The Burger Court Opinion Writing Database

White Mountain Apache Tribe v. Bracker

448 U.S. 136 (1980)

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

May 21, 1980

RE: 78-1177 - White Mountain Apache Tribe v. Bracker

Dear Thurgood:

I join.

Regards,

WEB

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 20, 1980

RE: No. 78-1177 White Mountain Apache Tribe v. Bracker

Dear Thurgood:

I agree.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 20, 1980

Re: 78-1177 - White Mountain Apache Tribe
v. Bracker

Dear John:

Please add my name to your dissenting opinion.

Sincerely yours,

P.S.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 27, 1980

Re: No. 78-1177 - White Mountain Apache Tribe
v. Bracker

Dear Thurgood,

I have read your proposed opinion and agree with a good deal of it.

Part III is the dispositive section, and I agree with its analysis and result. My sole concern is the implication of your statement on page 14 that "it is undisputed that the economic burden of these taxes will ultimately fall on the Tribe." In Confederated Tribes, the Court will uphold a State tax on non-Indians even though the economic burden of which falls on the Tribe. Could this statement be omitted or rephrased?

I have some difficulties with Part II and in light of Part III, wonder about its necessity. As you note, generalizations in Indian law are treacherous. I am concerned that some of the broader statements in Part II, taken out of context, might be applied in an inappropriate way in future cases. For example, at page 7 you quote Bryan v. Itasca County, 426 U.S. 373 (1976), for the proposition that "Indians stand in a special relation to the Federal Government from which the States are excluded unless Congress has manifested a clear purpose to. . . allow States to treat Indians as part of the general community." This statement was unexceptionable in Bryan, where the question was whether Pub. L. 280 permitted the States to tax Indian property which was clearly exempt from taxation under Moe and McClanahan. It makes sense in this context to say that State taxation is excluded unless Congress has permitted it. But it is questionable whether the same rule applies in cases involving State taxation of non-Indians doing business on the reservation. Indeed, Moe seems to the contrary, since the State was there permitted to tax non-Indian purchasers from Indian-operated reservation smoke shops despite the absence of federal statutes clearly intended to allow State taxation.

Similarly, you state at page 7 that the Court has "rejected the proposition that in order to find a particular state law to have been pre-empted by operation of federal law, an express congressional statement to that effect is required." This is certainly true in some cases, such as cases involving only Indians or cases involving relations between non-Indians and Indians on the reservation. It is not true, however, in cases involving relations between non-Indians and Indians off the reservation. Rather, "[a]bsent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law. . . ." Mescalero Apache Tribe v. Jones, 411 U.S. 148-149 (1973).

At page 8 you cite Moe for the proposition that "'automatic exemptions as a matter of constitutional law' are unusual." At least the clear implication in Moe was that automatic exemptions of this type are not recognized at all.

Finally, you say at page 8 that in the case of non-Indians conducting activities on the reservation, the pre-emption inquiry is "designed to determine whether, in the specific context, the exercise of state authority would undermine some federal policy." While I agree that federal policies are relevant, this statement might suggest an inquiry into the broad policies of encouraging Indian self-government and strengthening reservation economies without due attention to the specific language and provisions of the relevant statutes.

Sincerely yours,

Mr.Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 31, 1980

Re: No. 78-1177 - White Mountain Apache Tribe v. Bracker

Dear Thurgood,

Thank you for your letter of March 28. Your suggested changes for the most part satisfy me and I join your opinion. Although I would have preferred that you eliminate the word "automatic" from the statement in footnote 18, I shall leave the matter in your hands.

Sincerely yours,

Mr. Justice Marshall

Copies to the Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1177

White Mountain Apache Tribe et al., Petitioners, v. Robert M. Bracker et al. | On Writ of Certiorari to the Court of Appeals of Arizona, Division One.

[March —, 1980]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

In this case we are once again called upon to consider the extent of State authority over the activities of non-Indians engaged in commerce on an Indian reservation. The State of Arizona seeks to apply its motor carrier license and use fuel taxes to petitioner Pinetop Logging Company (Pinetop), an enterprise consisting of two non-Indian corporations authorized to do business in Arizona and operating solely on the Fort Apache Reservation. Pinetop and petitioner White Mountain Apache Tribe contend that the taxes are pre-empted by federal law or, alternatively, that they represent an unlawful infringement on tribal self-government. The Arizona Court of Appeals rejected petitioners' claims. We hold that the taxes are pre-empted by federal law, and we therefore reverse.

