No. 07-411

In the Supreme Court of the United States

PLAINS COMMERCE BANK, PETITIONER,

v.

LONG FAMILY LAND AND CATTLE COMPANY, INC., ET AL., RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR *AMICUS CURIAE* CHEYENNE RIVER SIOUX TRIBE IN SUPPORT OF RESPONDENTS

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INTEREST OF THE *AMICUS CURIAE* [1]

The Cheyenne River Sioux Tribe ("the Tribe" or "CRST") is a federally recognized Indian tribe and signatory to the Treaty with the Sioux, 15 Stat. 635 (Apr. 29, 1868). The tribal Constitution establishes a tribal court "for the adjudication of claims or disputes arising among or affecting the Cheyenne River Sioux Tribe." Constitution of the Cheyenne River Sioux Tribe, Art. IV, § 1(k) (1935) ("CRST Const."), *amended by* Bylaws of the Cheyenne River Sioux Tribe, Art. V, § 1(c) (1992) ("[t]he tribal courts shall have jurisdiction over claims and disputes arising on the reservation"). CRST courts are open to tribal members and non-members alike. *See also* pages 26-31, *infra*.

The Cheyenne River Sioux Tribe has a direct and immediate interest in this case. The question presented concerns the civil adjudicatory jurisdiction of the Tribe's court. Furthermore, the underlying dispute arises from a contractual relationship between petitioner Plains Commerce Bank (the "Bank"), which does significant business with members of the Tribe on the Cheyenne River Indian Reservation (the "Reservation"), and respondent Long Family Land and Cattle Company, an entity owned and operated by CRST members –

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[1] Petitioner and respondents have filed a blanket consent with the Clerk. Pursuant to S. Ct. R. 37.6, *amicus* Tribe states that no counsel for a party authored this brief in whole or in part, no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and no person other than *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

respondents Ronnie and Lila Long (the "Longs"). In particular, that dispute involves land located wholly within the Tribe's Reservation and affects the financial interests of tribal members who live and make their living on the Reservation. These are matters in which the Tribe has a significant interest. *See* CRST Const., Art. I (the territorial jurisdiction of the Tribe extends to "the territory within the original confines of the diminished reservation boundaries"); *id.*, Art. IV, § 1(b) (the Cheyenne River Sioux Tribal Council has authority to "assist members of the tribe in presenting their claims and grievances before any court or agency of government"). Finally, the claim at issue, sustained by the jury in the tribal court, charges discrimination by the Bank against tribal members based on their status as Native Americans.

In these circumstances, the Tribe has a substantial interest in presenting its views to the Court in this case.

STATEMENT

The Court previously has considered the history of the Cheyenne River Sioux Tribe and its treaty relationship with the United States. *See South Dakota v. Bourland*, 508 U.S. 679 (1993); *Solem v. Bartlett*, 465 U.S. 463 (1984); *United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980). We briefly recount that history to put this case in proper context.

The Cheyenne River Sioux Tribe is a federally recognized Indian tribe and signatory to the Treaty with the Sioux, 15 Stat. 635 (Apr. 29, 1868) (the "Fort Laramie Treaty"). The Tribe comprises four of the seven bands

of the Lakota Sioux – Minnecoujou, Itazapco, Oohenumpa, and Siha Sapa. It has approximately 16,000 enrolled members, a majority of whom live on the Reservation in 16 tribal communities located throughout Ziebach and Dewey counties in north-central South Dakota. The Reservation constitutes approximately 2.8 million acres of land, which is approximately the size of the State of Connecticut. Of this, some 1.6 million acres are held in trust for the benefit of the Tribe or tribal members or held by individual members in fee.[2]

The United States entered into the Fort Laramie Treaty with the seven bands of the Lakota Sioux, including what is now known as *amicus* Cheyenne River Sioux Tribe. The Fort Laramie Treaty reserved for the seven bands of the Lakota Sioux the lands within the Great Sioux Reservation along the Missouri River and is considered the seminal treaty among a series of treaties in which the United States pledged to preserve portions of the Sioux Tribes' original territory for their exclusive use in exchange for peace.[3]

Beginning with the Fort Laramie Treaty in 1868 through the 1880s, the relationship between the United States and the Sioux increasingly reflected the federal government's desire to rid itself of the reservation system, assimilate Indians into the general population,

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[2] *See* CRST Const., Art. VIII, § 2; *South Dakota v. Bourland*, 508 U.S. at 682.

[3] *See United States v. Sioux Nation of Indians*, 448 U.S. at 374-77 & nn.1, 4 (1980) (describing the 1851 treaty setting aside lands for individual Sioux tribes and the events leading up to and the results of the 1868 treaty).

and extinguish the treaty relationship with Indian tribes.[4] The Fort Laramie Treaty, like subsequent treaties, consequently included provisions that promised to provide Indians with the necessary lands, tools, and materials to assist the Indians in becoming "civilized" farmers.[5]

It soon became clear, however, that the ultimate goal of federal policy was to transfer the remaining reservation lands from tribes to non-Indians. In 1887, Congress passed the General Allotment Act, 24 Stat. 388, which divided reserved lands into individual Indian ownership and opened the remaining "surplus" lands for sale to non-Indian settlers.[6]

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[4] *See Montana v. United States*, 450 U.S. 544, 559 n.9 (1981). *See generally* Felix S. Cohen, HANDBOOK OF FEDERAL INDIAN LAW § 1.04, at 76-84 (2005 ed. & Supp. 2007) (examining the "civilization and assimilation" federal Indian policy of the period from 1871-1928).

[5] *See* 15 Stat. 635, Art. 2 (reserving the Great Sioux Reservation "for the absolute and undisturbed use and occupation of the Indians herein named"); Art. 3 (promising that additional "arable" land would be provided upon showing of "a very considerable number of [Indians who are] disposed to commence cultivating the soil as farmers"); Art. 6 (authorizing "heads of families" to select lands for farming but conditioning use and occupation of such lands "so long as he or they may continue to cultivate it"); Art. 8 (promising that the United States would provide a farmer in order to teach Indians how to farm and further obligating that when more than 100 Indians became farmers, another blacksmith would be provided); Art. 10 (obligating the United States to provide "one good American cow" and "one good well broken pair of American oxen" to each Indian family after settlement on the reservation); Art. 14 (promising $500 in gifts per year for three years after the date of signing to the ten Indians who "in the judgment of the [U.S.] agent may grow the most valuable crops for the respective year").

