The Burger Court Opinion Writing Database

Washington v. Confederated Tribes of Colville Reservation

447 U.S. 134 (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

October 15, 1979

RE: 78-630 - Washington v. Confederated Tribes of the Colville Indian Reservation

Dear Bill:

Except for the jurisdictional aspect on Yakima, my vote was the same as yours in the above. On the Yakima jurisdiction, I'm prepared to go along. By coincidence I had assigned this to you. You haven't had your share of Indian cases!

Regards,

WEB

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

February 1, 1980

Re: 78-630 - Washington v. Confederated Tribes of the Colville Indian Reservation

Dear Bill:

In reviewing our "inventory" before taking off for the Mid-Year ABA session, I find the above.

I will await word from you as to anything you want me to do - other than join you!

Regards,

WEB

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

February 25, 1980

RE: No. 78-630 - Washington v. Confederated Tribes

Dear Bill:

As I indicated to you earlier, I cannot join your opinion in this case. I could join Parts I, II, and III, and although I agree with the results you reach in Part V on the motor vehicle tax and the State's assumption of jurisdiction over the reservations, I find that I do not agree with you regarding the cigarette and sales taxes, or on the issue of the proper treatment of Indians who are not enrolled members of the relevant tribes.

Accordingly, I have decided to act on your suggestion that the case be reassigned, and will ask Byron to try his hand at an opinion that accommodates the positions of those who have expressed views similar to his own.

This is a hard case to unravel and there will have to be some accommodation.

Regards,

WEB

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

February 25, 1980

RE: No. 78-630 - Washington v. Confederated Tribes

Dear Byron:

Will you try your hand at an opinion for the Court in this Case?

Regards,

WEB

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 4, 1980

RE: 78-630 - Washington v. Confederated Tribes

Dear Byron:

I join.

Regards,

Mr. Justice White

Copies to the Conference

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

From: Mr. Justice Brennan

Circulated: 26 NOV 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-630

State of Washington et al., Appellants, *v.* Confederated Tribes of the Colville Indian Reservation et al.	On Appeals from the United States District Court for the Eastern District of Washington.
State of Washington, *v.* United States et al.	

[November —, 1979]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Moe v. *Confederated Salish and Kootenai Tribes*, 425 U. S. 463 (1976), held that the State of Montana could require Indian operators of on-reservation "smoke shops" to collect cigarette taxes from the non-Indian purchasers on whom those taxes fell. 425 U. S., at 481–483. Today we consider a challenge to similar cigarette taxes imposed by the State of Washington on similar transactions. But while in *Moe* the cigarette retailing business was largely a private operation, the Tribes involved in these consolidated cases have adopted comprehensive ordinances regulating and taxing the distribution of cigarettes by on-reservation smoke shops. The principal question for decision, therefore, is whether the tribal regulatory and taxing involvement present here and absent in *Moe* mandates a different conclusion as to the validity of the Washington taxes. The three-judge District Court for the Eastern District of Washington concluded that it does, and we affirm. When the tribal governments chose to tax the

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 28, 1979

RE: No. 78-630 Washington v. Confederated Tribes of Colville Indian Reservation

Dear Lewis:

Thanks very much for your comments on the circulated opinion in the above. Perhaps before you undertake to write something I might try to expand upon why I think the sales tax and cigarette tax should not be treated differently. I'll let you have a revision of footnote 40 within a day or two.

Sincerely,

Bill

Mr.Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 4, 1979

MEMORANDUM TO THE CONFERENCE

RE: No. 78-630 Washington v. Confederated Tribes of Colville Indian Reservation

I am substituting the enclosed footnote 40 for the old footnote of that number. I am sending this change to the printer today and will recirculate with some stylistic changes shortly.

W.J.B.Jr.

19, 20, 22, 23, 24

STYLISTIC CHANGES

To: The Chief Justice
Mr. Justice Stewart
Mr. Just...

5 DEC 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-630

State of Washington et al., Appellants, *v.* Confederated Tribes of the Colville Indian Reservation et al. State of Washington, *v.* United States et al.	On Appeals from the United States District Court for the Eastern District of Washington.

[November —, 1979]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Moe v. *Confederated Salish and Kootenai Tribes*, 425 U. S. 463 (1976), held that the State of Montana could require Indian operators of on-reservation "smoke shops" to collect cigarette taxes from the non-Indian purchasers on whom those taxes fell. 425 U. S., at 481–483. Today we consider a challenge to similar cigarette taxes imposed by the State of Washington on similar transactions. But while in *Moe* the cigarette retailing business was largely a private operation, the Tribes involved in these consolidated cases have adopted comprehensive ordinances regulating and taxing the distribution of cigarettes by on-reservation smoke shops. The principal question for decision, therefore, is whether the tribal regulatory and taxing involvement present here and absent in *Moe* mandates a different conclusion as to the validity of the Washington taxes. The three-judge District Court for the Eastern District of Washington concluded that it does, and we affirm. When the tribal governments chose to tax the

