

A Test Of Tribes' Legal Immunity - High Court Reviews Sovereignty Issue

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By Rick Green - The Hartford Courant

Jumping into one of the hottest disputes between Indians and the outside world, the state Supreme Court has agreed to review sovereign immunity, the long-standing doctrine that protects tribes from lawsuits.

In essence, the court has been asked to review a question that many in the non-Indian world struggle with: Why can't you sue an Indian tribe if the tribe sues you?

Wealthy, casino-owning tribes are "pushing the boundaries. Indian tribes have become so hugely commercial, they are acting like a business. For that reason the courts are increasingly wondering what they are," said John Williams, lawyer for Bradley W. Beecher, who has sought to sue the Mohegan Tribe. "This is a pure clash between the traditional basis for tribal immunity and the commercial reality."

But the economic success of a tribe has nothing to do with tribal sovereignty, said a Massachusetts lawyer who represents tribes throughout New England.

"The framers of the Constitution acknowledged back in 1787 that Indian tribes were the same as a foreign country," said Douglas Luckerman, who works with the Narragansetts of Rhode Island and the Wampanoags of Massachusetts. Later, Chief Justice John Marshall in the 1830s found that as "domestic dependent nations" tribes enjoy a limited sovereignty.

"To understand sovereign immunity is no different than to understand what happens when a diplomat comes to the United States and racks up a bunch of parking tickets," Luckerman said. "The state can't haul that diplomat into court."

The state Supreme Court will examine five cases from state court in which the central question rests on sovereign immunity - four involving investors and the Eastern Pequots, a state-recognized tribe in North Stonington that says it cannot be sued. The investors include Donald Trump and J.D. DeMatteo, of Burlington.

The other is the dispute between Beecher, a former state police lieutenant, and the Mohegans, a federally recognized tribe. The tribe last year successfully sued Beecher, blocking him from publicly disclosing information he learned about tribal business when he worked as an investigator for the tribe's gaming commission. A Superior Court judge has dismissed a countersuit by Beecher.

"The tribe did not want me to talk. They came up with a fabricated lawsuit and got a restraining order against me. I was silenced for two months. I tried to sue them back to try to clear my name and try to pay for damages," Beecher said. "They can sue me, but I have no recourse? And that's OK?"

When it comes to federally recognized tribes, the answer from Congress and the courts has been clear: Indian tribes, like state government, cannot be sued, said Attorney General Richard Blumenthal.

"Tribal sovereignty has sweeping implications for individuals and communities near Indian reservations," Blumenthal said. "The courts must respect legitimate Native American sovereignty

rights and balance them with the rights of individuals and local communities." He said his office had not yet decided whether to become involved in these cases.

Charles Bunnell, a spokesman for the Mohegans, said both the tribe and Beecher want the case before the Supreme Court.

"We both agreed that it was the appropriate court because of the issue of sovereignty," Bunnell said. "We are confident we will prevail."

A lawyer for the Eastern Pequots, Robert Tobin, said the question of sovereign immunity is not one of equal rights, but of respecting a government's independence.

"It is not just for Indians. It is [protection] for governments," Tobin said. "They are entitled to not be interfered with. That's the concept of sovereignty, to not have another entity interfere with your internal affairs."

But with increasing conflicts between tribes and non-Indians and questions about limits to sovereignty increasing, the Beecher case is one that may move quickly to the U.S. Supreme Court, said James Lynch, a consultant who frequently does research into legal and historical issues concerning New England tribes.

"The Mohegans have thrown down the gauntlet in terms of their sovereign immunity - 'We can do something to you that may be detrimental to you, but you cannot come back at us,'" Lynch said. "Sovereignty is one of these things that everybody talks about and nobody stops and thinks what it really is."