[6] *See* Cohen, § 1.04, at 77.

Two years later, the Great Sioux Reservation was divided into several reservations among the signatories to the Fort Laramie Treaty by the Act of March 2, 1889, 25 Stat. 889 ("1889 Act").[7] The 1889 Act opened up nine million "surplus" acres of the Great Sioux Reservation to non-Indian settlement.[8] Significantly for the present case, the 1889 Act also allotted some land to individual Indians for the express purpose of promoting farming and agricultural pursuits.[9]

Thus, from the outset, the Tribe's Reservation was established, in accordance with federal policy, to cultivate an agrarian economy on individual Indian-owned parcels of land. To this day, the Reservation continues to depend on an agrarian-based economy, primarily cattle ranching, farming, and haying. Indeed, the Tribe's Constitution expressly recognizes the importance of regulating and controlling economic activity on tribal lands, which remain the Reservation economy's largest and most profitable resource. CRST Const., Art. IV, § 1(c).[10]

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[7] The 1889 Act established the Pine Ridge, Rosebud, Standing Rock, Cheyenne River, Lower Brule, and Crow Creek Sioux Reservations.

[8] The crush of non-Indians seeking to settle the area further led to the passage of the Act of May 29, 1908, 35 Stat. 460, which opened up 1.6 million "surplus," unallotted acres of the Tribe's Reservation for homesteading by non-Indians. *South Dakota v. Bourland*, 508 U.S. at 682-83; *Bartlett*, 465 U.S. at 467 & n.6.

[9] *See Solem v. Bartlett*, 465 U.S. at 466-67 & n.5.

[10] The CRST Tribal Council's powers include authority

> to approve or veto any sale, disposition, lease or encumbrance or tribal lands, interests in land or

(Cont'd)

See generally Indian Reorganization Act (the "IRA"), 25 U.S.C. §§ 461, 469-70 (2000) (encouraging economic development through Indian-chartered corporations); Cohen, § 1.05, at 84-89 (explaining that for the first time in United States history of federal policy toward Indian tribes, the IRA encouraged tribal economic development and self-determination). The importance of these lands to both the Tribe and the federal government is demonstrated by the fact that business related to ranching normally includes, and sometimes requires, approval from both the Tribe and the Bureau of Indian Affairs.[11]

(Cont'd)

> other tribal assets which may be authorized or executed by the Secretary of the Interior . . . provided that no tribal lands shall ever be sold . . . [t]ribal lands may not be encumbered or leased for a period exceeding five years [with certain exceptions].

CRST Const., Art. IV, § 1(c) (adopting, in relevant part, the Indian Reorganization Act, 25 U.S.C. § 476(e) (2000)).

[11] *See* CRST Ordinance No. 71 (2003) (Grazing Ordinance) (providing a comprehensive set of regulations pertaining to the leasing, management, and tribal oversight of rangeland activity on tribal trust and member-owned fee lands); 25 C.F.R. Part 166 (grazing permits). *See also* CRST Const., Art. VIII, § 3 (authorizing leasing of tribal lands for "business purposes," including grazing); *id.*, Art. IV, § 1(m) (tribal council's authorities include promoting the "public welfare by regulating the use and disposition of property of members of the tribe"); CRST Bylaws, Art. IV, § 11 (lease records "pertaining to lands of any nature on the reservation" to be maintained by tribal council); Law & Order Code of the Cheyenne River Sioux Tribe ("C.R.C.") § 10-2-6(6) (1978), as amended (landlord remedies for holdover occupancy by tenant of agricultural land).

Finally, federally recognized Indian tribes are sovereign political entities that possess inherent sovereign authority. *See*, *e.g.*, *United States v. Lara*, 541 U.S. 193, 199 (2004); *McClanahan v. Arizona Tax Comm'n*, 411 U.S. 164, 172 (1973) ("[Indian tribes'] claim to sovereignty long predates that of our own Government") (citations omitted); *Williams v. Lee*, 358 U.S. 217, 223 (1959) ("[t]he cases in this Court have consistently guarded the authority of Indian governments over their reservations"); Cohen, § 4.01[1][a], at 205 ("Indian tribes consistently have been recognized, first by the European nation, and later by the United States, as 'distinct, independent political communities,' qualified to exercise powers of self-government . . . by reason of their original tribal sovereignty") (internal citations omitted). The Tribe enjoys a government-to-government relationship with the United States and the State of South Dakota. It exercises its power of self-government by, among other things, entering into cooperative agreements with the South Dakota Department of Revenue. These agreements provide for the State to administer and collect both the state sales taxes and parallel tribal taxes identical to the state taxes on sales of cigarettes and tobacco products to non-members on the Reservation, gross receipt taxes on visitor-related businesses, use taxes, contractors' excise taxes, alternate contractors' taxes, amusement device taxes, and fuel excise taxes. As such, they evidence good faith in dealing and mutual respect between two sovereigns whose jurisdictions are, at times, in tension. *See*, *e.g.*, *Cheyenne River Sioux Tribe v. South Dakota*, 105 F.3d 1552 (8th Cir.), *cert. denied*, 522 U.S. 981 (1997) (CRST successfully challenged imposition of state motor vehicle excise tax

and registration fee on Indians who reside within reservation boundaries). *See also*, *e.g.*, *Lower Brule Sioux Tribe v. South Dakota*, 104 F.3d 1017 (8th Cir.), *cert. denied*, 522 U.S. 816 (1997) (Lower Brule Sioux Tribe's challenge to imposition of state hunting and fishing laws on fee lands located within reservation boundaries).

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court's precedents establish that "Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands." *Montana v. United States*, 450 U.S. at 565. Since *Montana*, none of this Court's decisions has retreated from, let alone overruled, this bedrock principle. It is only by ignoring, and indeed belittling, the settled doctrine of retained tribal sovereignty that the Bank can urge reversal of the judgment below. *See*, *e.g.*, Pet. Br. 44 ("there are no compelling reasons requiring a nonmember defendant to defend itself in tribal court against a tort claim brought by a tribal member").[12]

Under what has come to be called the first *Montana* exception, a tribe has authority over a nonmember where the nonmember has undertaken a "consensual relationship" with a tribe or its members:

> A tribe may regulate, through taxation, licensing, or other means, the activities of

[12] For the reasons stated in respondents' brief, *amicus* Tribe also agrees that this Court is deprived of jurisdiction because the Bank lacks standing and that in any event the writ should be dismissed as improvidently granted.

> nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.

Montana, 450 U.S. at 565. The *Montana* analysis applies to a tribe's adjudicatory jurisdiction as well as its regulatory authority. *See*, *e.g.*, *Atkinson Trading Co., Inc. v. Shirley*, 532 U.S. 645, 652 (2001) (the Court has "held that *Montana* govern[s] tribal assertions of adjudicatory authority over non-Indian fee land within a reservation"); *Strate v. A-1 Contractors*, 520 U.S. 438, 451-52 (1997).

For purposes of the first *Montana* exception, the question is whether the nonmember has voluntarily entered into a consensual relationship with the member. In that event, a tribe's retained inherent sovereignty extends to regulation of that relationship and to adjudication of disputes arising out of that relationship, and the nonmember reasonably submits itself to that essential sovereign authority of the tribe. *See*, *e.g.*, *Nevada v. Hicks*, 533 U.S. 353, 372 (2001) (the first *Montana* exception "was referring to private individuals who voluntarily submitted themselves to tribal regulatory jurisdiction by the arrangements that they . . . entered into"); *Atkinson Trading Co.*, 532 U.S. at 653 ("'a tribe has no authority over a nonmember until the nonmember enters tribal lands or conducts business with the tribe'") (citation omitted); *Strate*, 520 U.S. at 446 ("[t]he first exception relates to nonmembers who enter consensual relationships with the tribe or its

members"); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 142 (1982) (tribe may exercise authority over nonmember when "the nonmember enters the tribal jurisdiction" by "enter[ing] tribal lands or conduct[ing] business with the tribe"); *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134, 153 (1980) (recognizing "tribal power to tax non-Indians entering the reservation to engage in economic activity").[13]

The Tribe has significant governmental interests, recognized by federal Indian policy, in regulating the economic relationships of its members with nonmembers, particularly when those relationships affect the Reservation economy as they did here. The Tribe's general interest as a government in regulating such relationships is reinforced by the facts of this case – that the Bank is a frequent lender on the Reservation to members and member-owned companies through loans guaranteed by the Bureau of Indian Affairs. Finally, holding the Bank responsible in tribal courts for

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[13] As respondents demonstrate, the land in question in this case consisted of both Indian trust land leased to Ronnie Long and fee-simple land initially owned by tribal member Maxine Long and her husband Kenneth Long (parents of respondent Ronnie Long). For this reason, the Bank's insistence that the case involves only land owned in fee by a nonmember is incorrect. For purposes of this *amicus* brief, however, the Tribe addresses the Bank's argument on its own terms. Of course, "[t]he ownership status of land . . . is only one factor to consider"; contrary to the Bank's assertion, and for the reasons stated below, it is not "a dispositive factor" in this case. *Nevada v. Hicks*, 533 U.S. at 360.

its discriminatory practices against tribal members is an appropriate and fair means of exercising the Tribe's inherent retained sovereign authority.[14]

ARGUMENT

THE TRIBAL COURT HAD JURISDICTION OVER THE CLAIM THAT THE BANK ENGAGED IN DISCRIMINATION AGAINST TRIBAL MEMBERS ARISING OUT OF THE BANK'S CONTRACTUAL RELATIONSHIP WITH A MEMBER-OWNED CORPORATION.

I. THE CHEYENNE RIVER SIOUX TRIBAL COURT'S JURISDICTION IN THIS CASE RESTED ON THE TRIBE'S SUBSTANTIAL GOVERNMENTAL INTERESTS IN THE CONSENSUAL ECONOMIC RELATIONSHIP BETWEEN THE PARTIES.

As the Eighth Circuit correctly recognized below, "[a]t its heart the *Montana* inquiry is about tribal interests and tribal self government." Pet. App. A12. *See also*, *e.g.*, *Brendale v. Confederated Tribes and*

[14] *Montana* also has a second exception recognizing that a tribe "also retain[s] inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." 450 U.S. at 566. Much of the following discussion also applies to the *Montana* second exception. However, because the Eighth Circuit did not reach the second exception (*see* Pet. App. A14 n.7), this brief focuses on the first exception.

Bands of the Yakima Indian Nation, 492 U.S. 408, 429 n.11 (1989) (opinion of White, J.) (issue is whether there is a tribal "interest sufficient 'to justify tribal regulation'"); *id.* at 444 (opinion of Stevens, J.) ("important tribal interests"); *id.* at 457 (opinion of Blackmun, J.) ("significant tribal interest"); *Coleville Tribe*, 447 U.S. at 153 ("significant [tribal] interest in the subject matter"). Here, there can be no doubt that the Tribe has substantial and legitimate governmental interests in the consensual relationship between the Bank and the Indian-owned Long Company that gave rise to the Longs' claim of discrimination.

A. The Tribe Has Significant Interests In This Case.

The Tribe has significant interests that are directly implicated in this case. To begin with, the Tribe has a strong interest in the economic relationships of its members with nonmembers. Indeed, the welfare and well-being of its citizens is one of the most fundamental interests any governmental entity can have. Thus, where a nonmember voluntarily undertakes a commercial relationship with a member, a tribe has a significant interest.[15]

The present case, however, involves much more than this general tribal interest. For example, even accepting for purposes of argument that the land was owned in fee

[15] This interest is recognized in the legal doctrines of both long-arm jurisdiction and conflicts of law. *See, e.g.*, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-75 (1985); *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223 (1957); RESTATEMENT (SECOND) OF CONFLICT OF LAW §§ 36-37 (1971).

by nonmembers (*see* page 10 note 13, *supra*), the land nonetheless is part of the CRST Reservation and thus its status and title remain of considerable interest to the Tribe. The Tribe's LEASEHOLD MORTGAGE FORECLOSURE CODE, §§ 3-1 *et seq*. (1996) (foreclosure proceedings), LANDLORD TENANT CODE, § 2 (1996) (rights and responsibilities of landlords and tenants, remedies), § 3 (eviction, notice to quit possession), and THE CHEYENNE RIVER SIOUX TRIBE LAW AND ORDER CODE (1978), as amended ("C.R.C."), Title X, §§ 10-1-1 *et seq*. (foreclosures of secured obligations), 10-2-1 to 10-2-8 (actions to recover possession of real property) reflect this interest and provide a comprehensive regulatory scheme for parties engaged in real-property transactions on lands within the Reservation.

