

The Burger Court Opinion Writing Database

Delaware Tribal Business Committee v. Weeks

430 U.S. 73 (1977)

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

January 22, 1977

RE: 75-1301; 1335; 1495 - Delaware Tribal Business
Comm.; Absentee Delaware Tribe of Okla. Business
Comm.; Kleppe v. Weeks

Dear Bill:

I am more nearly with Harry's position at the moment
than with an unreserved "join." I will await John's dissent,
and you will then hear from me promptly.

Regards,

WEB

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

February 17, 1977

Re: 75-1301; 1335; 1495 - Delaware Tribal Business
Comm. et al.; Absentee Delaware Tribe of Oklahoma
Business Comm. et al.; Kleppe, Sec. Interior v. Weeks

Dear Bill:

John has made some persuasive points which tempt me but I conclude we must proceed on the "fiction" that Congress generally must be presumed to know what it is doing. I doubt it did here but the "fiction" is essential to orderly operation of co-equal branches.

I come down joining Harry who goes almost the whole way with you.

Regards,



Mr. Justice Brennan

Copies to the Conference

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

1/4/77

1/4/77

Received

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75-1301, 75-1335, AND 75-1495

Delaware Tribal Business Committee
et al., Appellants,

75-1301 v.

Wanda June Weeks et al.

Absentee Delaware Tribe of Oklahoma
Business Committee et al.,
Appellants,

75-1335 v.

Wanda June Weeks et al.

Thomas S. Kleppe, Secretary of the
Interior, et al., Appellants,

75-1495 v.

Wanda June Weeks et al.

On Appeals from the
United States Dis-
trict Court for the
Western District
of Oklahoma.

[January —, 1977]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

An Act of Congress providing for distribution of funds to certain Delaware Indians, pursuant to an award by the Indian Claims Commission to redress a breach by the United States of an 1854 treaty, is challenged in this action by a group of Delawares excluded from the distribution. The question presented by this case is whether their exclusion denies them equal protection of the laws in violation of the Due Process Clause of the Fifth Amendment.¹

¹Fifth Amendment equal protection claims are cognizable under the Amendment's Due Process Clause. *Schneider v. Rusk*, 377 U. S. 163, 168 (1964); *Bolling v. Sharpe*, 347 U. S. 497, 499 (1954). "Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment." *Buckley v. Valeo*, 424 U. S. 1, 93 (1976).

pp 12, 13;
and technical changes.

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

From: Mr. Justice Brennan

Circulated: _____

Recirculated: 2/17/77

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75-1301, 75-1335, AND 75-1495

Delaware Tribal Business Committee
et al., Appellants,

75-1301 v.

Wanda June Weeks et al.

Absentee Delaware Tribe of Oklahoma
Business Committee et al.,
Appellants,

75-1335 v.

Wanda June Weeks et al.

On Appeals from the
United States Dis-
trict Court for the
Western District
of Oklahoma.

Cecil D.
Andrus

7 Thomas S. Kleppe, Secretary of the
Interior, et al., Appellants,

75-1495 v.

Wanda June Weeks et al.

[January —, 1977]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

An Act of Congress providing for distribution of funds to certain Delaware Indians, pursuant to an award by the Indian Claims Commission to redress a breach by the United States of an 1854 treaty, is challenged in this action by a group of Delawares excluded from the distribution. The question presented by this case is whether their exclusion denies them equal protection of the laws in violation of the Due Process Clause of the Fifth Amendment.¹

¹ Fifth Amendment equal protection claims are cognizable under the Amendment's Due Process Clause. *Schneider v. Rusk*, 377 U. S. 163, 168 (1964); *Bolling v. Sharpe*, 347 U. S. 497, 499 (1954). "Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment," *Buckley v. Valeo*, 424 U. S. 1, 93 (1976).

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 25, 1977

MEMORANDUM TO THE CONFERENCE

Petition for rehearing in Delaware Tribal Business Comm. v. Weeks, No. 75-1301; Absentee Delaware Tribe of Oklahoma Business Comm. v. Weeks, No. 75-1335; Andrus v. Weeks, No. 75-1495.

In their petition for rehearing, appellees Weeks, et al., ask the Court, if it does not grant the petition, to word its mandate so that it will only be effective after a reasonable time unless Congress reconsiders the matter. If such reconsideration results in no revision of the Act, or no reconsideration is undertaken by Congress, the mandate that the judgment of the District Court be reversed will end the matter. If Congress does reconsider the matter and revises the Act to include the Kansas Delawares, the questions will be mooted. Such an order would afford to Congress the opportunity to grant relief if there has been a legislative 'malfunction' and at the same time will not prejudice the rights of the Appellants. Pet., at 8-9.

