

# The Burger Court Opinion Writing Database

*Santa Clara Pueblo v. Martinez*

436 U.S. 49 (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

December 10, 1977

Re: 76-682 - Santa Clara Pueblo v. Martinez

MEMORANDUM TO THE CONFERENCE:

My vote is to reverse.

Regards,

W. B.

W. B.

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

CHAMBERS OF  
THE CHIEF JUSTICE

April 7, 1978

Re: 76-682 - Santa Clara Pueblo v. Martinez

Dear Thurgood:

I join.

Regards,

WEBB

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 3, 1978

RE: No. 76-682 Santa Clara Pueblo, et al. v. Martinez

Dear Thurgood:

Please join me.

Sincerely,

*Bill*

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 10, 1978

Re: No. 76-682, Santa Clara Pueblo v. Martinez

Dear Thurgood,

At the Conference discussion I expressed a different reason why I thought the judgment in this case should be reversed. I have decided, however, that no souls would be saved by a concurring opinion on my part. Your opinion for the Court is very persuasive, and I am glad to join it.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 30, 1978

Re: 76-682 - Santa Clara Pueblo  
v. Martinez

---

Dear Thurgood,

I am considering a lonesome dissent  
in this case.

Sincerely,



Mr. Justice Marshall  
Copies to the Conference

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

From: Mr. Justice White

Circulated: 5/3

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-682

Santa Clara Pueblo et al.,  
 Petitioners,  
 v.  
 Julia Martinez et al. } On Writ of Certiorari to the  
 } United States Court of Appeals  
 } for the Tenth Circuit.

[May —, 1978]

MR. JUSTICE WHITE, dissenting.

The declared purpose of the Indian Civil Rights Act of 1968 (ICRA or Act), 25 U. S. C. §§ 1301-1341, is "to insure that the American Indian is afforded the broad constitutional rights secured to other Americans." S. Rep. No. 841, 90th Cong., 1st Sess., 6 (1967) (hereinafter Senate Report). The Court today, by denying a federal forum to Indians who allege that their rights under the ICRA have been denied by their tribes, substantially undermines the goal of the ICRA and in particular frustrates Title I's<sup>1</sup> purpose of "protect[ing] individual Indians from arbitrary and unjust actions of tribal governments." Senate Report 6. Because I believe that implicit within Title I's declaration of constitutional rights is the authorization for an individual Indian to bring a civil action in federal court against tribal officials<sup>2</sup> for declaratory and injunctive relief to enforce those provisions, I dissent.

Under 28 U. S. C. § 1343 (4), federal district courts have jurisdiction over "any civil action authorized by law to be

<sup>1</sup> 25 U. S. C. §§ 1301-1303.

<sup>2</sup> Because the ICRA is silent on the question, I agree with the Court that the Act does not constitute a waiver of the Pueblo's sovereign immunity. The relief respondents seek, however, is available against petitioner Lucario Padilla, the Governor of the Pueblo. Under the Santa Clara constitution, the governor is charged with the duty of enforcing the Pueblo's laws. App. 5.

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

STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 5

*Old & n 4 deleted -  
renumbered footnotes*

From: Mr. Justice White

Circulated: \_\_\_\_\_

Recirculated: S/11

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-682

Santa Clara Pueblo et al.,  
Petitioners,  
v.  
Julia Martinez et al. } On Writ of Certiorari to the  
United States Court of Appeals  
for the Tenth Circuit.

[May —, 1978]

MR. JUSTICE WHITE, dissenting.

The declared purpose of the Indian Civil Rights Act of 1968 (ICRA or Act), 25 U. S. C. §§ 1301-1341, is "to insure that the American Indian is afforded the broad constitutional rights secured to other Americans." S. Rep. No. 841, 90th Cong., 1st Sess., 6 (1967) (hereinafter Senate Report). The Court today, by denying a federal forum to Indians who allege that their rights under the ICRA have been denied by their tribes, substantially undermines the goal of the ICRA and in particular frustrates Title I's<sup>1</sup> purpose of "protect[ing] individual Indians from arbitrary and unjust actions of tribal governments." Senate Report 6. Because I believe that implicit within Title I's declaration of constitutional rights is the authorization for an individual Indian to bring a civil action in federal court against tribal officials<sup>2</sup> for declaratory and injunctive relief to enforce those provisions, I dissent.

