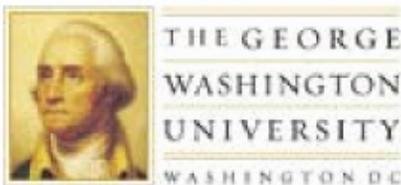


# The Burger Court Opinion Writing Database

## *Rosebud Sioux Tribe v. Kneip*

430 U.S. 584 (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

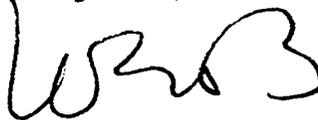
March 14, 1977

Re: 75-562 Rosebud Sioux Tribe v. Kneip, et al

Dear Bill:

I join.

Regards,



Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 28, 1977

RE: No. 75-562 Rosebud Sioux Tribe v. Kneip, et al.

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

March 4, 1977

Re: No. 75-562, Rosebud Sioux Tribe v. Kneip

Dear Bill,

Your opinion for the Court is a fine job and makes a most impressive case for diminution of the reservation. Since, however, I was of the other view on the basis of the briefs and oral arguments, I shall await Thurgood's dissent.

Sincerely yours,

PS,  
/

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

March 28, 1977

Re: No. 75-562, Rosebud Sioux Tribe v. Kneip

Dear Thurgood,

Please add my name to your dissenting opinion  
in this case.

Sincerely yours,

PS,  
/

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 7, 1977

Re: No. 75-562 - Rosebud Sioux Tribe v. Kneip

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 3, 1977

Re: No. 75-562, Rosebud Sioux Tribe v. Kneip

Dear Bill:

In due course I will circulate a dissenting opinion  
in this case.

Sincerely,

  
T. M.

Mr. Justice Rehnquist

cc: The Conference

MAR 24 1977

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-562

Rosebud Sioux Tribe, Petitioner, v. Richard Kneip et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.
---	---	---

[March —, 1977]

MR. JUSTICE MARSHALL, dissenting.

The Court holds today that in 1904, 1907, and 1910, Congress broke solemn promises it had made to the Rosebud Sioux Tribe and took from them, without any guarantee of compensation, three-quarters of their reservation. Although it was suggested at argument, *Tr.*, at 18-20, that the only consequence of such a holding would be to preclude the Tribe from continuing to exercise the jurisdiction granted to it by its approved Constitution and Bylaws,<sup>1</sup> in fact much more is at stake. This case involves not just the rights of the

<sup>1</sup> The Constitution of the Rosebud Tribe, approved by the Secretary of the Interior in 1935, App. 1396-1397, states in Art. I that "The jurisdiction of the Rosebud Sioux Tribe . . . shall extend to the territory within the original confines of the Rosebud Reservation boundaries as established by the act of March 2, 1889. . . ."

There is some confusion in the record concerning the jurisdictional history of the disputed area. At the conclusion of his lengthy opinion, the district judge stated that, "the State of South Dakota has treated the [disputed] counties . . . as portions of the state over which the State of South Dakota can exercise jurisdiction since the passage of [the] acts." *Rosebud Sioux Tribe v. Kneip*, 375 F. Supp. 1065, 1083 (SD 1974). But contrary to the Court's suggestion, *ante*, at — n. 27, this statement is hotly disputed insofar as it implies that the Tribe has conceded jurisdiction. The Tribe claims it "has consistently exercised jurisdiction over Indians on all parts of the reservation." Reply Brief, at 2b. The United States agrees, Brief for the United States as *Amicus Curiae*, at 32 n. 22, and has provided a number of examples, *id.*, at 23a-33a.

3,4,17,18

MAR 30 1977

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 75-562

Rosebud Sioux Tribe, Petitioner, v. Richard Kneip et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.
---	---	---

[March —, 1977]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN and MR. JUSTICE STEWART join, dissenting.

The Court holds today that in 1904, 1907, and 1910, Congress broke solemn promises it had made to the Rosebud Sioux Tribe and took from them, without any guarantee of compensation, three-quarters of their reservation. Although it was suggested at argument, Tr., at 18-20, that the only consequence of such a holding would be to preclude the Tribe from continuing to exercise the jurisdiction granted to it by its approved Constitution and Bylaws,<sup>1</sup> in fact much more is at stake. This case involves not just the rights of the

<sup>1</sup> The Constitution of the Rosebud Tribe, approved by the Secretary of the Interior in 1935, App. 1396-1397, states in Art. I that "The jurisdiction of the Rosebud Sioux Tribe . . . shall extend to the territory within the original confines of the Rosebud Reservation boundaries as established by the act of March 2, 1889. . . ."

