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Scalia: Sovereignty would create chaos

Sherrill, Oneida Indians argue their land claim case before Supreme Court

Amaris Elliott-Engel

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WASHINGTON -- A potential pivotal Indian land claim case reached the U.S. Supreme Court Tuesday --- and at least one justice appeared to sympathize with New York State's plight.

Oral arguments were heard in the city of Sherrill v. Oneida Indian Nation case on whether land reacquired by the Oneida Indian Nation within its historic land claim reverts to or retains sovereign status.

The case could have implications for tribes that own land in Cayuga County. Both the Seneca-Cayuga Tribe of Oklahoma and the Cayuga Indian Nation have claimed they are not subject to local laws and taxes in Cayuga County.

The Sherrill case originated in the late 1990s after the Oneida tribe sued the city in federal court when the city moved to foreclose 10 properties for which the Oneidas refused to pay property taxes. Sherrill issued the tax bills after the nation bought the properties, including a gas station, convenience store and textile factory, within city limits in 1997.

Supreme Court Justice Antonin Scalia, in an exchange with Oneida lawyer Michael R. Smith, said ruling that such land purchases are sovereign islands within larger municipal borders would create difficulties for local government enforcement of municipal issues like police, fire control and environmental regulatory protection.

"What you're asking the court to do is sanction a very odd checkboard of jurisdiction," Scalia said.

Scalia -- the most overtly sympathetic justice to Sherrill's arguments -- also said the tribe might be eligible for monetary damages, or even to be reimbursed for the property value of their lost land, but that ruling positively on the issue of sovereignty would create too much disruption to the modern landscape in Sherrill.

"It would just create a chaotic situation in New York state if we say you have jurisdiction over any piece of land you buy," he said.

Smith countered the case was about a "fair and square deal" for the Oneidas' sovereign tribal status.

"There needs to be a sensible way to recognize rights," Smith said.

Smith noted the Oneidas' argument that their reacquired property never lost its sovereignty -- despite repeated transfers over several generations -- was already given credence in a 1985 Supreme Court case. The court ruled then that federal law protects the right of the Oneida Nation to possess reservation lands previously alienated by New York state.

Sherrill lawyer Ira S. Sacks argued that the Oneida property in Sherrill is no longer sovereign because:

- * the 1788 Treaty of Fort Schuyler between New York state and the Oneidas terminated aboriginal title to the land and established a reservation through the state's authority.

- * the 1838 Treaty of Buffalo Creek then required the Oneidas to permanently abandon their lands in New York for a reservation out west and thus disestablished the New York reservation.

- * the tribe no longer had a "possessory right" after the lapse of 190 years.

"What extinguished the aboriginal title was the passage of time," as well as the transfer of property titles to state and local control, Sacks said.

But Justice David Souter said he didn't see what extinguished the aboriginal title to the land, besides the Treaty of Fort Schuyler, which was negotiated by New York state, not the federal government.

Malcolm Stewart, assistant to the U.S. Solicitor General, argued for the federal government that only Congress, as required under the 1790 Indian Non-Intercourse Act, can reduce or disestablish an Indian reservation.

A total of five amicus briefs sided with Sherrill, including a brief from Cayuga and Seneca counties, and a total of four briefs sided with the Oneida Nation.

The city of Sherrill appealed the case to the Supreme Court after two lower courts ruled in favor of the Oneida Nation.

Besides the issue of the Oneidas paying taxes on their property in Sherrill, the case might also have implications for the Supreme Court's standard of what is sovereign Indian Country.

Following the oral arguments, representatives from both sides of the case gathered on the Supreme Court steps to further spin their arguments.

"It's just a matter if the country will keep its word to the Oneida people," Ray Halbritter, the Oneida Nation's federally recognized representative.

"I thought it was a very good exchange," said Joseph Griffo, the Oneida county executive. "It's extremely important the case got to this level, but there is no way to ascertain yet how it went today."

The court's decision in the case is expected later this year.

Chief Justice William Rehnquist was not present for the oral arguments due to continuing ill health, but Rehnquist will participate in the court's decision making in the case by reading the briefs and transcripts.

Staff writer Amaris Elliott-Engel can be reached at 253-5311 ext. 282 or at amaris.elliott-engel@lee.net