

The Burger Court Opinion Writing Database

*Kennerly v. District Court of Ninth
Judicial District of Montana*

400 U.S. 423 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

GVR

CHAMBERS OF
THE CHIEF JUSTICE

January 8, 1971

Re: No. 5370 - Kennerly v. District Court of Ninth Jud. Dist.

Dear John:

Join me in your per curiam in the above.

Regards,

WSJ

Mr. Justice Harlan

cc: The Conference

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

January 7, 1971

Dear John:

Re: No. 5370 - Kennerly v. District
Court of Ninth Judicial Dist.

I agree to your per curiam in the
above case.

Sincerely,
H. L. B.
H. L. B.

Mr. Justice Harlan

cc: Members of the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

January 7, 1971

Dear John:

In No. 5370 - Kennerly v.
District Court, please join me in
your Per Curiam.

W. O. D.

Mr. Justice Harlan

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

January 6, 1971

MEMORANDUM TO THE CONFERENCE

Re: No. 5370 - Kennerly v. District Court of
Ninth Judicial District

Dear Brethren:

When this petition for certiorari was first considered at our Conference on October 16, 1970, it was decided to ask the Solicitor General for his views. The Solicitor General subsequently filed a memorandum urging that certiorari be granted, and that the judgment of the Montana Supreme Court be reversed.

At our Conference of December 18, 1970, according to my Conference notes, there were at least four votes to grant the petition, but the upshot of our discussion was that I should try my hand at preparing a per curiam for summary reversal. I submit such a per curiam for your consideration, and am of the opinion that a summary disposition of this case is both justified and appropriate. If the consensus of the Conference is, however, that summary disposition is not appropriate, I would still vote to grant the petition and set the case for plenary consideration.

I should point out that the per curiam vacates, rather than reverses, the judgment of the Montana Supreme Court. The reason for this is that the state court's opinion merely assumes, without deciding, that the transaction took place in 'Indian country.' Hence I think that question should be left open on remand.

Sincerely,

J.M.H.

J. M. H.

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

JAN 7 1971

From: Harlan, J.

Circulated: ~~12/12/71 NY~~

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

October Term, 1970

ROBERT KENNERLY ET AL. v. DISTRICT COURT
OF THE NINTH JUDICIAL DISTRICT OF
MONTANA ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO SUPREME COURT
OF MONTANA

No. 5370. Decided January —, 1971

PER CURIAM.

This case arises on petition for certiorari from a judgment of the Supreme Court of Montana. The petition for certiorari and the motion to proceed *in forma pauperis* are granted. For reasons appearing below, we vacate the judgment of the Supreme Court of Montana and remand the case for further proceedings not inconsistent with this opinion.

Petitioners are members of the Blackfeet Indian Tribe and reside on the Blackfeet Indian Reservation in Montana. The tribe is duly organized under the Indian Reorganization Act of June 18, 1934, 48 Stat. 984, 25 U. S. C. § 461 *et seq.* In July and August of 1964, petitioners purchased some food on credit from a grocery store located within the town limits of Browning, a town incorporated under the laws of Montana but located within the exterior boundaries of the Blackfeet Reservation.

A suit was commenced in the Montana state courts against petitioners on the debt arising from these transactions. Petitioners moved to dismiss the suit on the ground that the state courts lacked jurisdiction because the defendants were members of the Blackfeet Tribe and the transaction took place on the Indian reservation. The lower state court overruled the motion and petitioners, pursuant to Montana rules of procedure, petitioned the Supreme Court of Montana for a "writ of

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changes.

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

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SUPREME COURT OF THE UNITED STATES

Opinion: Harlan, J.

October Term, 1970

Circulated:

ROBERT KENNERLY ET AL. v. DISTRICT COURT
OF THE NINTH JUDICIAL DISTRICT OF
MONTANA ET AL.

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan (11)
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

From: Harlan, J.

October Term, 1970

Circulated:

ROBERT KENNERLY ET AL. v. DISTRICT COURT
OF THE NINTH JUDICIAL DISTRICT OF
MONTANA ET AL.

Recirculated JAN 14 1971

ON PETITION FOR WRIT OF CERTIORARI TO SUPREME COURT
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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 7, 1971

RE: No. 5370 - Kennerly v. District Court
of Ninth Judicial Circuit

Dear John:

I agree with the Per Curiam you have
prepared in the above case.

Sincerely,



W. J. B. Jr.

Mr. Justice Harlan

cc: The Conference

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan ✓
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

October Term, 1970

Circulated:

JAN 13 1971

ROBERT KENNERLY ET AL. v. DISTRICT COURT
OF THE NINTH JUDICIAL DISTRICT OF MONTANA ET AL.

Recirculated:

ON PETITION FOR WRIT OF CERTIORARI TO SUPREME COURT
OF MONTANA

No. 5370. Decided January —, 1971

MR. JUSTICE STEWART, with whom MR. JUSTICE WHITE joins, dissenting.

This case does not involve state action infringing "the right of reservation Indians to make their own laws and be ruled by them." *Williams v. Lee*, 358 U. S. 217, 220. To the contrary, the exercise of state jurisdiction complained of here was expressly authorized by tribal law. Blackfeet Tribal Law and Order Code, ch. 2, §1. The Court holds that this tribal law is invalid because Congress has restricted the right of Indian self-government by specifying the exclusive procedure by which reservation Indians may confer on a state court jurisdiction over them.

I think that Congress did not intend in enacting either § 7 of the Act of August 15, 1953, 67 Stat. 590, or the successor to that section, Title IV of the Civil Rights Act of 1968, §§ 402 (a), 406, 25 U. S. C. §§ 1322, 1326, to invalidate tribal legislation which authorizes state courts to take jurisdiction over actions brought against a member of the tribe. It is plain to me that these statutes reflect only a congressional determination that there is a need for protective limitations when state jurisdiction over reservation Indians is to be *permanently* authorized. But I can find in these statutes no suggestion that Congress determined that such limitations are necessary

January 11, 1971

Re: No. 5370 - Kennerly v. District
Court of the Ninth Judicial
District of Montana

Dear Potter:

Please join me in your dissent
in this case.

Sincerely,

B.R.W.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 11, 1971

Re: No. 5370 - Kennerly v. District Court
of the Ninth Judicial District of Montana

Dear John:

Please join me.

Sincerely,



T.M.

Mr. Justice Harlan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 7, 1971

Re: No. 5370 - Kennerly v. District Court of Ninth
Judicial District, Montana

Dear John:

I would join you in the per curiam you have
proposed for the disposition of this case.

Sincerely,

hah

Mr. Justice Harlan

cc: The Conference