

The Burger Court Opinion Writing Database

Northern Cheyenne Tribe v. Hollowbreast
425 U.S. 649 (1976)

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



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

CHAMBERS OF
THE CHIEF JUSTICE

May 14, 1976

Re: 75-145 - Northern Cheyenne Tribe v. Hollowbreast

Dear Bill:

I join your proposed opinion dated May 7, 1976.

Regards,

lewb

Mr. Justice Brennan

Copies to the Conference

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

From: Mr. Justice Brennan

Circulated: 3/7/76

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-145

The Northern Cheyenne Tribe, Petitioner, *v.* William Hollowbreast et al. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[May —, 1976]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The question to be decided is whether the Northern Cheyenne Allotment Act, Act of June 3, 1926, 44 Stat. 690, gave the allottees of surface lands vested rights in the mineral deposits underlying those lands. The District Court for the District of Montana held that the Act did not grant the allottees vested rights in the mineral deposits. 349 F. Supp. 1302. The Court of Appeals for the Ninth Circuit reversed. 505 F. 2d 268. We granted certiorari. 423 U.S. 891. We agree with the District Court and reverse.

I

The 1926 Act statutorily established the Northern Cheyenne Reservation pursuant to the federal policy expressed in the General Allotment Act of 1887, 24 Stat. 388,¹ and provided for the allotment of tracts of land

¹ The objects of this policy were to end tribal land ownership and to substitute private ownership, on the view that private ownership by individual Indians would better advance their assimilation as self-supporting members of our society and relieve the Federal Government of the need to continue supervision of Indian affairs. See Comment, Tribal Self-Government and the Indian Reorganization Act of 1934, 70 Mich. L. Rev. 955, 959 (1972).

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 10, 1976

Re: No. 75-145, Northern Cheyenne Tribe
v. Hollowbreast

Dear Bill,

I am glad to join your opinion for the Court in
this case.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 14, 1976

Re: No. 75-145 - The Northern Cheyenne Tribe v.
Hollowbreast

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 10, 1976

Re: No. 75-145 -- The Northern Cheyenne Tribe v.
William Hollowbreast

Dear Bill:

Please join me.

Sincerely,



T. M.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 15, 1976

Re: No. 75-145 - Northern Cheyenne Tribe
v. Hollowbreast

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

cc: The Conference

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

From: Mr. Justice Blackmun
 ✓ Circulated: 5/17/76

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

75
 No. -145

The Northern Cheyenne Tribe, | On Writ of Certiorari
 Petitioner, | to the United States
 v. | Court of Appeals for
 William Hollowbreast et al. | the Ninth Circuit.

[May 19, 1976]

MR. JUSTICE BLACKMUN, concurring.

For me, and obviously for the Congress, this case is much closer and the legislative history much less clear, than the Court's opinion makes them out to be. There are factors that distinctly favor the respondents. For one example, in other comparable statutes, there are *specific* reservations (*e. g.*, "unless otherwise provided by Congress") of the kind of congressional power that the Court finds implicit here. Our national legislature obviously knew how expressly to reserve the power and yet did not employ the "magic words" here. On balance, however, the strength of the case rests with the petitioner. It is of some importance, I feel, that the minerals could have been leased and depleted during the 50-year period. This possibility surely diminishes the reliance interest of any allottee and his successors. I therefore join the Court's opinion and its judgment.

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 10, 1976

No. 75-145 Northern Cheyenne Tribe v.
Hollowbreast

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

1fp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 14, 1976

Re: No. 75-145 - Northern Cheyenne Tribe v. Hollowbreast

Dear Bill:

Please join me.

Sincerely,

WW

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 7, 1976

Re: 75-145 - The Northern Cheyenne Tribe v.
Hollowbreast, et al.

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to the Conference