

# The Burger Court Opinion Writing Database

*Wilson v. Omaha Tribe*

442 U.S. 653 (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

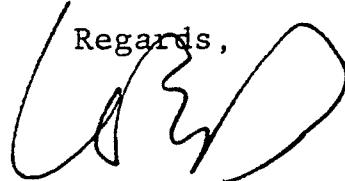
June 5, 1979

Dear Byron:

Re: (78-160 Roy Tibblas Wilson v. Omaha Indian Tribe  
(78-161 State of Iowa v. Omaha Indian Tribe

I join.

Regards,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

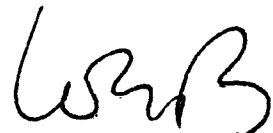
June 12, 1979

Re: (78-160 - Wilson v. Omaha Indian Tribe  
(78-161 - Iowa v. Omaha Indian Tribe

Dear Harry:

Please join me in your June 11 concurring opinion.

Regards,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 30, 1979

RE: Nos. 78-160 & 161 Wilson & Iowa v. Omaha Indian  
Tribe

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Dear Byron:

I was the other way but I give up. Your very  
persuasive opinion carries the day with me. Please  
join me.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 31, 1979

Re: 78-160 and 78-161 - Wilson v. Omaha Indian Tribe, etc.

Dear Byron:

I am glad to join your opinion for the Court.

Sincerely yours,

?S.

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 7, 1978

MEMO TO THE CONFERENCE

Re: Nos. 78-160, 78-161 & 78-162 -

Wilson v. Omaha Indian Tribe  
Iowa v. Omaha Indian Tribe  
RGP, Inc., v. Omaha Indian Tribe

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The Conference was interested in limiting the possible grants in these cases to the questions of whether federal or state law controlled and whether § 194, the burden of proof section, applied against a state. With this in mind, the grant in No. 78-160 should be limited to question 2, which includes the issue whether Iowa should be considered a "white person" for the purposes of § 194 and question 3 going to the federal-state law issue. In No. 78-161, the state's petition, question 1 poses the § 194 matter and question 4 the controlling law issue. No. 78-162 raises neither question but perhaps should be held.

Sincerely yours,



*Line B  
Brennan  
White*

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: May 29, 1979

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

No. 78-160 ) Wilson, et al. v. Omaha Indian Tribe, et al.

No. 78-161 ) Iowa, et al. v. Omaha Indian Tribe, et al.

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MR. JUSTICE WHITE delivered the opinion of the Court.

At issue here is the ownership of a tract of land on the east bank of the Missouri River in Iowa. Respondent Omaha Indian Tribe, supported by the United States as trustee of the <sup>1/</sup> Tribe's reservation lands, <sup>1/</sup> claims the tract as part of reservation lands created for it under an 1854 treaty. Petitioners, including the State of Iowa and several individuals, argue that past movements of the Missouri River washed away part of the Reservation and the soil accreted to the Iowa side of the river, vesting <sup>2/</sup> title in them as riparian landowners.

Two principal issues are presented. First, we are faced with novel questions regarding the interpretation and scope of 25 U. S. C. § 194, a 145-year-old, but seldom used statute that provides:

STYLISTIC CHANGES TO COME

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: \_\_\_\_\_

Recirculated: 6/4/79

Printed  
1st/DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 78-160 AND 78-161

|   |  |
|---|--|
| Roy Tibbals Wilson et al.,<br>Petitioners,<br>78-160 <i>v.</i><br>Omaha Indian Tribe et al.<br>State of Iowa et al.,<br>Petitioners,<br>78-161 <i>v.</i><br>Omaha Indian Tribe et al. | On Writs of Certiorari to the<br>United States Court of Appeals<br>for the Eighth Circuit. |
|---|--|

[June —, 1979]

MR. JUSTICE WHITE delivered the opinion of the Court.

At issue here is the ownership of a tract of land on the east bank of the Missouri River in Iowa. Respondent Omaha Indian Tribe, supported by the United States as trustee of the Tribe's reservation lands,<sup>1</sup> claims the tract as part of

<sup>1</sup> In *Heckman v. United States*, 224 U. S. 413 (1912), the Court explained the source and nature of this trust relationship. In the exercise of its plenary authority over Indian affairs, Congress has the power to place restrictions on the alienation of Indian lands. Where it does so, it continues guardianship over Indian lands and "[d]uring the continuance of this guardianship, the right and duty of the Nation to enforce by all appropriate means the restrictions designed for the security of the Indians cannot be gainsaid. . . . A transfer of the [Indian land] is not simply a violation of the proprietary rights of the Indian. It violates the governmental rights of the United States." *Id.*, at 437-438. Accordingly, the United States is entitled to go into court as trustee to enforce Indian land rights. "It [is] not essential that it should have a pecuniary interest in the controversy." *Id.*, at 439. See also *Morrison v. Work*, 266 U. S. 481, 485 (1925); *Choate v. Trapp*, 224 U. S. 665, 678 (1912); F. Cohen, *Handbook of Federal Indian Law* 94-96 (1942).

