

The Burger Court Opinion Writing Database

South Carolina v. Catawba Tribe, Inc.

476 U.S. 498 (1986)

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

December 18, 1985

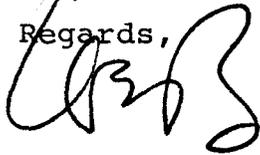
Re: No. 84-782 - South Carolina v. Catawba Indian
Tribe

Dear Thurgood:

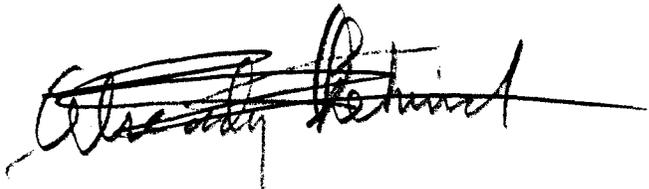
I have struck out on every possible "switch" of
84-782, South Carolina v. Catawba Indian Tribe with
some other case.

Will you settle if I relieve you of this case and
give you extra cases next time around?

Regards,



Justice Marshall



CJ

I will appreciate your reassessing this case and
giving me an extra case or two next time around.



Copies to other justices

DEC 18 10:31

DEC 18 1985

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

CHAMBERS OF
THE CHIEF JUSTICE

December 20, 1985

RE: No. 84-782 - South Carolina v. Catawaba Indian Tribe

Dear John:

Will you take on the opinion for the Court in this case? As you know, Thurgood has asked to be relieved of it.

Regards,



Justice Stevens

Copies to the Conference

DEC 23 10 28

U.S. SUPREME COURT
WASHINGTON, D.C. 20543

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

CHAMBERS OF
THE CHIEF JUSTICE

May 29, 1986

RE: 84-782 - South Carolina, et al. v.
Catawba Indian Tribe of South
Carolina

Dear John:

I join.

Regards,

A handwritten signature in dark ink, appearing to be "Stevens", written in a cursive style.

Justice Stevens

Copies to the Conference

h/

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 3, 1986

No. 84-782

South Carolina v. Catawba
Indian Tribe of South Carolina

Dear John,

Please join me.

Sincerely,



Justice Stevens

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SE vbb-3 632e



CHAMBERS OF
JUSTICE BYRON R. WHITE

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

April 3, 1986

84-782 - South Carolina v. Catawba
Indian Tribe of South Carolina

Dear John,

Please join me.

Sincerely yours,

A handwritten signature in cursive script, appearing to be 'Stevens'.

Justice Stevens

Copies to the Conference

APR 11 1986

APR 11 1986

December 20, 1985

Re: No. 84-782-South Carolina v. Catawba Indian Tribe

Dear Chief:

I will appreciate your reassigning this case and giving me an extra case or two next time around.

Sincerely,

T.M.

The Chief Justice

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 3, 1986

Re: No. 84-782-South Carolina v. Catawba
Indian Tribe

Dear John:

I await the dissent.

Sincerely,

J.M.

T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 27, 1986

Re: No. 84-782-South Carolina v. Catawba Indian
Tribe of South Carolina

Dear Harry:

Please join me in your dissent.

Sincerely,

T.M.

T.M.

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 2, 1986

Re: No. 84-782, South Carolina v. Catawba Indian Tribe

Dear John:

In due course, I shall try my hand at a dissent in this case.

Sincerely,



Justice Stevens

cc: The Conference

APR 3 1986

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

From: **Justice Blackmun**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-782

**SOUTH CAROLINA, ET AL., PETITIONERS v.
 CATAWBA INDIAN TRIBE OF
 SOUTH CAROLINA**

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

[April —, 1986]

JUSTICE BLACKMUN, dissenting.

The Catawba Indian Tribe Division of Assets Act, 73 Stat. 592, 25 U. S. C. § 931 *et seq.*, was passed by Congress in 1959 to divide up the Tribe's federally supervised reservation so that individual Catawbas could sell or mortgage their allotments. The Court today concludes that the Act also had the incidental effect of applying a South Carolina statute of limitations to the Catawbas' pre-existing and longstanding claim to lands the State purported to purchase from the Tribe in 1840. I feel this interpretation cannot be reconciled with the language of the Act under this Court's traditional approach to statutes regulating Indian affairs. I therefore dissent.

I

Too often we neglect what history offers to teach us. Even more than other domains of law, "the intricacies and peculiarities of Indian law . . . deman[d] an appreciation of history." Frankfurter, Foreword to A Jurisprudential Symposium in Memory of Felix S. Cohen, 9 Rutgers L. Rev. 355, 356 (1954).

