

04-631 WAGNON V. PRAIRIE BAND POTAWATOMI NATION

DECISION BELOW:379 F3d 979

LOWER COURT CASE NUMBER: 03-3218

QUESTIONS PRESENTED:

- 1) When a State taxes the receipt of fuel by non-tribal distributors, manufacturers and importers, and such receipt occurs off-reservation, does the interest-balancing test in *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980), apply because the fuel is later sold by a tribe to final consumers?
- 2) Should the Court abandon the *White Mountain Apache* interest-balancing test in favor of a preemption analysis based on the principle that Indian immunities are dependent upon congressional intent?
- 3) Did the court of appeals err in applying the *White Mountain Apache* interest balancing test by, inter alia, placing dispositive weight on the fact that a tribally-owned gas station derives income from largely non-tribal patrons of the tribe's nearby casino?

CERT. GRANTED 2/28/2005

FORMERLY *Richards v. Prairie Band Potawatomi Nation*