This request undoubtedly stems from the Court's statement in Part IV of its opinion that Congress has the power to revise its original allocation since no distribution of money has yet taken place under the challenged Act. Slip op., at 16. I recall that in Buckley v. Valeo, 424 U.S. 1, 142-143 (1976), we stayed the Court's judgment in order to give Congress an opportunity to reconstitute the Federal Election Commission or to adopt some other valid enforcement mechanism. I do not see that what we are now requested to do differs in principle from that action in Buckley.

I would not object to our denying the petition for rehearing, but staying the judgment for, say, 90 days to give appellees an opportunity to persuade Congress to revise the allocation scheme. See our Rule 59. But if it is to be done, I think it should have Conference approval.

WJB, Jr.

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 5, 1977

Re: Nos. 75-1301, 75-1335, and 75-1495,
Delaware Tribal Business Comm. v. Weeks

Dear Bill,

I am glad to join your opinion for the Court
in these cases.

Sincerely yours,

P.S.
/

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 28, 1977

Re: No. 75-1301, Delaware Tribal Business Comm.
v. Weeks
No. 75-1335, Absentee Delaware Tribe of
Oklahoma v. Weeks
No. 75-1495, Andrus v. Weeks

Dear Bill,

I would deny the petition for rehearing, but would have no objection to staying our judgment for 90 days. I would not explicate the reason for such a stay.

Sincerely yours,

PS
1.51

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 5, 1977

Re: Nos. 75-1301, 75-1335 & 75-1495 - Delaware
Tribal Business Committee v.
Weeks

Dear Bill:

Please join me.

Sincerely,

Byron R. White

Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 30, 1977

Re: No. 75-1301 - Delaware Tribal Business Comm.
v. Weeks

Dear Bill:

My own preference would be to deny the
petition for rehearing without more.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 13, 1977

Re: Nos. 75-1301, 75-1335, and 75-1495, Delaware Tribal
Business Comm. v. Weeks

Dear Bill:

Please join me.

Sincerely,

JM.
T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 28, 1977

Re: Petition for rehearing in Delaware Tribal Business Comm. v. Weeks, No. 75-1301; Absentee Delaware Tribe of Oklahoma Business Comm. v. Weeks, No. 75-1335; Andrus v. Weeks, No. 75-1495

Dear Bill:

I agree with your suggestion on this.

Sincerely,



T.M.

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 Blackmun
 Mr. Justice Stevens

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Mr. Justice Blackmun

Circulated: 1/13/77

Nos. 75-1301, 75-1335, AND 75-1495

Recirculated: _____

Delaware Tribal Business Committee
 et al., Appellants,
 75-1301 v.

Wanda June Weeks et al.

Absentee Delaware Tribe of Oklahoma
 Business Committee et al.,
 Appellants,
 75-1335 v.

Wanda June Weeks et al.

Thomas S. Kleppe, Secretary of the
 Interior, et al., Appellants,
 75-1495 v.

Wanda June Weeks et al.

On Appeals from the
 United States Dis-
 trict Court for the
 Western District
 of Oklahoma.

[January —, 1977]

MR. JUSTICE BLACKMUN, concurring.

I join Parts I and II of the Court's opinion, but otherwise I concur only in the result.

For me, the reversal of the District Court's judgment is not a result that is so inevitable and so easily and smoothly reached as a reading of Part III of the Court's opinion makes it appear. The Court's justifications for exclusion of the Kansas Delawares are not very persuasive. The first—favoritism toward tribal Indians—is undermined by the fact that Absentee Delawares who are not members of that tribe nevertheless are entitled to participate. *Ante*, 8 n. 14. The second—exclusion from a prior distribution—is troublesome because it is difficult for me to see how perceived prior unfair treatment buttresses further unfairness. And I won-

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 29, 1977

Re: Nos. 75-1301, 75-1335, 75-1495 - Delaware Tribes

Dear Bill:

I think this request is a most unusual one and could be made in many cases. I, therefore, would simply deny the petition for re-hearing.

Sincerely,

Ha D.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 5, 1977

No. 75-1301 Delaware Tribal Business
Commission v. Weeks
No. 75-1335 Absentee Delaware Tribe
v. Weeks
No. 75-1495 Kleppe v. Weeks

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 28, 1977

No. 75-1301 Delaware Trial Business
Comm., et al.