Before the arrival of white settlers, the Catawba Indians occupied much of what is now North and South Carolina. In the 1760 Treaty of Pine Tree Hill, the Catawbas relinquished the bulk of their aboriginal territory to Great Britain in ex-

STYLISTIC CHANGES

8 pp. 1, 6, 9

Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'ConnorFrom: **Justice Blackmun**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-782

SOUTH CAROLINA, ET AL., PETITIONERS *v.*
CATAWBA INDIAN TRIBE OF
SOUTH CAROLINAON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[June —, 1986]

JUSTICE BLACKMUN, with whom JUSTICE MARSHALL and
JUSTICE O'CONNOR join, dissenting.

The Catawba Indian Tribe Division of Assets Act, 73 Stat. 592, 25 U. S. C. § 931 *et seq.*, was passed by Congress in 1959 to divide up the Tribe's federally supervised reservation so that individual Catawbas could sell or mortgage their allotments. The Court today concludes that the Act also had the incidental effect of applying a South Carolina statute of limitations to the Catawbas' pre-existing and longstanding claim to lands the State purported to purchase from the Tribe in 1840. I feel this interpretation cannot be reconciled with the language of the Act under this Court's traditional approach to statutes regulating Indian affairs. I therefore dissent.

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Too often we neglect the past. Even more than other domains of law, "the intricacies and peculiarities of Indian law . . . demand an appreciation of history." Frankfurter, Foreword to A Jurisprudential Symposium in Memory of Felix S. Cohen, 9 Rutgers L. Rev. 355, 356 (1954).

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 8, 1986

84-782 South Carolina v. Catawba Indian Tribe

Dear John:

Please join me.

Sincerely,

Lewis

Justice Stevens

lfp/ss

cc: The Conference

APR 11 1986

3

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 4, 1986

Re: 84-782 - South Carolina v. Catawba Indian
Tribe of South Carolina

Dear John:

Please join me.

Sincerely,

WR

Justice Stevens

cc: The Conference

APR 19 4 31 PM '86

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201

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 23, 1985

Re: 84-782 - South Carolina v. Catawaba
Indian Tribe

Dear Chief:

I will be happy to take on the opinion in this case.

Respectfully,

John Paul Stevens / jps

The Chief Justice

Copies to the Conference

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

From: **Justice Stevens**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-782

SOUTH CAROLINA, ET AL., PETITIONERS v. CATAWBA INDIAN TRIBE OF SOUTH CAROLINA

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

[April —, 1986]

JUSTICE STEVENS delivered the opinion of the Court.

At issue in this litigation is the right to possession of a "Tract of Land of Fifteen Miles square" described in a 1763 treaty between the King of England and the Catawba Head Men and Warriors.¹ The Tract, comprising 144,000 acres and 225 square miles, is located near the northern border of South Carolina; some 27,000 persons now claim title to different parcels within the Tract. The specific question presented to us is whether the State's statute of limitations applies to the Tribe's claim. The answer depends on an interpretation of a statute enacted by Congress in 1959 to authorize a division of Catawba tribal assets. See 25 U. S. C. §§ 931-938. We hold that the State's statute applies, but we do not reach the question whether it bars the Tribe's claim.

¹The 1763 Treaty of Fort Augusta was entered into by the Catawbas and British and colonial officials, and provides, in relevant part:

"And We the Catawba Head Men and Warriors in Confirmation of an Agreement heretofore entered into with the White People declare that we will remain satisfied with the Tract of Land of Fifteen Miles square a Survey of which by our consent and at our request has been already begun and the respective Governors and Superintendant on their Parts promise and engage that the aforesaid survey shall be compleated and that the Catawbas shall not in any respect be molested by any of the King's subjects within the said Lines but shall be indulged in the usual Manner of hunting Elsewhere." J. A. 35.

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

STYLISTIC CHANGES THROUGHOUT.
 SEE PAGES.

From: **Justice Stevens**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-782

SOUTH CAROLINA ET AL., PETITIONERS *v.* CA-
 TAWBA INDIAN TRIBE OF SOUTH CAROLINA

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

[April —, 1986]

JUSTICE STEVENS delivered the opinion of the Court.

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"And We the Catawba Head Men and Warriors in Confirmation of an Agreement heretofore entered into with the White People declare that we will remain satisfied with the Tract of Land of Fifteen Miles square a Survey of which by our consent and at our request has been already begun and the respective Governors and Superintendant on their Parts promise and engage that the aforesaid survey shall be compleated and that the Catawbans shall not in any respect be molested by any of the King's subjects within the said Lines but shall be indulged in the usual Manner of hunting Elsewhere." XI Colonial Records of North Carolina 201-202 (1763), reprinted in App., 35.

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 3, 1986

No. 84-782 South Carolina v. Catawba Indian
Tribe of South Carolina

Dear John,

I may join you in the end, but for now
I'll wait and see what Harry has to say.

Sincerely,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 27, 1986

Re: 84-782 South Carolina, et al. v. Catawba Indian
Tribe of South Carolina

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference