

# The Burger Court Opinion Writing Database

*Native American Church of Navajoland,  
Inc. v. Arizona Corporation Commission*  
405 U.S. 901 (1972)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



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LAW (TITLE 17, U.S. CODE)

Mr. Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Rehnquist

84

2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

NATIVE AMERICAN CHURCH OF NAVAJOLAND,  
INC., ET AL. v. ARIZONA CORPORATION  
COMMISSION

Mr. Justice Douglas, J.

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1-15

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF ARIZONA

No. 71-533. Decided January —, 1972

MR. JUSTICE DOUGLAS.

This is a direct appeal from the order of a three-judge District Court, convened pursuant to 28 U. S. C. § 2281,<sup>1</sup> denying appellants' prayer for injunctive relief. Jurisdiction over the appeal is based upon 28 U. S. C. § 1253.<sup>2</sup> If the three-judge court were improperly convened, however, the appeal lies not to this Court, but to the Court of Appeals. *Moody v. Flowers*, 387 U. S. 97. My analysis leads me to conclude that a three-judge court was not required, so I would dismiss this appeal.

The controversy involves the efforts of appellant Native American Church of Navajoland, Inc., to obtain a certificate of incorporation from the Arizona Corporation

<sup>1</sup> 28 U. S. C. § 2281:

"An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title."

<sup>2</sup> 28 U. S. C. § 1253:

"Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges."

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

3rd DRAFT

# SUPREME COURT OF THE UNITED STATES

From: Mr. Justice Douglas

NATIVE AMERICAN CHURCH OF NAVAJOLAND,  
INC., ET AL. v. ARIZONA CORPORATION  
COMMISSION

Regulated: 1/18/72

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF ARIZONA

No. 71-533. Decided January —, 1972

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE STEWART concurs.

This is a direct appeal from the order of a three-judge District Court, convened pursuant to 28 U. S. C. § 2281,<sup>1</sup> denying appellants' prayer for injunctive relief. Jurisdiction over the appeal is based upon 28 U. S. C. § 1253.<sup>2</sup> If the three-judge court were improperly convened, however, the appeal lies not to this Court, but to the Court of Appeals. *Moody v. Flowers*, 387 U. S. 97. My analysis leads me to conclude that a three-judge court was not required, so I would dismiss this appeal.

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4th DRAFT

# SUPREME COURT OF THE UNITED STATES

## NATIVE AMERICAN CHURCH OF NAVAJOLAND, INC., ET AL. v. ARIZONA CORPORATION COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF ARIZONA

No. 71-533. Decided January —, 1972

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE STEWART concurs.

This is a direct appeal from the order of a three-judge District Court, convened pursuant to 28 U. S. C. § 2281,<sup>1</sup> denying appellants' prayer for injunctive relief. Jurisdiction over the appeal is based upon 28 U. S. C. § 1253.<sup>2</sup> If the three-judge court were improperly convened, however, the appeal lies not to this Court, but to the Court of Appeals. *Moody v. Flowers*, 387 U. S. 97. My analysis leads me to conclude that a three-judge court was not required, so I would dismiss this appeal.

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For: The Chief Justice  
Mr. Justice Warren  
Mr. Justice Brandeis  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 17, 1972

Re: No. 71-533 - Native American Church  
v. Arizona Corporation Comm'n

Dear Bill,

I agree with your circulation in this case.

Sincerely yours,

PS,  
✓

Mr. Justice Douglas

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zation of the Hoover Institution Archives.

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CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

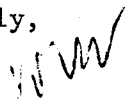
February 18, 1972

Re: No. 71-533 - Native American Church of Navajoland,  
Inc., et al. v. Arizona Corporation Commission

Dear Bill,

Please join me in your opinion in the above  
case.

Sincerely,



Mr. Justice Douglas

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zation of the Hoover Institution Archives.

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