There is some confusion in the record concerning the jurisdictional history of the disputed area. At the conclusion of his lengthy opinion, the district judge stated that, "the State of South Dakota has treated the [disputed] counties . . . as portions of the state over which the State of South Dakota can exercise jurisdiction since the passage of [the] acts." *Rosebud Sioux Tribe v. Kneip*, 375 F. Supp. 1065, 1083 (SD 1974). But contrary to the Court's suggestion, *ante*, at — n. 27, this statement is hotly disputed insofar as it implies that the Tribe has conceded jurisdiction. The Tribe claims it "has consistently exercised jurisdiction over Indians on all parts of the reservation." Reply Brief, at 2b. The United States agrees, Brief for the United States as *Amicus Curiae*, at 32 n. 22, and has provided a number of examples, *id.*, at 23a-33a.

March 16, 1977

Re: No. 75-562 - Rosebud Sioux Tribe v. Kneip

Dear Bill:

I feel that the changes you propose with respect to Lone Wolf go far to assuage my concern about that old case, and I appreciate your being willing to approach it in this way. I agree that there is no need to go further and explicitly cast doubt on it.

I am still on the affirm side of this case and see no reason at this time why I shall not join your opinion. Rumor has it, however, that the forthcoming dissent will focus on Mattz. Inasmuch as I wrote Mattz, I feel it advisable, for my self-comfort, to withhold my vote until I have seen the dissent. I hope you will not mind my doing this.

Sincerely,

HAB

Mr. Justice Rehnquist

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 28, 1977

Re: No. 75-562 - Rosebud Sioux Tribe v. Kneip

Dear Bill:

Please join me.

Sincerely,

*H.A.B.*

Mr. Justice Rehnquist

cc: The Conference

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

✓  
✓

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 25, 1977

No. 75-562 Rosebud Sioux v. Kneip

Dear Chief:

At Conference I voted tentatively to "reverse", but stated that I was not entirely at rest. Although the case still puzzles me more than a little, I have concluded that I will be less uncomfortable if I vote to affirm.

My original tentative vote rested primarily on the presumption against extinguishment of Indian entitlement. Mattz, Seymour and DeCoteau. But the argument of the Attorney General of South Dakota pretty well persuades me that the history for two-thirds of a century rebuts the presumption. As I understand it, the state in fact has exercised jurisdiction over the area in controversy, its population is 90% non-Indian, and landownership therein is about 90% non-Indian. In short, the longstanding interpretation of these ambiguous acts of Congress by all parties concerned - if I understand it correctly - seems sufficient to rebut the normal presumption.

I also am reluctant - when this much in doubt - to overrule carefully considered opinions of the District Court and the Court of Appeals, written by judges more familiar with these problems than most of us who have practiced solely in the East. Accordingly, I would like now to be recorded as voting to affirm.

Sincerely,

*Lewis*

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 10, 1977

No. 75-562 Rosebud Sioux Tribe v. Kneip

Dear Bill:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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

From Mr. Justice

Circulated: 977

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 75-562

Rosebud Sioux Tribe, Petitioner, v. Richard Kneip et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.
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[March —, 1977]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

In June 1972, the Rosebud Sioux Tribe sued in the United States District Court for the District of South Dakota to obtain a declaratory judgment that the original boundaries of their reservation, as defined in the Act of March 2, 1889, 25 Stat. 888, had not been diminished by three subsequent Acts of Congress passed in 1904, 1907, and 1910 respectively.<sup>1</sup> The District Court, noting that "from the time these Acts were passed, these [four] counties have been treated as outside the Rosebud Sioux reservation by the settlers, their descendants, the State of South Dakota and the federal courts," 375 F. Supp. 1065, 1084, denied relief. It concluded that Congress had intended to diminish the reservation so as to exclude the four counties in South Dakota affected by the 1904, the 1907, and the 1910 Acts. The United States Court of Appeals for the Eighth Circuit, in a careful and comprehensive opinion, affirmed the judgment of the District Court. 521 F. 2d 87. We granted certiorari, 425 U. S. 989, to review this determination in the light of our recent decisions in *DeCoteau v. District County Court*, 420 U. S. 425 (1975), and *Mattz v. Arnett*, 412 U. S. 481 (1973). Since we conclude that the three Acts

<sup>1</sup> Act of April 23, 1904, 33 Stat. 254; Act of March 2, 1906, 34 Stat. 1230; Act of May 30, 1910, 36 Stat. 448.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 15, 1977

Re: No. 75-562, Rosebud Sioux Tribe v. Kneip

Dear Harry:

I have made several changes on the enclosed copy of Rosebud in an attempt to deal with your concern that the opinion should not appear in any way to reaffirm the Lone Wolf holding. The proposed changes, I hope, remove any sense of a present endorsement of the case. I do not think, however, that we should go further and explicitly cast doubt on Lone Wolf. The issue was not suggested by any of the parties, and this Court, as recently as 1968, suggested that Lone Wolf remained good law. Menominee Tribe v. United States, 391 U.S. 404, 412-413 (1968). The present vitality of Lone Wolf, of course, is not important to the outcome of this case. I am content with leaving those waters undisturbed for now.

I believe these thoughts and these changes are consistent with the conversation we had yesterday. If you agree, and feel that they will enable you to join the opinion, I will have printed and circulated a new draft incorporating these changes.\* Let me know when you have a chance.