Dear Bill:

My first choice is simply to deny the petition for rehearing.

But I would not object to denying the petition and staying the judgment for a limited period as suggested in your letter.

Sincerely,



Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

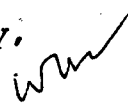
January 6, 1976

Re: Nos. 75-1301, 75-1335, and 75-1495 - Delaware
Tribal Business Committee v. Weeks, et al.

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

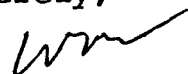
March 25, 1977

Re: No. 75-1301 - Delaware Tribal Business
Comm., et al.

Dear Bill:

I would have no objection to our denying the petition for rehearing without more, but if you would prefer I would certainly have no objection to denying the petition for rehearing but staying the judgment for ninety days, as you suggest in your letter. I would be very much opposed to including anything more than that in the denial, particularly any positive intimation that Congress ought to reconsider the matter.

Sincerely,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 6, 1976

Re: 75-1301, 1335, 1495 - Delaware Tribal
Business Committee v. Weeks et al.

Dear Bill:

Your opinion identifies three possible justifications for a legislative decision to exclude the Kansas Delawares from the distribution of funds to the successors in interest of the persons injured by the breach of the 1854 Treaty. None of those justifications raises any question about appellees' status as successors of members of the injured class; nor do you question the fact that the exclusion is the consequence of a malfunctioning of the legislative process rather than deliberate choice by Congress.

The appellees are members of the class whose claim has been determined to be valid by the Indian Claims Commission. There is nothing in the proceeding before the Claims Commission, or in the legislative history of the statute, to support the conclusion that anyone advocated, or Congress intended, to award compensation for less than all members of the class. At the end of the legislative process Congress adopted an amendment to the bill in order to be sure that the Munsees--who are not members of the class--would not participate in the award. Unfortunately, the amendment had the unintended consequence of also excluding the appellees.

In view of the fact that payment of the appropriated funds to the appellants will represent a distribution of the entire amount of the award, I do not see how the Court can be sanguine about the possibility suggested in Part IV of your opinion, of a legislative solution which will correct what I regard as a manifest injustice.

- 2 -

In any event, I still plan to prepare a dissenting opinion which will set forth the substance of the foregoing together with a discussion of the reasons why I am persuaded that each of the three hypothetical justifications for this discriminatory action is insufficient to save its constitutionality.

Respectfully,



Mr. Justice Brennan

Copies to the Conference

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

From: Mr. Justice Stevens

Circulated: FEB 15 1977

2nd DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

Nos. 75-1301, 75-1335, AND 75-1495

Delaware Tribal Business Committee
 et al., Appellants,

75-1301 v.

Wanda June Weeks et al.

Absentee Delaware Tribe of Oklahoma
 Business Committee et al.,
 Appellants,

75-1335 v.

Wanda June Weeks et al.

Thomas S. Kleppe, Secretary of the
 Interior, et al., Appellants,

75-1495 v.

Wanda June Weeks et al.

On Appeals from the
 United States Dis-
 trict Court for the
 Western District
 of Oklahoma.

[February —, 1977]

MR. JUSTICE STEVENS, dissenting.

At the outset of these proceedings the Indian Claims Commission noted that in accordance with the Indian Claims Commission Act any recovery for a breach of the Treaties of 1829 and 1854 "must be for the benefit of all the descendants of the Delaware Nation as constituted in 1829 and 1854," *Delaware Tribe of Indians v. United States*, 2 Ind. Cl. Comm. 253, 270-271 (1952).¹ In due course the Commission found

¹ Aff'd as to parties, 128 F. Supp. 391 (Ct. Cl. 1953). The Commission relied on a contemporaneous holding of the Court of Claims to the same effect, *McGhee v. Creek Nation*, 122 Ct. Cl. 380, 388, 392, 396 (1952), cert. denied, 344 U. S. 856. That court, charged by statute with interpreting the Indian Claims Commission Act and reviewing the actions of the Commission, 25 U. S. C. § 70s, continues to adhere to this view: "[T]he ancestral group 'owns' the claim, and the present-day Indian

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 29, 1977

Re: Nos. 75-1301, 75-1335, 75-1495 - Delaware Tribes

Dear Bill:

My only reason for not commenting on the request
is that I assume I have no standing to do so.

Respectfully,



Mr. Justice Brennan .

Copies to the Conference