SUPREME COURT OF THE UNITED STATES

No. 03–1488

ULYSSES TORY, ET AL., PETITIONERS *v.* JOHNNIE L. COCHRAN, JR.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT

[May 31, 2005]

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, dissenting.

I would dismiss the writ of certiorari as improvidently granted. We granted the writ, as the Court notes, to decide

> "[w]hether a permanent injunction as a remedy in a defamation action, preventing all future speech about an admitted public figure, violates the First Amendment." Pet. for Cert. i; *ante*, at 2.

Whether or not Johnnie Cochran's death moots this case, it certainly renders the case an inappropriate vehicle for resolving the question presented. The Court recognizes this, *ante*, at 3, but nevertheless vacates the judgment below, *ante*, at 4. It does so only after deciding, as it must to exercise jurisdiction, that in light of the uncertainty in California law, the case is not moot. *Ante*, at 2–3; *ASARCO Inc.* v. *Kadish,* 490 U. S. 605, 621, n. 1 (1989) (when a case coming from a state court becomes moot, this Court "lack[s] jurisdiction and thus also the power to disturb the state court's judgment"); see also *City News & Novelty, Inc.* v. *Waukesha,* 531 U. S. 278, 283–284 (2001).

In deciding the threshold mootness issue, a complicated problem in its own right, the Court strains to reach the validity of the injunction after Cochran's death. Whether

the injunction remains valid in these changed circumstances is neither the reason we took this case nor an important question, but merely a matter of case-specific error correction. Petitioners remain free to seek relief on both constitutional and state-law grounds in the California courts. And, if the injunction is invalid, they need not obey it: California does not recognize the "collateral bar" rule, and thus permits collateral challenges to injunctions in contempt proceedings. *People* v. *Gonzalez*, 12 Cal. 4th 804, 818, 910 P. 2d 1366, 1375 (1996) (a person subject to an injunction may challenge "the constitutional validity of the injunction when it is issued, or . . . reserve that claim until a violation of the injunction is charged as a contempt of court"). The California courts can resolve the matter and, given the new state of affairs, might very well adjudge the case moot or the injunction invalid on state-law grounds rather than the constitutional grounds the Court rushes to embrace. As a prudential matter, the better course is to avoid passing unnecessarily on the constitutional question. See *Ashwander* v. *TVA,* 297 U. S. 288, 345–348 (1936) (Brandeis, J., concurring).

The Court purports to save petitioners the uncertainty of possible enforcement of the injunction, and thereby to prevent any chill on their First Amendment rights, by vacating the decision below. But what the Court gives with the left hand it takes with the right, for it only invites further litigation by pronouncing that "injunctive relief may still be warranted," conceding that "any appropriate party remains free to ask for such relief," and "express[ing] no view on the constitutional validity of any such new relief." *Ante*, at 4. What the Court means by "any appropriate party" is unclear. Perhaps the Court means Sylvia Dale Mason Cochran, Cochran's widow, who has taken his place in this suit. Or perhaps it means the Cochran firm, which has never been a party to this case, but may now (if "appropriate") intervene and attempt to

enjoin the defamation of a now-deceased third party. The Court's decision invites the doubts it seeks to avoid. Its decision is unnecessary and potentially self-defeating. The more prudent course is to dismiss the writ as improvidently granted. I respectfully dissent.