

# The Burger Court Opinion Writing Database

*Three Affiliated Tribes of Fort Berthold  
Reservation v. Wold Engineering, P.C.*  
467 U.S. 138 (1984)

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 9, 1984

Re: 82-629 - Three Affiliated Tribes v. Wold Engr., Et al.

Dear Harry:

I join.

Regards,

Handwritten signature of Clarence Thomas, consisting of a large, stylized 'C' followed by 'T' and 'B'.

Justice Blackmun

Copies to the Conference

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

RECEIVED  
SUPREME COURT U.S.  
JUSTICE MARSHALL

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

'84 ABR -5 A10:14

April 5, 1984

No. 82-629

Three Affiliated Tribes of the  
Fort Berthold Reservation v. Wold  
Engineering, P.C., et al.

Dear Harry,

I agree.

Sincerely,



Justice Blackmun

Copies to the Conference

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

RECEIVED  
SUPREME COURT U.S.  
JUSTICE BYRON R. WHITE

CHAMBERS OF  
JUSTICE BYRON R. WHITE

'84 ABR -9 A11 :41  
April 9, 1984

Re: 82-629 -

Three Affiliated Tribes of the  
Fort Berthold Reservation v.  
Wold Engineering, P.C.

Dear Harry,  
Please join me.

Sincerely,  


Justice Blackmun  
cc: The Conference  
cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 11, 1984

Re: No. 82-629 - Three Affiliated Tribes v.  
Wold Engineering

Dear Harry:

Please join me.

Sincerely,



T.M.

Justice Blackmun

cc: The Conference

Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: Justice Blackmun

Circulated: APR 4 1984

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-629

THREE AFFILIATED TRIBES OF THE BERTHOLD  
 RESERVATION, PETITIONERS *v.* WORLD  
 ENGINEERING, P. C., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF  
 NORTH DAKOTA

[April —, 1984]

JUSTICE BLACKMUN delivered the opinion of the Court.

This litigation presents issues of state court civil jurisdiction over a claim asserted by an Indian tribe. The case, as it comes to us, is somewhat unusual in a central respect: the tribe seeks, rather than contests, state-court jurisdiction, and the non-Indian party is in opposition. Cf. *Williams v. Lee*, 358 U. S. 217 (1959).

Chapter 27-19 of the North Dakota Century Code (1974) is entitled "Indian Civil Jurisdiction." Section 27-19-01 of that Code provides that the jurisdiction of North Dakota courts shall extend "over all civil causes of action which arise on an Indian reservation upon acceptance by Indian citizens." In this case, the Supreme Court of North Dakota interpreted Chapter 27-19 to disclaim state court jurisdiction over a claim (against a non-Indian) by an Indian tribe that had not accepted jurisdiction under the statute. The court determined that the North Dakota Legislature had disclaimed jurisdiction pursuant to the principal federal statute governing state jurisdiction over Indian country, namely, the Act of Aug. 15, 1953, 67 Stat. 588, as amended, 28 U. S. C. § 1360, commonly known as Pub. L. 280. The court further concluded that the jurisdictional disclaimer, inasmuch as it was authorized by Pub. L. 280, did not run afoul of the North Dakota or Federal Constitutions. Because the North Dakota

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7/15

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 25, 1984

MEMORANDUM TO THE CONFERENCE

Re: Case Held for No. 82-629 - Three Affiliated Tribes  
v. Wold Engineering

The only case being held for Three Affiliated Tribes is No. 82-1564, Lonewolf v. Lonewolf. In that case, appellee Theresa Lonewolf filed a petition for separation from her husband, appellant Joseph Lonewolf, in a New Mexico state court. Appellant and appellee were married in 1951 in New Mexico. Appellant is an Indian and an enrolled member of the Santa Clara Indian tribe in New Mexico. Appellee is a non-Indian but lived with appellant on the reservation for seven years before filing the separation petition. Appellee's separation petition sought, inter alia, a temporary assignment of certain of the couple's assets located on the reservation. In his answer to the separation petition, appellant counterclaimed for divorce but maintained that the state court lacked jurisdiction over any personal property located on the reservation.

