No. 11-1485

IN THE
Supreme Court of the United States

CHRIS YOUNG, PERSONAL REPRESENTATIVE OF THE ESTATE OF JEFFRY YOUNG,
Petitioner,

v.

JOSEPH S. FITZPATRICK, INDIVIDUAL POLICE OFFICER, CHRISTOPHER E. DAUSCH, INDIVIDUAL POLICE OFFICER, AND JOHN SCRIVNER, INDIVIDUAL POLICE OFFICER,
Respondents.

On Petition for Writ of Certiorari to the Washington State Supreme Court

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

The Petitioner poses two questions for review:

First, whether police officers employed by the Tribe, but trained by the State and provisioned by the United States are subject to the Constitution, U.S. Civil Rights Law, and State Tort Laws. Petitioner argues that the court below has held that none apply and there is thus no remedy for civil rights violations by Tribal officers.

Second, whether the Treaty of Medicine Creek, Act of Dec. 26, 1854, 10 Stat. 1132, and "additional sources of State and Federal Law" preempt claims for qualified immunity by individual Puyallup Police officers.

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ADDITIONAL CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS

1. Puyallup Tribal Code § 4.12.030

4.12.030 – Limited waiver of Tribal sovereign immunity.

(a) The Tribe's immunity from suit shall remain in full force and effect except to the extent that it is waived by this Act. Members of the Tribal Council shall remain immune from suit for actions taken during the course of and within the scope of their duties as members of the Tribal Council, and nothing contained in this Act shall be construed otherwise.

(b) The Tribe may be sued solely in the Tribal Court. Nothing contained in this Act shall be construed as a waiver of the Tribe's immunity from suit in any state or federal court.

(c) The sovereign immunity of the Tribe is waived in the following instances:

> (1) Injuries proximately caused by the negligent acts or omissions of the Tribe, its agents, employees, or officers;
>
> (2) Injuries proximately caused by the condition of any facility of the Tribe, provided the claimant establishes that the facility was in a dangerous condition.

2. Puyallup Tribal Code § 4.12.050

4.12.050 – Actions outside the scope of employment or authority.

(a) This Act does not immunize agents, employees, or officers of the Tribe from individual liability for the full measure of the recovery applicable to a claimant,

if it is established that their conduct exceeded the scope of employment or authority. Claims for individual liability arising out of conduct which is found to exceed the scope of employment or authority and which arise within the exterior boundaries of the Puyallup Indian Reservation shall be heard only in the Tribal Court.

(b) If the Tribal Court determines that the injuries claimed from an act or omission of an agent, employee, or officer were willful and wanton or otherwise outside the scope of employment or authority, the Tribe may request and the Court may order the individual defendant(s) named in the claim to reimburse the Tribe for costs and attorney fees which may have been incurred in the defense of the defendant(s).

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STATEMENT OF THE CASE

The Puyallup Tribe of Indians ("Tribe") operates a tribal health facility located on Tribal trust land within its reservation. Jeffry Young, not a member of the Tribe, entered the facility and, acting in a bizarre manner and posing as a medical doctor, attempted to see patients. The resident attendant asked him to leave. App. to Pet. Cert. e. Young, who weighed "300 or so pounds," refused. Pet. Cert. 7. After the attendant called the Puyallup police for assistance, Young continued to refuse to leave, and the officers

sought to detain him. Young resisted and struggled with the officers who then stunned him with a taser so that they could apply restraints. Shortly after, they noticed that he was not breathing. The Pierce County Medical Examiner declared his death accidental. App. e-f.

Petitioner, as representative of the decedent's estate, brought suit against the Tribe and the three Tribal policemen in Tribal Court under the Tribal Tort Claims Act. *Id.* at f. The Tribal Court called a pre-trial conference. *Id.* at mm. Petitioner, before the pre-trial conference, voluntarily sought to dismiss his suit, and the Tribal Court dismissed it with prejudice. *Id.* at ll. He then brought this suit in the Pierce County Superior Court against the three Tribal policemen, the chief of the Tribal Police, and a Tribal security officer. They filed motions to dismiss for lack of subject matter jurisdiction which, after a hearing at which the Petitioner conceded that the Tribe was protected by tribal sovereign immunity, the Court granted. *Id.* at f-g. Petitioner then appealed to the Court of Appeals of Washington, Division 1, and stipulated to the dismissal of all parties except the Tribal police officers. *Id.* at g. After argument, in a thorough opinion without dissent, that court dismissed the case for lack of subject matter jurisdiction, based on the sovereign immunity of the Tribe and the action of the officers within the scope of their duties. *Id.* at e. The Washington Supreme Court denied further review without dissent. *Id.* at b.

REASONS FOR DENYING THE PETITION

I. THE STATE COURTS BELOW PROPERLY DISMISSED THE SUIT AS BARRED BY TRIBAL IMMUNITY FROM SUIT.

The Puyallup Tribe, through the Tribal Tort Claims Act, has waived its immunity from suit, and that of its police officers, for suits in Tribal Court. Puyallup Tribal Code § 4.12.030.[1] But the Puyallup Tribe has clearly not waived its sovereign immunity for suits in State court. "The Tribe may be sued solely in the Tribal Court. Nothing contained in this Act shall be construed as a waiver of the Tribe's immunity from suit in any state or federal court." § 4.12.030(b). Nor has Congress provided an alternate waiver of Tribal sovereign immunity. *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng'g*, 476 U.S. 877, 892 (1986) ("We have never read Pub. L. 280 to constitute a waiver of tribal sovereign immunity[.]"); *accord Bryan v. Itasca Cnty.*, 426 U.S. 373, 387-388 (1976).

Without such a waiver, the State Court of Appeals correctly dismissed this suit. *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978) ("Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers."); *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 759 (1998) ("Like foreign sovereign immunity, tribal immunity is a matter of federal law.").

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[1] *Available at* http://www.codepublishing.com/WA/puyalluptribe.

II. PETITIONER CHOSE NOT TO AVAIL HIMSELF OF THE AVAILABLE AND PROPER FORUM FOR HIS CLAIMS.

Under the Tribal Tort Claims Act, the Tribe has provided a waiver of sovereign immunity broad enough to cover tort claims against Tribal police officers, and an additional waiver of sovereign immunity for Tribal officers acting outside the scope of their authority. Puyallup Tribal Code §§ 4.12.030, 4.12.050. The Petitioner, after initially filing a claim in Tribal Court, and before any ruling by that Court, dismissed it, thus voluntarily failing to take advantage of this avenue to litigate his claim.

Therefore, the Petitioner's argument that the dismissal by the State court left him with no avenue to bring his claim, and that this Court should intervene to create such an avenue, is entirely false. Petitioner had ample chance to litigate his Claim in the proper forum – he simply chose not to do so.

CONCLUSION

The Puyallup Tribe has carefully waived Tribal immunity for suits brought in Tribal Court against officers of the Tribe, including police officers, yet Petitioner dismissed his suit in Tribal Court without taking advantage of this avenue to present his claims and have his case heard.

There was no error below. Nor is there any conflict with any decision of this Court or decision of a State Supreme Court. Petitioner's elaborate claims that he cannot be granted relief under current law, and that this Court needs to intervene – apparently in a legislative manner – are baseless and do not merit review by this Court.

Respectfully submitted,

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