10-1975

# Bryan v. Itasca County, Minnesota

Lewis F. Powell Jr.

Gail - This memo supersedes the earlier memo.

Discuss
Probably a grant but I want to hear what Rehnquist thinks

The response says the lower courts are in accord (CA 8 + Wash SC agree w/ Minn SC) and the statute is clear. But - as this memo points out - the issue is important. And the statute is not that clear. The response claims this issue was DFWSFQ in an earlier case (No. 74-807), but there the issue was not directly presented and there was a mootness problem. Chris

Minn. imposed a personal prop. tax on a mobile home owned by an Indian & situated on Indian land held in trust by U.S. for Indians.

DISCUSS

Q: whether 25 USC 1360 confers authority on a state (Minn.) to tax Indian prop. situated on trust land? Then Q was left open in McClanahan

Preliminary Memo

Summer List 10, Sheet 4

No. 75-5027

Probable grant. Chris

| | | |
|---|---|---|
| BRYAN | Cert. to Minn SC (Yetka; en banc) | Timely*/ |
| V. | | |
| ITASCA COUNTY, MINNESOTA | State/Civil | |

1. SUMMARY: The question presented is whether Minnesota is empowered by Congress to impose a personal property tax on a mobile home owned by a Chippewa Indian and situated upon Indian land held

Note in filing

*/The previous memo, concluding that the petn was jurisdictionally untimely, is withdrawn. The clerk's office has verified that the Minn SC's judgment was not entered until April 10, 1975, which date brings the petn, filed July 7, within the 90-day period. That the opinion was dated March 28 does not control.

in trust by the U.S. for the tribe. Affirming the trial court, the Minn. SC upheld the tax as authorized by Congress.

2. FACTS: Petr, an enrolled member of the Chippewa Tribe, organized and recognized as such under federal law, has since 1971 owned and resided in a mobile home located within the Greater Leech Lake Indian Reservation, which land is held in trust by the U.S. for the tribe. The mobile home is permanently connected to water, sewer, and electric service. Resp's treasurer assessed personal property taxes against petr upon the mobile home for part of 1971 and all of 1972, totalling some $150. Petr's state declaratory judgment action asserted tax immunity under federal Indian law. The trial court, upon stipulated facts (including that the mobile home was personalty), found that the authority to tax Indian personalty was extended by Congress to Minnesota (and its subdivisions) by Pub. L. No. 83-280, § 4 (Aug. 15, 1953), codified at 28 U.S.C. § 1360, subsection (a) of which states that "those civil laws [of the listed States, including Minnesota] that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the [listed States]."[1/] The Minn. SC (Yetka; en banc), affirming, reasoned that P.L. 280's

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1/Pub. L. 280, §§ 2 and 4 respectively, grant criminal and civil jurisdiction over Indian adjudication to state courts; § 2 is codified at 18 U.S.C. § 1162. The entire act is reproduced and attached.

extension to the named States of criminal and civil jurisdiction over Indian adjudication, together with the explicit language quoted above, constituted the first, important step in Congress' plan to "assimilate" Indians into modern society, a reading supported by the legislative history. The quoted language should thus be read as plainly embracing general taxing power over Indians and Indian property and enterprises within the reservation; and it is the kind of "express" statutory authority required under McClanahan v. Arizona Tax Comm'n, 411 U.S. 164, 171, 177-179 (1973), and there found wanting. That the quoted language within § 1360 (a) is a general grant of taxing power is confirmed by the excepting language of § 1360(b):

> "Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States. . . ."

Section 1360(a) must include the general power to tax, for otherwise § 1360(b) is superfluous as a limitation on a non-existent power.

3. CONTENTIONS: Within the "backdrop" of the Indian sovereignty doctrine, McClanahan, 411 U.S., at 172, express Congressional authority for Minn. to tax Indians on Indian land does not exist: (1) the treaty creating the Leech Lake reservation

for the Chippewa is silent with respect to taxation; (2) the Buck Act, passed six years earlier in 1947, expressly stated that it was not to be read as authorizing taxation of "any Indian not otherwise taxed," 4 U.S.C. § 109, which language is "explicable only if Congress assumed that the States lacked the power to impose . . . taxes without special authorization." McClanahan, 411 U.S., at 177; (3) there is no express grant of taxing power in either the language of P.L. 280 or its legislative history; that immunity which Congress so carefully preserved in prior statutes like the Buck Act would not have been swept aside without specific notation; (4) P.L. 280, according to its legislative history, is to be read as a "law and order" statute, designed to shift responsibility for adjudication from tribal courts to state courts; it is a modest solution to the specific problem of the inadequacy of law enforcement in some areas of Indian country. Finally, the question of whether P.L. 280 authorizes the levy of personal income or property taxes on Indians within reservations was specifically reserved in McClanahan.

4. DISCUSSION: The only decision relied upon by Minn. SC as squarely on point is Omaha Tribe of Indians v. Peters, 382 F.Supp. 421 (D. Neb. 1974). It has since been affirmed by CA 8. 516 F.2d 133. Peters involved Nebraska's assertion of taxing power over the personal income earned on the reservation by Indians residing

therein. Nebraska, like Minnesota, is a listed state under § 1360 (a). Distinguishing McClanahan on the ground that Arizona does not come within § 1360, CA 8's reasoning tracked that of the Minn. SC: to give "civil laws . . . of general application" the same force and effect within Indian country is plainly to embrace personal income tax laws. That § 1360(b) granted a specific tax exemption as to trust property shows Congress' awareness that state revenue laws were among those which would become applicable to Indians by virtue of the breadth of § 1360(a). 516 F.2d at 137.