Apart from its interest in the status of the land, the Tribe has an economic interest in ensuring and protecting its economic security and that of its members. The tribal economy depends on cattle ranching, farming, and haying.[16] Here, the Longs leased a tribal grazing unit – *i.e.*, land held in trust for the Tribe and designated by the Tribe for the specific purpose of grazing cattle – so that their cattle could graze near the site of the Long Company's operations. The Tribe regularly leases its trust lands for the purpose of cattle ranching and grazing, usually to individual tribal members but also to non-Indians and non-Indian businesses, as a major

[16] According to the United States Department of Agriculture, approximately 93 percent of the Reservation lands are permitted for agricultural use, including farming, cattle ranching, and haying. *See* U.S. Dept. of Agriculture, National Agricultural Statistics Services, *available at* http://www.fedstats.gov. *See generally* Cohen, § 15.01, at 965 (range and grazing lands account for 44 million acres of the 55.4 million acres of land held in trust for Indian tribes throughout the United States).

means of tribal revenue. Moreover, the Longs mortgaged their home and the fee land upon which they operated their business on the Reservation in order to guarantee the debt of the Company and, as added security for the loans at issue, pledged their personal interests as well.

In addition, Kenneth Long intended to and did bequeath his interest in the land he owned to his son Ronnie Long. Absent the Bank's breach of contract and wrongful discrimination, the land therefore would have returned to ownership by a tribal member – a result that would have furthered the federal policy of restoring the tribal land base by returning lands to ownership by tribes or their members. *See* Indian Reorganization Act, 25 U.S.C. §§ 461, 463(a) (2000) (authorizing Secretary of the Interior to restore to tribal ownership lands opened or authorized to be opened to sale to non-Indians), 488 (authorizing agricultural loans to tribes for the purpose of acquiring fee lands within their reservations); *see generally* Cohen, § 1.05, at 86-89. A clearer or more important tribal interest is hard to imagine.

That tribal interest, moreover, is reflected in federal Indian policy. The Tribe's inherent authority to regulate on-Reservation activity that adversely affects the livelihood of its members and the health of the agricultural-based Reservation economy is crucial to its federally recognized right to self-government and self-determination. *See generally* President Nixon, Special Message on Indian Affairs, 1970 PUB. PAPERS 564 (July 8, 1970); Indian Self Determination and Education Assistance Act, 25 U.S.C. §§ 450, 450a (2000); American Indian Agricultural Resource Management Act, 25 U.S.C. §§ 3701 *et seq*. (2000); *White Mountain Apache*

Tribe v. Bracker, 448 U.S. 136, 143-44 & n.10 (1980); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. at 138 n.5 (citing *Confederated Tribes of the Colville Indian Reservation*, 447 U.S. at 155).

These tribal interests are further reinforced by two considerations central to this case. First, the Bank is not only a current lender to the Tribe[17] but also a frequent lender to tribal members in connection with land on the Reservation. *See*, *e.g.*, *Bank of Hoven v. Director, Office of Economic Development*, 34 I.B.I.A. 206 (2000) (Bank sought 90 percent guaranty of $500,000 loan to majority Indian-owned cattle company); *River Bottom Cattle Co., Inc. v. Acting Aberdeen Area Director*, 25 I.B.I.A. 110 (1994) (Bank sought 80 percent guaranty of $410,040 loan to majority Indian-owned cattle company); *Netterville v. Aberdeen Area Director*, 24 I.B.I.A. 52 (1993) (agricultural loan from the Bank of Hoven to individual Indian).

Second, the loans in question were guaranteed by the Bureau of Indian Affairs (the "BIA") under the BIA Loan Guaranty Program, 25 C.F.R. Part 103 (2007). The BIA Loan Guaranty Program is authorized under the Indian Financing Act of 1974, 25 U.S.C. §§ 1451 *et seq.* (2000), as amended, and permits the BIA to insure loans made by approved lenders to businesses that are majority-owned and operated by Indians. *See* 25 C.F.R. §§ 103.2, 103.25(a)-(b).[18] The Program implements the federal policy of

[17] The Tribe has a $750,000 loan with the Bank in connection with its investment in an on-Reservation motel. It also has a certificate of deposit with the Bank in the amount of $65,000.

[18] The Indian borrower must have at least 20 percent equity in the business being financed in order to secure a BIA guaranteed loan. 25 C.F.R. § 103.7.

providing capital to develop Indian resources, such as the cattle ranching and haying in the instant case, so that Indians "will fully exercise responsibility for the utilization and management of their own resources" and thereby realize "a standard of living . . . comparable to that enjoyed by non-Indians in neighboring communities." 25 U.S.C. § 1451 (2000) (congressional declaration of policy); 25 C.F.R. § 103.2 (purpose of the Program is to "encourage eligible borrowers to develop viable Indian businesses through conventional lender financing"). *See also* American Indian Agricultural Resource Management Act, 25 U.S.C. §§ 3701 *et seq.* (2000).

By thus benefiting the Tribe and its members, the BIA Loan Guaranty Program is critically important to the overall Reservation economy that the Tribe is constitutionally charged with regulating. CRST Const., Art. IV, §§ 1(c), (e)-(g), (l)-(n); Art. VIII, §§ 1-13 ("Land"). The Tribe's role in securing a robust and healthy Reservation economy is a key element of its sovereign authority to govern its members and encourage on-Reservation business opportunities for the benefit of all Reservation residents. *See*, *e.g.*, 25 U.S.C. § 450a(a)-(b) (2000) (federal policy recognizes the power of tribal self-government and provides assistance to Indian tribes in the development of reservation economies); 25 U.S.C. § 1521 (2000) (the purpose of the Indian Business Development Program is "to establish and expand profit-making Indian-owned economic enterprises"). Accordingly, the Bank's wrongful conduct here will have broad implications for tribal borrowers, for the economic vitality of the Reservation, and for the relationship between the BIA and the Tribe and its members.