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<sup>2</sup> Because the ICRA is silent on the question, I agree with the Court that the Act does not constitute a waiver of the Pueblo's sovereign immunity. The relief respondents seek, however, is available against petitioner Lucario Padilla, the Governor of the Pueblo. Under the Santa Clara constitution, the Governor is charged with the duty of enforcing the Pueblo's laws. App. 5.

28 MAR 1978

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-682

Santa Clara Pueblo et al.,  
Petitioners,  
v.  
Julia Martinez et al. } On Writ of Certiorari to the  
United States Court of Appeals  
for the Tenth Circuit.

[March —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case requires us to decide whether a federal court may pass on the validity of an Indian tribe's ordinance denying membership to the children of certain female tribal members.

Petitioner Santa Clara Pueblo is an Indian tribe that has been in existence for over 600 years. Respondents, a female member of the tribe and her daughter, brought suit in federal court against the tribe and its Governor, petitioner Lucario Padilla, seeking declaratory and injunctive relief against enforcement of a tribal ordinance denying membership in the tribe to children of female members who marry outside the tribe, while extending membership to children of male members who marry outside the tribe. Respondents claimed that this rule discriminates on the basis of both sex and ancestry in violation of Title I of the Indian Civil Rights Act of 1968 (ICRA), 25 U. S. C. §§ 1301–1303 (1970), which provides in relevant part that “[n]o Indian tribe in exercising powers of self-government shall . . . deny to any person within its jurisdiction the equal protection of its laws.” *Id.*, § 1302 (8).<sup>1</sup>

<sup>1</sup> The Indian Civil Rights Act was initially passed by the Senate in 1967, 113 Cong. Rec. 35473, as a separate bill containing six titles. S. 1843, 90th Cong., 1st Sess. (1967). It was re-enacted by the Senate in 1968 without change, 114 Cong. Rec. 5838, as an amendment to a House-originated bill, H. R. 2516, 90th Cong., 2d Sess. (1968), and was

P. 24

29 MAR 1978

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-682

Santa Clara Pueblo et al.,  
 Petitioners,  
 v.  
 Julia Martinez et al. } On Writ of Certiorari to the  
 } United States Court of Appeals  
 for the Tenth Circuit.

[March —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court. This case requires us to decide whether a federal court may pass on the validity of an Indian tribe's ordinance denying membership to the children of certain female tribal members.

Petitioner Santa Clara Pueblo is an Indian tribe that has been in existence for over 600 years. Respondents, a female member of the tribe and her daughter, brought suit in federal court against the tribe and its Governor, petitioner Lucario Padilla, seeking declaratory and injunctive relief against enforcement of a tribal ordinance denying membership in the tribe to children of female members who marry outside the tribe, while extending membership to children of male members who marry outside the tribe. Respondents claimed that this rule discriminates on the basis of both sex and ancestry in violation of Title I of the Indian Civil Rights Act of 1968 (ICRA), 25 U. S. C. §§ 1301-1303 (1970), which provides in relevant part that “[n]o Indian tribe in exercising powers of self-government shall . . . deny to any person within its jurisdiction the equal protection of its laws.” *Id.*, § 1302 (8).<sup>1</sup>

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 31, 1978

Re: No. 76-682 - Santa Clara Pueblo v. Martinez

Dear Lewis and John:

I am moderately inclined at this point to leave in Part III. The holding of Part III follows clearly from our prior decisions, and helps elucidate the background against which we decide the question whether to imply a cause of action against the individual officers. Moreover, I think it useful for the Court to make clear that if Congress decides to authorize additional actions under the ICRA, it must speak clearly if it chooses to make the tribe itself, as a sovereign entity, amenable to suits.

However, if Part III continues to trouble you, or if it is a problem for others in the majority who have not yet spoken, I would be prepared to abandon it.

Sincerely,

*JM.*

T.M.

Mr. Justice Powell  
Mr. Justice Stevens

cc: The Conference

Deletion, changes  
at APR 20, 21

3 APR 1978

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-682

Santa Clara Pueblo et al.,  
Petitioners,  
v.  
Julia Martinez et al. } On Writ of Certiorari to the  
United States Court of Appeals  
for the Tenth Circuit.

[April —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case requires us to decide whether a federal court may pass on the validity of an Indian tribe's ordinance denying membership to the children of certain female tribal members.

Petitioner Santa Clara Pueblo is an Indian tribe that has been in existence for over 600 years. Respondents, a female member of the tribe and her daughter, brought suit in federal court against the tribe and its Governor, petitioner Lucario Padilla, seeking declaratory and injunctive relief against enforcement of a tribal ordinance denying membership in the tribe to children of female members who marry outside the tribe, while extending membership to children of male members who marry outside the tribe. Respondents claimed that this rule discriminates on the basis of both sex and ancestry in violation of Title I of the Indian Civil Rights Act of 1968 (ICRA), 25 U. S. C. §§ 1301-1303 (1970), which provides in relevant part that "[n]o Indian tribe in exercising powers of self-government shall . . . deny to any person within its jurisdiction the equal protection of its laws." *Id.*, § 1302 (8).<sup>1</sup>

<sup>1</sup> The Indian Civil Rights Act was initially passed by the Senate in 1967, 113 Cong. Rec. 35473, as a separate bill containing six titles. S. 1843, 90th Cong., 1st Sess. (1967). It was re-enacted by the Senate in 1968 without change, 114 Cong. Rec. 5838, as an amendment to a House-originated bill, H. R. 2516, 90th Cong., 2d Sess. (1968), and was

PP 1,22

11 APR 1978

4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

**No. 76-682**

Santa Clara Pueblo et al.,  
Petitioners,  
*v.*  
Julia Martinez et al. } On Writ of Certiorari to the  
United States Court of Appeals  
for the Tenth Circuit.

[April —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.\* )

This case requires us to decide whether a federal court may pass on the validity of an Indian tribe's ordinance denying membership to the children of certain female tribal members.

Petitioner Santa Clara Pueblo is an Indian tribe that has been in existence for over 600 years. Respondents, a female member of the tribe and her daughter, brought suit in federal court against the tribe and its Governor, petitioner Lucario Padilla, seeking declaratory and injunctive relief against enforcement of a tribal ordinance denying membership in the tribe to children of female members who marry outside the tribe, while extending membership to children of male members who marry outside the tribe. Respondents claimed that this rule discriminates on the basis of both sex and ancestry in violation of Title I of the Indian Civil Rights Act of 1968 (ICRA), 25 U. S. C. §§ 1301-1303 (1970), which provides in relevant part that "[n]o Indian tribe in exercising powers of self-government shall . . . deny to any person within its jurisdiction the equal protection of its laws." *Id.*, § 1302 (8).<sup>1</sup>

\*MR. JUSTICE REHNQUIST joins Parts I, II, IV, and V of this opinion.

<sup>1</sup>The Indian Civil Rights Act was initially passed by the Senate in 1967, 113 Cong. Rec. 35473, as a separate bill containing six titles. S. 1843, 90th Cong., 1st Sess. (1967). It was re-enacted by the Senate in 1968 without change, 114 Cong. Rec. 5838, as an amendment to a House-originated bill, H. R. 2516, 90th Cong., 2d Sess. (1968), and was

UJ's Draft

✓ —  
Deletion  
p. 17  
Footnotes renumbered

5 MAY 1978

5th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-682

Santa Clara Pueblo et al.,  
Petitioners,  
v.  
Julia Martinez et al. } On Writ of Certiorari to the  
United States Court of Appeals  
for the Tenth Circuit.

[May —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.\*

This case requires us to decide whether a federal court may pass on the validity of an Indian tribe's ordinance denying membership to the children of certain female tribal members.

Petitioner Santa Clara Pueblo is an Indian tribe that has been in existence for over 600 years. Respondents, a female member of the tribe and her daughter, brought suit in federal court against the tribe and its Governor, petitioner Lucario Padilla, seeking declaratory and injunctive relief against enforcement of a tribal ordinance denying membership in the tribe to children of female members who marry outside the tribe, while extending membership to children of male members who marry outside the tribe. Respondents claimed that this rule discriminates on the basis of both sex and ancestry in violation of Title I of the Indian Civil Rights Act of 1968 (ICRA), 25 U. S. C. §§ 1301-1303 (1970), which provides in relevant part that "[n]o Indian tribe in exercising powers of self-government shall . . . deny to any person within its jurisdiction the equal protection of its laws." *Id.*, § 1302 (8).<sup>1</sup>

\*MR. JUSTICE REHNQUIST joins Parts I, II, IV, and V of this opinion.

<sup>1</sup> The Indian Civil Rights Act was initially passed by the Senate in 1967, 113 Cong. Rec. 35473, as a separate bill containing six titles. S. 1843, 90th Cong., 1st Sess. (1967). It was re-enacted by the Senate in 1968 without change, 114 Cong. Rec. 5838, as an amendment to a House-originated bill, H. R. 2516, 90th Cong., 2d Sess. (1968), and was

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 22, 1978

MEMORANDUM TO THE CONFERENCE

Re: Case HELD for Santa Clara Pueblo v. Martinez, 76-682;  
Graves v. White Mountain Apache Tribe, 77-1077

After a federal suit was dismissed on jurisdictional grounds, petitioners sued an Indian tribe, the tribe's timber company, the general manager of this tribal enterprise and his wife, and the tribe's insurance company, in state court for personal injuries sustained by petitioner Darrel Graves while working at the tribe's sawmill. The Arizona Court of Appeals Division One, held that (1) the doctrine of tribal immunity barred the suit against the tribe itself; (2) the timber company was part of the tribe and as such also immune from suit; (3) the individual defendants, since they were acting as agents for the tribe within the scope of their authority, were also protected by the tribe's immunity from suit; and (4) the tribe's purchase of liability insurance was not a waiver of immunity. Petitioners seek review of each of these holdings.

In Santa Clara, we reaffirmed our prior holdings that Indian tribes are immune from suit in state or federal courts without express authorization from Congress. Petitioner's argument -- that the original justifications for the rule of tribal sovereignty have disappeared -- must therefore be addressed to Congress, not this Court. The state court's conclusion that the timber company is a part of the tribe is a factual one, not worthy of review here. In any event, the opinion below states that petitioners did "not question" the validity of its earlier holdings that (1) this timber company was a part of the tribe, and (2) that the general manager of the tribal enterprise was immune from suit for actions taken within the scope of his duty as the tribe's agent. See White Mountain Apache Indian Tribe v. Shelley, 480 P. 2d 654 (Ariz. Supreme Ct. 1971). In light of this concession below, I do not think it makes sense for us to review these questions.

Finally, with respect to whether a purchase of liability insurance should be regarded as a waiver of immunity, I do not believe the issue merits review at this time or in this case. First, there is no conflict of authority on the question. Second, according to the respondent, the weight of authority

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 28, 1978

Re: No. 76-682 - Santa Clara Pueblo v. Martinez

Dear Thurgood:

Will you please add at the end of your opinion that I took no part in the consideration or decision of this case.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 30, 1978

76-682 Santa Clara Pueblo v. Martinez

Dear Thurgood:

I am glad to join your opinion, which is extremely well done.

I would prefer to omit Part III (pp. 8-9), in which you hold that Congress did not waive tribal immunity from suit by enacting the Indian Civil Rights Act. I would not have thought this necessary to include in view of your holding in Part IV. But my "join" is not conditioned on your eliminating Part III.

Sincerely,

*Lewis*

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 3, 1978

No. 76-682 Santa Clara Pueblo v. Martinez

Dear Thurgood:

Thank you for your note of March 31.

Although my preference is to omit Part III, I certainly will "join four" to leave it in - if this is your preference.

Sincerely,



Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 5, 1978

Re: No. 76-682 - Santa Clara Pueblo v. Martinez

Dear Thurgood:

Please join me in Parts I, II, IV, and in the judgment in this case. I am familiar with the exchange of correspondence between you, Lewis, and John, and appreciate your preference for leaving in Part III. Nonetheless, I tend to agree with Harry's observation made in one of these cases during the last Term or so that eventually, in a proper case, we are going to have to take another look at the somewhat casually considered decision in United States v. United States Fidelity and Guaranty Co., 309 U.S. 506 (1940); I also feel there is some slight cross-pulling between your Part III and my recent opinion for the Court in Oliphant v. Suquamish, which is perhaps not surprising since you dissented in that case. I agree with the analysis contained in the rest of your opinion, and could probably join Part III with a few changes. But I am sure you would prefer to get a Court for the whole opinion as now written, and that is why I am sending you this "join" letter.

Sincerely,

*Wm*

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

(1)

March 29, 1978

Re: 76-682 - Santa Clara Pueblo v. Martinez

Dear Thurgood:

Please join me.

Respectfully,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 30, 1978

Re: 76-682 - Santa Clara Pueblo v. Martinez

Dear Thurgood:

Although I do not qualify my join in your opinion, I also had the feeling expressed by Lewis that it would be better to omit Part III.

Respectfully,



Mr. Justice Marshall

Copies to the Conference