

The Burger Court Opinion Writing Database

Oliphant v. Suquamish Tribe

435 U.S. 191 (1978)

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

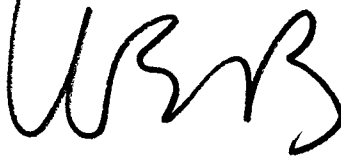
February 24, 1978

Re: 76-5729 - Oliphant, et al. v. The Suquamish
Indian Tribe, et al.

Dear Thurgood:

Will you undertake a dissent in the above?

Regards,

A handwritten signature in dark ink, appearing to be 'W B B' with a large, sweeping initial 'W'.

Mr. Justice Marshall

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

CHAMBERS OF
THE CHIEF JUSTICE

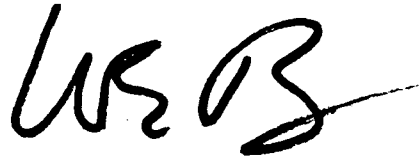
March 2, 1978

Dear Bill:

Re: 76-5729 Oliphant v. The Suquamish Indian Tribe

Thurgood advises me he will be content, as I am,
with showing that we two dissent.

Regards,



Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

March 3, 1978

RE: 76-5729 - Oliphant v. Suquamish Indian Tribe

Dear Thurgood:

Please join me in your dissent.

Regards,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 23, 1978

Re: No. 76-5729, Oliphant v.
Suquamish Indian Tribe

Dear Bill,

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

Sincerely yours,

P.S.
✓

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 24, 1978

Re: #76-5729 - Oliphant v. The
Suquamish Indian Tribe
et al.

Dear Bill,

Please join me in your excellent opinion
on this very difficult subject.

Sincerely,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 3, 1978

Re: No. 76-5729, Oliphant v. Suquamish Indian Tribe

Dear Chief:

I decided that I feel more comfortable including a short statement of my reasons for dissenting. I assume that this will not prevent the decision from issuing on Monday.

Sincerely,



T.M.

The Chief Justice

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 3, 1978

No. 76-5729, Oliphant v. Suquamish Indian Tribe

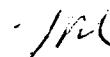
MEMORANDUM TO THE CONFERENCE

I have sent to the printer the following short statement of my reasons for dissenting in this case, which I understand is to issue on Monday.

MR. JUSTICE MARSHALL, dissenting.

I agree with the court below that the "power to preserve order on the reservation . . . is a sine qua non of the sovereignty that the Suquamish originally possessed." 544 F. 2d 1007, 1009 (CA9 1976). In the absence of affirmative withdrawal by treaty or statute, I am of the view that Indian tribes enjoy as a necessary aspect of their retained sovereignty the right to try and punish all persons who commit offenses against tribal law within the reservation. Accordingly, I dissent.

Sincerely,



T.M.

8 MAR 1978

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-5729

Mark David Oliphant and Daniel B.	}	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
Belgarde, Petitioners,		
v.		
The Suquamish Indian Tribe et al.		

[March —, 1978]

MR. JUSTICE MARSHALL, with whom THE CHIEF JUSTICE joins, dissenting.

I agree with the court below that the "power to preserve order on the reservation . . . is a sine qua non of the sovereignty that the Suquamish originally possessed." 544 F. 2d 1007, 1009 (CA9 1976). In the absence of affirmative withdrawal by treaty or statute, I am of the view that Indian tribes enjoy as a necessary aspect of their retained sovereignty the right to try and punish all persons who commit offenses against tribal law within the reservation. Accordingly, I dissent.

February 27, 1978

Re: No. 76-5729 - Oliphant v. Suquamish Indian Tribe

Dear Bill:

By separate letter I am glad to join your proposed opinion in this case. I have two very minor and picky suggestions for your consideration; they do not affect my joinder:

1. Would it not be better to indicate that we granted Belgarde's petition for certiorari before judgment. Without such a statement, I found the second full paragraph on page 3 mildly confusing as to how Belgarde arrived here. I confess that if one reads what is said at 431 U.S. 964, it may become apparent.