Petr is correct in stating that McClanahan reserved the very question presented, 411 U.S., at 178, n. 18, namely, that on the assumption that a state is within the reach of § 1360, does that section empower taxation of Indians living on the reservation. Whether or not CA 8 and the Minn. SC are correct, I would rate this a candidate for cert: (1) a decision would have broad applicability to personalty, income, and other non-trust-property taxes (see petn at 23-24) with respect to Indians living on reservations within the reach of § 1360; (2) since under the Indian Civil Rights Act of 1968 those tribes not embraced by § 1360 now have the choice (as opposed to the states) of subjecting themselves to state civil and criminal jurisdiction (25 U.S.C. §§ 1321 & 1322), this Court should settle the tax implications involved in that choice.

There is no response; it has been waived.

8/19/75 Mason Minn. SC opin in appx to petn

does this mean there is no need to CFR P.? not necessarily

August 15, 1953
[H. R. 1063]

P.L. 83-280,
67 Stat. 588

Indians.

AN ACT

To confer jurisdiction on the States of California, Minnesota, Nebraska, Oregon, and Wisconsin, with respect to criminal offenses and civil causes of action committed or arising on Indian reservations within such States, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That chapter 53 of title 18, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1151 of such title the following new item:

State jurisdiction over criminal offenses.

"1162. State jurisdiction over offenses committed by or against Indians in the Indian country."

SEC. 2. Title 18, United States Code, is hereby amended by inserting in chapter 53 thereof immediately after section 1161 a new section, to be designated as section 1162, as follows:

"§ 1162. State jurisdiction over offenses committed by or against Indians in the Indian country

"(a) Each of the States listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over offenses committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country as they have elsewhere within the State:

| "State of | Indian country affected |
|---|---|
| California | All Indian country within the State |
| Minnesota | All Indian country within the State, except the Red Lake Reservation |
| Nebraska | All Indian country within the State |
| Oregon | All Indian country within the State, except the Warm Springs Reservation |
| Wisconsin | All Indian country within the State, except the Menominee Reservation |

Taxation of property, etc.

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

"(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section."

State jurisdiction over civil causes.

SEC. 3. Chapter 85 of title 28, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1331 of such title the following new item:

"1360. State civil jurisdiction in actions to which Indians are parties."

SEC. 4. Title 28, United States Code, is hereby amended by inserting in chapter 85 thereof immediately after section 1359 a new section, to be designated as section 1360, as follows:

"§ 1360. State civil jurisdiction in actions to which Indians are parties

"(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

| "State of | Indian country affected |
|---|---|
| California | All Indian country within the State |
| Minnesota | All Indian country within the State, except the Red Lake Reservation |
| Nebraska | All Indian country within the State |
| Oregon | All Indian country within the State, except the Warm Springs Reservation |
| Wisconsin | All Indian country within the State, except the Menominee |

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein. Taxation of property, etc.

"(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section."

Repeal.

SEC. 5. Section 1 of the Act of October 5, 1949 (63 Stat. 705, ch. 604), is hereby repealed, but such repeal shall not affect any proceedings heretofore instituted under that section.

Removal of legal impediment.

SEC. 6. Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: *Provided*, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be.

Consent of U. S. to other States.

SEC. 7. The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof.

Approved August 15, 1953.

28 USCA §1323 (Supp. 1975):

**§ 1323. Retrocession of jurisdiction by State**

**(a) The United States is authorized to accept a retrocession by any State of all or any measure of the criminal or civil jurisdiction, or both, acquired by such State pursuant to the provisions of section 1162 of Title 18, section 1360 of Title 28, or section 7 of the Act of August 15, 1953 (67 Stat. 588), as it was in effect prior to its repeal by subsection (b) of this section.**

**(b) Section 7 of the Act of August 15, 1953 (67 Stat. 588), is hereby repealed, but such repeal shall not affect any cession of jurisdiction made pursuant to such section prior to its repeal.**
**Pub.L. 90-284, Title IV, § 403, Apr. 11, 1968, 82 Stat. 79.**

note repeal of P.L. 280, §7.

Conference 10-31-75

Court ..... Voted on ....., 19...

Argued ....., 19... Assigned ....., 19... No. 75-5027

Submitted ....., 19... Announced ....., 19...

# BRYAN

vs.

# ITASCA COUNTY, MINNESOTA

I read wrong docket sheet by mistake

Granted Hold for Moe 74-1656

This is correct vote.

| | GR | HOLD FOR | CERT. G | CERT. D | JURISDICTIONAL STATEMENT N | JURISDICTIONAL STATEMENT POST | JURISDICTIONAL STATEMENT DIS | JURISDICTIONAL STATEMENT AFF | MERITS REV | MERITS AFF | MOTION G | MOTION D | ABSENT | NOT VOTING | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Rehnquist, J. | | ✓ | | | | | | | | | | | | | |
| Powell, J. | ✓ | | | | Hold for Moe | | | | | | | | | | |
| Blackmun, J. | ✓ | | | | " | | | | | " | | | | | |
| Marshall, J. | ✓ | | | | Hold for Moe | | | | | | | | | | |
| White, J. | ✓ | | | | Hold for Moe | | | | | | | | | | |
| Stewart, J. | | ✓ | ✓ | ✓ | | " | | | " | | | | | | |
| Brennan, J. | ✓ | | ✓ | | | | | | | | | | | | |
| Douglas, J. | | ✓ | | | | | | | | | | | | | |
| Burger, Ch. J. | | ✓ | | | Hold for Moe | | | | | | | | | | |

cs/ss 4/17/76

BENCH MEMO

TO: Mr. Justice Powell DATE: April 17, 1976

FROM: Carl Schenker

No. 75-5027 Bryan v. Itasca County

I recommend reversal.

This is a you-pays-your-money-and-you-takes-your-choice case. I choose the Indians.

Basic "Indian law" is that states may not tax Indians without congressional authorization. If there is such authorization here, Congress gave it in an off-hand fashion. It seems to me more likely that the Indians are correct in contending that Congress intended only (i) to confer state court jurisdiction to resolve civil disputes, and (ii) to designate a choice-of-law principle. Congress probably was not aware of how carefully it might have to draw a protective clause because of the ill-developed state of Indian tax law in 1957. I am somewhat confirmed in my view by the state's argument consisting of nothing but "plain language" points.

Carl

ss

Cert. to Minn S/Ct

75-5027 BRYAN v. ITASCA COUNTY Argued 4/20/76

Q - whether Minn. is empowered by Congress to impose a personal prop. tax on a mobile home owned by an Indian, & situated on trust land held for the Tribe? Minn. upheld tax.

This Q was reserved in McClanahan

Pub. Law 280 } 28 USC §1360, (a) relied upon by Minn. Ct., provides that "civil laws" [of Minn. — of the U.S.] applicable to "private persons" or "property" shall apply w/in "Indian Country".

§1360 is not clear, altho sub-section (b) provides that nothing in section shall authorize taxation of trust prop. Minn. S/Ct relied primarily on (b):

"Unless (a) is interpreted as a general grant of power to tax, the exceptions --- in (b) are limitations on a non-existent power."

Becker (Retr) (Indiana)
(No helps)

Luther (Deputy AG - Minn)

Absent P. Law 280, Minn. would have no auth. to tax.

This case involves personal prop that is not trust prop. exempted by (b).

If the mobile home were real prop, it would be exempt (as trust prop?). But no contention was made below that this is real prop.

In add. to personal prop tax, 280 would allow any tax of general applicability: e.g. income, sales, etc — other than real prop. which is trust prop.

Leg. history sheds no light.

Policy underlying 280 was to assimilate & integrate Indians with other citizens.

No. 75-5027, BRYAN v. ITASCA COUNTY — Conf. 4/23/76

Reverse 5-3 (Chief Parted)

The Chief Justice — Affirm ??

P.L. 280 not clear but S/Ct Minn. is right.

X X X

After discussion C.J. decided to "Pass"

Stevens, J. — Reverse

Thinks he can explain (b).

Brennan, J. — Reverse

Congress has to be explicit if wants to allow Indians to be taxed.

Stewart, J. — Reverse

Difficult, close case.

If Nez were not an Indian Tribe, would agree with Minn. S/Ct.

But there is a strong presumption vs. taxing Indians.

There is personal prop. (concededly)

P.L. 280 is not sufficiently explicit.

White, J.

Affirm

P. L. 280 is supplement ev. of Congressional intent.

Marshall, J.

Reverse

Agreen with Brennan + Stewart (Wrote McClanahan)

Blackmun, J. Reverse

In view of "tender care" doctrine of Indian law, Congress has to be totally explicit to impose tax.

Powell, J. Affirm (?)

Sub-section (b) is persuasive

Rehnquist, J. Affirm

P. L. 280 was not in MOL.

Can't explain sub-section (b)

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 1, 1976

Douglas
Stewart

MEMORNADUM TO THE CONFERENCE

RE: No. 75-5027 Bryan v. Itasca Co, Minnesota Reversed Indians www - ar unan.

Due to the log-jam at print shop I circulate above in xeroxed form.

W.J.B. Jr.

Renewed 6/2/76

I voted the "other way" - but this op. is persuasive in light of general presumption (rarely articulated as such) that the Indians are not subjected to state taxation absent Congressional consent. See McClanahan + Mescalero

RUSSELL BRYAN, petitioner v. ITASCA COUNTY, MINNESOTA, respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

No. 75-5027 Decided June ___, 1976

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This case presents the question reserved in McClanahan v. Arizona State Tax Commission, 411 U.S. 164, 178 n. 18 (1973): whether the grant of civil jurisdiction to the States conferred by § 4 of Public Law 280, 72 Stat 590, 28 U.S.C. § 1360, is a Congressional grant of power to the States to tax reservation Indians except insofar as taxation is expressly excluded by the terms of the statute.

Petitioner Russell Bryan, an enrolled member of the Minnesota Chippewa Tribe,[1/] resides in a mobile home on land held in trust for the Chippewa Tribe on the Leech Lake Reservation in Minnesota. In June of 1972, petitioner received notices from the auditor of respondent Itasca County, Minnesota that he had been assessed personal property tax liability on the mobile home totaling $147.95. Thereafter, in September, 1972, petitioner brought this suit in the Minnesota District Court seeking a declaratory judgment that the state and county were without authority to levy such a tax on personal property of a reservation Indian on the reservation and that imposition of such a tax was contrary to federal law. The Minnesota District Court rejected the contention and entered judgment for

respondent County. The Minnesota Supreme Court affirmed, ____ Minn. ____, 228 N.W.2d 249 (1975). We granted certiorari, ____ U.S. ____ (1975), and now reverse.

I

Principles defining the power of States to tax reservation Indians and their property and activities on federally established reservations were codified in McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164 (1973). As summarized in its companion case, Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973), McClanahan established the principle that:

> "[I]n the special area of state taxation absent cession of jurisdiction or other federal statutes permitting it, there has been no satisfactory authority for taxing Indian reservation lands or Indian income from activities carried on within the boundaires of the reservation, and McClanahan . . . lays to rest any doubt in this respect by holding that such taxation is not permissible absent Congressional consent." Mescalero Apache Tribe v. Jones, supra, at 148.[2/]

McClanahan held that Arizona was disabled in the absence of Congressional consent from imposing a state income tax on the income of a reservation Indian earned solely on the reservation. On the authority of McClanahan, Moe v. Confederated Salish and Kootenai Tribes, ____ U.S. ____, ____ (1976), held this Term that in the absence of Congressional consent the State was disabled from imposing a personal property

tax on motor vehicles owned by tribal members living on the reservation, or a vendor license fee applied to a reservation Indian conducting a business for the Tribe on reservation land, or a sales tax as applied to on-reservation sales by Indians to Indians.

