

# The Burger Court Opinion Writing Database

*Washington v. Confederated Bands and Tribes of Yakima Nation*

439 U.S. 463 (1979)

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 11, 1979

No. 77-388 - Washington v. Confederated Bands

Dear Potter:

I join.

Regards,

*W. C. B.*

Mr. Justice Stewart

Copies to The Conference

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

October 11, 1978

RE: No. 77-388 Washington v. Confederated Bands & Tribes of the Yakima Indian Nation

Dear Thurgood:

You and I are in dissent in the above. Would you  
care to undertake the dissent?

Sincerely,



Mr. Justice Marshall

*WJB*  
*sure - thank*  
*MM*

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 11, 1979

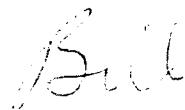
RE: No. 77-388 State of Washington v. Confederated Bands  
of the Yakima Indian Nation

---

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

cc: The Conference

*PG*  
*Argued 10/10/78*  
*Decided 12/12/78*

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

From: Mr. Justice Stewart

Circulated: 26 DEC 1978

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

**1st DRAFT**

**SUPREME COURT OF THE UNITED STATES**

No. 77-388

State of Washington et al.,  
Appellants,  
v.  
Confederated Bands and Tribes  
of the Yakima Indian Nation. | On Appeal from the United  
States Court of Appeals  
for the Ninth Circuit.

[January —, 1979]

MR. JUSTICE STEWART delivered the opinion of the Court.

In this case we are called upon to resolve a dispute between the State of Washington and the Yakima Indian Nation over the validity of the State's exercise of jurisdiction on the Yakima Reservation. In 1963 the Washington Legislature obligated the State to assume civil and criminal jurisdiction over Indians and Indian territory within the State, subject only to the condition that in all but eight subject-matter areas jurisdiction would not extend to Indians on trust or restricted lands without the request of the Indian tribe affected. Ch. 36, 1963 Washington Laws.<sup>1</sup> The Yakima Nation

<sup>1</sup> The statute, codified as R. C. W. S. 37.12.010, provides:

*"Assumption of criminal and civil jurisdiction by state*

"Assumption of criminal and civil jurisdiction by state. The State of Washington hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, reservations, country, and lands within this state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session), but such assumption of jurisdiction shall not apply to Indians when on their tribal lands or allotted lands within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States, unless the provisions

Changes throughout. See 14, 25, 27, 31

To: The Clerk  
Mr. Justice BRENNAN  
Mr. Justice WHITE  
Mr. Justice MARSHALL ✓  
Mr. Justice WILLIAMS  
Mr. Justice POWELL  
Mr. Justice REHNQUIST  
Mr. Justice STEVENS

From: Mr. Justice Stewart

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

Recirculated: 8 JAN 1979

**2nd DRAFT**

**SUPREME COURT OF THE UNITED STATES**

No. 77-388

State of Washington et al.,  
Appellants,  
v.  
Confederated Bands and Tribes  
of the Yakima Indian Nation. } On Appeal from the United  
States Court of Appeals  
for the Ninth Circuit.

[January —, 1979]

MR. JUSTICE STEWART delivered the opinion of the Court.

In this case we are called upon to resolve a dispute between the State of Washington and the Yakima Indian Nation over the validity of the State's exercise of jurisdiction on the Yakima Reservation. In 1963 the Washington Legislature obligated the State to assume civil and criminal jurisdiction over Indians and Indian territory within the State, subject only to the condition that in all but eight subject-matter areas jurisdiction would not extend to Indians on trust or restricted lands without the request of the Indian tribe affected. Ch. 36, 1963 Washington Laws.<sup>1</sup> The Yakima Nation

<sup>1</sup> The statute, codified as R. C. W. S. 37.12.010, provides:

*"Assumption of criminal and civil jurisdiction by state"*

"Assumption of criminal and civil jurisdiction by state. The State of Washington hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, reservations, country, and lands within this state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session), but such assumption of jurisdiction shall not apply to Indians when on their tribal lands or allotted lands within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States, unless the provisions

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 27, 1978

Re: 77-388 — State of Washington, et al.  
v. Confederated Bands and  
Tribes of the Yakima Indian  
Nation

---

Dear Potter:

I agree.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

October 12, 1978

Re: No. 77-388 - Washington v. Confederated Bands &  
Tribes of the Yakima Indian Nation

Dear Bill:

Sure - thanx.

Sincerely,

*T.M.*  
T.M.

Mr. Justice Brennan

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 27, 1978

Re: No. 77-388 - State of Washington v.  
Confederated Bands and Tribes of the  
Yakima Indian Nation

Dear Potter:

I hope to circulate a dissent soon.

Sincerely,

T.M.

T.M.

Mr. Justice Stewart

cc: The Conference

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

9 JAN 1979

From: Mr. Justice Marshall  
9 JAN 1979  
Circulated: \_\_\_\_\_

1st DRAFT

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

## SUPREME COURT OF THE UNITED STATES

No. 77-388

State of Washington et al.,  
Appellants,  
v.  
Confederated Bands and Tribes  
of the Yakima Indian Nation. } On Appeal from the United  
States Court of Appeals  
for the Ninth Circuit.