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES.

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: \_\_\_\_\_

Recirculated: 6 JUN 1979

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 78-160 AND 78-161

Roy Tibbals Wilson et al.,  
 Petitioners,

78-160 *v.*

Omaha Indian Tribe et al. } On Writs of Certiorari to the  
 Petitioners,

State of Iowa et al.,

78-161 *v.*

Omaha Indian Tribe et al.

United States Court of Appeals  
 for the Eighth Circuit.

[June —, 1979]

MR. JUSTICE WHITE delivered the opinion of the Court.

At issue here is the ownership of a tract of land on the east bank of the Missouri River in Iowa. Respondent Omaha Indian Tribe, supported by the United States as trustee of the Tribe's reservation lands,<sup>1</sup> claims the tract as part of

<sup>1</sup> In *Heckman v. United States*, 224 U. S. 413 (1912), the Court explained the source and nature of this trust relationship. In the exercise of its plenary authority over Indian affairs, Congress has the power to place restrictions on the alienation of Indian lands. Where it does so, it continues guardianship over Indian lands and "[d]uring the continuance of this guardianship, the right and duty of the Nation to enforce by all appropriate means the restrictions designed for the security of the Indians cannot be gainsaid. . . . A transfer of the [Indian land] is not simply a violation of the proprietary rights of the Indian. It violates the governmental rights of the United States." *Id.*, at 437-438. Accordingly, the United States is entitled to go into court as trustee to enforce Indian land rights. "It [is] not essential that it should have a pecuniary interest in the controversy." *Id.*, at 439. See also *Morrison v. Work*, 266 U. S. 481, 485 (1925); *Choate v. Trapp*, 224 U. S. 665, 678 (1912); F. Cohen, *Handbook of Federal Indian Law* 94-96 (1942).

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STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES.

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

## 3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 78-160 AND 78-161

From: Mr. Justice White

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

Recirculated: 15 JUN 1979

Roy Tibbals Wilson et al.,  
Petitioners,

78-160 *v.*

Omaha Indian Tribe et al.

State of Iowa et al.,  
Petitioners,

78-161 *v.*

Omaha Indian Tribe et al.

On Writs of Certiorari to the  
United States Court of Appeals  
for the Eighth Circuit.

[June —, 1979]

MR. JUSTICE WHITE delivered the opinion of the Court.

At issue here is the ownership of a tract of land on the east bank of the Missouri River in Iowa. Respondent Omaha Indian Tribe, supported by the United States as trustee of the Tribe's reservation lands,<sup>1</sup> claims the tract as part of

<sup>1</sup> In *Heckman v. United States*, 224 U. S. 413 (1912), the Court explained the source and nature of this trust relationship. In the exercise of its plenary authority over Indian affairs, Congress has the power to place restrictions on the alienation of Indian lands. Where it does so, it continues guardianship over Indian lands and "[d]uring the continuance of this guardianship, the right and duty of the Nation to enforce by all appropriate means the restrictions designed for the security of the Indians cannot be gainsaid. . . . A transfer of the [Indian land] is not simply a violation of the proprietary rights of the Indian. It violates the governmental rights of the United States." *Id.*, at 437-438. Accordingly, the United States is entitled to go into court as trustee to enforce Indian land rights. "It [is] not essential that it should have a pecuniary interest in the controversy." *Id.*, at 439. See also *Morrison v. Work*, 266 U. S. 481, 485 (1925); *Choate v. Trapp*, 224 U. S. 665, 678 (1912); F. Cohen, *Handbook of Federal Indian Law* 94-96 (1942).

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 19, 1979

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 78-160, Wilson, et al. v. Omaha Indian Tribe; and No. 78-161, Iowa, et al. v. Omaha Indian Tribe, et al.

