The Burger Court Opinion Writing Database

Montana v. Blackfeet Tribe
471 U.S. 759 (1985)

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 24, 1985

Re: No. 83-2161 - Montana v. Blackfeet Tribe

Dear Lewis:

I join.

Regards,

WEB

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 9, 1985

No. 83-2161

Montana v. Blackfeet Tribe of Indiana

Dear Lewis,

I agree.

Sincerely,

Bill

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 15, 1985

83-2161 -

Montana v. Blackfeet Tribe of Indians

Dear Lewis,

I due course, I shall circulate a dissent in this case.

Sincerely,

Byron

Justice Powell

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

Circulated: MAY 24 1985

Recirculated: ______

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-2161

MONTANA, ET AL., PETITIONERS *v.* BLACKFEET TRIBE OF INDIANS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[May ——, 1985]

JUSTICE WHITE, dissenting.

The question is whether the proviso to the Act of May 29, 1924, ch. 210, 43 Stat. 244, codified at 25 U. S. C. § 398, authorizes a State to tax oil and gas production under leases entered into under the Indiàn Mineral Leasing Act of 1938, ch. 198, 52 Stat. 347, codified at 25 U. S. C. § 396a–396g. In my view, the proviso constitutes a sufficiently explicit expression of congressional intent to permit such taxation.

The majority apparently does not rest its contrary holding on the conclusion that the 1938 Act *repealed* the taxing authority contained in the 1924 Act. See *ante*, at 8, and n. 6. Although the majority does not appear to come to rest on the question whether the taxing proviso has been repealed, it is clear to me (as it was to both the majority and the dissent in the Court of Appeals) that the 1938 Act did not repeal the proviso. The 1938 Act repealed only acts inconsistent with its terms, see ch. 198, § 7, 52 Stat. 347, and there is no suggestion that taxation of mineral leases is actually inconsistent with any of the provisions of the 1938 Act. Indeed, given that the 1938 Act and its legislative history are completely silent on the question of taxation, it cannot seriously be suggested that the 1938 Act specifically repealed any taxing authority that might otherwise exist under the 1924 Act.

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

Circulated: ____________

Recirculated: ____ 1985 ____

p. 1 + stylistic

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-2161

MONTANA, ET AL., PETITIONERS *v.* BLACKFEET TRIBE OF INDIANS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[May ——, 1985]

JUSTICE WHITE, with whom JUSTICE REHNQUIST and JUSTICE STEVENS join, dissenting.

The question is whether the proviso to the Act of May 29, 1924, ch. 210, 43 Stat. 244, codified at 25 U. S. C. § 398, authorizes a State to tax oil and gas production under leases entered into under the Indian Mineral Leasing Act of 1938, ch. 198, 52 Stat. 347, codified at 25 U. S. C. § 396a–396g. In my view, the proviso constitutes a sufficiently explicit expression of congressional intent to permit such taxation.

The majority apparently does not rest its contrary holding on the conclusion that the 1938 Act *repealed* the taxing authority contained in the 1924 Act. See *ante*, at 8, and n. 6. Although the majority does not appear to come to rest on the question whether the taxing proviso has been repealed, it is clear to me (as it was to both the majority and the dissent in the Court of Appeals) that the 1938 Act did not repeal the proviso. The 1938 Act repealed only acts inconsistent with its terms, see ch. 198, § 7, 52 Stat. 347, and there is no suggestion that taxation of mineral leases is actually inconsistent with any of the provisions of the 1938 Act. Indeed, given that the 1938 Act and its legislative history are completely silent on the question of taxation, it cannot seriously be suggested that the 1938 Act specifically repealed any taxing authority that might otherwise exist under the 1924 Act.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 9, 1985

Re: No. 83-2161-Montana v. Blackfeet Tribe of Indians

Dear Lewis:

Please join me.

Sincerely,

T.M.

T.M.

Justice Powell

cc: The Conference

V

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 13, 1985

Re: No. 83-2161, Montana v. Blackfeet Tribe

Dear Lewis:

Please join me.

Sincerely,

Harry

Justice Powell

cc: The Conference

LFP

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: MAY 8 1985

Recirculated: ____________

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-2161

MONTANA, ET AL., PETITIONERS *v.* BLACKFEET TRIBE OF INDIANS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[May ——, 1985]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether the State of Montana may tax the Blackfeet Tribe's royalty interests under oil and gas leases issued to non-Indian lessees pursuant to the Indian Mineral Leasing Act of 1938, ch. 198, 52 Stat. 347, 25 U. S. C. § 396a *et seq.*

I

Respondent Blackfeet Tribe filed this suit in the United States District Court for the District of Montana challenging the application of several Montana taxes[1] to the Tribe's royalty interest in oil and gas produced under leases issued by the Tribe. The leases involved unallotted lands on the Tribe's reservations and were granted to non-Indian lessees in accordance with the Indian Mineral Leasing Act of 1938, ch. 198, 52 Stat. 347, 25 U. S. C. § 396a *et seq.* (the 1938 Act). The taxes at issue were paid to the State by the lessees and then deducted by the lessees from the royalty payments made to the Tribe. The Blackfeet sought declaratory and in-

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[1] At issue are the taxes adopted in the following statutes: the Oil and Gas Severance Tax, Mont. Code Ann. §§ 15-36-101 *et seq.* (1983); the Oil and Gas Net Proceeds Tax, Mont. Code Ann. §§ 15-23-601 *et seq.* (1983); the Oil and Gas Conservation Tax, Mont. Code Ann. §§ 82-11-101 *et seq.*; and the Resource Indemnity Trust Tax, Mont. Code Ann. §§ 15-38-101 *et seq.* (1983).

05/14

Stylistic changes

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: ____________

Recirculated: 5/14/85

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-2161

MONTANA, ET AL., PETITIONERS *v.* BLACKFEET TRIBE OF INDIANS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[May ——, 1985]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether the State of Montana may tax the Blackfeet Tribe's royalty interests under oil and gas leases issued to non-Indian lessees pursuant to the Indian Mineral Leasing Act of 1938, ch. 198, 52 Stat. 347, 25 U. S. C. § 396a *et seq.* (1938 Act).

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[1] At issue are the taxes adopted in the following statutes: the Oil and Gas Severance Tax, Mont. Code Ann. § 15-36-101 *et seq.* (1983); Oil and Gas Net Proceeds, Mont. Code Ann. § 15-23-601 *et seq.* (1983); Oil and Gas Conservation, Mont. Code Ann. § 82-11-101 *et seq.* (1983); and the Resource Indemnity Trust Tax, Mont. Code Ann. § 15-38-101 *et seq.* (1983).

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 24, 1985

Re: No. 83-2161 Montana v. Blackfeet Tribe of Indians

Dear Byron,

Please join me in your dissenting opinion.

Sincerely,

WHR

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 15, 1985

Re: 83-2161 - Montana v. Blackfeet Tribe of Indians

Dear Lewis:

I shall wait for the dissent in this case.

Respectfully,

JPS

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 24, 1985

Re: 83-2161 - Montana v. Blackfeet Tribe of Indians

Dear Byron:

Please join me.

Respectfully,

Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 9, 1985

No. 83-2161 Montana v. Blackfeet Tribe of Indians

Dear Lewis,

Please join me.

Sincerely,

Sandra

Justice Powell

Copies to the Conference