

# The Burger Court Opinion Writing Database

*Central Machinery Co. v. Arizona Tax Commission*

448 U.S. 160 (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

(4)

CHAMBERS OF  
THE CHIEF JUSTICE

May 21, 1980

RE: 78-1604 - Central Machinery Co. v.  
Arizona State Tax Commission

Dear Thurgood:

I join.

1  
Regards,

WB

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

March 18, 1980

RE: No. 78-1604 Central Machinery Co. v. Arizona State  
Tax Commission

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

March 17, 1980

Re: 78-1604 - Central Machinery v. Arizona

Dear Thurgood:

I shall in due course circulate a short dissenting opinion.

Sincerely yours,

P.S.  
P.

Mr. Justice Marshall

Copies to the Conference

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

From: Mr. Justice Stewart

Circulated: 19 MAY 1980

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

**1st DRAFT**

**SUPREME COURT OF THE UNITED STATES**

No. 78-1604

Central Machinery Company,  
Appellant,  
v.  
Arizona State Tax Commission. } On Appeal from the Supreme Court of Arizona.

[May —, 1980]

MR. JUSTICE STEWART, dissenting.

The question before us is whether the appellant is immune from a state tax imposed on the proceeds of the sale by it of farm machinery to an Indian tribe. The Court concludes that an affirmative answer is required by the rationale of *Warren Trading Post Co. v. Arizona Tax Comm'n*, 380 U. S. 685, a case that is similar in some respects to this one. While I agree that *Warren Trading Post*, *supra*, states the relevant legal principles, I cannot agree that those principles lead to the result reached by the Court in this case. Accordingly, I dissent.

In *Warren Trading Post*, *supra*, the Court held that the State of Arizona may not impose the same tax involved here on the operator of a federally licensed retail trading business located on an Indian reservation. The Court determined that the "apparently all-inclusive [federal] regulations and the statutes authorizing them," *id.*, at 690, under which the trader in that case had been licensed, were "in themselves sufficient to show that Congress has taken the business of trading on reservations so fully in hand that no room remains for state laws imposing additional burdens on traders," *ibid.*

As the Court recognizes, the circumstances of this case differ from those presented by *Warren Trading Post*, *supra*. Specifically, the appellant here is not a licensed Indian trader and does not have a permanent place of business on the

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: \_\_\_\_\_

2nd DRAFT

Recirculated: 21 MAY 1980

**SUPREME COURT OF THE UNITED STATES**

\_\_\_\_\_  
 No. 78-1604  
 \_\_\_\_\_

Central Machinery Company,  
 Appellant,  
 v. On Appeal from the Su-  
 preme Court of Arizona,  
 Arizona State Tax Commission.

[May —, 1980]

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

The question before us is whether the appellant is immune from a state tax imposed on the proceeds of the sale by it of farm machinery to an Indian tribe. The Court concludes that an affirmative answer is required by the rationale of *Warren Trading Post Co. v. Arizona Tax Comm'n*, 380 U. S. 685, a case that is similar in some respects to this one. While I agree that *Warren Trading Post*, *supra*, states the relevant legal principles, I cannot agree that those principles lead to the result reached by the Court in this case. Accordingly, I dissent.

In *Warren Trading Post*, *supra*, the Court held that the State of Arizona may not impose the same tax involved here on the operator of a federally licensed retail trading business located on an Indian reservation. The Court determined that the "apparently all-inclusive [federal] regulations and the statutes authorizing them," *id.*, at 690, under which the trader in that case had been licensed, were "in themselves sufficient to show that Congress has taken the business of trading on reservations so fully in hand that no room remains for state laws imposing additional burdens on traders," *ibid.*

As the Court recognizes, the circumstances of this case differ from those presented by *Warren Trading Post*, *supra*. Specifically, the appellant here is not a licensed Indian trader

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 20, 1980

Re: 78-1604 - Central Machinery Company  
v. Arizona State Tax Commn.

Dear Thurgood,

Please join me.

Sincerely yours,



Mr. Justice Marshall  
Copies to the Conference  
cmc

14 MAR 1980

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

—  
No. 78-1604  
—

Central Machinery Company, |  
Appellant, |  
v. | On Appeal from the Su-  
Arizona State Tax Commission. } preme Court of Arizona.

[March —, 1980]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case presents the question whether a State may tax the sale of farm machinery to an Indian tribe when the sale took place on an Indian reservation and was made by a corporation that did not reside on the reservation and was not licensed to trade with Indians.

I

Appellant is a corporation chartered by and doing business in Arizona. In 1973 it sold 11 farm tractors to Gila River Farms, an enterprise of the Gila River Indian Tribe. The Tribe is federally recognized and is governed by a constitution adopted pursuant to the Indian Reorganization Act, 25 U. S. C. § 476. Gila River Farms conducts farming operations on tribal and individual trust land within the Gila River Reservation, which was established in Arizona by the Act of February 28, 1859, ch. 66, 11 Stat. 388, 401.

Appellant's salesman solicited the sale of these tractors on the reservation, the contract was made there, and payment for and delivery of the tractors also took place there. Appellant does not have a permanent place of business on the reservation, and it is not licensed under 25 U. S. C. §§ 261-264 and 25 CFR Part 251 to engage in trade with Indians on reservations. The transaction was approved, however, by the Bureau of Indian Affairs.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 21, 1980

(3)

Re: No. 78-1604 - Central Machinery Company v.  
Arizona State Tax Commission

Dear Thurgood:

Please join me.

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 15, 1980

78-1604 Central Machinery v. Arizona

Dear Thurgood:

In accordance with my vote at the Conference, I  
will await the dissent.

Sincerely,



Mr. Justice Marshall

lfp/ss

cc: The Conference

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

5-6-80

From: Mr. Justice Powell

Circulated: MAY 6 1980

## 1st DRAFT

Recirculated:

**SUPREME COURT OF THE UNITED STATES**

Nos. 78-1604 AND 78-1177

Central Machinery Company, Appellant, 78-1604 <i>v.</i> Arizona State Tax Commission.	On Appeal from the Supreme Court of Arizona.
White Mountain Apache Tribe et al., Petitioners, 78-1177 <i>v.</i> Robert M. Bracker et al.	On Writ of Certiorari to the Court of Appeals of Arizona, Division One.

[May —, 1980]

MR. JUSTICE POWELL, dissenting and concurring.

I write separately because I would distinguish *Central Machinery Co. v. Arizona State Tax Comm'n, ante*, at — (No. 78-1604), from *White Mountain Apache Tribe v. Bracker, ante*, at — (No. 78-1177). I agree with the Court that a non-Indian contractor continuously engaged in logging upon a reservation is subject to such pervasive federal regulation as to bring into play the pre-emption doctrine of *Warren Trading Post Co. v. Arizona Tax Comm'n*, 380 U. S. 685 (1965). But *Warren Trading Post* simply does not apply to routine state taxation of a non-Indian corporation that makes a single sale to reservation Indians. I therefore join the Court's opinion in *White Mountain Apache Tribe*, but I dissent from its decision in *Central Machinery*.

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### *Central Machinery*

*Warren Trading Post* held that Arizona could not levy its transaction privilege tax against a company regularly engaged in retail trading with the Indians upon a reservation. The

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

2, 3

5-15-80

From: Mr. Justice Powell

2nd DRAFT

Circulated:

**SUPREME COURT OF THE UNITED STATES**

Reproduced by: MAY 15 1974

Nos. 78-1604 AND 78-1177

Central Machinery Company, Appellant,  
78-1604 v. On Appeal from the Supreme Court of Arizona.  
Arizona State Tax Commission.

White Mountain Apache Tribe et al., Petitioners, 78-1177 v. Robert M. Bracker et al. } On Writ of Certiorari to the Court of Appeals of Arizona, Division One.

[May —, 1980]

MR. JUSTICE POWELL, dissenting and concurring.

I write separately because I would distinguish *Central Machinery Co. v. Arizona State Tax Comm'n*, ante, at — (No. 78-1604), from *White Mountain Apache Tribe v. Bracker*, ante, at — (No. 78-1177). I agree with the Court that a non-Indian contractor continuously engaged in logging upon a reservation is subject to such pervasive federal regulation as to bring into play the pre-emption doctrine of *Warren Trading Post Co. v. Arizona Tax Comm'n*, 380 U. S. 685 (1965). But *Warren Trading Post* simply does not apply to routine state taxation of a non-Indian corporation that makes a single sale to reservation Indians. I therefore join the Court's opinion in *White Mountain Apache Tribe*, but I dissent from its decision in *Central Machinery*.

II

## *Central Machinery*

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

5-19-80

From: Mr. Justice Powell

3rd DRAFT

Circulated:

Recirculated: MAY 19 1980

**SUPREME COURT OF THE UNITED STATES**

Nos. 78-1604 AND 78-1177

Central Machinery Company, Appellant,  
78-1604 v. On Appeal from the Su-  
Arizona State Tax Commission. preme Court of Arizona.

White Mountain Apache Tribe et al., Petitioners,  
78-1177 v. Robert M. Bracker et al. } On Writ of Certiorari to the  
Court of Appeals of Arizona, Division One.

[May —, 1980]

MR. JUSTICE POWELL, dissenting and concurring.

I write separately because I would distinguish *Central Machinery Co. v. Arizona State Tax Comm'n, ante*, at — (No. 78-1604), from *White Mountain Apache Tribe v. Bracker, ante*, at — (No. 78-1177). I agree with the Court that a non-Indian contractor continuously engaged in logging upon a reservation is subject to such pervasive federal regulation as to bring into play the pre-emption doctrine of *Warren Trading Post Co. v. Arizona Tax Comm'n*, 380 U. S. 685 (1965). But *Warren Trading Post* simply does not apply to routine state taxation of a non-Indian corporation that makes a single sale to reservation Indians. I therefore join the Court's opinion in *White Mountain Apache Tribe*, but I dissent from its decision in *Central Machinery*.

### Central Machinery

*Warren Trading Post* held that Arizona could not levy its transaction privilege tax against a company regularly engaged in retail trading with the Indians upon a reservation. The

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 21, 1980

78-1604 Central Machinery v. Arizona State Tax Commission

Dear Potter:

Please add my name to your dissenting opinion.

Sincerely,



Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 20, 1980

Re: No. 78-1604 Central Machinery Co. v. Arizona  
State Tax Commission

Dear Potter:

Please join me in your dissent in this case.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

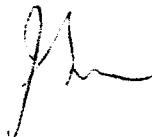
April 9, 1980

Re: 78-1604 - Central Machinery v. Arizona

Dear Thurgood:

As I should have written sometime ago, I am  
waiting for Potter's dissent.

Respectfully,



Mr. Justice Marshall

Copies to the Conference

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

5

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 19, 1980

Re: 78-1604 - Central Machinery v.  
Arizona State Tax Comm'n

Dear Potter:

Please join me.

Respectfully,



Mr. Justice Stewart

Copies to the Conference