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 12, 1979

MEMORANDUM TO THE CONFERENCE

RE: No. 78-630 Washington v. Confederated Tribes

In response to John's dissent I propose to add the language marked in the margin to my footnote 37 so that that note would read as follows:

37/ This problem was entirely absent in Moe. Nothing in the result there disfavored the purchase of Indian goods. Rather, imposition of the state tax on non-Indians simply created a situation in which persons were encouraged to buy cigarettes on the basis of factors other than tax benefits and avoidance - factors like geographical location and convenience. In the present situation, the balance actually tips agains the Indians. Accordingly, our brother Stevens' statement that the "economic interest at stake in this litigation is precisely the same as that involved in Moe", dissent infra at p. 2, overlooks a crucial distinction - that between the preservation of a tax advantage, which was at stake in Moe, and the elimination of a tax disadvantage, which is at the core of this case. This distinction might not be present if the state tax allowed some form of credit for the amount of any tribal tax. We are not now faced with a state scheme that provides for such a credit, and we express no view as to the validity of such a scheme.

W.J.B.Jr.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 17, 1979

RE: No. 78-630 Washington v. Confederated Tribes

Dear Harry:

Thanks for your memorandum of December 14. Your comment about the last paragraph of Part IV is of course well taken. It will be corrected by an appropriate reference to "on-reservation" sales by Indians to non-Indians.

As to the treatment of the motor vehicle tax in Part V,I prefer to leave it as it is though of course I'd also consider any dissent.

As to the treatment of the state sales tax in Part IV, I can only await further developments. I still think the treatment of it in the opinion is correct.

Sincerely,

Bill

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 17, 1979

There are 2 letters from WB to HB, one is on the list + this is the other

RE: No. 78-630 Washington v. Confederated Tribes

Dear Harry:

Thank you for your note of December 14 suggesting corrections in some "trivial matters." Of course, you are right as to all of them and our next circulation will incorporate them.

Sincerely,

Bill

Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 17, 1979

RE: No. 78-630 Washington v. Confederated Tribes

Dear Thurgood:

Thank you for your note in the above. I shall, of course, make the change you suggested.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

20, 25, 27

STYLISTIC CHANGES

To: The Chief Justice
Mr Justice Stewart
Mr Justice White
Mr Justice Marshall
Mr Justice Blackmun
Mr Justice Powell
Mr
Mr

From: Mr. Justice Brennan

Circulated: 10 DEC 1979

Recirculated:

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-630

State of Washington et al., Appellants, *v.* Confederated Tribes of the Colville Indian Reservation et al.

State of Washington, *v.* United States et al.

On Appeals from the United States District Court for the Eastern District of Washington.

[November —, 1979]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Moe v. *Confederated Salish and Kootenai Tribes*, 425 U. S. 463 (1976), held that the State of Montana could require Indian operators of on-reservation "smoke shops" to collect cigarette taxes from the non-Indian purchasers on whom those taxes fell. 425 U. S., at 481–483. Today we consider a challenge to similar cigarette taxes imposed by the State of Washington on similar transactions. But while in *Moe* the cigarette retailing business was largely a private operation, the Tribes involved in these consolidated cases have adopted comprehensive ordinances regulating and taxing the distribution of cigarettes by on-reservation smoke shops. The principal question for decision, therefore, is whether the tribal regulatory and taxing involvement present here and absent in *Moe* mandates a different conclusion as to the validity of the Washington taxes. The three-judge District Court for the Eastern District of Washington concluded that it does, and we affirm. When the tribal governments chose to tax the

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

From: Mr. Justice Brennan

Circulated: JAN 14 1980

Recirculated: _____

January 14, 1980

No. 78-630 - State of Washington v. Confederated Tribes

Now that Bill's dissent in the above has been circulated, I think it would be a good idea if an effort were made to bring things to a head. I intend in the next day or so to circulate some relatively minor changes in the portion of my opinion dealing with the state cigarette tax. I think we all agree that that issue is the most important one in the case and it is quite clear that Bill and I disagree substantially as to the applicable legal principles. However much we would like some clarification from Congress in this area, we have received none in recent years. I find the suggestion that until we do we should resolve doubtful cases against the Indians extraordinary. Rather, I would think, we must attempt to fill in the interstices in existing laws and treaties as best we can. That process inevitably involves appropriate reference to broad federal policies and notions of Indian sovereignty, however amorphous. I do not read McClanahan, Mescalero and Moe to seal off evolution of the sovereignty doctrine at some

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 16, 1980

RE: No. 78-630 State of Washington v. Confederated Tribes

Dear Bill:

Thanks so much for your response. Since you are altering your draft dissent I'll await its circulation before making my changes.

Sincerely,

Bill

Mr.Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 4, 1980

RE: No. 78-630 - Washington v. Confederated Tribes

Dear Chief:

Assuming that your memorandum of last Friday constitutes a vote against my position in the above, I offer the following score sheet: There is a court for my facts and jurisdiction sections (parts I, II & III) and for the portions of part V setting forth my views of the motor vehicle tax and the State's assumption of jurisdiction over the reservations. My positions on the cigarette and sales taxes (part IV) and the proper treatment of Indians not enrolled in the subject Tribes (part V) have not carried the day. And my position on the single enforcement issue before us -- whether the state may require tribal retailers to keep records of exempt sales of goods other than cigarettes to facilitate collection of sales taxes on nonexempt sales of such goods -- has yet to be the focus of attention in several chambers (although my impression is that it is entirely uncontroversial since the District Court found that the requirement served no purpose).

