

# The Burger Court Opinion Writing Database

## *Wilson v. Omaha Tribe*

442 U.S. 653 (1979)

Paul J. Wahlbeck, George Washington University  
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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R WHITE

September 18, 1979

MEMORANDUM TO THE CONFERENCE

Re: Nos. 78-160 & 78-161 - Wilson v. Omaha Indian Tribe  
Motion for Modification of Opinion

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The Solicitor General, on behalf of the United States, has requested modification of the opinion in the above-entitled case. For the reasons stated below, I would deny the motion.

The cause of the SG's complaint is contained in a paragraph in which the Court concludes that a sovereign State is not a "white person" under 25 U.S.C. §194. The Court found that the term "person" in statutes does not ordinarily include the sovereign but recognized that there is no hard and fast rule in this regard. Looking to the purpose of §194 -- that of preventing and providing remedies against non-Indian squatters on Indian lands -- the Court found it unlikely that Congress viewed the States as posing such a threat. The Court then continued with the following discussion indicating that the legislative context did not suggest any deviation from the general rule:

"Indeed, the 1834 Act, which included §22, the provision identical to the present §194, was 'intended to apply to the whole Indian country, as defined in the first section.' H.R. Rep. No. 474, 23d Cong., 1st Sess., 10 (1834). Section 1 defined Indian country as being 'all that part of the United States west of the Mississippi, and not within the states of Missouri and Louisiana, or the territory of Arkansas, and, also, that part of the United States east of the Mississippi River, and not within any state to which the Indian title has not been extinguished....' Although this definition was discarded in the Revised Statutes, see R.S. 5596, it is apparent that in adopting §22 Congress had in mind only disputes arising in Indian country, disputes that would not arise in or involve any of the States."

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

September 20, 1979

78-160 and 78-161 Wilson v. Omaha Indian Tribe

Dear Byron:

As I was "out" of this case, I express no opinion  
with respect to the Solicitor General's motion.

Sincerely,

*Lewis*

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

September 19, 1979

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

Dear Byron:

I agree with your memorandum of September 18th respecting the motion of the Solicitor General for modification of the opinion you wrote for the Court last Term in this case.

Sincerely,



Mr. Justice White

Copies to the Conference