There is one petition being held for Omaha Indian Tribe:

No. 78-162, RGP, Inc., et al. v. Omaha Indian Tribe, et al. This is a separate petition for certiorari filed by the two corporate litigants in this case and differs from Nos. 78-160 and 78-161 only insofar as it raises the issue of the propriety of applying 25 U.S.C. § 194 to corporations. However, in light of the opinion of the Court, that issue would not warrant certiorari. See slip op., at 10-11.

That leaves the problem of the CA 8's improper choice of law, which affected these petitioners equally with those in Nos. 78-160 and 78-161. Accordingly, I recommend a GVR in light of Omaha Indian Tribe.

Sincerely yours,



cmc

18 160  
18 161

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

July 5, 1979

MEMORANDUM TO THE CONFERENCE

I thought you might be interested in the attached memorandum, which was prepared by the Library for me in connection with the Omaha Indian cases but which has general significance with respect to the interpretation and application of R. S. §5596, the repealer provision. I have omitted the enclosure referred to in the second paragraph.



BRW

Attachment

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 31, 1979

Re: Nos. 78-160 & 161 - Wilson & Iowa v. Omaha  
Indian Tribe

Dear Byron:

I give up. Please join me.

Sincerely,

*JM.*  
T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 4, 1979

Re: No. 78-160 - Wilson v. Omaha Indian Tribe  
No. 78-161 - Iowa v. Omaha Indian Tribe

Dear Byron:

Please join me. I shall be writing a paragraph in  
separate concurrence.

Sincerely,

*HAB.*

Mr. Justice White

cc: The Conference

For: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: 11 JUN 197

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

No. 78-160, Wilson v. Omaha Indian Tribe  
No. 78-161, State of Iowa v. Omaha Indian Tribe

MR. JUSTICE BLACKMUN, concurring:

I join the Court's opinion, but I write briefly to add a comment about my views as to the scope of 25 U.S.C. § 194.

Section 194 applies to a property dispute between an Indian and a "white person." The property dispute here is between Indians, on the one hand, and, on the other, nine individuals, two corporations, and the State of Iowa. See 575 F.2d 620, 622 (CA8 1978). The Court holds that "white person" includes an artificial entity and thus that § 194 applies in the dispute between the Omahas and the two corporate petitioners. Ante, at 10-11. Contrariwise, the Court holds that "white person" does not include a sovereign State, and thus that § 194 does not

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

From: Mr. Justice Blackmun

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

Received: 1 2 JUN 19

1st DRAFT

*Printed*  
**SUPREME COURT OF THE UNITED STATES**

Nos. 78-160 AND 78-161

Roy Tibbals Wilson et al.,  
 Petitioners,

78-160 *v.*

Omaha Indian Tribe et al.

State of Iowa et al.,  
 Petitioners,

78-161 *v.*

Omaha Indian Tribe et al.

On Writs of Certiorari to the  
 United States Court of Appeals  
 for the Eighth Circuit.

[June —, 1979]

**MR. JUSTICE BLACKMUN, concurring.**

I join the Court's opinion, but I write briefly to add a comment about my views as to the scope of 25 U. S. C. § 194.

Section 194 applies to a property dispute between an Indian and a "white person." The property dispute here is between Indians, on the one hand, and, on the other, nine individuals, two corporations, and the State of Iowa. See 575 F. 2d 620, 622 (CA8 1978). The Court holds that "white person" includes an artificial entity and thus that § 194 applies in the dispute between the Omahas and the two corporate petitioners. *Ante*, at 10-11. Contrariwise, the Court holds that "white person" does not include a sovereign State, and thus that § 194 does not apply in the dispute between the Omahas and petitioner State of Iowa. *Ante*, at 11-12, 23. The Court, however, does not expressly discuss § 194's applicability to the nine individual claimants.

Since the Court nevertheless holds that "§ 194 applies to the private petitioners" without exception, *ante*, at 23, it must be proceeding on one of two assumptions. The Court could assume, first, that all nine individual petitioners are

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 29, 1979

78-160 Wilson v. Omaha Indian Tribe

Dear Byron:

Please show on the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 31, 1979

Re: Nos. 78-160 and 78-161 - Wilson v. Omaha Indian  
Tribe, et al.

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 30, 1979

Re: 78-160 - Wilson v. Omaha Indian Tribe  
78-161 - Iowa v. Omaha Indian Tribe

Dear Byron:

Although I had originally intended to write a dissent, your opinion has convinced me to join. Please join me.

Respectfully,



Mr. Justice White

Copies to the Conference