In light of this, it seems that you should reassign the opinion, presumably to someone whose views are in line with those of at least four others on all issues. Whoever winds up with it is of course free to take whatever he pleases from my draft.

Sincerely,

Bill

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 17, 1980

RE: No. 78-630 Washington v. Confederated Tribes, etc.

Dear Byron:

I'll be attempting a dissent on the basic issue. I hope to get it around shortly.

Sincerely,

Bill

Mr. Justice White

cc: The Conference

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

From: Mr. Justice Brennan

Circulated: MAY 15 19

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–630

State of Washington et al., Appellants, *v.* Confederated Tribes of the Colville Indian Reservation et al.

State of Washington, *v.* United States et al.

On Appeals from the United States District Court for the Eastern District of Washington.

[May —, 1980]

MR. JUSTICE BRENNAN, concurring in part and dissenting in part.

I agree with the Court's analysis of the jurisdictional questions posed in these cases, as well as with its treatment of the Washington motor vehicle, mobile home, camper and travel trailer taxes and its disposition of the assumption of jurisdiction issue. Accordingly, I join in their entirety Parts I, II, III, V, and VI of the Court's opinion. I also agree with Part IV insofar as it holds that the Colville, Makah, and Lummi Tribes have the power to impose their cigarette taxes on nontribal purchasers (Part IV–B (1)). As the Court points out, the power to tax on-reservation transactions that involve a tribe or its members is a "fundamental attribute of sovereignty which the tribes retain unless divested of it by federal law or necessary implication." *Ante,* at 15. Recognition of that fundamental attribute, however, leads me to disagree with much of the balance of the Court's Part IV. In my view, the State of Washington's cigarette taxing scheme should be invalidated both because it undermines the Tribes' sovereign authority to regulate and tax the distribution of

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 11, 1979

Re: No. 78-630, Washington v. Confederated Tribes

Dear Bill,

You were a good soldier to assign this one to yourself, and I am sure we are all grateful. You may remember that at the Conference I was alone in believing that the Washington sales and cigarette taxes were valid if they credited the taxes imposed by the Tribes. At present I am simply not at rest and shall await the dissenting opinion.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 17, 1980

MEMORANDUM TO THE CONFERENCE

Re: No. 78-630, State of Washington v. Confederated Tribes

Whichever way the Court finally resolves the cigarette tax and sales tax issues in this case, I shall apparently be alone in disagreement. Accordingly, I have drafted and shall expect to file the enclosed separate opinion.

The enclosed opinion does not deal with the state vehicle excise taxes. As to that subject I would hold that the State has the power to impose such taxes on all vehicles that are operated on state roads at any time during the taxable year, but that it has no power to tax vehicles operated exclusively during the year by Indians on their reservation. Since is is my understanding that Washington does not claim any power to impose a tax in the latter situation, I would uphold the imposition of the state vehicle excise taxes, with a statement of my understanding as to the position of the State.

P.S.

1/17/80

STATE OF WASHINGTON V. CONFEDERATED TRIBES, No.78-630

MR. JUSTICE STEWART, dissenting in part

In Moe v. Salish & Kootenai Tribes, 425 U.S. 463, 481-483, the Court held that a State has the power to tax Indian sales of cigarettes to non-Indians, despite the exemptions from state taxes possessed by an Indian Tribe and its members. The State may exert this power, according to Moe, even if it thereby deprives the Tribe or the enterprises the Tribe operates of substantial revenues. Cf., Thomas v. Gay, 169 U.S. 264. The cigarette and sales tax aspects of this case would, therefore, be wholly controlled by the Moe decision, but for the fact that the respondent Tribes levy their own cigarette excise taxes on the on-reservation sales of cigarettes to non-Indians.

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 30, 1980

Re: No. 78-630, Washington v. Confederated Tribes

Dear Byron,

In due course I shall circulate a short separate opinion, concurring in part and dissenting in part.

Sincerely yours,

P.S.

Mr. Justice White

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 Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: 4 JUN 1980

1st DRAFT Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 78-630

State of Washington et al., Appellants, *v.* Confederated Tribes of the Colville Indian Reservation et al.

State of Washington, *v.* United States et al.

On Appeals from the United States District Court for the Eastern District of Washington.

[June —, 1980]

MR. JUSTICE STEWART, concurring in part and dissenting in part.

I join all but Part IV-B (2) and Part V of the Court's opinion. My disagreement with Part V is for the same reasons stated in Part III of MR. JUSTICE REHNQUIST's separate opinion. My disagreement with Part IV-B (2) stems from the belief that the State of Washington cannot impose the full combined measure of its cigarette and sales taxes on purchases by nontribal members of cigarettes from tobacco outlets on the Colville, Lummi, and Makah Reservations.

In *Moe* v. *Salish & Kootenai Tribes*, 425 U. S. 463, 481–483, the Court held that a State has the power to tax sales of cigarettes to non-Indians by Indian tobacco outlets, despite the exemptions from state taxes possessed by an Indian Tribe and its members themselves. The State may exert this power, according to *Moe*, even if it thereby deprives the Tribe or the enterprises the Tribe operates of substantial revenues. Cf., *Thomas* v. *Gay*, 169 U. S. 264. The cigarette and sales tax aspects of this case would, therefore, be wholly controlled by the *Moe* decision, but for the fact that all of the respondent

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 2, 1980

Re: 78-630 - Washington v. Confederated Tribes of The Colville Indian Reservation

Dear Bill,

I shall likely be in partial dis[illegible] to this case and before coming to rest, I am awaiting other writings.

Sincerely yours,

Byron

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 17, 1980

Re: 78-630 - State of Washington v. Confederated Tribes of The Colville Reservation.

Dear Bill,

As you know, my vote in Conference was contrary to the view expressed in Part IV of your circulating opinion in this case. I have not changed my mind on the cigarette and sales tax questions, and in all likelihood I shall join John Stevens in this respect.

With respect to sales to Indians not members of the tribe, I agree with Bill Rehnquist. Since I believe the state taxes on cigarettes are valid, I would also sustain the record-keeping requirements. Otherwise, I agree with your Part V.

Sincerely yours,

Mr. Justice Brennan

Copies to the Conference

cmc

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: 21 JAN 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-630

State of Washington et al., Appellants, *v.* Confederated Tribes of the Colville Indian Reservation et al.

State of Washington, *v.* United States et al.

On Appeals from the United States District Court for the Eastern District of Washington.

[February —, 1980]

MR. JUSTICE WHITE, concurring in part and dissenting in part.

I view this case much as MR. JUSTICE STEVENS does and have joined his partial dissent. I add only that the majority opinion proceeds on the assumption that federal law requires state tax laws to give way to Indian taxes on transactions between Indians and non-Indians on Indian reservations. I find nothing in our prior cases to support this result. Of course, the tribal tax involved here is a valid tax, but that alone does not warrant pre-empting state taxing power absent more definitive guidance from Congress than we have.

Moe held that the States could impose a sales tax on sales by Indians to non-Indians, even though the tax, by removing a competitive advantage that otherwise would have existed, had serious economic impact on the Indians and their federally licensed Indian smoke shops. The Court does not disturb that holding here; and the result should be no different simply because the tribes have chosen, in effect, to substitute for their lost competitive advantage a tribal tax on sales to non-Indians and hence, absent a rollback of state taxes, to make

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: 16 APR 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–630

State of Washington et al., Appellants, *v.* Confederated Tribes of the Colville Indian Reservation et al. State of Washington, *v.* United States et al.	On Appeals from the United States District Court for the Eastern District of Washington.

[April —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

In recent Terms we have more than once addressed the intricate problem of state taxation of matters involving Indian Tribes and their members. *White Mountain Apache Tribe* v. *Bracker*, — U. S. — (1980); *Central Machinery Co.* v. *Arizona*, — U. S. — (1980); *Moe* v. *Salish & Kootenai Tribes*, 425 U. S. 463 (1976); *McClanahan* v. *Arizona State Tax Comm'n*, 411 U. S. 164 (1973); *Mescalero Apache Tribe* v. *Jones*, 411 U. S. 145 (1973). We return to that vexing area in the present cases. Although a variety of questions are presented, perhaps the most significant is whether an Indian Tribe ousts a State from any power to tax on-reservation purchases by nonmembers of the Tribe by imposing its own tax on the transaction or by otherwise earning revenues from the tribal business. A three-judge District Court held for the Tribes. We affirm in part and reverse in part.

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

STYLISTIC CHANGES THROUGHOUT.
~~SEE PAGES:~~

From: Mr. Justice White

Circulated: _____

Recirculated: 4 JUN 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–630

State of Washington et al., Appellants, *v.* Confederated Tribes of the Colville Indian Reservation et al.

State of Washington, *v.* United States et al.

On Appeals from the United States District Court for the Eastern District of Washington.

[June —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

In recent Terms we have more than once addressed the intricate problem of state taxation of matters involving Indina tribes and their members. *White Mountain Apache Tribe* v. *Bracker*, — U. S. — (1980); *Central Machinery Co.* v. *Arizona*, — U. S. — (1980); *Moe* v. *Salish & Kootenai Tribes*, 425 U. S. 463 (1976); *McClanahan* v. *Arizona State Tax Comm'n*, 411 U. S. 164 (1973); *Mescalero Apache Tribe* v. *Jones*, 411 U. S. 145 (1973). We return to that vexing area in the present cases. Although a variety of questions are presented, perhaps the most significant is whether an Indian tribe ousts a State from any power to tax on-reservation purchases by nonmembers of the tribe by imposing its own tax on the transaction or by otherwise earning revenues from the tribal business. A three-judge District Court held for the Tribes. We affirm in part and reverse in part.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 4, 1980

MEMORANDUM TO THE CONFERENCE

Re: 78-630 - Washington v. Confederated Tribes

For the information of those who have written in this case, I plan no substantive changes in the circulating draft.