Thus McClanahan and Moe preclude any authority in respondent County to levy a personal property tax upon petitioner's mobile home in the absence of Congressional consent. Our task therefore is to determine whether § 4 of Public Law 280, 28 U.S.C. § 1360, constitutes such consent.

Subsection (a) of § 4, 28 U.S.C. § 1360(a), provides:

> "Each of the States . . . listed . . . shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed . . . to the same extent that such State . . . has jurisdiction over other civil causes of action, and those civil laws of such State . . . that are of general application to private persons or private property shall have the same force and effect within Indian country as they have elsewhere within the State . . . .
>
> * * * *
>
> Minnesota . . . All Indian Country within the State, except the Red Lake Reservation"

The statute does not in terms provide that the tax laws of a State are among "civil laws . . . of general application to private persons or private property." The Minnesota Supreme Court concluded, however,

that they were included, finding in § 4(b) of the statute a negative implication of inclusion in § 4(a) of a general power of tax. Section 4(b) provides:

> "Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein."

The Minnesota Supreme Court reasoned that "unless paragraph (a) is interpreted as a general power to tax, the exceptions contained in paragraph (b) are limitations on a non-existent power." ____ Minn., at ____, 228 N.W.2d, at ____.[3/] Therefore, the State Court held "Public Law 280 is a clear grant of power to tax," ____ Minn., at ____, 228 N.W.2d, at ____.[4] We disagree. That conclusion is foreclosed by the legislative history of Public Law 280 and the application of canons of construction applicable to Congressional statutes claimed to terminate Indian immunities.

The primary concern of Congress in enacting Public Law 280 that clearly emerges from its sparse legislative history was with the problem of lawlessness on certain Indian reservations, and the absence of adequate tribal institutions for law enforcement. See Goldberg, Public Law 280: The Limits of State Jurisdiction over Reservation Indians, 22 U.C.L.A. L. Rev. 535, 541-542 (1975). The House Report expressly states:

> "These States lack jurisdiction to prosecute Indians for most offenses committed on Indian reservations or other Indian country, with limited exceptions. The applicability of Federal criminal laws in States having Indian reservations is also limited. The United States district courts have a measure of jurisdiction over offenses committed on Indian reservations or other Indian country by or against Indians, but in cases of offenses committed by Indians against Indians that jurisdiction is limited to the so-called 10 major crimes: murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, arson, burglary, robbery, and larceny.
>
> "As a practical matter, the enforcement of law and order among the Indians in the Indian country has been left largely to the Indian groups themselves. In many States, tribes are not adequately organized to perform that function; consequently, there has been created a hiatus in law-enforcement authority that could best be remedied by conferring criminal jurisdiction on States indicating an ability and willingness to accept such responsibility."

H.R. Rep. 848, 83d Cong., 1st Sess. 5-6 (1953).[5/] Thus, provision for State criminal jurisdiction over offenses committed by or against

Indians on the reservations was the central focus of Public Law 280 and is embodied in § 2 of the Act, 18 U.S.C. § 1162.[6/]

In marked contrast is the virtual absence of Congressional policy or intent in the legislative history respecting § 4's grant of civil jurisdiction to the States. Of special significance for our purposes, however, is the total absence of any mention or discussion regarding a Congressional intent to confer upon the States an authority to tax Indians or Indian property on Indian reservations. Neither Report nor floor discussion in either House mentions such authority.[7/] This omission has significance in the application of the canons of construction applicable to statutes affecting Indian immunities, as some mention would normally be expected if such a sweeping change in the status of tribal government and reservation Indians had been contemplated by Congress.[8/] The only mention of taxation authority is in a colloquy between Mr. Sellery, Chief Counsel of the Bureau of Indian Affairs, and Congressman Young during House committee hearings on Public Law 280. That colloquy strongly suggests that Congress did not mean to grant tax authority to the States:

> "Mr. Young. Does your bill limit the provision for Federal assistance to States in defraying the increased expenses of the courts in connection with the widening of the jurisdiction that the bill encompasses?
>
> Mr. Sellery. No; it does not.
>
> Mr. Young. Do you think it would be necessary to provide for some payment, inasmuch as the great portion of Indian lands are not subject to taxation?

Mr. Sellery. . . . Generally, the Department's views are that if we started on the processes of Federal financial assistance or subsidization of law enforcement activities among the Indians, it might turn out to be a rather costly program, and it is a problem which the States should deal with and accept without Federal financial assistance; otherwise there will be some tendency, the Department believes, for the Indian to be thought of and perhaps to think of himself because of the financial assistance which comes from the Federal Government as still somewhat a member of a race or group which is set apart from other citizens of the State. And it is desired to give him and the other citizens of the State the feeling of a conviction that he is in the same status and has access to the same services, including the courts, as other citizens of the State who are not Indians.

Mr. Young. That would not quite be true, though; would it? Because for the most part he does not pay any taxes.

Mr. Sellery. No. There is that difference.

Mr. Young. A rather sizable difference in not paying for the courts or paying for the increased expenses for judicial proceedings.

Mr. Sellery. The Indians, of course, do pay other forms of taxes. I do not know how the courts of Nevada are supported financially, but the Indians do pay the sales tax and other taxes.

Mr. Young. But no income tax or corporation tax or profits tax. You understand a large portion of the land is held in trust and therefore is not subject to tax.

Mr. Sellery. That is correct.

Mr. Young. So far as my State is concerned, it would be a large burden on existing costs of judicial procedure. I think it is only right that the Federal Government should make some contribution for that. You seem to differentiate. I think there is a differentiation, too, in that they are not paying taxes.