[January —, 1979]

MR. JUSTICE MARSHALL, dissenting.

For over 140 years, the Court has resolved ambiguities in statutes, documents, and treaties that affect retained tribal sovereignty in favor of the Indians.<sup>1</sup> This interpretive principle is a response to the unique relationship between the Federal Government and the Indian people, "who are the wards of the nation, dependent upon its protection and good faith." *Carpenter v. Shaw*, 280 U. S. 363, 367 (1930). More fundamentally, the principle is a doctrinal embodiment of "the right of [Indian Nations] to make their own laws and be ruled by them." *Williams v. Lee*, 358 U. S. 217, 220 (1959), a right emphatically reaffirmed last Term in *United States v. Wheeler*, 435 U. S. 313, 322-330 (1978). Although retained

<sup>1</sup> E. g., *Worcester v. Georgia*, 6 Pet. 515, 580-582 (1832) (McLean, J., concurring); *The Kansas Indians (Wan-zop-e-ah v. Board of Commissioners of the County of Miami)*, 5 Wall. 737, 760 (1867); *Jones v. Meehan*, 175 U. S. 1, 11-12 (1899); *Cherokee Intermarriage Cases*, 203 U. S. 76, 94 (1906); *Choate v. Trapp*, 224 U. S. 665, 675 (1912); *Alaska Pacific Fisheries v. United States*, 248 U. S. 78, 89 (1918); *Carpenter v. Shaw*, 280 U. S. 363, 366-367 (1930); *United States v. Santa Fe Pacific R. Co.*, 314 U. S. 339, 353-354 (1941); *Squire v. Capoeman*, 351 U. S. 1, 6-7 (1956); *Menominee Tribe of Indians v. United States*, 391 U. S. 404, 406 n. 2 (1968); *McClanahan v. Arizona State Tax Commission*, 411 U. S. 164, 173-175, and n. 13 (1973); *Bryan v. Itasca County*, 426 U. S. 373, 392-393 (1975).

— Stylistic changes 1-6

11 JAN 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-388

State of Washington et al.,  
Appellants,  
v.  
Confederated Bands and Tribes  
of the Yakima Indian Nation. } On Appeal from the United  
States Court of Appeals  
for the Ninth Circuit.

[January —, 1979]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, dissenting.

For over 140 years, the Court has resolved ambiguities in statutes, documents, and treaties that affect retained tribal sovereignty in favor of the Indians.<sup>1</sup> This interpretive principle is a response to the unique relationship between the Federal Government and the Indian people, "who are the wards of the nation, dependent upon its protection and good faith." *Carpenter v. Shaw*, 280 U. S. 363, 367 (1930). More fundamentally, the principle is a doctrinal embodiment of "the right of [Indian Nations] to make their own laws and be ruled by them." *Williams v. Lee*, 358 U. S. 217, 220 (1959), a right emphatically reaffirmed last Term in *United States v. Wheeler*, 435 U. S. 313, 322-330 (1978). Although retained

<sup>1</sup> E. g., *Worcester v. Georgia*, 6 Pet. 515, 580-582 (1832) (McLean, J., concurring); *The Kansas Indians (Wan-zop-e-ah v. Board of Commissioners of the County of Miami)*, 5 Wall. 737, 760 (1867); *Jones v. Meehan*, 175 U. S. 1, 11-12 (1899); *Cherokee Intermarriage Cases*, 203 U. S. 76, 94 (1906); *Choate v. Trapp*, 224 U. S. 665, 675 (1912); *Alaska Pacific Fisheries v. United States*, 248 U. S. 78, 89 (1918); *Carpenter v. Shaw*, 280 U. S. 363, 366-367 (1930); *United States v. Santa Fe Pacific R. Co.*, 314 U. S. 339, 353-354 (1941); *Square v. Capoeman*, 351 U. S. 1, 6-7 (1956); *Menominee Tribe of Indians v. United States*, 391 U. S. 404, 406 n. 2 (1968); *McClanahan v. Arizona State Tax Commission*, 411 U. S. 164, 173-175, and n. 13 (1973); *Bryan v. Itasca County*, 426 U. S. 373, 392-393 (1976).

January 2, 1979

Re: No. 77-388 - Washington v. Confederated Bands

Dear Potter:

By a separate note I am joining your opinion. I would feel much more comfortable, however, if you could see your way clear to eliminate the last sentence of footnote 22 on page 14. You have already said that the argument made by the Tribe is "tendentious," and I would prefer not to rub it in any more.

There are also a number of confusing typographicals on pages 6, 7, 15, 22, and 25. Tom Merrill, my clerk, will be speaking to your clerk about these; perhaps he already has done so.

Sincerely,

HAB

Mr. Justice Stewart

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 2, 1979

Re: No. 77-388 - Washington v. Confederated Bands

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 28 1978

No. 77-388 Washington v. Confederated Bands

Dear Potter:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 2, 1979

Re: No. 77-388 State of Washington v. Confederated Bands

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

December 28, 1978

RE: 77-388 - State of Washington v. Confederated Bands and  
Tribes of the Yakima Indian Nation

Dear Potter:

Please join me.

Respectfully,



Mr. Justice Stewart

Copies to the Conference