Finally, the Tribe, like other sovereigns, has a paramount governmental interest in protecting its members from (or ensuring that they are compensated for) the evil of discrimination based on their status as Indians. *See*, *e.g.*, *Bob Jones University v. United States*, 461 U.S. 574, 592, 604 (1983) ("there can no longer be any doubt that racial discrimination . . . violates deeply and widely accepted views of elementary justice," and the United States has a "fundamental, overriding interest in eradicating racial discrimination"). As the Eighth Circuit recognized below, the Tribe is entitled "to hold nonmembers like the bank to a minimum standard of fairness when they voluntarily deal with tribal members." Pet. App. A13.

It is an unfortunate but still all-too-common occurrence for Indians living on reservations to experience racial discrimination. They often are victimized by the predatory lending practices of local banks that seek to exploit the disadvantages of reservation economies compared to those of neighboring communities. *See*, *e.g.*, *Bone Shirt v. Hazeltine*, 336 F.Supp.2d 976, 1031 (D.S.D. 2004) ("Indians in South Dakota have also been subject to discrimination in lending"), *aff'd*, 461 F.3d 1011 (8th Cir. 2006). Such practices have been investigated by the U.S. Department of Justice on behalf of American Indians in South Dakota and determined to be actionable. *See* Consent Decree in *United States v. Blackpipe State Bank*, Civ. A. No. 93-5115 (D.S.D. Jan. 21, 1994) (alleging that South Dakota bank engaged in discriminatory lending practices through a policy of refusing to make loans to Indians that would be subject to tribal-court jurisdiction and

charging higher interest rates to Indians as compared to similarly situated non-Indian borrowers).[19]

Indeed, the Bank and other lenders have not only discriminated against tribes and their members, but also

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[19] *See also*, *e.g.*, Report, First Nations Development Institute, *Predatory Lending in Native American Communities* (May 2003), *available at* http://www.firstnations.org (concluding that predatory lending practices by banks doing business in Indian Country, including among tribes in South Dakota, pose significant problems especially among Native communities that are "isolated" and therefore have "less financial options," and reporting stereotyping and racism against Native Americans as hurdles to good-faith practice among lenders); Report, First Nations Development Institute, *Borrowing Trouble: Predatory Lending in Native American Communities* (2008) *available at* http://www.firstnations.org (updating and expanding 2003 report, including data on Native borrowers' limited experience with traditional banks); Report, National Community Reinvestment Coalition and the National American Indian Housing Council, *High Cost Lending on Indian Reservations – Watch Out if You are Buying a Home: A Survey Report and Data Analysis by NAIHC and NCRC* (June 2003), *available at* http://www.naihc.net (reporting that "the incidence of predatory lending is greater in states, [including South Dakota,] where high cost lenders have their greatest share of the market to Native Americans . . . relative to whites" and that discrimination on the basis of race is often cited by Native American borrowers who are offered higher interest rates even though they qualify for lower rates). *See generally* Report, William C. Apgar and Allegra Calder, Joint Center for Housing Studies, Harvard University, *The Dual Mortgage Market: The Persistence of Discrimination in Mortgage Lending*, in *The Geography of Opportunity: Race and Housing Choice in Metropolitan America* (Brookings Institute Press 2005) (reporting that the sub-prime lending market targets minorities and prevents equal access to prime mortgages).

have threatened to withhold loans from CRST members on the Reservation. In its oral argument before the Tribal Court of Appeals in this case, the Bank stated:

> That's why I'm concerned, not just for the bank, the bank has got the money to pay the judgment, your Honors. What I'm concerned with, is that this bank is not acting on its own. There are a number of banks around that are looking at this case, not just this Tribe; there are a number of banks around. *And let me tell you, if they want to discriminate against tribal members, they can do it and get by with it. They can. They don't have to make everybody loans. They can find a reason for rejecting the loans.*

CRST Ct. App. Tr. at 114 (Oct. 6, 2004) (emphasis added). The CRST Appellate Court rightly rebuffed this threat:

> Unfortunately, a final concern must be addressed. In his concluding summation to this Court, counsel for the Bank stated that a lot of banks and lenders were watching this case. While it seemed jarring and inappropriate at the time, it is even more so upon reflection. It is difficult to see the statement as merely some form of artless advocacy, but rather more as some kind of threat impugning the integrity of the Cheyenne River Sioux Tribe's judicial system, which this Court finds most offensive and unprofessional. Such statements must not be made again. Though it hardly needs repeating, the Court restates its commitment

> to fair play, the rule of law, and cultural respect for *all* parties who appear in the courts of the Cheyenne River Sioux Tribe.

Pet. App. A67-A68, 32 Indian L. Rep. 6001, 6006 (CRST Ct. App. 2004). Such threats and discrimination undeniably implicate a tribal sovereign interest of the highest order.

B. The Bank's Arguments Do Not Negate The Tribe's Interests In This Case.

In the face of the foregoing considerations supporting tribal authority, the Bank's responses plainly are insufficient to deprive the tribal court of jurisdiction under the first *Montana* exception.

The Bank principally relies on the formal argument that the Long Company was not itself a member of the Tribe but merely a nonmember South Dakota corporation. This argument simply blinks reality. As the Eighth Circuit recognized, it falls far short of defeating the Tribe's substantial and legitimate interests in this case. *See* Pet. App. A9-A11.[20]

First of all, the Long Company was – and, under its articles of incorporation, was required to be – majority-owned by CRST members. Thus, the company's Indian-related nature was inherent in its existence notwithstanding incorporation under South Dakota law.

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[20] CRST law has no provision for the formation of a non-governmental corporation.

Furthermore, the Long Company was structured in this way for Indian-related reasons. In particular, majority ownership by tribal members is a requirement for the BIA Loan Guarantee Program. *See* 25 C.F.R. § 103.7; page 15, *supra*. Thus, it is not a happenstance, but essential to its commercial viability and economic attractiveness to lenders, that the Long Company was established in this way.

The BIA Program provides incentives and safeguards to encourage lenders to make loans to Indian-owned businesses. It reduces "excessive risks" to lenders by guaranteeing loans up to 90 percent of the unpaid principal and accrued interest upon default by an Indian borrower. *See* 25 C.F.R. §§ 103.2, 103.6. Moreover, it also pays interest subsidies to lenders. *Id.*, §§ 103.20 – 103.21. And any fees the lenders incur in order to participate in the Program may be passed on to borrowers as part of the loan. *Id.*, § 103.8(a)(1)-(2). Thus, lenders assume virtually no risk in making loans guaranteed under the Program.[21]

In this case, the Bank substantially benefited from the BIA loan guarantees made possible by the majority-Indian ownership of the Long Company. Upon respondents' default, the Bank collected a total of $392,968 in federal loan guarantees from the BIA and other payments tied to the loan agreement as well as

[21] Notably, the BIA may reject a lender's application to participate in the program "if it believes the lender would be willing to extend the requested financing without a BIA guaranty or insurance coverage." 25 C.F.R. § 103.4(d). The Bank's applications in this case were not rejected on this basis. *See* J.A. 39-40, 47-53, 71-79.

the prior interest-subsidy payments.[22] The Tribe also is aware of other BIA-guaranteed loans that the Bank has made to companies that are majority-owned by CRST members over the last 25 years.

In these circumstances, it rings hollow indeed for the Bank to contend that the Long Company is nothing but a South Dakota corporation when the Bank secured the advantages for itself from the majority-member ownership of the company. It ill behooves the Bank, in its dealings in Indian Country, to try to have it both ways.

It also rings hollow for the Bank to feign surprise and unfairness in being called to account in tribal court for its discrimination against tribal members arising out of its voluntary lending transactions and relationships. For the reasons explained above, the Tribe's cognizable interests under *Montana* should have been evident to a sophisticated and well-counseled lender. In fact, the Bank actually recognized the prospect that tribal jurisdiction would apply. *See* Pet. App. A1-A3. Furthermore, it initially conceded tribal-court jurisdiction over the discrimination claim in this case. *Id.* at A5. Accordingly, this is not a case in which possible difficulties in determining jurisdictional boundaries militate against tribal authority over nonmembers altogether. *See Nevada v. Hicks*, 533 U.S. at 383-85 (Souter, J., concurring).

Likewise, there is no merit to the Bank's expressed concern, relying on Justice Souter's concurrence in *Nevada v. Hicks*, that it could not reasonably anticipate

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[22] *See, e.g.*, J.A. 39, 41, 77; CRST Trial Ct. Tr., Vol. II, at 348-49 (Dec. 11, 2002).

that discrimination based on Native American status would be prohibited by CRST law. In this day and age, anti-discrimination on the basis of race is a settled and core principle of all legal systems in this country. *See*, *e.g.*, *Bob Jones Univ.*, 461 U.S. at 592 ("there no longer can be any doubt that racial discrimination . . . violates deeply and widely accepted views of elementary justice"). Moreover, the discrimination found by the jury in this case was of the most willful, deliberate, and blatant sort; no refinements debated elsewhere in the law, such as affirmative action or disparate impact, are necessary to condemn the Bank's discrimination here.

To be sure, CRST common law, like all common law, develops and evolves in the course of decisions over time. *See*, *e.g.*, *Gregory v. Ashcroft*, 501 U.S. 452, 466 (1991) ("[t]he common law, unlike a constitution or statute, provides no definitive text; it is to be derived from the interstices of prior opinions and a well-considered judgment of what is best for the community") (citing Oliver Wendall Holmes, THE COMMON LAW 35-36 (1881)); *Carey v. Piphus*, 435 U.S. 247, 257 (1978). But the fact that a tribal court had not previously declared the obvious – that out-and-out discrimination against Native Americans is unlawful – does not excuse the Bank from otherwise proper tribal jurisdiction. Here, the Tribal Court of Appeals, in rendering its ruling on tribal law, relied on decisions of this Court as well as other authorities under the Tribe's law. Pet. App. A50-A68, 32 Indian L. Rep. at 6002-03; *see also* Pet. App. A14-A15. *See generally* Cohen, § 7.06[1], at 652 (tribal courts apply tribal common law in the absence of tribal code provisions, and they may "convert the state law into tribal law by adopting it as part of the tribal common law").

II. THE TRIBAL COURT'S EXERCISE OF CIVIL ADJUDICATORY AUTHORITY IN THIS CASE WAS PROPER AND FAIR UNDER *MONTANA*.

A. Tribal-Court Jurisdiction Is An Appropriate Means To Effectuate The Tribe's Interests.

As explained above, *Montana* recognizes that "Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands." 450 U.S. at 565. In particular, under the first *Montana* exception, "[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements." *Id.* The Eighth Circuit correctly held that the Tribe appropriately exercised civil adjudicatory jurisdiction over the Bank with respect to the claim of discrimination.

The decision below is fully consistent with this Court's precedents. For example, in *Strate*, the Court observed that it was an "unremarkable proposition that, where tribes possess authority to regulate the activities of nonmembers, '[c]ivil jurisdiction over [disputes arising out of] such activities presumptively lies in tribal courts.'" 520 U.S. at 453 (citation omitted; bracketed material in original). *See also Atkinson Trading Co.*, 532 U.S. at 651-52. In fact, *Montana* itself cited a case involving tribal-court jurisdiction to illustrate the meaning and scope of the first exception. *See* 450 U.S. at 565-66 (citing *Williams v. Lee*, 358 U.S. 217, 223 (1959) (upholding tribal-court jurisdiction over on-reservation contract claim between non-Indian and tribal members)).

What is more, a contrary conclusion would be anomalous and illogical. Where a tribe has sufficient interests to tax a nonmember or regulate the nonmember's conduct, it simply makes no sense to ignore those same interests in deciding whether the tribal court has jurisdiction over the same subject matter. Rather, the tribal court's jurisdiction to adjudicate disputes arising from the underlying consensual relationship, and to provide effective remedies for breaches or violations of legal duties, is derivative of the tribe's authority over the relationship itself. *See* Cohen, § 7.01, at 598 n.12.

This analysis also reflects the fundamental importance of tribal courts in a tribe's governmental system. "Tribal courts play a vital role in tribal self-government." *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 14 (1987). Moreover, "the Federal Government has consistently encouraged their development." *Id.* at 14-15; *see also id.* at 16-17 ("[t]he federal policy of promoting tribal self-government encompasses the development of the entire tribal court system"). *See*, *e.g.*, Indian Tribal Justice Act, 25 U.S.C. §§ 3601 *et seq*. (2000); Indian Tribal Justice and Legal Assistance Act, 25 U.S.C. §§ 3651(6)-(7) (2000) (congressional findings of federal policy acknowledging importance of tribal justice systems to tribal self-determination); Janet Reno, *A Federal Commitment to Tribal Justice Systems*, 79 JUDICATURE 113, 113 (1995) ("[T]ribal justice systems are essential pieces of the mosaic of tribal self-governance. The U.S. Department of Justice is firmly committed to increasing self-determination for American Indian tribal governments by strengthening tribal justice systems"). *See also* Philip P. Frickey, *(Native) American Exceptionalism in Federal Public Law*, 119 HARV. L. REV. 431, 450 (2005).

The Cheyenne River Sioux Tribe's Constitution and Bylaws authorize the establishment of "courts for the adjudication of claims or disputes arising among or affecting the Cheyenne River Sioux Tribe or any Indian present on the Cheyenne River Indian Reservation" and provide that "tribal courts shall have jurisdiction over claims and disputes arising on the reservation." CRST Const., Art. IV § 1(k), amended by Bylaws of the Cheyenne River Sioux Tribe, Art. V, § 1(c). *See also* CRST Const., Art. I. CRST courts are equally available to tribal members and non-members. *See also* pages 29-31, *infra* (Bank has initiated and won cases in the tribal courts).

The Cheyenne River Sioux tribal court system is governed by a comprehensive judicial code. *See* CHEYENNE RIVER SIOUX LAW AND ORDER CODE (1978), as amended. This code contains both substantive and procedural provisions and addresses the complete range of legal disputes that can arise affecting the Tribe and its members. Furthermore, tribal-court opinions are available to the public through the tribal legal department or clerk of court. Selected opinions also are available in the Indian Law Reporter and on the Internet without charge.[23]

The Tribe's judicial system, like those of most modern tribal courts, follows procedures similar to those utilized in federal and state courts around the country. *See* Remarks, Justice Sandra Day O'Connor, *Lessons*

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[23] *See* Tribal Court Clearing House, *available at* http://www.tribal-institute.org. A proposal to provide access to opinions through Westlaw on a fee basis currently is pending.

from the Third Sovereign: Indian Tribal Courts, 33 TULSA L. REV. 1, 5 (1997) (specifically acknowledging the CRST court system). For example, Anglo-American principles of separation of powers are contained in the tribal Constitution. *See* CRST Const. Art. IV, § 1(k), as amended ("[d]ecisions of tribal courts may be appealed to tribal appellate courts, but shall not be subject to review by the Tribal Council"). Likewise, many of the protections of the Bill of Rights are afforded by the CRST tribal courts.[24] And all trial procedures are governed by rules that either follow or substantially incorporate both state and federal rules on civil and criminal procedure as well as the rules of evidence.[25]

Furthermore, tribal court judges are bound by their oath of office (C.R.C. Title I, § 1-2-6) and follow the American Bar Association Code of Judicial Conduct

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[24] *See*, *e.g.*, C.R.C. Title II, R.3 (rights of criminal defendants), R.7 (arraignment); C.R.C. Title VII, R.35(b) (habeas corpus). *See generally* Indian Civil Rights Act, 25 U.S.C. §§ 1302-03; *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). Although not raised in this Court, the Bank complained below that it was denied due process at trial because, *inter alia*, the jury consisted of tribal members. However, the Tribe's court system allows non-Indian litigants to petition to include nonmember jurors – a procedure that the Bank never invoked. *See* C.R.C. Title I, § 1-6-1(2).

[25] *See* Cheyenne River Sioux Tribe Rules of Civil Procedure in C.R.C. Title VII, as amended (1993); *id.*, R.18 (evidence); Rules of Criminal Procedure, C.R.C. Title II, R.15-16 (trial by jury and jury selection); Appeals, C.R.C. Title VII, R.37, as amended by Tribal Court of Appeals Rules (adopted June 1, 1993); pretrial procedure (Title XIV).

(C.R.C. Title I, § 1-2-4(3)). The CRST Code also provides for removal or disqualification of judges. *See* C.R.C. Title I, §§ 1-2-3 to 1-2-5; C.R.C. Title VII, R.33(b). Likewise, the Code sets strict guidelines for the conduct of attorneys and counselors. *See* C.R.C. Title I, § 1-5-6.

Finally, the judges of the tribal courts are well-trained and well-recognized jurists and academics. For example, Chief Justice Frank Pommersheim of the CRST Court of Appeals, who wrote the tribal appellate decision in this case, is a member of the bar of South Dakota and a professor at the University of South Dakota School of Law; a graduate of Columbia University Law School, he serves on several tribal appellate courts, writes extensively in the area of Indian law and is a contributor to the HANDBOOK OF FEDERAL INDIAN LAW by Felix S. Cohen, and has received awards for teaching at the University of South Dakota and its law school. Judge B.J. Jones, who presided as the trial judge in the tribal court in this case, is a member of a number of bars including those of North and South Dakota and is on the faculty of the University of North Dakota School of Law; Judge Jones graduated from the University of Virginia Law School, serves on several tribal appellate and trial courts, and is the Director of the Tribal Judicial Institute at the University of North Dakota Law School.

In light of these characteristics, the State of South Dakota authorizes its courts to give comity to decisions of the CRST tribal courts. *See* S.D. CODIFIED LAWS § 1-1-25 (2007). *See also*, *e.g.*, *One Feather v. O.S.T. Pub. Safety Comm'n*, 482 N.W.2d 48, 49 (S.D. 1992); *Gesinger*

v. Gesinger, 531 N.W.2d 17 (S.D. 1995).[26] Similarly, federal courts afford comity to tribal-court decisions. *See*, *e.g.*, *Iowa Mut. Ins. Co.*, 480 U.S. at 19; *Burrell v. Armijo*, 456 F.3d 1159, 1168 (10th Cir. 2006), *cert. denied*, __ U.S. __, 127 S.Ct. 1132 (2007).

These fair and unbiased tribal procedures lead to fair and unbiased results. For instance, the Tribe itself frequently loses cases in the tribal courts. *See*, *e.g.*, *High Elk v. Iron Hawk*, Case No. 05-002-A, 33 Indian L. Rep. 6031 (CRST Ct. App. 2006) (per curiam).

Of particular significance to this case, the Bank has often prevailed in tribal court or settled cases on favorable terms.[27] In addition, tribal courts have issued

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[26] The Tribe reciprocally recognizes South Dakota decisions for purposes of comity. *See* CRST Tribal Council Resolution No. 323-CR-05 (Aug. 4, 2005).

[27] *See*, *e.g.*, Findings of Fact and Conclusions of Law, *Bank of Hoven, n/k/a Plains Commerce Bank v. Ducheneaux* (CRST Trial Ct. Sept. 5, 1990) (judgment entered in favor of Bank and setting repayment schedule on overdue loan plus interest and costs, against tribal member); Findings of Fact and Conclusions of Law, *Bank of Hoven, n/k/a Plains Commerce Bank v. Garreau*, Case No. C-325-88 (CRST Trial Ct. Aug. 16, 1989) (judgment in favor of Bank and setting repayment schedule on overdue loan); Stipulation and Agreement, *Bank of Hoven, n/k/a Plains Commerce Bank v. Chasing Hawk*, Case No. C-065-01 (CRST Trial Ct. Aug. 31, 2001) (dismissing complaint and ordering tribal member to make regular payments on overdue loan to Bank, plus costs, and releasing bond against tribal member); Order of Settlement, *Plains Commerce Bank v. Marshall*, Case No. C-092-04 (CRST Trial Ct. Oct. 1, 2004) (approving settlement agreement between parties and releasing impounded vehicles).

numerous judicial orders in favor of the Bank.[28] The Bank also has sought the assistance of tribal courts to obtain relief against tribal members. In fact, in a number of cases, as it did in this case, the Bank has conceded the jurisdiction of the tribal court.[29] And, where the Bank has been successful in litigation in tribal court (whether against tribal members or nonmembers living on the

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[28] *See*, *e.g.*, Order of Impoundment, *Chasing Hawk*, Case No. C-065-01 (CRST Trial Ct. Aug. 1, 2001); Order of Impoundment, *Plains Commerce Bank v. Laundreaux*, Case No. C-002-03 (CRST Trial Ct. May 20, 2003); Order for Release of Motor Vehicle, *Laundreaux*, Case No. C-002-03 (CRST Trial Ct. Aug. 26, 2003); Order of Impoundment, *Marshall*, Case No. C-092-04 (CRST Trial Ct. July 28, 2004); Order of Disposition, *Garreau*, Case No. C-325-88 (CRST Trial Ct. Aug. 21, 1991) (confirming tribal member's scheduled payments to the Bank as ordered by the court).

[29] *See*, *e.g.*, Letter from David Von Wald, Attorney on behalf of Bank of Hoven, n/k/a Plains Commerce Bank to Tribal Court (June 10, 1999) (requesting tribal court to serve notice to quit on respondent Ronnie Long); Letter from David Von Wald, Attorney on behalf of Bank of Hoven, n/k/a Plains Commerce Bank to Dale Charging Cloud, Tribal Court Clerk (July 7, 1999) (requesting tribal court's assistance in service of process); *see also*, *e.g.*, Letter from Tim Gapp, Bank of Hoven to CRST Tribal Court (Aug. 19, 1991) (advising court of its position relating to three show-cause hearings scheduled before the court); Letter from Brent Heinert, Plains Commerce Bank to Cheyenne River Sioux Tribal Court (Dec. 11, 2006) (requesting postponement of hearing); Letter from Charles Simon, Bank of Hoven to Krist High Elk, Clerk of CRST Tribal Court (Jan. 26, 1998) (advising tribal court of defendant-borrower's debt satisfaction and seeking dismissal of complaint).

Reservation), it has accepted the tribal court's jurisdiction without objection.[30]

B. The Bank's Arguments Do Not Render Tribal-Court Jurisdiction Inappropriate.

The Bank's two objections to tribal court jurisdiction in this case are unavailing and should be rejected.

First, the Bank contends that tribal court adjudication of disputes between members and nonmembers does not constitute "*regulat[ion]* . . . through taxation, licensing, or *other means*" within the meaning of the first *Montana* exception. 450 U.S. at 565 (emphasis added). As previously explained, however, exclusion of civil adjudicatory jurisdiction from a tribe's retained sovereignty is inconsistent with both precedent and logic. Furthermore, the Bank's attempt to scrutinize the language of the Court's opinion as though it were a statute, and its reliance on canons of statutory construction, is fundamentally misconceived. *See*, *e.g.*,

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[30] *See*, *e.g.*, *Ducheneaux*, *supra*; *Chasing Hawk*, *supra*; *Marshall*, *supra*; *Garreau*, *supra*; *Laundreaux*, *supra*; *see also*, *e.g.*, Default Judgment, *Bank of Hoven n/k/a Plains Commerce Bank v. Taylor*, Case No. C-210-88 9 (CRST Trial Ct. Oct. 5, 1988) (default judgment entered against non-Indian former spouse of tribal member living on Reservation); Motion and Order for Execution Hearing, *Taylor*, Case No. C-210-88 (CRST Trial Ct. Nov. 18, 1988); Order, *Taylor*, Case No. C-210-88 (CRST Trial Ct. Dec. 6, 1989); Order, *Taylor*, Case No. C-210-88 (CRST Trial Ct. Jan. 17, 1989); Order, *Taylor*, Case No. C-210-88 (CRST Trial Ct. Feb. 24, 1989); Order, *Taylor*, Case No. 210-88 (CRST Trial Ct. Mar. 21, 1989); Order of Disposition, *Taylor*, Case No. 210-88 (CRST Trial Ct. Apr. 13, 1989) (request by Bank that case be dropped, resulting in order of dismissal).

C.I.R. v. Bollinger, 485 U.S. 340, 349 (1988) ("we decline to parse the text of [an opinion] as though that were itself the governing statute"); *Reiter v. Sonotone Corp.*, 442 U.S. 330, 341 (1979) ("the language of an opinion is not always to be parsed as though we were dealing with the language of a statute"). Indeed, this Court recently and explicitly pointed out the error in the Bank's approach in the specific context of an Indian case. *See Nevada v. Hicks*, 533 U.S. at 372. In the end, *Montana* is sufficiently broad to include civil adjudication within tribal retained sovereignty and is not narrowly confined to "legislative enactments . . . nothing else." Pet. Br. 36.

Second, the Bank protests that the Eighth Circuit's decision will turn tribal courts into tribunals of general jurisdiction. That simply is not so. Tribal courts will remain courts of limited jurisdiction, and decisions of this Court limiting tribal adjudicatory jurisdiction will remain good law. *See*, *e.g.*, *Hicks*, *supra*; *Strate*, *supra*. To say that tribal courts have, as a matter of tribal sovereignty, broader jurisdiction than the Bank would like does not mean that they become courts of general and unlimited jurisdiction.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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