Mr. Sellery. I will concede your point that they are not paying taxes. The Department has recommended, nevertheless, that no financial assistance be afforded to the States." App. 55-56.[9/]

Piecing together as best we can the sparse legislative history of § 4, subsection (a) seems to have been primarily intended to redress the lack of adequate Indian forums for resolving private legal disputes between reservation Indians, and between Indians and other private citizens, by permitting the courts of the States to decide such disputes; this is definitely the import of the statutory wording conferring upon a State "jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in . . . Indian country . . . to the same extent that such State . . . has jurisdiction over other civil causes of action." With this as the primary focus of § 4(a), the wording that follows in § 4(a) -- "and those civil laws of such State . . . that are of general application to private persons or private property shall have the same force and effect within Indian country as they have elsewhere within the State" -- authorizes application by the State courts of their rules of decision to decide such disputes.[10/] Compare 28 U.S.C. § 1652. This construction finds support in the consistent and uncontradicted references in the legislative history to "permitting State courts to adjudicate civil controversies" arising on Indian reservations, H.R. Rep. 848, at 5, 6 (emphasis added), and the complete absence of anything remotely resembling an intention to confer general state civil regulatory control over Indian reservations.[11/] In short, the consistent and exclusive

use of the terms "civil cause of action," "arising in," "civil laws of general application to private persons and private property," and "adjudicat[ion]," in both the Act and its legislative history virtually compel our conclusion that the primary intent was to grant jurisdiction over litigation involving reservation Indians in state court.

Furthermore, certain tribal reservations were completely exempted from the provisions of Public Law 280 precisely because each had a "tribal law-and-order organization that functions in a reasonably satisfactory manner." H.R. Rep. 848, at 7.[12/] Congress plainly meant only to allow state courts to decide criminal and civil matters arising on reservations not so organized. Accordingly, rather than the expansive reading given § 4(a) by the Minnesota Supreme Court, the construction we give the section is much more consonant with the revealed congressional intent. Moreover, our construction is consistent with our prior references to § 4 as "the extension of state jurisdiction over causes of action arising in Indian country." Kennerly v. District Court of Montana, 400 U.S. 423, 427 (1971). See also, id., at 424 n. 1; id., at 430-432 (STEWART, J., dissenting); Warren Trading Post Co. v. Arizona Tax Comm., 380 U.S. 685, 687, n. 3 (1965); Menominee Tribe v. U.S., 391 U.S. 404, 416, n. 8 (1968) (STEWART, J., dissenting). Our construction is also fully consistent with Title IV of the Civil Rights Act of 1968,

25 U.S.C. §§ 1321-1326. Title IV repeals § 7 of Public Law 280 and requires tribal consent as a condition to further state assumptions of the jurisdiction provided in 18 U.S.C. § 1162 and 28 U.S.C. § 1360. Section 402 of Title IV, 25 U.S.C. § 1322, tracks verbatim the language of § 4 of Public Law 280. Section 406 of Title IV, 25 U.S.C. § 1326, which provides for Indian consent, refers to "State jurisdiction acquired pursuant to this subchapter with respect to criminal offenses or civil causes of action . . . ." It is true, of course, that the primary interpretation of § 4 must have reference to the legislative history of the Congress that enacted it rather than to the history of Acts of a later Congress. Nevertheless, Title IV of the 1968 Act is intimately related to § 4, as it provides the method for further state assumptions of the jurisdiction conferred by § 4. We have construed the effect of legislation affecting reservation Indians in light of "intervening" legislative enactments, Moe v. Confederated Salish and Kootenai Tribes, ____ U.S., at ____, and it would be paradoxical to suppose that Congress intended the meaning of § 4 to vary depending upon the time and method by which particular States acquired jurisdiction. Certainly the legislative history of Title IV makes it difficult to construe § 4 jurisdiction acquired pursuant to Title IV as extending State general civil regulatory power, including taxing power, to govern Indian reservations. Senator Ervin,

who offered and principally sponsored Title IV, see Kennerly v. District Court of Montana, 400 U.S., at 429 n. 5, referred to § 1360 civil jurisdiction as follows:

> "Certainly representatives of municipalities have charged that the repeal of Public Law 280 would hamper air and water pollution controls and provide a haven for undesirable, unrestricted business establishments within tribal land borders. Not only does this assertion show the lack of faith that certain cities have in the ability and desire of Indian tribes to better themselves and their environment, but, most importantly, it is irrelevant, since Public Law 280 relates primarily to the application of state civil and criminal law in court proceedings, and has no bearing on programs set up by the States to assist economic and environmental development in Indian territory." (emphasis added)

III

Other considerations also support our construction. Today's Congressional policy toward reservation Indians may less clearly than in 1953 favor their assimilation but Public Law 280 was plainly not meant to effect total assimilation. Public Law 280 was only one of many types of assimilationist legislation under active consideration in 1953. H.R. Rep. 848, at 3-5; Santa Rosa Band of Indians v. Kings County, No. 74-1565, Slip op. at 10 (CA 9, Nov. 3, 1973).[13/] And nothing in its legislative history remotely suggests that Congress meant the Act's extension of civil jurisdiction to the States should result in the undermining or destruction of such tribal governments as did exist and

a conversion of the affected tribes into little more than "'private, voluntary organizations,'" United States v. Mazurie, 419 U.S. 544, 557 (1975) -- [redacted] a possible result if tribal governments were subordinated to the full panoply of civil regulatory powers, including taxation, of state and local governments.[14/] The Act itself refutes such an inference: there is notably absent any conferral of state jurisdiction over the tribes themselves, and § 4(c), 28 U.S.C. § 1360(c), providing for the "full force and effect" of any tribal ordinances or customs "heretofore or hereafter adopted by an Indian tribe . . . if not inconsistent with any applicable law of the State" contemplates the continuing vitality of tribal government.[15/]

