6. The Defendants McIntyre and Bond admit the allegations contained in paragraph 6.

7. The Defendants McIntyre and Bond admit the allegations contained in paragraph 7.

8. The Defendants McIntyre and Bond admit the allegations contained in paragraph 8.

9. The Defendants McIntyre and Bond admit the allegations contained in paragraph 9.

10. The Defendants McIntyre and Bond admit the allegations contained in paragraph 10.

11. The Defendants McIntyre and Bond admit that under California law, the Estate of Annette Gano Lummis

is the sole heir of the Estate. The Defendants McIntyre and Bond deny that the Estate of Annette Gano Lummis will be liable for the entire California tax due and that the other heirs who are parties to the agreement will, to the extent that they inherit property pursuant to said agreement, be jointly and severally liable for their proportionate share of the California tax relating to the assets so acquired by them.

12. The Defendants McIntyre and Bond admit the allegations contained in paragraph 12.

13. The Defendants McIntyre and Bond admit that Mr. Hughes was born in Texas in 1905. They admit that he resided in Texas until 1926. They deny that thereafter he became a California domiciliary. They admit that he was present in California at various times until 1966, but deny that such presence was continuous or of such a permanent nature as to result in the acquisition of a California domicile. They admit that Mr. Hughes acquired some business holdings and relationships in California. The Defendants McIntyre and Bond admit that Mr. Hughes filed nonresident income tax returns in California, and paid taxes at the resident rate but assert that such taxes were paid under protest. The Defendants McIntyre and Bond deny that his only known extended absence from California during this forty-year period was in 1953-54, when he temporarily resided in Nevada. The Defendants McIntyre and Bond assert that Mr. Hughes was absent from California on many occasions between 1926 and 1966 therefore making his presence in California of a transient nature. Defendants McIntyre and Bond admit that Mr. Hughes resided in Nevada in 1953-54. The Defendants McIntyre and Bond admit that after leav-

ing California in 1966, Mr. Hughes traveled successively to Boston, Las Vegas, the Bahamas, Nicaragua, Canada, Nicaragua, London, the Bahamas and Mexico and admit that he lived in hotel rooms in these various locations. The Defendants McIntyre and Bond deny that Mr. Hughes never acquired a domicile after 1966. The Defendants McIntyre and Bond deny that during this time period Mr. Hughes retained his personal and business ties to California. The Defendants McIntyre and Bond further deny that the "nerve center" of his business operations remained in California. The Defendants McIntyre and Bond admit that Mr. Hughes died on April 5, 1976 in an airplane en route to Houston, Texas.

14. The Defendants McIntyre and Bond admit the allegations contained in paragraph 14.

15. The Defendants McIntyre and Bond admit the allegations contained in paragraph 15 except they deny that the Texas Co-Temporary Administrators asserted that Hughes acquired first a California domicile. The Defendants McIntyre and Bond do not have sufficient information and therefore are unable to either admit or deny the allegations that California is not a party to and will not be bound by any judgment entered in the Texas proceedings.

16. The Defendants McIntyre and Bond admit the allegations contained in paragraph 16.

17. The Defendants McIntyre and Bond admit the allegations contained in paragraph 17.

18. The Defendants McIntyre and Bond admit the allegations contained in paragraph 18.

19. The Defendants McIntyre and Bond admit that the issue of Mr. Hughes' domicile is pending in the courts of California and Texas, with the Estate, through the personal representative in each state, asserting Nevada domicile in each jurisdiction. The Defendants McIntyre and Bond do not have sufficient information and therefore are unable to either admit or deny the allegation that neither Texas nor California is, or will become, a party to the proceedings in the other's courts, with the result that neither will be bound by an adverse determination in the other's forum.

20. The Defendants McIntyre and Bond admit the allegations contained in paragraph 20.

21. The Defendants McIntyre and Bond admit the allegations contained in paragraph 21 except they deny the holding by the Court of Appeals that the Los Angeles County Treasurer is a claimant is now clearly incorrect.

22. The Defendants McIntyre and Bond admit the allegations contained in paragraph 22.

23. The Defendants McIntyre and Bond admit the allegations contained in paragraph 23 except that they do not have sufficient information and therefore are unable to either admit or deny that each state utilizes the identical legal definition of domicile.

24. The Defendants McIntyre and Bond admit that Texas claims a lien on all intangible assets of the Estate to secure its domicile-based death tax claim. The Defendants McIntyre and Bond admit that California asserts an identical lien. The Defendants McIntyre and Bond deny that Hughes was a domiciliary of California.

25. Based on the court's opinions in *Cory v. White, et al., supra*, and *California v. Texas, et al., supra*, the Administrators admit the allegations contained in paragraph 25.

26. The Defendants McIntyre and Bond do not know what is meant, legally, by the term "factual basis." Therefore, they neither admit nor deny the claim of Texas is without factual basis. The Defendants McIntyre and Bond do not have sufficient information to admit or deny what Texas, if unrestrained, will do in the future to perfect its trial court judgment of Texas domicile and to enforce that judgment and its asserted lien on intangible assets to secure payment of Texas death taxes. The Defendants McIntyre and Bond do not have sufficient information to admit or deny the prediction made by California that it is highly probable that this will occur before California can obtain a final judgment in its own courts on its death tax claim. The Defendants McIntyre and Bond admit that the overwhelming majority of the Estate's tangible assets are located outside of California. Defendants do not have sufficient information and therefore are unable to admit or deny that the Estate intends to administer the tangible assets in the states where those assets are located. The Defendants McIntyre and Bond admit that the assets of the Estate are insufficient to satisfy the death tax claim of both Texas and California and to the extent that the claim of one state were fully satisfied, the claim of the other state could not be fully satisfied. The Defendants McIntyre and Bond do not have sufficient information to admit or deny the assertion that the mere existence of the inconsistent Texas claim—and the lack of any alternative forum in which to obtain a determination of domicile binding on both states—will substantially impair the opportunity California might otherwise have to nego-

tiate a fair and reasonable compromise of its tax claim against the Estate. The Defendants McIntyre and Bond do not have sufficient information to admit or deny California's prediction that it will be irreparably injured if Texas is permitted to impose and collect an inheritance tax based on a determination by a Texas court of a Texas domicile.

27. The Defendants McIntyre and Bond admit that this suit is not brought on behalf of the Estate but deny the validity of the asserted California tax lien because Mr. Hughes was not domiciled in California at death.

28. Except as to the allegations which are admitted in paragraphs 1 through 27, all other allegations contained in the Complaint are denied.

WHEREFORE, the Defendants McIntyre and Bond pray that:

(a) The Court adjudge and declare that Mr. Hughes was domiciled in either Texas or Nevada, and therefore not in any other jurisdiction at the time of his death, and that all parties to this action abide by that declaration;

(b) The Court adjudge and declare that the Estate and/or the heirs are not liable to California for death taxes levied on intangibles of Mr. Hughes' estate because he was not a California domiciliary;

(c) The Court adjudge and declare that the Estate and/or the heirs are not liable to Texas for death taxes levied on intangibles of Mr. Hughes' estate if it is determined that Mr. Hughes was not a Texas domiciliary.

(d) In the alternative, should the Court determine that Mr. Hughes was domiciled in a jurisdiction other than Texas or Nevada, then adjudge and declare in which other jurisdiction Mr. Hughes was domiciled at death and further adjudge and declare that he was domiciled only in that jurisdiction at death and that all parties to this action abide by that declaration; and

(e) The Court grant such other and further relief as may be just and proper.

DATED: August 13, 1982.

Respectfully submitted,

A handwritten signature in cursive script, reading "Michael Perrin". The signature is written in dark ink and is positioned above a horizontal line.

MICHAEL W. PERRIN

FISHER, GALLAGHER, PERRIN
& LEWIS

*Attorneys for Defendants,
McIntyre and Bond*