The trial court ruled that it lacked jurisdiction over real property located within the reservation but that it possessed jurisdiction over the couple's personal property regardless of location. The couple then entered into a stipulation concerning the distribution of most of the personal property, and the trial court entered an order dissolving the marriage and requiring appellant to pay appellee \$18,000 for her interest in certain Indian pottery whose location and ownership were still disputed. Appellant appealed to the New Mexico Supreme Court, renewing his claim that the trial court lacked jurisdiction over the pottery and other personal property located on the reservation. That court affirmed. It reasoned that while state courts lack jurisdiction over real property in tribal reservations under Williams v. Lee, 358 U.S. 217 (1959), appellee's community-property interests in the personal property were not tied to the reservation and the trial court's jurisdiction to dissolve the marriage brought with it jurisdiction to determine distribution of the couple's community property. The court also reasoned that appellant had submitted to the jurisdiction of the trial court with respect to the personal property when he filed his counterclaim for divorce and when he entered into the stipulation concerning the division of most of the couple's personal property. This appeal here followed.

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

RECEIVED  
SUPREME COURT U.S.  
JUSTICE POWELL

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

'84 ABR -9 A9:56

April 7, 1984

82-629 Three Affiliated Tribes v. World Engineering

Dear Harry:

Please join me.

Sincerely,



Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 10, 1984

Re: No. 82-629 Three Affiliated Tribes of Fort Berthold  
Reservation v. Wold Engineering

Dear Harry:

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

Sincerely,



Justice Blackmun

cc: The Conference



Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Stevens  
 Justice O'Connor

From: Justice Rehnquist

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

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Pp 178

MAY 11 1984

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-629

THREE AFFILIATED TRIBES OF THE FORT  
 BERTHOLD RESERVATION, PETITIONERS *v.*  
 WOLD ENGINEERING, P. C., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF  
 NORTH DAKOTA

[May —, 1984]

JUSTICE REHNQUIST, with whom JUSTICE STEVENS joins, |  
 dissenting.

The highest state court in North Dakota has made a decision on the scope of state court jurisdiction, a decision based on a state statute passed following amendment of the state constitution. The question is clearly one of state law, immune from our review except in so far as it might be preempted by federal law or in conflict with the United States Constitution. The Court today does not say that Chapter 27-19, as interpreted by the North Dakota Supreme Court, is preempted by federal law. Nor does the Court find that statute unconstitutional. Yet the Court vacates the judgment below because Pub. L. 280 neither "authorized" nor "required" any disclaimer of pre-existing state jurisdiction.

I do not disagree with the Court's essay on the purpose and effect of Pub. L. 280. But I fail to see its relevance to the state law issues decided by the court below. Accordingly, I would affirm the judgment of the North Dakota court because the only federal question actually before us—the constitutionality of North Dakota's refusal to exercise jurisdiction over a lawsuit brought by an Indian tribe—is |  
 insubstantial.

In Part II(A) of its opinion, the Court argues that state-court jurisdiction over this case would have been proper, as a

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 10, 1984

Re: 82-629 - Three Affiliated Tribes v.  
Wold Engineering

Dear Harry:

In view of the fact that Bill Rehnquist is writing, plus the fact that I was somewhat troubled about this case when it was argued, I believe I will wait to see what he writes.

Respectfully,



Justice Blackmun

Copies to the Conference

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

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

'84 MAY 10 P3:03

May 10, 1984

Re: 82-629 - Three Affiliated Tribes v.  
Wold Engineering

Dear Bill:

Please join me in your dissenting opinion.

Respectfully,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

April 4, 1984

Re: No. 82-629 Three Affiliated Tribes of the Fort  
Berthold Reservation v. Wold  
Engineering

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference