19-477
No.

In The
SUPREME COURT OF THE UNITED STATES

Arletta J. Kurowski,
Petitioner,
v.
Estate of Kenneth H. Kurowski,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court presses, 1) tribal court exhaustion[1], 2) a "court of competent jurisdiction"[2], and 3) a "full and fair opportunity to litigate"[3]. The Oneida Indian Petitioner exhausted [her] tribal court remedy, the Oneida Judiciary is incompetent[4], preclusion elements[5] (2) and (4) are required to apply collateral estoppel but fail. *Id.*, at (4), the Chief Trial Judge "effectively limited litigation"[6] fairness[7].

In five days and without a threshold inquiry, the E.D. Wis., Orders a Dismissal for "lack of jurisdiction"[8] over the incompetent and unfair tribal court-exhausted decision. Like "whites," Native American litigants must also have a federal right to be protected against an unlawful exercise of Tribal Court judicial power"[9]. The question presented is:

Upon tribal court exhaustion must District Courts perform a threshold inquiry to protect the Indian Petitioners' federal 25 U.S.C. § 1302 rights?

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[1] *National Farmers Union Insurance Companies v. Crow Tribe*, 471 U.S. 845 (1985) at 849, see also *Iowa Mutual Insurance Company v. LaPlante*, 480 U.S. 9 (1987), and *Burrell v. Armijo*, 456 F.3d 1159 (10th Cir. 2006).

[2] *Montana v. United States*, 440 U.S. 147 (1979) at 153.

[3] *Kremer v. Chemical Construction Corp.*, 456 U.S. 461 (1982) at 480.

[4] Elected but unqualified. The trial judge dismissed the cases because they were not small claims cases, inferring gross incompetence.

[5] *Dodge v. Cotter Corp.*, 203 F.3d 1190 (2000) at 1198.

[6] *Murdock v. Ute Indian Tribe of Uintah & Ouray Reservation*, 975 F.2d 683 (1992) at 689.

[7] The Chief Trial Judge attended a hearing and covers up for [her] family who pilfered the $5,000 death benefit by preventing trial discovery.

[8] Case 1:19-cv-00274-WCG, filed 02/25/19, page 1 of 1 Document 2.

[9] *National Farmers Union* at 851.

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JURISDICTION

The Seventh Circuit Court of Appeals entered its judgment on June 3, 2019, see Pet. App. 36. This Courts' jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

Relevant provisions of 25 U.S.C. § 1302 are reproduced here:

> (a). In general, no Indian tribe in exercising powers of self-government shall
>
> > (1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peacefully to assemble and to petition for a redress of grievances;
> >
> > (8) deny to any person within its jurisdiction the equal protection of the laws or deprive any person of liberty or property without due process of law;

Relevant provisions of the Oneida Nation Constitution Article VII – Bill of Rights are reproduced here:

> All members of the Nation shall be accorded equal opportunities to participate in the economic resources and activities of the Nation. All members of the tribe may enjoy, without hindrance, freedom of worship, conscience, speech, press, assembly, association and due process of law, as guaranteed by the Constitution of the United States.

STATEMENT

1. 25 U.S.C. § 1302 Statutory and Regulatory Background

A. Section 1302 is a Congressional 1968 Civil Rights Era Law: titled "Constitutional Rights of Indians."

i. In 1968 Congress to extend constitutional safeguards to Indian people. The Petitioner argues that Congress intended the Petitioner to have all the 1968 Constitutional Rights, including the First Amendment, Fifth Amendment, and Fourteenth Amendment safeguards, ii-iv, *infra.*

ii. The First Amendment language of § 1302(a)(1) is taken virtually word for word from the First Amendment, "make or enforce any law prohibiting the free exercise of religion, or

abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances".

iii. The language of § 1302(a)(8) reflects the Fourteenth Amendment, such that no Indian Tribe shall "deny to any person within its jurisdiction the equal protection of its laws."

iv. Reflecting the Fifth Amendment, further directs that Indian Tribes shall *not* "deprive any person of liberty or property without due process of law," § 1302(a)(8).

v. Tribal § 1302 Constitutional Amendments are by express legislation of Congress for which tribes are consigned by conquest to provide federal rights to their people, i.e., to the Oneida Indian Petitioner, see *Begay v. Miller*, 70 Ariz. 380 (1950) at 385.

The United States express legislative power of § 1302 terminates the tribes' external powers to abridge any single tribal member' constitutional or in the alternative federal rights under § 1302, *Begay* at 385.

B. Although, no provision in the U.S. Constitution makes the First Amendment, Fifth Amendment, or Fourteenth Amendment applicable to Indian Nations §

1302 is an express law of Congress making Constitutional Amendments relevant to Indian Nations and to the Indian Petitioner.

Native Americans are citizens of the United States[10] and therefore ought to have the same or similar Constitutional rights as whites hence the reason for § 1302.

Section 1302 legally binds tribes to ensure tribal-U.S. citizens have *unabridged* Constitutional rights and is the foundation of this Petition for Writ of Certiorari; the right to due process of law; upon exhaustion of tribal court the right to appeal to a federal court.

C. A legal overview of § 1302 starts with 1960s violations of constitutional rights in the operations of Indian Tribes. Subsequently, President Lyndon Johnson urged Congress in 1968 to enact the statutory Indian Bill of Rights.

On March 8, 1968, Senator Sam Irvin, Jr., offered the complete final text of S. 1843 and amendment to H.R. 2516, the House-passed Civil Rights Bill, a few days later the Senate passed H.R. 2516 and approved with further

[10] Indian Citizenship Act of 1924.

amendment see 114 Cong. Rec. H 2825-2826, note eleven on page 96.[11]

D. The Granting of this Petition for Writ of Certiorari would ensure the Indian Petitioner' federal rights of due process and equal protection are "*guaranteed*" under the Oneida Nation Constitution, Bill of Rights, Article VII, by federal statute 25 U.S.C. § 1302; notwithstanding the U.S. Constitution.

2. Facts

A. Because jurisdiction has *not* been established the merits of the Cases below have *not* been heard. Nonetheless, four examples of tribal court incompetence and unfairness are elucidated in the Reasons for Granting Petition section at III, *infra.*

B. Notwithstanding, injustice and an incompetent tribal court, this Petition for Writ of Certiorari will determine if the E.D. Wis., ***erred*** or in the alternative violated the Petitioner' rights to appeal to the federal district court upon tribal court exhaustion, *infra* i-ii.

i. The Petitioner is a federally-enrolled Oneida Nation tribal member who upon tribal court exhaustion Appealed the Consolidated Decisions

[11] Wunder, J. (Ed.) (1996). *Native Americans and the law: Contemporary and historical perspectives on American Indian rights, freedoms, and sovereignty.* New York, NY: Garland Publishing, Inc.

of the Oneida Appellate Court to the federal District Court for the Eastern District of Wisconsin, see Pet. App. 31.

ii. Even though the Indian Petitioner exhausted [her] tribal court remedies, the Honorable Chief Judge, William C. Griesbach, E.D. Wis., Dismissed the Appeal citing lack of jurisdiction over the Oneida Judiciary, see Pet. App. 35.

3. Proceedings Below

A. On February 8, 2019, the Petitioner, received by certified mail the Oneida Judiciary, Appellate Court Consolidated Decisions.

B. On February 15, 2019, the Petitioner filed a Notice of Appeal (NOA) with the Oneida Judiciary, The Oneida Judiciary Clerk of Court date stamped an original.

C. Federal District Court, E.D. Wis., subsequently filed the NOA as Doc.# 1-1 in Case No. 1:19-cv-00274-WCG on February 20, 2019, concomitant Certificate of Mailing of forgoing NOA as Doc.# 1-2.

D. With ***no*** threshold inquiry, five days later, on February 25, 2019, E.D. Wis., Dismissed the Indian Petitioner' federal Appeal, Doc.# 2. Judgment entered on February 27, 2019, Doc.# 3, see also Pet. App. 35.

E. On March 3, 2019, Petitioner filed an NOA to the Seventh Circuit Court of Appeals, Doc.# 4.

F. On June 3, 2019, the Seventh Circuit Court of Appeals entered Order: Final Judgement Affirming E.D. Wis.' Decision, Doc.# 16, see also Pet. App. 36.

G. On July 3, 2019, Petitioner filed Notice of Intent (NOI) to Appeal via Petition for U.S. Supreme Court Writ of Certiorari, Doc.# 18.

REASONS FOR GRANTING PETITION

I. THE DECISION BELOW CONFLICTS WITH THE INDIAN PETITIONER' U.S. CONSTITUTIONAL RIGHTS UNDER 25 U.S.C. § 1302

This Case directly conflicts with the U.S. Supreme Court' tribal court *stare decisis* decisions, because the Oneida Petitioner is a U.S. Citizen[12] and the Federal District Court (E.D. Wis.) ignored the Petitioner' § 1302 and tribal Constitutional rights to due process of law; to redress grievances; to Appeal to federal District Court upon tribal court exhaustion (described infra). The Oneida Nation Constitution, Article VII provides the Petitioner *"guaranteed"* U.S. Constitutional

[12] Indian Citizenship Act of 1924.

rights and thus is protected under 25 U.S.C. § 1302.

The Indian Petitioner must have equal protection to that of whites. White Petitioners can Appeal to federal District Court from a tribal court decision, "Moreover, the Indian Civil Rights Act, 25 U.S.C. § 1302, provides non-Indians with various protections against unfair treatment in tribal courts", see *Iowa Mutual* at 19.

If whites are allowed various protections in federal court upon tribal court exhaustion, the Indian Petitioner who receives unfair treatment in the tribal Trial Court must also have equal access and protections to federal court upon tribal Appellate court exhaustion as do whites? *Id.*, at 19.

Indeed, the Indian Petitioner has "exhausted [her] tribal remedies before instituting a suit in federal court, the [Oneida Judiciary[13]] determination of jurisdiction is ultimately subject to review" and "petitioner may challenge that ruling in the District Court," *id.*, at 19.

Thus, by *stare decisis*, the federal E.D. Wis., ***erred*** by stating the federal District Court does *not* have jurisdiction over the Oneida Judiciary, *id.*, at 19.

[13] Substituted Oneida Judiciary for Blackfeet Tribal Courts.

II. PER THE NATIONAL FARMERS UNION TRIBAL COURT EXHAUSTION RULE[14], INDIAN PETITIONERS MUST HAVE EQUAL ACCESS TO FEDERAL DISTRICT COURT AS WHITES

The 7th Circuits' Decision to Affirm the premature, i.e., no threshold review of the federal E.D. Wis., Dismissal for lack of jurisdiction over the Oneida Judiciary is patently flawed because this Court presses tribal court exhaustion before an appeal to federal court, see *Iowa Mutual* at 19.

This Court, as *stare decisis* precedent in tribal court cases, presses, or in the alternative demands the Indian Petitioner to exhaust [her] tribal court remedies, yet, the E.D. Wis., rejected the Petitioner' Appeal without any threshold review. Thus, the Federal Eastern District Court ***erred*** when failing to assert federal jurisdiction over the Oneida Judiciary, *id.*, at 19.

Why would this Court insist on tribal court exhaustion unless there was the opportunity for an appeal to federal court? It is illogical for this Court to demand an Indian Petitioner to exhaust their tribal court remedies, when the E.D. Wis., provides ***no*** remedy to Appeal as the Petitioner has

[14] National Farmers Union exhaustion rule, see Iowa Mutual at 16.

Appealed. Nonetheless, the logical answer is self-evident, E.D. Wis. must perform a threshold review; "ultimately subject to review" to determine minimally, the opportunity for an Appeal, *id.*, at 19.

For the above reason, this Court must Grant this Petition. In the alternative, because the E.D. Wis., ***err*** is so overt, this Court *sua sponte*, ought to Reverse the federal District Court, E.D. Wis., jurisdiction Decision. And allow the Indian Petitioner to redress [her] grievances and "guarantee" [her] due process of law; allow the federal District Court Appeal, so that the Petitioner can have [her] day in a competent federal court.

III. TRIBAL U.S. CITIZENS MUST HAVE THE SAME COMPETENCY AND FAIRNESS IN COURT PROCEEDINGS AS WHITES

Generally, it is whites who scream at the tops of their lungs that tribes "have local bias and tribal court incompetence"[15]; being unfair, sneaky Indians who seemingly assert disingenuous tribal sovereignty upon them. Contrarily, this Court must know tribal people, especially in small tribes, are inherently subjected to unfair familial bias because

[15] Iowa Mutual at 19 and Burrell at 1168.

everyone is related to each other, i.e., family, marriage, or clan. Regardless of what tribal governments tell Congress or this Court, a tribal member cannot have a fair hearing in tribal court. For this reason, tribal members must have access to federal District Court to appeal from any tribal Appellate Decision.

The Petitioner states, it is the responsibility of all the Oneida General Tribal Council, including the Petitioner, to hold any tribal arm too high sovereignty standards; the Oneida Judiciary fails in this regard, and the Petitioner is forced to Petition for Writ of Certiorari exposing tribal judicial ineptness.

It is *not* the Petitioner' intent to argue the merits as the jurisdiction has *not* been established. However, it would be remiss in failing to include several examples of Oneida Judiciary Court incompetency and unfairness in this Reason for Granting Petition section of the Petition. Only four examples are elucidated, *infra*, A-D.

A. Prime example. The Chief Trial Judge is the niece of the Defendants. The Chief Trial Judge' family is implicated in pilfering the tribal $5,000 death benefit[16] pressed below from the Oneida Nation Trust and Enrollment Department (agency). The Chief Trial Judge' mother was the former chairperson and is currently elected to the Trust and Enrollment Committee and is the

[16] The Petitioner; legal spouse should have controlled the death benefit.

sister of the Defendant, Kenneth H. Kurowski. The tribal death benefit was sent to South Carolina. Notwithstanding Discovery, the Trust and Enrollment Office refuses to release the name of the Chief Trial Judge' family member who pilfered the $5,000 death benefit. To add icing-on-the-cake, the Chief Trial Judge attended a trial hearing.

This prime example is a textbook example of the Petitioner' failure to obtain a "full and fair opportunity" to litigate in the Oneida Judiciary, see *Burrell* at 1167.

B. Following example. The tribal Courts wrongly believe they only have jurisdiction within the external boundaries of the reservation. The idea of just Reservation jurisdiction is nonsense, as the Petitioner pressed below, the "old" tribal Court (Oneida Appeals Commission) has heard *stare decisis* cases involving off-the-Reservation matters, i.e., outside the external boundaries of the Oneida Nation"[17].

Moreover, as pressed below, South Eastern Oneida Tribal Services (SEOTS) with a physical office in Milwaukee, WI supports approximately 2,000 tribal members in six southeastern Wisconsin counties and are not within the external boundaries of the

[17] Dan Hawk v. Oneida Election Board (2004), i.e., Waupaca County.

Oneida Nation. Notwithstanding, tribal legal support, the Oneida Election Law 102.3-19 covers SEOTS off-the-Reservation.

The Oneida Judiciary failed to address off-the-Reservation jurisdiction whether by *stare decisis* decisions, tribal law, or federal statute (*infra* at C). The Oneida Judiciary cannot wish-a-way their ineptness by rubbing a birchbark canoe and thus their peril.

C. Third example. The Oneida Judiciary has jurisdiction or in the alternative long-arm jurisdiction of Reservation Indian-child-owed child support and arrearages, see 28 U.S.C. § 1738B, 42 U.S.C. § 666, such that "Personal jurisdiction over the other party may be established using any method provided by law, including long-arm jurisdiction procedures" at Oneida Tribal Law 704.4-2.

It is neon stupid to think that someone can evade paying Indian child support by living on the east side of Green Bay[18]; or in the alternative anywhere off-the-Reservation.

The Petitioner argues [she] does *not* have the same protection to that of other Oneida tribal members who receive child support and arrearages off-the-Reservation. Why is

[18] West Green Bay borders the Oneida Nation external boundaries.

this so? Because the Defendant is the Chief Trial Court judge' uncle?

Regardless of tribal or federal law or statute, the rules are *not* equally applied to the Petitioner; fairness and equality are necessary elements for the Constitutional due process of law. Indeed, "collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a "full and fair opportunity" to litigate that issue in the earlier case," see *Burrell* at 1167.

D. Fourth example. The tribal Trial Court fishes for excuses in the River of Incompetence and snag "Small Claims." Although the claims below are *not* Small Claims, the tribal judge believes he can only hear small claims cases; thus wrongly forces a Small Claims Dismissal. Consider:

There are no excuses for failing to accept jurisdiction in tribal Trial Court because:

i. The Constitution is the backbone of due process, equal protection, and redress of grievances as dictated in tribal law 801.5-2(b) reproduced here:

> The Trial Court shall have subject matter jurisdiction over cases and

controversies arising under the Constitution[19].

ii. There are 19 different cases[20] the tribal Trial Court can hear, item four (4) of 19 is Small Claims. However, item 19 is a catch-all and is reproduced here:

> Other cases where the Oneida Nation law(s) specifically authorize the Court to exercise jurisdiction.

iii. Further, the tribal Trial Court ensures ***all*** civil resolutions; catch-all law; 801.7-1 is reproduced here:

> There is hereby established a General Civil Division, under the jurisdiction of the Trial Court, to provide a forum for the resolution of ***all*** civil actions and proceedings, unless jurisdiction is given to some other division or court.

It is embarrassing for the Oneida Petitioner to broadcast to the public and the U.S. Supreme Court that the Oneida tribal trial

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[19] Which Constitution? The U.S. Constitution or the Tribal Constitution. Considering the latter at Article VII, does it matter which Constitution?

[20] https://oneida-nsn.gov/dl-file.php?file=2018/10/What-Types-of-Cases-Can-the-Trial-Court-Hear.pdf

judge could *not* judicially tell the difference between a claim and a small claim.

If the Small Claim Dismissals were not so pathetic, the abyss of Oneida judicial incompetence would be mesmerizing and worthy of a Ph.D. dissertation. Unfortunately, this kind of patent incompetence is the reason non-Indians like the Burrell's[21] have clamored to get into federal court to obtain coherent justice.

E. Summary. The above demonstrates at III.A-D that the Oneida Judiciary is biased and incompetent and deserves Federal District Court review.

IV. THIS COURT SHOULD REVERSE THE FEDERAL LOWER COURTS' DECISIONS AND REMAND TO DISTRICT COURT; TO TAKE FEDERAL JURISDICTION UPON APPEAL FROM TRIBAL COURT EXHAUSTION

This Court should Reverse the Eastern District of Wisconsin' concomitant 7th Cir., Decision because it fails to provide Indian litigants a tribal court exhaustion remedy, notwithstanding, tribal unfairness and incompetence as demonstrated above.

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[21] The tribal judge "fail[ed] to make any rulings on the pending motions for almost four years" see, *Burrell* at 1165.

Such that Indian litigants ought to have the same right to redress unfair and incompetent tribal court Decisions and processes as white people do, see *Iowa Mutual* at 19.

This Court should Reverse the Lower Courts' Decisions because the Lower Courts' provide no judicial explanation as to why the federal E.D. Wis., would *not* have jurisdiction over a tribal court because federal courts have established *stare decisis* jurisdiction over tribal courts; "invoking the jurisdiction of federal court" upon tribal court exhaustion, see *National Farmers Union* at 849.

This Court should Reverse the Lower Courts' Decisions because Article VII "guarantees" the Petitioner the *unabridged* right to due process of law per 25 U.S.C. § 1302 thus has the federal right to redress grievances; to Appeal upon tribal court exhaustion from an incompetent tribal court concomitant unfair Decision.

A. Reverse Summary

The Lower Court's misunderstanding that the Petitioner has the right to equal protection and protected due process of law under 25 U.S.C. § 1302, and therefore, the federal E.D. Wis. must perform a threshold inquiry; "to review" the Appeal from tribal court to ensure the Indian Petitioner' federal rights are *not* violated, see *Iowa Mutual* at 19.

Regardless of Lower Courts' misapprehensions, Article VII is clear; the Petitioner has *unabridged* U.S. Constitutional rights, including the right to

due process of law, the right to redress grievances under 25 U.S.C. § 1302.

For reasons *supra*, this Court should Reverse the judgment of the federal Lower Courts' Decisions and Remand.

B. In Conclusion

The Petition for Writ of Certiorari ought to be granted.

Arletta Kurowski

Arletta Kurowski