

Supreme Court Reaffirms Tribal Sovereign Immunity

On May 27, 2014, the United States Supreme Court reaffirmed the doctrine of tribal sovereign immunity by determining that sovereign immunity bars suits by states against Indian tribes and sovereign immunity extends to lawsuits arising out of commercial activity occurring outside of a tribe's Indian country.

In *Michigan v. Bay Mills Indian Community, et al.*, the state of Michigan sued the Bay Mills Indian Community based upon Michigan's belief that Bay Mills, a federally recognized Indian tribe, had opened a casino on non-Indian lands, thereby violating the Indian Gaming Regulatory Act ("IGRA"). The IGRA restricts gaming operations to Indian land and contains a provision which permits states to bring federal claims for violations of the IGRA that occur on Indian lands.

The Court took a textual approach and determined that the IGRA did not abrogate the sovereign immunity that Indian tribes enjoy. Although the IGRA permits lawsuits based upon gaming activity on Indian lands, the clear language of the IGRA prohibits such a lawsuit based upon activities that arise off of Indian lands. As an act of Congress, only the legislature has the ability to revise the text of the IGRA, not the Court. Because the alleged violation of the IGRA occurred off Indian lands, there was no waiver of the tribe's sovereign immunity and a lawsuit by the state of Michigan could not proceed. As a result, the Court reaffirmed the principles of sovereign immunity and extended the protection to activities that occur off of Indian land.