

# The Burger Court Opinion Writing Database

*Three Affiliated Tribes of Fort Berthold  
Reservation v. Wold Engineering, P.C.*  
476 U.S. 877 (1986)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University





CHAMBERS OF  
THE CHIEF JUSTICE

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

June 7, 1986

Re: No. 84-1973 - Three Affiliated Tribes v. Wold Engineering

Dear Sandra,

I join.

Regards,

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 8, 1986

No. 84-1973

Three Affiliated Tribes  
v. Wold Engineering

Dear Bill and John,

We three are in dissent in the  
above. Would you, Bill, be willing to  
take it on?

Sincerely,



Justice Rehnquist

Justice Stevens

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 4, 1986

No. 84-1973

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

Dear Bill,

Please join me.

Sincerely,,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 22, 1986

84-1973 - Three Affiliated Tribes of the Fort  
Berthold Reservation v. Wold Engineering

Dear Sandra,

I await the dissent in this case.

Sincerely yours,



Justice O'Connor

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 5, 1986

84-1973 - Three Affiliated Tribes of the Fort  
Berthold Reservation v. Wold Engineering

Dear Sandra,

This has become a hard case for me, but  
I now join your opinion.

Sincerely yours,



Justice O'Connor

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 23, 1986

Re: No. 84-1973-Three Affiliated Tribes of the Fort  
Berthold Reservation v. Wold  
Engineering et al.

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Dear Sandra:

Please join me.

Sincerely,

*J.M.*

T.M.

Justice O'Connor

cc: The Conference

W

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 23, 1986

Re: No. 84-1973, Three Affiliated Tribes v. Wold Engineering

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

19

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 27, 1986

84-1973 Three Affiliated Tribes v. Wold Engineering

Dear Sandra:

Please join me.

Sincerely,

*Lewis*

Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 8, 1986

Re: No. 84-1973 Three Affiliated Tribes v.  
Wold Engineering

Dear Bill,

I will be happy to try a dissent in this case.

Sincerely,

WHR

Justice Brennan

cc: Justice Stevens

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

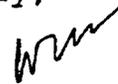
May 22, 1986

Re: No. 84-1973 Three Affiliated Tribes v. Wold Engineering

Dear Sandra,

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

Sincerely,



Justice O'Connor

cc: The Conference

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

From: **Justice Rehnquist**

Circulated:         JUN 3 1986        

Recirculated:   

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

          
No. 84-1973  
        

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

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF  
NORTH DAKOTA

[June —, 1986]

JUSTICE REHNQUIST, dissenting.

North Dakota law provides that in order for an Indian tribe such as petitioner to avail itself of the jurisdiction of North Dakota courts as a plaintiff, it must also accept the jurisdiction of those courts when it is properly named as a defendant in them. This Court holds that such a rule—which would commend itself to most people as eminently fair—is preempted by federal law. To support this conclusion the Court advances two arguments: first, pre-emption by Pub. L. 280, and, second, the “overshadowing” of the state interest by “long-standing federal and tribal interest.” *Ante*, p. 7. Neither by themselves nor in the rather awkward juxtaposition in which the Court places them are these arguments persuasive.

The Court’s argument based on Pub. L. 280 consists of two assertions: (1) Pub. L. 280 pre-empts Chapter 27-19’s disclaimer of preexisting jurisdiction because the federal statute establishes a “comprehensive” legislative plan to govern Indian matters, and Chapter 27-19’s disclaimer is incompatible with the plan’s general purpose to authorize the assumption of state jurisdiction over Indian country, *ante*, at 7-8; and (2) the initial failure of Pub. L. 280 to authorize a disclaimer of jurisdiction, combined with the subsequent authorization of such disclaimer in the 1968 amendments with

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 22, 1986

Re: 84-1973 - Three Affiliated Tribes of  
the Fort Berthold Reservation v.  
Wold Engineering, et al.

Dear Sandra:

I shall wait for Bill's dissent.

Respectfully,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 3, 1986

Re: 84-1973 - Three Affiliated Tribes of  
the Fort Berthold Reservation v.  
Wold Engineering, et al.

Dear Bill:

Please join me.

Respectfully,



Justice Rehnquist

Copies to the Conference

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: Justice O'Connor

Circulated: ~~MAY 2, 1986~~

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-1973

THREE AFFILIATED TRIBES OF THE FORT  
BERTHOLD RESERVATION, PETITIONER  
v. WOLD ENGINEERING ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF  
NORTH DAKOTA

[May —, 1986]

JUSTICE O'CONNOR delivered the opinion of the Court.

Petitioner, Three Affiliated Tribes of the Fort Berthold Reservation, sought to sue respondent, Wold Engineering, P. C., in state court for negligence and breach of contract. The North Dakota Supreme Court held that Chapter 27-19 of the North Dakota Century Code (1974) disclaimed the unconditional state court civil jurisdiction North Dakota had previously extended to tribal Indians suing non-Indians in state court. It ruled that under Chapter 27-19, petitioner could not avail itself of state court jurisdiction unless it consented to waive its sovereign immunity and to have any civil disputes in state court to which it is a party adjudicated under state law. 364 N. W. 2d 98 (1985). The question presented is whether Chapter 27-19, as construed by the North Dakota Supreme Court, is repugnant to the federal Constitution or is preempted by federal Indian law.

I

This is the second time this Court has been called upon to address this jurisdictional controversy. See *Three Affiliated Tribes v. Wold Engineering (Three Tribes I)*, 467 U. S. 138 (1984). Because the facts and procedural history of the litigation were set forth in some detail in *Three Tribes I*, our present recitation will be brief.

Stylistic Changes Throughed.

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: Justice O'Connor

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Recirculated: MAY 27 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1973

THREE AFFILIATED TRIBES OF THE FORT  
BERTHOLD RESERVATION, PETITIONER  
v. WOLD ENGINEERING ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF  
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