Cheers,

cmc

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 5, 1980

MEMORANDUM TO THE CONFERENCE

Re: 78-630 - State of Washington v. Confederated Tribes

Just to brighten your day, I am enclosing a copy of the suggested lineup I have sent to the Reporter. I have also sent him all of the opinions to be filed and have asked him to verify the lineup. Of course, if any of you has been misrepresented, I should appreciate hearing.

Enclosure

cmc

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: 9 JUN 1980

27

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–630

State of Washington et al., Appellants, *v.* Confederated Tribes of the Colville Indian Reservation et al.	On Appeals from the United States District Court for the Eastern District of Washington.
State of Washington, *v.* United States et al.	

[June —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

In recent Terms we have more than once addressed the intricate problem of state taxation of matters involving Indian tribes and their members. *Moe* v. *Salish & Kootenai Tribes*, 425 U. S. 463 (1976); *McClanahan* v. *Arizona State Tax Comm'n*, 411 U. S. 164 (1973); *Mescalero Apache Tribe* v. *Jones*, 411 U. S. 145 (1973). We return to that vexing area in the present cases. Although a variety of questions are presented, perhaps the most significant is whether an Indian tribe ousts a State from any power to tax on-reservation purchases by nonmembers of the tribe by imposing its own tax on the transaction or by otherwise earning revenues from the tribal business. A three-judge District Court held for the Tribes. We affirm in part and reverse in part.

I

These cases are here on the State of Washington's appeal

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 13, 1979

Re: No. 78-630 - Washington v. Confederated Tribes

Dear Bill:

I join your opinion but strongly suggest that you delete the words "and particularly the second" in the first full paragraph on page 20.

I consider all three of them to be equally important and especially the third one so it seems it would be easier to leave out the whole phrase.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 17, 1980

Re: No. 78-630 - State of Washington v. Confederated Tribes, etc.

Dear Byron:

I await the dissent.

Sincerely,

T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 6, 1980

Re: No. 78-630 - Washington v. Confederated Tribes

Dear Bill:

Please join me in your opinion.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 14, 1979

There are 2 letters from HB to WJB; one is on the list + this is the other

Dear Bill:

Re: No. 78-630 - Washington v. Confederated Tribes

The following are trivial matters but I mention them for what they may be worth:

1. Should the word "even" in the fourth line of page 24 be "event?"

2. Is there a typographical error in the first line of note 45 on page 25?

3. No. 78-60, according to my notes, was held for No. 78-630. In footnote 46, probable jurisdiction is now noted in No. 78-60. The footnote, however, does not formally dispose of the case. Should it end with a statement such as "The judgment is affirmed?"

Sincerely,

Harry

Mr. Justice Brennan

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 14, 1979

Re: No. 78-630 - Washington v. Confederated Tribes

Dear Bill:

This, indeed, is a complicated and "messy" case. I am prepared to join Parts I, II, and III of your opinion.

Part V affords me difficulty, particularly with respect to the motor vehicle tax. I shall await the dissent from Bill Rehnquist as to this Part.

I have some reservations about Part IV along the lines suggested by Lewis. The state sales tax and the state cigarette tax, it seems to me, are separate and distinct. One certainly can argue that they should be treated separately and that, if the facts warrant, one of them should be salvaged. On this approach, the "credit" issue sought to be avoided in note 37, lurks in the background. This means that I am not entirely persuaded by the suggestion in note 40 that the two taxes must be lumped together.

It may be that I shall not dissent from Part IV (or most of it) even if it remains in its present form. For now, however, I shall await any other writing that may be forthcoming.

Could it be said that the last paragraph of Part IV (on page 22) is literally too broad? Could not the final sentence be read to apply to a sale of cigarettes to any casual purchaser in a Seattle smoke shop? Would this be cured by the insertion of an appropriate reference to "on-reservation" sales by Indians?

Sincerely,

H.A.B.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 1, 1980

Re: No. 78-630 - Washington v. Confederated Tribes

Dear John:

The attached copy of my memorandum of today is self-explanatory.

I am frank to say, however, that in joining your opinion I would be more at ease if you would eliminate the "Cf." citation to Moorman on page 2 of the typed draft of January 17. This, of course, is because I dissented in Moorman and because I suspect that the citation does not add any great strength to the sentence in your opinion to which it is appended.

Sincerely,

Harry

Mr. Justice Stevens

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 1, 1980

MEMORANDUM TO THE CONFERENCE

Re: No. 78-630 - Washington v. Confederated Tribes

At our conference of October 12, I voted to affirm in part and to reverse in part. I am still of that view. Accordingly, on the assumption that the several opinions that have been proposed remain as they are, and that no different consensus develops, I propose to file one reading as follows:

> "I join Parts I, II, and III of the Court's opinion. I am in agreement with Mr. Justice Rehnquist's analysis of the Washington motor vehicle excise tax issue, and I therefore join Part IIC of his separate opinion.
>
> "I also join the respective opinions of Mr. Justice White and Mr. Justice Stevens, except to the extent that they are inconsistent with Part IIC of Mr. Justice Rehnquist's opinion."