2. On the next to the last line of the opinion, page 21, the words "nonmembers of their tribe" puzzled me a little. Would they be better replaced by "non-Indians," a phrase you use at the end of the second paragraph on page 3. If either of the offenses charged in this case had involved a Rosebud Sioux who was vacationing in Washington, I am not sure what the answer would be.

These, of course, are trivia, and I may be out of line suggesting that you consider them.

Sincerely,

HAB

Mr. Justice Rehnquist

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 27, 1978

Re: No. 76-5729 - Oliphant v. Suquamish Indian Tribe

Dear Bill:

Please join me.

Sincerely,

HAB.
—

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 28, 1978

No. 76-5729 Oliphant v. Suquamish Indian Tribe

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 Blackmun
 Mr. Justice Powell
 Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: SEP 24 1978

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-5729

Mark David Oliphant and Daniel B. Belgarde, Petitioners, <i>v.</i> The Suquamish Indian Tribe et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
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[February —, 1978]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Two hundred years ago, the area bordering Puget Sound consisted of a large number of politically autonomous Indian villages, each occupied by from a few dozen to over a hundred Indians. Through a series of treaties in the mid-19th century, these loosely related villages were aggregated into a series of Indian tribes, one of which, the Suquamish, has become the focal point of this litigation. By the 1855 Treaty of Point Elliott, 12 Stat. 927, the Suquamish Indian Tribe relinquished all rights that they might have had in the lands of the State of Washington and agreed to settle on a 7,276-acre reservation near Port Madison, Wash. Located on Puget Sound across from the city of Seattle, the Port Madison Reservation is a checkerboard of tribal community land, allotted Indian lands, property held in fee-simple by non-Indians, and various roads and public highways maintained by Kitsap County.¹

¹ According to the District Court's findings of fact, the "Port Madison Indian Reservation consists of approximately 7,276 acres of which approximately 63% thereof is owned in fee-simple absolute by non-Indians and the remaining 37% is Indian owned lands subject to the trust status of the United States, consisting mostly of unimproved acreage upon which no persons reside. Residing on the reservation is an estimated population of approximately 2,928 non-Indians living in 976 dwelling units. There lives on the reservation approximately 50 members of the Suquamish Indian Tribe. Within the reservation are numerous public highways of the State

✓
Pg 2, 3, 10, 12, 18 & 21
footnotes renumbered

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

From: Mr. Justice Rehnquist

Circulated _____
1578
Reproduced _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-5729

Mark David Oliphant and Daniel B.	} On Writ of Certiorari to
Belgarde, Petitioners,	
v.	
The Suquamish Indian Tribe et al.	the United States Court of Appeals for the Ninth Circuit.

[February —, 1978]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

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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

Pp 3,17420

3rd DRAFT

MAP 8 18/6

SUPREME COURT OF THE UNITED STATES

No. 76-5729

Mark David Oliphant and Daniel B.	} On Writ of Certiorari to
Belgarde, Petitioners,	
v.	
The Suquamish Indian Tribe et al.	the United States Court of Appeals for the Ninth Circuit.

[February —, 1978]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Two hundred years ago, the area bordering Puget Sound consisted of a large number of politically autonomous Indian villages, each occupied by from a few dozen to over a hundred Indians. Through a series of treaties in the mid-19th century, these loosely related villages were aggregated into a series of Indian tribes, one of which, the Suquamish, has become the focal point of this litigation. By the 1855 Treaty of Point Elliott, 12 Stat. 927, the Suquamish Indian Tribe relinquished all rights that they might have had in the lands of the State of Washington and agreed to settle on a 7,276-acre reservation near Port Madison, Wash. Located on Puget Sound across from the city of Seattle, the Port Madison Reservation is a checkerboard of tribal community land, allotted Indian lands, property held in fee-simple by non-Indians, and various roads and public highways maintained by Kitsap County.¹

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 17, 1978

Dear Harry:

Here is the letter from John Miller
about which we spoke.

Sincerely,



Mr. Justice Blackmun

Attachment

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 27, 1978

Re: 76-5729 - Oliphant v. The Suquamish Indian
Tribe

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Rehnquist

Copies to the Conference