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### Can a Tribal Court Be Enjoined from Exercising Jurisdiction over Nonmembers of the Tribe?

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## *Can a Tribal Court Be Enjoined from Exercising Jurisdiction over Nonmembers of the Tribe?*

by Richard B. Collins

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**National Farmers Union Insurance Companies**

v.

**Crow Tribe of Indians**

(Docket No. 84-320)

*Argued April 16, 1985*

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### ISSUES

This lawsuit was brought in federal court to challenge the authority of the Crow Tribal Court over a personal injury claim filed by tribal members against nonmembers. The Crow Indian parties raised three challenges to the federal court's authority to hear the case. They argued that the federal court had no authority at all, or that even if it did, it must refrain from exercising jurisdiction until the nonmembers have exhausted all their remedies in the Crow courts. The Crow Tribe argued that its sovereign immunity bars the federal court from exercising jurisdiction over the tribe and its officials. These issues are before the Supreme Court, although it may not rule on all of them.

### FACTS

In 1982, Leroy Sage, a ten year-old Crow Indian, was struck and injured by a motorcycle on the grounds of the Lodge Grass Elementary School at Lodge Grass, Montana. The school is a public school of the state of Montana located within the Crow Indian Reservation. Through his guardian, Flora Not Afraid, Sage brought a personal injury lawsuit in Crow Tribal Court against the Lodge Grass School District. The suit claimed that Sage's injuries were caused by the unsafe condition of the school parking lot and by inadequate supervision during school hours. The school district did not respond to the lawsuit, and a default judgment for \$153,000 was entered against it.

The school district did not appear in Crow Tribal Court to try to have the default judgment set aside. Instead, the district and its insurance company, National Farmers, brought suit in federal district court to enjoin the tribal court from hearing the case. They sued the Crow Tribe, the judges of the Crow Tribal Court, the Crow Tribal Council, the chairman of the Crow Tribe,

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Flora Not Afraid and Leroy Sage. The suit claimed that under federal law, the Crow Tribal Court had no authority over the state school district. The federal district court agreed and enjoined all defendants from proceeding with the tribal court case.

On appeal, the Ninth Circuit Court of Appeals reversed. The court majority held that the federal district court had no authority to enjoin tribal court proceedings. A concurring judge said that a federal district court has jurisdiction over this kind of case but only after the school district and National Farmers have exhausted all their remedies in tribal court. Since they had not yet done so, the case must be dismissed.

The school district and National Farmers did nothing for a while, and the case was sent back to the federal district court to be dismissed. Leroy Sage's attorney began to execute Sage's judgment against the district, and some of the district's property was seized under tribal court order. On the day before the seized property was to be sold to satisfy the judgment, the school district and National Farmers appeared in tribal court for the first time and moved to enjoin the sale and to set aside the default judgment. The tribal court postponed the sale and set a date for a hearing on the motion to set aside the default judgment.

The district and National Farmers also obtained an order from Justice William Rehnquist of the Supreme Court, who is circuit justice for the Ninth Circuit. The order temporarily restored the federal district court's injunction against the tribal court proceeding pending review by the Supreme Court. The Crow Tribal Court then issued an order postponing its hearing on the motion to set aside the default judgment. Soon after, the full Supreme Court agreed to hear the case.

### BACKGROUND AND SIGNIFICANCE

The principal issues in this case are unsettled and of great importance in Indian country. The Supreme Court must first decide whether the federal district court had jurisdiction to hear the lawsuit brought by the school district and National Farmers to challenge tribal court authority. The briefs and oral arguments concentrated on the issue of exhausting tribal remedies, which was the basis for the concurring judge's opinion in the court of appeals. This seems likely to be the principal jurisdictional issue for the Court.

The Crow Tribe argued that its sovereign immunity bars the suit against it and its officials. This defense is

clearly good for the tribe itself, but it is possible that the federal courts have jurisdiction over the tribal officials just as they would over state or federal officials in similar circumstances. The Supreme Court may not rule on these questions because the case might be able to proceed against Sage and Not Afraid alone. Since they are not tribal officials, the immunity issue does not affect them.

The basic question in the case concerns tribal and state court authority over personal injury and other tort lawsuits when the events occur within an Indian tribal reservation. It is settled law that a reservation personal injury lawsuit against a tribal member must be brought in tribal court and cannot be brought in state court—even if the person bringing the suit is not a tribal member. It is also settled that if neither party is a tribal member, the case belongs in state court rather than in tribal court. If an injured tribal member sues a nonmember—including a nonmember entity like the Lodge Grass School District—it is uncertain whether federal law allows tribal courts to hear the case.

The Supreme Court has sustained tribal authority to tax and regulate nonmembers who are mining or hunting on tribal land. The Court has prohibited tribal authority to punish nonmembers for crimes or to regulate nonmembers whose only connection with the tribe is presence within the reservation. The Sage case differs from each of these precedents.

#### **ARGUMENTS**

***For National Farmers Insurance Companies and Lodge Grass School District No. 27*** (Counsel of Record, Rodney T. Hartman, 2075 Central Avenue, Billings, MT 59102; telephone (406) 652-1010)

1. The federal district court had jurisdiction to enjoin tribal court proceedings that violate federal law.

2. Under federal law, the Crow Tribal Court had no jurisdiction over this personal injury lawsuit against the Lodge Grass School District.

***For the Crow Tribe of Indians and Crow tribal officials*** (Counsel of Record, Robert S. Pelcyger, 1881 9th Street, Boulder, CO 80302; telephone (303) 443-1683)

1. Sovereign immunity bars this action against the Crow Tribe and its officials.
2. The federal district court should not have heard this case because tribal court remedies had not been exhausted.
3. The Crow Tribal Court has jurisdiction over the personal injury suit by tribal members against the school district.

***For Leroy Sage and Flora Not Afraid*** (Counsel of Record, Clarence T. Belue, 215 West Third Street, Hardin, MT 59034; telephone (406) 665-1161)

Same as arguments 2 and 3 for the Crow Tribe of Indians.

#### **AMICUS BRIEFS**

***In Support of the School District and National Farmers***

Briefs were filed by twelve states and by Salt River Project (a political subdivision of the state of Arizona) and Arizona Public Service Co.

***In Support of the Crow Tribe***

Briefs were filed by the United States and by fifteen Indian tribes and Indian organizations.