HAB.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 22, 1980

Re: No. 78-630 - Washington v. Confederated Tribes

Dear Byron:

Bill Brennan and you have done basic and helpful work on the many issues of this complicated case. I think there is some merit in having as much unanimity as possible.

I still have some mild concern as to certain minor issues, but they are not overwhelming, and I am willing to accommodate. You therefore may join me.

Sincerely,

Harry

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 27, 1979

No: 78-630 Washington v. Confed. Tribes

Dear Bill:

You were generous to assign this difficult Indian case to yourself, and you have written a fine opinion.

I agree with most of it. My vote at the Conference, however, was that the state sales tax on Indian cigarette sales to non-Indians probably was valid.

Because the tribes do not levy a sales tax, imposition of the state's sales tax on Indian cigarette sales would not put Indian goods at a "competitive disadvantage." Non-Indian consumers simply would pay the same surcharge no matter where they made their purchases. Thus, the state sales tax--unlike the state cigarette tax--does not subject Indian transactions to a double exaction or impose state regulation over a sale that the tribes have chosen to regulate. Indeed, absolving Indian retailers of the obligation to collect the state sales tax would allow them to gain a "competitive edge" by marketing their tax exemption. But Moe, as you have pointed out, held that Indian businesses are not entitled to such an edge. Op.at 18, 21-22.

If after further consideration, I adhere to my Conference view, I will join most of your opinion but dissent briefly as to the sales tax issue.

Sincerely,

Lewis

Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 6, 1979

78-630 Washington v. Confederated Tribes

Dear Bill:

I so much appreciate your sending me a draft of a proposed new footnote 40, in response to my letter of November 27. The redraft of the note does not meet the view I expressed as to the difference between the cigarette and sales tax, and I suppose we simply have different perceptions of this issue. Yet, I do think the most important goal is to resolve doubt and provide guidance in this area. Accordingly, it is possible that I will join your entire opinion. For the time being, however, I think I will await writings by other Justices and see what is said about the sales tax.

Sincerely,

Lewis

Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 17, 1980

78-630 Washington v. Confederated Tribues

Dear Bill:

Thank you for your memorandum on this case. For the reasons stated in my Nov. 27 letter, I still am inclined to adhere to my view that the state sales tax is not pre-empted. I will await the end of this second round of "voting," however, before I decide whether to dissent on that issue.

While I continue to agree with most of what you have written, I think that WHR's dissent makes a point when it says that the Court has not fully identified the source of the pre-emption in this case. Since it is no mere stroke of the tribal pen, but federal power that ousts the state tax, perhaps it would be well to address the gap that Bill identifies.

Here, the Secretary of the Interior--acting under lawful regulations--has approved tribal constitutions that give these tribes the power to tax non-Indians. See, e.g., Colville Constitution art. V, § 1(e) (1938) [App. 66]. The Secretary also has approved the taxing schemes at issue. Our decisions show that such expressions of federal authority and policy can confer additional authority upon the Tribes and pre-empt inconsistent state laws. United States v. Mazurie, 419 U.S. 544 (1975), recognizes that the federal government can give the Indians authority over non-Indians who come within the reservation because the tribes traditionally have had substantial independent authority over non-Indians within their territory. And Fisher v. District Court, 424 U.S. 382 (1976), holds that federal approval of a tribal court could pre-empt state court jurisdiction over matters otherwise within the state's power.

I do not, of course, insist upon changes along these lines, but perhaps some reference to these factors would emphasize the continuity in our Indian law decisions.

Sincerely,

Lewis

Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 17, 1980

78-630 State of Washington v. Confederated Tribes

Dear Byron:

I will await the dissent

Sincerely,

Lewis

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 22, 1980

79-630 Washington v. Confederate Tribes

Dear Byron:

In view of the difficulties - unusual even for a complex Indian case - that we have had putting a Court together on a majority of the issues in this case, I write to say that I am willing to join your opinion if my vote will give you a Court.

I may join you even if you end up only with a plurality of four, although in that situation I reserve the right to take a second look.

The principal difference between your conclusions and the views I have heretofore held is that you sustain the state's cigarette tax. I had rather thought the Indians had the better of it on the preemption argument. I have not thought, however, that the principle of tribal self government was strong enough in itself to prevent the state from taxing cigarette sales to non-Indians. I note that Bill Brennan now rests his view primarily on this ground.

In any event, I think you have written a persuasive opinion. It is important to put a Court together, and settle these questions of power to tax. I therefore am willing to join you as above indicated.

Sincerely,

Lewis

Mr. Justice White

cc: The Conference

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 4, 1980

78-630 Washington v. Confederated Tribes

Dear Byron:

Please join me in your opinion for the Court.

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

November 26, 1979

Re: No. 78-630 - Washington v, Confederated Tribes

Dear Bill:

In due course, I will circulate a dissent in this case.

Sincerely,

Mr. Justice Brennan

Copies to the Conference

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

From: Mr. Justice Rehnquist

Circulated: 11 JAN 1980

Recirculated: _____

78-630 - Washington v. Confederated Tribes, First Draft

MR. JUSTICE REHNQUIST, dissenting in part.

Since early in the last century, this Court has been struggling to develop a coherent doctrine by which to measure with some predictability the scope of Indian immunity from state taxation.[1/] In recent years, it appeared such a doctrine was well on its way to being established. That doctrine, I had thought, was at bottom a preemption analysis based on the principle that Indian immunities are dependent upon congressional intent. McClanahan v. Arizona State Tax Commission, 411 U.S. 164 (1973); Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973); Moe v. Confederated Salish & Kootenai Tribes, 425 U.S. 463 (1976); Bryan v. Itasca County, 426 U.S. 373 (1976).

The Court today claims to adhere to this preemption analysis, but the claim will not withstand analysis. The Court never identifies the backdrop of sovereignty which McClanahan made relevant to the preemption analysis. More importantly, the Court fails to examine any specific terms of the relevant congressional enactments in this field. It must, therefore, be solely by judicial intuition that the Court finds that Congress prohibited the states from taxing (at least to the full extent) cigarette purchases by non-Indian purchasers on the reservation. Just at the point of doctrinal development when the Court seemed firmly resolved to leave the determination of these immunity questions to the appropriate forum, i.e., Congress, it retreats from the straightforward preemption analysis employed in these other very recent cases, and pulls out of the closet a judicial immunity wand which may apparently be used at will without regard to the intent of Congress. Because I am satisfied that McClanahan and Mescalero were doctrinally correct, I dissent from the Court's failure to adhere to their teaching.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 15, 1980

Re: No. 78-630 - State of Washington v Confederated Tribes

Dear Bill:

I agree that our differences on the principles applicable to the adjudication of Indian tax immunities are fundamental. I, for one, am simply unwilling to see this Court step in as a surrogate for Congress unless the state taxation is discriminatory or subjects tribes to undue interference with tribal self-government--neither of which are present in this case.

We also seem to disagree fundamentally on the characteristics of a valid vehicle excise tax. If the state scheme were drafted or construed so as not to apply to those Indians limiting use of their vehicles to the reservation, I do not think that Moe would be controlling. While I could concur in the invalidation of the tax on the grounds that if not so interpreted, it is overinclusive in this respect only, I continue to prefer a remand. I think it is clear that the lower court did not appreciate the significance of this distinction and accordingly did not focus on the manner in which the state taxing scheme would be applied to Indians limiting their use to the reservation. Judge Kilkenny, for example, found the record inadequate to resolve the question of validity.

As you point out, the parties did stipulate that Indians would be required to obtain vehicle licenses, but I do not think that this stipulation obviates any need for a remand for a number of reasons. The state case cited in the stipulation confirms that the state has assumed jurisdiction over the public highways located on the reservation. The case did not address directly the question of how the motor vehicle licensing statute would be applied in conjunction with the excise tax when a reservation Indian seeks to use a vehicle exclusively on a reservation. The construction of a state statute, when it bears on the disposition of a contested federal issue, must be derived from judicial interpretation and not stipulation of the parties. More importantly, there may be other provisions or interpretations of state law which would be relevant to this question of exclusive reservation use. It may well be that the excise tax is applicable without exception to even those Indians using their vehicles exclusively on the reservation, but I agree with Judge Kilkenny that federal courts cannot invalidate state taxes without thoroughly reviewing the applicable precedents of the state courts construing the operation of the statutes. I would therefore remand the case in order to clarify that this is

ng question in determining the validity of the
scheme. By remanding, I would require the lower
ly examine the state taxing scheme under a corrected
at federal law requires. Cf. Perkins v. Benguet
red Mining Co., 342 U.S. 437 (1952); Zacchini v.
oward Broadcasting Co., 433 U.S. 562, 578-79 (1977).

will alter my draft dissent in some minor respects and
re as soon as it returns from the printer.

Sincerely,

The Conference

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

From: Mr. Justice Rehnquis

Circulated: 16 JAN 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-630

State of Washington et al., Appellants, *v.* Confederated Tribes of the Colville Indian Reservation et al.

State of Washington, *v.* United States et al.

On Appeals from the United States District Court for the Eastern District of Washington.

[January —, 1980]

MR. JUSTICE REHNQUIST, dissenting in part.

Since early in the last century, this Court has been struggling to develop a coherent doctrine by which to measure with some predictability the scope of Indian immunity from state taxation.[1] In recent years, it appeared such a doctrine was well on its way to being established. That doctrine, I had thought, was at bottom a pre-emption analysis based on the principle that Indian immunities are dependent upon congressional intent. *McClanahan* v. *Arizona State Tax Commission*, 411 U. S. 164 (1973); *Mescalero Apache Tribe* v. *Jones*, 411 U. S. 145 (1973); *Moe* v. *Confederated Salish & Kootenai Tribes*, 425 U. S. 463 (1976); *Bryan* v. *Itasca County*, 426 U. S. 373 (1976).

The Court today claims to adhere to this pre-emption analysis, but the claim will not withstand analysis. The Court never identifies the backdrop of sovereignty which *McClanahan* made relevant to the pre-emption analysis.

[1] Much of that developmental history is recounted in *McClanahan* v. *Arizona State Tax Comm'n*, 411 U. S. 164, 168–172 (1973).

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 28, 1980

Re: No. 78-630 Washington v. Confederated Tribes

Dear Byron:

Needless to say, you are free to borrow anything you want from my earlier dissenting opinion in this case in preparing the new majority opinion assigned to you by the Chief.

Sincerely,

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 23, 1980

Re: No. 78-630 - Washington v. Confederated Tribes

Dear Byron:

I anticipate circulating an opinion concurring in part and dissenting in part as soon as I can.

Sincerely,

Mr. Justice White

Copies to the Conference

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

From: Mr. Justice Rehnquist

Circulated: 6 MAY 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–630

State of Washington et al., Appellants, v. Confederated Tribes of the Colville Indian Reservation et al.

State of Washington, v. United States et al.

On Appeals from the United States District Court for the Eastern District of Washington.

[May —, 1980]

MR. JUSTICE REHNQUIST, concurring and dissenting.

Since early in the last century, this Court has been struggling to develop a coherent doctrine by which to measure with some predictability the scope of Indian immunity from state taxation.[1] In recent years, it appeared such a doctrine was well on its way to being established. I write separately to underscore what I think the contours of that doctrine are because I am convinced that a well-defined body of principles is essential in order to end the need for case-by-case litigation which has plagued this area of the law for a number of years. That doctrine, I had thought, was at bottom a pre-emption analysis based on the principle that Indian immunities are dependent upon congressional intent. *McClanahan* v. *Arizona State Tax Commission*, 411 U. S. 164 (1973); *Mescalero Apache Tribe* v. *Jones*, 411 U. S. 145 (1973); *Moe* v. *Confederated Salish & Kootenai Tribes*, 425 U. S. 463 (1976); *Bryan* v. *Itasca County*, 426 U. S. 373 (1976), at least absent dis-

[1] Much of that developmental history is recounted in *McClanahan* v. *Arizona State Tax Comm'n*, 411 U. S. 164, 168–172 (1973).

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 5, 1980

Re: No. 78-630 State of Washington v. Confederated Tribes

Dear Byron:

Your lineup in this case is agreeable to me.

Sincerely,

WHR/lfm

Mr. Justice White

Copies to the Conference

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: DEC 11 '79

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–630

State of Washington et al., Appellants, *v.* Confederated Tribes of the Colville Indian Reservation et al.

State of Washington, *v.* United States et al.

On Appeals from the United States District Court for the Eastern District of Washington.

[January —, 1980]

MR. JUSTICE STEVENS, dissenting in part.

In *Moe* v. *Confederated Salish and Kootenai Tribes*, 425 U. S. 463, 481–483, the Court held that a State that imposes a cigarette tax on non-Indian purchasers may require Indian merchants to collect and remit that tax. The State's requirement was objectionable to the Indians for two reasons: it destroyed their competitive advantage over non-Indian sellers and it imposed an administrative burden on the Indian merchants. Because the competitive advantage was derived solely from the willingness of a significant number of non-Indian purchasers to flout their obligations under state law to pay sales and excise taxes, the Court found it unworthy of federal protection. And the Court squarely held that the "minimal" administrative burden of collecting the tax was not a "burden which frustrates tribal self-government." *Id.*, at 483.

The Washington cigarette tax discussed in Part IV of the opinion the Court announces today is indistinguishable from the state tax at issue in *Moe*. It is perfectly clear that Washington's taxation of the tribal sales of cigarettes to non-

P.3

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: JAN 17 '80

78-630 - State of Washington v. Confederated Tribes of the Colville Indian Reservation

MR. JUSTICE STEVENS, dissenting in part.

In Moe v. Confederated Salish and Kootenai Tribes, 425 U.S. 463, 481-483, the Court held that a state that imposes a cigarette tax on non-Indian purchasers may require Indian merchants to collect and remit that tax. The State's requirement was objectionable to the Indians for two reasons: it destroyed their competitive advantage over non-Indian sellers and it imposed an administrative burden on the Indian merchants. Since the competitive advantage was derived solely from the willingness of a significant number of non-Indian purchasers to flout their obligations under state law to pay sales and excise taxes, the Court found it unworthy of federal protection. And the Court squarely held that the "minimal" administrative burden of collecting the tax was not a "burden which frustrates tribal self-government." Id., at 483.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 17, 1980

Re: 78-630 - State of Washington v. Confederated Tribes, etc.

Dear Byron:

Please join me.

Respectfully,

JPS

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 5, 1980

Re: 78-630 - State of Washington v. Confederated Tribes

Dear Byron:

To brighten your day, if you like, you may join me in your proposed lineup.

Respectfully,

JPS

Mr. Justice White

Copies to the Conference

P.S. HAPPY BIRTHDAY