Sincerely,



Mr. Justice Blackmun

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\*/ The only other change of substance from the first draft to the draft that is enclosed herewith is in footnote 23 on page 17.

STYLISTIC CHANGES THROUGHOUT

*Je. 13, 10*

From Mr. ...  
 Circulated: \_\_\_\_\_  
 Recirculated: **MAR 17 1977**

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 75-562

Rosebud Sioux Tribe, Petitioner, v. Richard Kneip et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.
---	---	---

[March —, 1977]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

In June 1972, the Rosebud Sioux Tribe sued in the United States District Court for the District of South Dakota to obtain a declaratory judgment that the original boundaries of their reservation, as defined in the Act of March 2, 1889, 25 Stat. 888, had not been diminished by three subsequent Acts of Congress passed in 1904, 1907, and 1910 respectively.<sup>1</sup> The District Court, noting that "from the time these Acts were passed, these [four] counties have been treated as outside the Rosebud Sioux reservation by the settlers, their descendants, the State of South Dakota and the federal courts," 375 F. Supp. 1065, 1084, denied relief. It concluded that Congress had intended to diminish the reservation so as to exclude the four counties in South Dakota affected by the 1904, the 1907, and the 1910 Acts. The United States Court of Appeals for the Eighth Circuit, in a careful and comprehensive opinion, affirmed the judgment of the District Court. 521 F. 2d 87. We granted certiorari, 425 U. S. 989, to review this determination in the light of our recent decisions in *DeCoteau v. District County Court*, 420 U. S. 425 (1975), and *Mattz v. Arnett*, 412 U. S. 481 (1973). Since we conclude that the three Acts

<sup>1</sup> Act of April 23, 1904, 33 Stat. 254; Act of March 2, 1906, 34 Stat. 1230; Act of May 30, 1910, 36 Stat. 448.

Pp 4-5, 22, 31-32

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

From: Mr. Justice Rehnquist  
Circulated: \_\_\_\_\_  
Recirculated: \_\_\_\_\_

4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 75-562

Rosebud Sioux Tribe,  
Petitioner,  
v.  
Richard Kneip et al. } On Writ of Certiorari to the United  
States Court of Appeals for the  
Eighth Circuit.

[March —, 1977]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

In June 1972, the Rosebud Sioux Tribe sued in the United States District Court for the District of South Dakota to obtain a declaratory judgment that the original boundaries of their reservation, as defined in the Act of March 2, 1889, 25 Stat. 888, had not been diminished by three subsequent Acts of Congress passed in 1904, 1907, and 1910 respectively.<sup>1</sup> The District Court, noting that "from the time these Acts were passed, these [four] counties have been treated as outside the Rosebud Sioux reservation by the settlers, their descendants, the State of South Dakota and the federal courts," 375 F. Supp. 1065, 1084, denied relief. It concluded that Congress had intended to diminish the reservation so as to exclude the four counties in South Dakota affected by the 1904, the 1907, and the 1910 Acts. The United States Court of Appeals for the Eighth Circuit, in a careful and comprehensive opinion, affirmed the judgment of the District Court. 521 F. 2d 87. We granted certiorari, 425 U. S. 989, to review this determination in the light of our recent decisions in *DeCoteau v. District County Court*, 420 U. S. 425 (1975), and *Mattz v. Arnett*, 412 U. S. 481 (1973). Since we conclude that the three Acts

<sup>1</sup> Act of April 23, 1904, 33 Stat. 254; Act of March 2, 1906, 34 Stat. 1230; Act of May 30, 1910, 36 Stat. 448.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 18, 1977

MEMORANDUM TO THE CONFERENCE

Re: Case heretofore held for No. 75-562 - Rosebud Sioux Tribe v. Kneip

Cook v. Parkinson, No. 75-5867 is a habeas case which raises the question of whether a 1910 Act of Congress disestablished Bennett County, South Dakota from the Pine Ridge Indian Reservation, so that South Dakota state courts had jurisdiction to try petitioner, an Indian, for a crime committed on non-Indian lands in Bennett County.

The United States District Court for the District of South Dakota, in a lengthy opinion, held that Congress, by the Act of May 27, 1910, had intended to remove Bennett County from the Pine Ridge Indian Reservation. The District Court felt that the operative language of the Act showed a clear intent to disestablish Bennett County. The language relied upon by the District Court reads:

" . . . the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Pine Ridge Indian Reservation, in the State of South Dakota, lying and being in Bennett County and described as follows. . . .  
"Provided, that any Indian to whom allotments had been made on the tract to be ceded may, in case they elect to do so before said lands are offered for sale,

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 3, 1977

Re: 75-562 - Rosebud Sioux Tribe v. Richard  
Kneip, et al.

Dear Bill:

Since I originally voted the other way, I will await Thurgood's dissent. However, I must confess that I find your opinion most persuasive and am inclined to believe that I will join it.

Respectfully,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 28, 1977

Re: 75-562 - Rosebud Sioux Tribe v. Kneip, et al.

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Rehnquist

Copies to the Conference