Moreover, the same Congress that enacted Public Law 280 also enacted several termination Acts,[16/] legislation which is cogent proof that Congress knows well how directly to express its intent when that intent is to subject Indians to the full sweep of state laws and state taxation. Cf. Board of County Comm'rs v. Seber, 318 U.S. 705, 713 (1943); Goudy v. Meath, 203 U.S. 146, 149 (1906). These termination enactments provide expressly for subjecting distributed property "and any income derived therefrom by the individual, corporation or other legal entity, to the same taxes, state and federal, as in the case of non-Indians," 25 U.S.C. § 564j; 25 U.S.C. § 749; 25 U.S.C. § 898, and provide that "all statutes of the United States which affect

Indians because of their status as Indians shall no longer be applicable to members of the tribe, and the laws of the several states shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction." 25 U.S.C. § 564q; 25 U.S.C. § 757; 25 U.S.C. § 899; cf., 25 U.S.C. § 726. These contemporaneous termination Acts are in pari materia with Public Law 280. Menominee Tribe v. United States, 391 U.S., at 411. Reading this express language respecting state taxation and application of the full range of state laws to tribal members of these contemporaneous termination Acts, the negative inference is that Congress did not mean in section 4(a) to subject reservation Indians to state taxation. Thus rather than the negative implication, found by the Minnesota Supreme Court in the exclusion of certain taxation by § 4(b), of a grant of general taxing power in § 4(a), we conclude that these Acts in pari materia with Public Law 280 show that if Congress in enacting Public Law 280 had intended to confer upon the States general civil regulatory powers, including taxation, over reservation Indians, it would have expressly said so.

IV

Additionally, we note that § 4(b), excluding "taxation . . . of any real or personal property . . . belonging to any Indian or Indian

tribe . . . that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States," is not obviously the narrow exclusion of state taxation which the Minnesota Supreme Court read it to be. On its face the statute is not clear whether the exclusion is applicable only to taxes levied directly on the trust property specifically, or whether it also excludes taxation on activities taking place in conjunction with such property and income deriving from its use. And even if read narrowly to apply only to taxation levied against trust property directly, § 4(b) certainly does not expressly authorize all other state taxation of reservation Indians.

Moreover, the express prohibition of any "alienation, encumbrance, or taxation" of any trust property can be read as a prohibition on the state courts acquiring jurisdiction over civil controversies involving reservation Indians pursuant to § 4, from applying state laws or enforcing judgments in ways that would effectively result in the "alienation, encumbrance, or taxation" of trust property. Indeed, any other reading of this provision of § 4(b) is difficult to square with the identical prohibition contained in § 2(b) of the Act, which applies the same restrictions upon state courts exercising criminal jurisdiction over reservation Indians. It would simply make no sense to infer from the identical language of § 2(b) a general power in § 2(a) to tax Indians in all other respects since § 2(a) deals only with criminal jurisdiction.

Indeed, § 4(b) in its entirety may be read as simply a reaffirmation of the existing reservation Indian-Federal Government relationship in all respects save the conferral of state court jurisdiction to adjudicate private civil causes of action involving Indians. We agree with the Court of Appeals for the Ninth Circuit that § 4(b) is "entirely consistent with, and in effect is a reaffirmation of, the law as it stood prior to its enactment." Kirkwood v. Arenas, 243 F.2d 863, 865-866 (1957). The absence of more precise language respecting state taxation of reservation Indians is entirely consistent with a general uncertainty in 1953 of the precise status and limits of state power to tax reservation Indians respecting other than their trust property, and a congressional intent merely to reaffirm the existing law whatever subsequent litigation might determine it to be. 17/

Finally, in construing this "admittedly ambiguous statute," Board of County Comm'rs v. Seber, 318 U.S., at 713, we must be guided by that "eminently sound and vital canon," Northern Cheyenne Tribe v. Hollowbreast, ____ U.S. ____, ____ n. 7 (1976), that "statutes passed for the benefit of Indian tribes are to be liberally construed, doubtful expressions being resolved in their favor." Alaska Pacific Fisheries v. United States, 78, 89 (1918). See Choate v. Trapp, 224 U.S. 665, 675 (1912); Antoine v. Washington, 420 U.S. 194, 199-200 (1975). This principle of statutory construction has particular force

in the face of claims that ambiguous statutes abolish by implication Indian tax immunities. McClanahan v. Arizona State Tax Comm'n, 411 U.S., at 174; Squire v. Capoeman, 351 U.S. 1, 6-7 (1956); Carpenter v. Shaw, 280 U.S. 363, 366-367 (1930). This is so because . . . Indians stand in a special relationship to the federal government from which the states are excluded unless the Congress has manifested a clear purpose to terminate [a tax] immunity and allow states to treat Indians as part of the general community." Oklahoma Tax Comm'n v. United States, 319 U.S. 598, 613-614 (1943) (Murphy, J., dissenting). What we recently said of a claim that Congress had terminated an Indian reservation by means of an ambiguous statute is equally applicable here to the respondent's claim that § 4(a) of Public Law 280 is a "clear grant of power to tax," and hence a termination of traditional Indian immunity from state taxation:

> "Congress was fully aware of the means by which termination could be effected. But clear termination language was not employed in the . . . Act. This being so, we are not inclined to infer an intention to terminate . . . . A congressional determination to terminate must be expressed on the face of the Act or be clear from the surrounding circumstances and legislative history." Mattz v. Arnett, 412 U.S. 481, 504-505 (1973).

The judgment of the Minnesota Supreme Court is

reversed.

## FOOTNOTES

1/ The Minnesota Chippewa Tribe is a federally recognized tribe with a constitution approved by the Secretary of the Interior. Memorandum for the United States as Amicus Curiae, at 2 n. 2. Its reservation was established by the Treaty of February 22, 1855, 10 Stat. 1165.

2/ The McClanahan principle derives from general preemption analysis, 411 U.S., at 172, that gives effect to the plenary and exclusive power of the federal government to deal with Indian tribes, United States v. Mazurie, 419 U.S. 544, 554 n. 11 (1975); Morton v. Mancari, 417 U.S. 535, 551-552 (1974); Board of County Comm'rs v. Seber, 318 U.S. 705, 716 (1943), and to "regulate and protect Indians and their property against interference even by a state," Board of County Comm'rs v. Seber, supra, at 715. This preemption analysis draws support from the "'backdrop' of the Indian sovereignty doctrine," Moe v. Confederated Salish and Kootenai Tribes, ____ U.S. ____, ____ (1976), "'the policy of leaving Indians free from state jurisdiction and control [which] is deeply rooted in the nation's history,'" McClanahan, supra, at 168, and the extensive federal legislative and administrative regulation of Indian tribes and reservations, id., at 173-179. "Congress has . . . acted consistently on the assumption

that the states have no power to regulate the affairs of Indians on a reservation," Williams v. Lee, 358 U.S. 217, 220 (1959), and therefore "'state laws generally are not applicable on an Indian reservation except where Congress has expressly provided that State laws shall apply.'" McClanahan, supra, at 170-171 (quoting U.S. Dept. of the Interior, Federal Indian Law 845 (1958)).

Of course, this preemption model usually yields different conclusions as to the application of state laws to tribal Indians who have left or never inhabited federally established reservations, or Indians "who do not possess the usual accoutrements of tribal self-government," McClanahan, supra, at 167-168; see Mescalero Apache Tribe, supra, at 148-149.

3/ The State Supreme Court relied upon Omaha Tribe of Indians v. Peters, 382 F. Supp. 421, aff'd 516 F.2d 133 (8th Cir.), where the District Court for the District of Nebraska gave the same construction to Public Law 280 in upholding a state income tax levied against reservation Indian income.

4/ Petitioner had not properly raised a claim that his mobile home was in fact annexed to tribal trust land and therefore a part of the real property expressly excluded from taxation by § 4(b). The

Minnesota Supreme Court found, however, that the mobile home was personal property taxable as such under Minnesota law.

5/ The House Report, H.R. Rep. 848, 83d Cong., 1st Sess. (1953), and the Senate Report, S. Rep. 699, 83d Cong., 1st Sess. (1953), are in all material respects identical. All citations herein are to the House Report.

6/ Section 2 of Public Law 280, 18 U.S.C. § 1162, provides:

> "State jurisdiction over offenses committed by or against Indians in the Indian country.
>
> (a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:
>
> | State or Territory of | Indian country affected |
> |---|---|
> | . . . | |
> | Minnesota------- | All Indian country within the State, except the Red Lake Reservation. |
> | . . . | |
>
> (b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging

to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction."

7/ 99 Cong. Rec. 9962, 10782, 10928 (1953).

8/ See Israel & Smithson, Indian Taxation, Tribal Sovereignty and Economic Development, 49 N.D. L. Rev. 267, 292 (1973).

9/ Unpublished Transcript of Hearings Before the Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs, 83d Cong., 1st Sess. (1953). The transcript was produced by the United States during the briefing of Tonasket v. Washington, 411 U.S. 451 (1973). The portion quoted in the text is reproduced in the Appendix in the instant case.

to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

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10/ Cf., Israel & Smithson, supra note ____, at 296:

> "A fair reading of these two clauses suggests that Congress never intended 'civil laws' to mean the entire array of state non-criminal laws, but rather that Congress intended 'civil laws' to mean those laws which have to do with private rights and status. Therefore, 'civil laws . . . of general application to private persons or private property' would include the laws of contract, tort, marriage, divorce, insanity, descent, etc., but would not include laws declaring or implementing the states' sovereign powers, such as the power to tax, grant franchises, etc. These are not within the fair meaning of 'private' laws."

11/ Moreover, this interpretation is consistent with the title of Public Law 280: "A bill to confer jurisdiction on the States . . . , with respect to criminal offenses and civil causes of action committed or arising on Indian reservations within such states, and for other purposes" (the other purposes being § 5's withdrawal from the affected areas of the operation of the Federal Indian Liquor Laws, and §§ 6-7's provision of a method whereby additional States could assume civil and criminal jurisdictions over Indian reservations). Additionally, this interpretation is buttressed by § 4(c), which provides that "any tribal ordinance or custom . . . adopted by an Indian tribe . . . in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil causes of action pursuant to this section" (emphasis

added). Finally, reading § 4(a) as an integrated whole, with the reference to state civil law as intended to provide the rules of decision for the private civil causes of action over which state courts were granted jurisdiction is consistent with § 3 of Public Law 280, which codifies § 4 in Title 28 of the United States Code. That Title collects acts of Congress governing jurisdiction and the judiciary. Section 4 would be expected to be codified in Title 25, governing Indian affairs if general state regulatory power over Indian reservations were being granted. Indeed, § 4 is entitled, as provided in Public Law 280 and codified at 28 U.S.C. § 1360, "State jurisdiction in actions to which Indians are parties."

12/ Tribal groups in the affected states which were exempted from the coverage of Public Law 280 because they had "reasonably satisfactory law-and-order" organizations, had objected to the extension of state criminal and civil jurisdiction on various grounds. Three of the tribes exempted objected due to their fear of inequitable treatment of reservation Indians in state courts. H.R. Rep. 848, at 7-8. Two of the objecting tribes expressed the fear that "the extension of state law to their reservations would result in the loss of various rights." Id., at 8. One tribe objected on the ground that its members were "not yet ready to be subjected to State laws." Ibid. Certainly if

abolition of traditional Indian immunity from state taxation, except insofar as expressly excluded, was an anticipated result of Public Law 280's extension of civil jurisdiction, vehement Indian objections on this specific ground would also have been voiced.

