

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Penobscot Nation v. Frey

No. 16-1424, 16-1435, 16-1474, 16-1482, United States Court of Appeals for the First Circuit (April 8, 2020)

SUMMARY

The First Circuit granted en banc rehearing in this dispute over the Penobscot Nation's reservation boundaries and regulatory authority over the Penobscot River's main stem. The court vacated the prior panel opinion and dissent, directing supplemental briefing on whether the Indian Canon of Construction applies to the Maine Settlement Acts (MIA and MICA), the effect of the canon against conveying navigable waters, and the proper interpretation of statutory definitions and treaty boundaries. Additional questions address ripeness, standing, laches, and whether the Nation transferred the river's main stem under the Settlement Acts.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Howard, Chief Judge; Torruella, Circuit Judge; Selya, Circuit Judge; Lynch, Circuit Judge; Thompson, Circuit Judge; Barron, Circuit Judge
JURISDICTION	Federal
DECIDED	April 8, 2020
DOCKET	16-1424, 16-1435, 16-1474, 16-1482
DISPOSITION	vacated
PROCEDURAL POSTURE	Petition for rehearing en banc granted; panel opinion and judgment vacated; case set for en banc briefing.
PRECEDENTIAL VALUE	Published
PARTIES	Penobscot Nation; United States v. Aaron M. Frey, Attorney General for the State of Maine; Judy A. Camuso, Commissioner for the Maine Department of Inland Fisheries and Wildlife; Joel T. Wilkinson, Colonel for the Maine Warden Service; State of Maine; Town of Howland; True Textiles, Inc.; Guilford-Sangerville Sanitary District; City of Brewer; Town of Millinocket; Kruger Energy (USA) Inc.; Veazie Sewer District; Town of Mattawamkeag; Covanta Maine LLC; Lincoln Sanitary District; Town of East Millinocket; Town of Lincoln; Verso Paper Corporation; Expera Old Town; Town of Bucksport; Lincoln Paper and Tissue LLC; Great Northern Paper Company LLC

TOPICS

tribal sovereignty

statutory interpretation

federalism

appellate procedure

standing

ripeness

PRACTICE AREAS

Indian Law

Federal Appellate Procedure

Statutory Interpretation

QUESTIONS PRESENTED

1. Does the Indian Canon of Construction apply to the Maine Settlement Acts?
2. Does the canon against conveying navigable waters affect the application of the Indian Canon?
3. How does *Alaska Pacific Fisheries v. United States* impact this case?
4. Are there any material ambiguities in the relevant provisions of the Settlement Acts?
5. Do state common law and interpretive rules apply?
6. May the Court consider legislative history?
7. Does 25 U.S.C. § 1723(a)(2) bar the United States from asserting certain claims?
8. Do the doctrines of laches, acquiescence, and/or impossibility bar the Nation's claims?
9. Did the Penobscot Nation transfer the Main Stem of the Penobscot River to Maine under the Settlement Acts?
10. What are the proper boundaries of the Reservation?
11. Is the Nation's claim ripe regarding sustenance fishing rights in the entire Main Stem?
12. Does the Nation have standing to bring this claim?

HOLDINGS

1. A majority of the active judges who are not disqualified have voted to hear this case en banc. The petitions for rehearing en banc are granted.

KEY QUOTATIONS

“A majority of the active judges who are not disqualified have voted to hear this case en banc.”

FACTUAL BACKGROUND

This case involves the Penobscot Nation's claims regarding the Penobscot River and the Maine Settlement Acts. The Nation and the United States seek to define the boundaries of the Penobscot Indian Reservation and the Nation's regulatory and fishing rights in the Main Stem of the Penobscot River.

PROCEDURAL HISTORY

The case was originally heard by a panel of this court, which issued an opinion and judgment on June 30, 2017. The Penobscot Nation and the United States filed petitions for rehearing en banc. A majority of active judges voted to grant en banc review.

DISPOSITION

vacated

CASES CITED

- Idaho v. Coeur d'Alene, 521 U.S. 261 (1997)
- Alaska Pacific Fisheries v. United States, 248 U.S. 78 (1918)
- Maine v. Johnson, 498 F.3d 37 (1st Cir. 2007)
- City of Sherrill v. Oneida Indian Nation of N.Y., 544 U.S. 197 (2005)
- Reddy v. Foster, 845 F.3d 493 (1st Cir. 2017)
- Town of Barnstable v. O'Connor, 786 F.3d 130 (1st Cir. 2015)
- Mashantucket Pequot Tribe v. Town of Ledyard, 722 F.3d 457 (2d Cir. 2013)
- Massachusetts v. EPA, 549 U.S. 497 (2007)
- Moe v. Confederated Salish & Kootenai Tribes of Flathead Reservation, 425 U.S. 463 (1976)
- Labor Relations Div. of Constr. Indus. of Mass., Inc. v. Healey, 844 F.3d 318 (1st Cir. 2016)