I

The 6,500 members of petitioner White Mountain Apache Tribe reside on the Fort Apache Reservation in a mountainous and forested region of northeastern Arizona.[1] The

[1] The Fort Apache Reservation was originally established as the White Mountain Reservation by an Executive Order signed by President Grant on November 8, 1871. By the Act of Congress of June 7, 1897, 30 Stat. 64, the White Mountain Reservation was divided into the Fort Apache and San Carlos Reservations.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 28, 1980

Re: No. 78-1177 - White Mountain Apache Tribe
v. Bracker

Dear Byron:

Thank you for your comments on my proposed opinion in this case. I think that I can accommodate almost all of your concerns.

With respect to the statement on p. 14, you are of course correct in suggesting that the fact that the economic burden falls on the Tribe is not dispositive. It is, however, relevant, as Warren Trading Post makes clear. My reference to the economic burden was intended to be read in conjunction with the immediately following sentence, which demonstrates that it is not the economic burden itself, but the Federal regulatory scheme in general, that leads to the result we reach. Would your concern be met if I added a footnote stating explicitly that the incidence of the economic burden is not controlling and distinguishing Moe and/or Confederated Tribes?

I do believe that Part II is necessary in order to set up a framework with which to approach the case. However, I am willing to adopt in full three of your four suggestions by (1) deleting the quotation from Bryan on p. 7; (2) adding a footnote on p. 7 to quote the statement in Mescalero with respect to Indians going beyond reservation boundaries; and (3) altering the sentence immediately before Part III to conclude, "whether, in the specific context, the exercise of state authority would violate federal law."

I do not agree that the statement in footnote 18 in Moe--referring to "automatic exemptions as a matter of constitutional law"--should be read as broadly as you suggest. Certainly the language of the footnote does not extend that far. Moreover, a number of our cases recognize the principle that the exercise of state authority over the reservation may be impermissible, not because it is "preempted" in the ordinary sense, but because it infringes on tribal self-government. See Williams v. Lee and the cases cited on p. 6 on my proposed opinion. This principle, I think, is difficult to reconcile with the view that "automatic" or "constitutional" exemptions are not recognized at all.

Sincerely,

T.M.

Mr. Justice White

cc: The Conference

P. 7, 8, 14
footnotes renumbered

1 APR 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1177

White Mountain Apache Tribe et al., Petitioners, *v.* Robert M. Bracker et al. | On Writ of Certiorari to the Court of Appeals of Arizona, Division One.

[March —, 1980]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

In this case we are once again called upon to consider the extent of State authority over the activities of non-Indians engaged in commerce on an Indian reservation. The State of Arizona seeks to apply its motor carrier license and use fuel taxes to petitioner Pinetop Logging Company (Pinetop), an enterprise consisting of two non-Indian corporations authorized to do business in Arizona and operating solely on the Fort Apache Reservation. Pinetop and petitioner White Mountain Apache Tribe contend that the taxes are pre-empted by federal law or, alternatively, that they represent an unlawful infringement on tribal self-government. The Arizona Court of Appeals rejected petitioners' claims. We hold that the taxes are pre-empted by federal law, and we therefore reverse.

I

The 6,500 members of petitioner White Mountain Apache Tribe reside on the Fort Apache Reservation in a mountainous and forested region of northeastern Arizona.[1] The

[1] The Fort Apache Reservation was originally established as the White Mountain Reservation by an Executive Order signed by President Grant on November 8, 1871. By the Act of Congress of June 7, 1897, 30 Stat. 64, the White Mountain Reservation was divided into the Fort Apache and San Carlos Reservations.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 23, 1980

MEMORANDUM TO THE CONFERENCE

Re: Holds for No. 79-1177, White Mountain Apache Tribe v. Bracker, and Central Machinery v. Arizona State Tax Commission, No. 79-1604.

No. 79-1242, Tiffany Construction Co. v. Bureau of Revenue, State of New Mexico is the only case held for White Mountain Apache and Central Machinery. Petitioner is a non-Indian corporation with its principal place of business in Arizona. It entered into a contract with the Navajo Tribe and the Bureau of Indian Affairs to build roads on the Navajo reservation. For about one year it worked on a part of the Navajo Reservation in New Mexico, grading and draining a road. Petitioner conducted no business activities outside of the reservation. All of petitioner's employees were residents of Arizona or Navajo Reservation Indians; New Mexico health, educational, and law enforcement services were not used.

The amount of the construction project was $1,681,740. Respondent imposed a gross receipts tax of $78,583.03. After paying the tax, petitioner brought suit for a refund, claiming that the tax was impermissible under state law, federal Indian law, and the Due Process Clause. The Court of Appeals of New Mexico concluded that the tax was permissible since the construction project took place within New Mexico.

Petitioner claims in its petition that the tax offends both the Due Process Clause and the doctrine of tribal sovereignty. White Mountain Apache is directly relevant and appears to

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 24, 1980

Re: No. 78-1177 - White Mountain Apache Tribe v. Bracker

Dear Thurgood:

Please join me.

Sincerely,

Harry

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 20, 1980

78-1177 White Mountain Apache Tribe v. Bracker

Dear Thurgood:

I voted with the majority in this case, and think you have written a fine opinion. In Central Machinery, I was in dissent - the only Justice to be for the Indians in one and against them in the other.

I therefore probably will write explaining why I view these cases differently. Although my present intention is to join you in this case, I will await other writing - including the dissent in Central Machinery - before deciding finally whether to join your opinion.

Sincerely,

Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 20, 1980

Re: No. 78-1177 White Mountain Apache Tribe v. Bracker

Dear John:

Please join me in your dissenting opinion in this case.

Sincerely,

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 20, 1980

Re: 78-1177 - White Mountain Apache Tribe
v. Bracker

Dear Thurgood:

In due course I will circulate a dissent.

Respectfully,

Mr. Justice Marshall

Copies to the Conference

Argued 1/14
Opinion 3/27

78-1177 - White Mountain Apache Tribe v. Bracker

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

From: Mr. Justice Stevens

Circulated: JUN 20 '80

Recirculated: _____

MR. JUSTICE STEVENS, dissenting.

The State of Arizona imposes use fuel and motor carrier license taxes on certain businesses in order to compensate it for their greater than normal use of public roads. See ante, at 5, n. 3 (POWELL, J., concurring). The issue originally presented to this Court was whether the State was prohibited from imposing such taxes on a non-Indian joint venture (Pinetop Logging Company) hired by the petitioner tribe to perform logging operations on the Fort Apache Reservation, when the taxes were based on Pinetop's use of roads located solely within the reservation. In light of the concessions made by both sides at various stages of the litigation, however, I doubt that we should reach that issue in this case. Moreover, even if the merits were properly before us, I could not agree with the Court's determination that the state taxes are preempted by federal law.

Between March 1971 and May 1976, Pinetop paid under protest use fuel taxes of $19,114.59 and motor carrier license taxes of

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

From: Mr. Justice Stevens

Circulated: _____

Recirculated: JUN 25 '80

RP 1,4,5,7

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1177

White Mountain Apache Tribe et al., Petitioners, *v.* Robert M. Bracker et al. | On Writ of Certiorari to the Court of Appeals of Arizona, Division One.

[June —, 1980]

MR. JUSTICE STEVENS, with whom MR. JUSTICE STEWART and MR. JUSTICE REHNQUIST join, dissenting.

The State of Arizona imposes use fuel and motor carrier license taxes on certain businesses in order to compensate it for their greater than normal use of public roads. See *ante*, at 5, n. 3 (POWELL, J., concurring). The issue originally presented to this Court was whether the State was prohibited from imposing such taxes on a non-Indian joint venture (Pinetop Logging Company) hired by the petitioner tribe to perform logging operations on the Fort Apache Reservation, when the taxes were based on Pinetop's use of roads located solely within the reservation. In light of the concessions made by both sides at various stages of the litigation, however, I doubt that we should reach that issue in this case. Moreover, even if the merits were properly before us, I could not agree with the Court's determination that the state taxes are pre-empted by federal law.

Between March 1971 and May 1976, Pinetop paid under protest use fuel taxes of $19,114.59 and motor carrier license taxes of $14,701.42. The Arizona Court of Appeals determined that the latter assessment impropely denied Pinetop a 60% credit to which it was entitled under state law.[1] After

[1] Under Arizona law, logging operations are exempt from the motor carrier license tax if the wood they haul is used for pulpwood. In this case 60% of the logs hauled by Pinetop were to be used for pulpwood.