13/ The legislative history of Public Act 280 does contain a congressional expression that "the Indians of several states have reached a stage of acculturation and development that makes desirable the extension of State civil jurisdiction to the Indian country. H.R. Rep. 848, at 6. But not too much can be made of this unelaborated statement; its thrust is too difficult to reconcile with the focus of Public Law 280 -- extending state jurisdiction to those reservations with the least developed and most inadequate tribal legal institutions; presumably those tribes evincing the least "acculturation and development" in terms of the mainstream of American society. See Goldberg, Public Law 280: The Limits of State Jurisdiction over Reservation Indians, 22 U.C.L.A. L. Rev. 535, 543 (1975).

14/ Much has been written on the subject of a possible devastating effect on tribal governments that might result from an interpretation of § 4 as conferring upon state and local governments general civil regulatory control over reservations Indians. Santa Rosa Band of Indians v.

Kings County, No. 74-1565, Slip op. at 7-8, 11-13 (CA 9, Nov. 3, 1975); Goldberg, supra note ____; Note, The extension of County Jurisdiction over Reservation Indians in California: Public Law 280 and the Ninth Circuit, 25 Hastings L. J. 1451 (1974); Comment, Indian Taxation: Underlying Policies and Present Problems, 59 Calif. L. Rev. 1261 (1971). The suggestion is that, since tribal governments are disabled under many state laws from incorporating as local units of government, Goldberg, supra, at 581, general regulatory control might relegate tribal governments to a level below that of counties and municipalities, thus essentially destroying them, particularly if they might raise revenue only after the tax base had been filtered through many governmental layers of taxation. Present federal policy appears to be returning to a focus upon strengthening tribal self-government. See, e.g., Indian Financing Act of 1974, 88 Stat. 77, 25 U.S.C. §§ 1451 et seq.; Indian Self-Determination and Educational Assistance Act of 1975, 88 Stat. 2203, 25 U.S.C. §§ 450 et seq., and the Court of Appeals for the Ninth Circuit has expressed the view that [redacted] courts "are not obligated in ambiguous circumstances to strain to implement a policy Congress has now rejected, particularly where to do so will interfere with the present congressional approach to what is, after all, an ongoing relationship." Santa Rosa Band of Indians v. Kings County, supra, Slip op., at 12.

15/ See also, Note, The Extension of County Jurisdiction over Indian Reservations in California: Public Law 280 and the Ninth Circuit, 25 Hastings L. J. 1451, 1489 (1974).

16/ 68 Stat. 718, 25 U.S.C. § 564 (Klamath Tribe); 68 Stat. 768, 25 U.S.C. §§ 721-728 (Alabama and Coushatta Tribes of Texas); 68 Stat. 1099, 25 U.S.C. §§ 741-760 (Paiute Indians of Utah); 68 Stat. 250, 25 U.S.C. §§ 891-901 (Menominee Tribe of Wisconsin).

17/ Congress would be fully justified in 1953 in being uncertain as to state power to levy a personal property tax on reservation Indians. No decision of this Court directly resolved the issue until Moe v. Confederated Salish and Kootenai Tribes, ____ U.S. ____, decided earlier this Term. It appears that the only decision of this Court prior to 1953 dealing with state power to levy a personal property tax on reservation Indians was United States v. Rickert, 188 U.S. 432, 443-444 (1902), a case which held exempt from state taxation personal Indian property purchased with federal funds. See United States Dept. of the Interior, Federal Indian Law 865 (1958).

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 2, 1976

Re: 75-5027 - Bryan v. Itasca County, Minnesota

Dear Bill:

Please join me.

On page 2, line 6, in place of "codified" would you consider "clarified" or "described," or perhaps some other verb?

Sincerely,

Mr. Justice Brennan

Copies to the Conference

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

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 2, 1976

Re: No. 75-5027, Bryan v. Itasca County, Minnesota

Dear Bill,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

6-3-76

To: LFP

From: CRS

Re: Bryan v. Itasca Cty, No. 75-5027

You and I "split" on this case, which we both consider close.

I think Brennan's opinion makes a good case for the result I prefer, although I am not persuaded by some of his individual arguments. It seems to me most important that the statute is too ambiguous to override the general rule of nontaxation when there is no legislative history indicating that Congress intended to do so.

On the other hand, each of the specific statutory text arguments that he makes has some weakness or other, because of the overall ambiguity of the case. It seems to me that the opinion might more effectively have eliminated these arguments because they provide the grist from which a respectable dissent can be made.

Overall, I would join if I were the Justice; but I believe you can adhere to your Conference vote. My understanding at present is that White will write so we would not have to do a dissent. If White changes his mind, of course, I'm ready too leap into the breach if you are.

[75-502]

6/3

I talked to Bynum.
He will let me know shortly whether he will write a dissent. If he does I'll wait & probably join him. Otherwise I'll probably join Brennan.
This is really an issue for Congress.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 4, 1976

Re: No. 75-5027 - Bryan v. Itasca County, Minn.

Dear Bill:

I was the other way in this case but I shall acquiesce with a graveyard dissent.

Sincerely,

Byron

Mr. Justice Brennan

Copies to Conference

June 4, 1976

No. 75-5027 Bryan v. Itasca County

Dear Bill:

I am following my Brother White's capitulation to your persuasive powers!

Please join me also.

Sincerely,

Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 4, 1976

Re: No. 75-5027 -- Russell Bryan v. Itasca County, Minnesota

Dear Bill:

Please join me.

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

June 4, 1976

Re: No. 75-5027 - Bryan v. Itasca County

Dear Bill:

Please join me.

Sincerely,

Harry

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 7, 1976

Re: 75-5027 - Bryan v. Itasca County, Minnesota

Dear Bill:

Please join me in your circulation of June 1.

Regards,

WEB

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 7, 1976

Re: No. 75-5027 - Bryan v. Itasca County, Minnesota

Dear Bill:

Please join me in your circulation of June 1st.

Sincerely,

Mr. Justice Brennan

Copies to the Conference

| THE C. J. | W. J. B. | P. S. | B. R. W. | T. M. | H. A. B. | L. F. P. | W. H. R. | J. P. S. |
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