Supreme Court, U.S.
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Supreme Court of the United States

COUSHATTA TRIBE OF LOUISIANA,

Petitioner,

v.

MEYER & ASSOCIATES, INC. and
RICHARD MEYER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
LOUISIANA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Dicta from this Court's previous decisions suggest that state courts are required to defer to tribal courts for an original determination of jurisdiction, yet there has been no explicit holding from this Court on the issue. The state courts have split on whether they are bound to follow the same analysis as the federal courts when Indian tribes appear before them with issues of tribal law, and therefore these are the questions presented.

1. Are state courts required to apply and follow the Tribal Exhaustion Doctrine, and, in this case, should the Louisiana Supreme Court have given the Coushatta Tribal Court the first opportunity to interpret Coushatta law?

2. Can a Native American Tribe be forced to litigate claims in a state court when an ostensible waiver of sovereign immunity is not valid under that tribe's law?

LIST OF PARTIES

The Petitioner, The Coushatta Tribe of Louisiana, is a federally-recognized Indian Tribe. Petitioner was Defendant/Appellant below.

The Respondents, Meyer & Associates, Inc. and Richard Meyer, individually were Plaintiffs/Appellees below. Meyer & Associates, Inc. is a Louisiana corporation, and Richard Meyer is a citizen of the State of Louisiana.

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OPINIONS BELOW

Petitioner, Coushatta Tribe of Louisiana, prays that a writ of certiorari issue to review the judgment below.

The opinion from the highest state court to review the merits appears at Appendix A to the petition and is reported at *Meyer & Associates, Inc. v. Coushatta Tribe of Louisiana*, 2007-2256 (La. 9/23/08), 992 So.2d 446.

The opinion from the appellate court, the Third Circuit Court of Appeal, appears at Appendix B to the petition and is reported at *Meyer & Associates, Inc. v. Coushatta Tribe of Louisiana*, 2006-1542 (La. App. 3d Cir. 8/8/07), 965 So.2d 930.

The opinion of the District Court for the Parish of Calcasieu appears at Appendix C to the petition, and this decision is unpublished.

JURISDICTION

The opinion of the Louisiana Supreme Court was entered September 23, 2008, and the request for rehearing by the Coushatta Tribe of Louisiana was denied on November 10, 2008. Appendix D to the petition. This Court's jurisdiction to consider this petition from the final judgment or decree by the highest court of the state in which the decision could be had is invoked pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 8, Clause 3 of the United States Constitution:

> "The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

Article VI, Clause 2, of the United States Constitution:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby. . . ."

Coushatta Judicial Code § 1.2.08, which provides a ranking of applicable laws. Appendix G.

Coushatta Judicial Code § 1.1.05, which describes the methods of waiving sovereign immunity. Appendix G.

STATEMENT OF THE CASE

Preliminary Statement

This case challenges the refusal of the Louisiana Supreme Court to defer to the Coushatta Tribal Court on an important issue of Coushatta Tribal law. The Coushatta Tribe of Louisiana (the "Coushatta Tribe") is a sovereign nation. It is a federally-recognized Native American Indian tribe that has its tribal offices in Elton, Louisiana. This case involves a series of contracts between the Coushatta Tribe and Meyer Associates, Inc. and that company's principal, Richard Meyer (collectively "Meyer"). The issues before this Court center on the legality of an ostensible waiver of sovereign immunity by the Coushatta Tribe's Chairman, Lovelin Poncho. The issues in the case are solely determined by federal and tribal law.

Background Facts

The Coushatta Tribe owns and operates a land-based casino in Kinder, Louisiana. Meyer approached the Tribe and successfully pitched the idea of a Coushatta-owned and operated power plant as an alternative source of revenue to the Tribe. The power plant would be located on Coushatta land, and it would be built by Meyer's company. Meyer drafted contract documents and drafted a resolution for the Tribal Council to approve.[1]

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[1] The Coushatta Tribal Council consists of four elected council members and a separately-elected Tribal Chairman.

(Cont'd)

Coushatta Resolution 2003-04, dated January 14, 2003, authorized Meyer to move forward with the power plant project. It also authorized the Chairman (or his designee) to "negotiate and execute all necessary Agreements with Meyer and Associates, Inc. . . . as may be required. . . ." The resolution does not authorize the Chairman to waive sovereign immunity.

Through a series of amendments to the original contract, the Chairman purported to commit the Tribe to (1) arbitration of contract disputes, then (2) litigation in Allen Parish courts (where the Tribe is located) and then (3) litigation in Calcasieu Parish (Meyer's home parish). In 2005 there was a change in the makeup of the Tribal Council. The newly-elected Council decided that the Tribe had paid Meyer millions of dollars, yet Meyer had not delivered any work product. The Tribe sued Meyer in Tribal Court to rescind the contracts, and Meyer responded by later filing suit against the Tribe in state district court in Calcasieu Parish.

The Coushatta Tribe excepted to the jurisdiction of the state court suit, and moved to have that suit dismissed on the basis of the Tribe's sovereign immunity. Alternatively, the Tribe asked the court to send the matter to the Tribal Court for an interpretation of Coushatta law, and for a determination of whether

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(Cont'd)

Kevin Sickey is the current Chairman. The Council performs the traditional functions of the legislative and executive branches of government. There is a separate and independent Tribal Court system, which consists of a trial court and a separate three-judge court of appeals.

the waiver of sovereign immunity in one of the contract amendments was valid under Coushatta law. The district court denied the Tribe's exceptions. *See* Appendix C.

The Tribe timely filed a request for a writ of review to the Third Circuit Court of Appeal. That intermediate appellate court granted the writ, and entered a stay order until such time as the Coushatta Tribal Court could rule on the validity of the waiver of sovereign immunity. *See* Appendix B.

In turn, Meyer requested that the Louisiana Supreme Court review that decision. The Supreme Court, in a 4-3 split decision, found that the state court had jurisdiction over the Tribe, and the court refused to defer to the Tribal Court's determination of Coushatta law. Appendix A. That court refused to grant a request for rehearing, and issued its denial on November 10, 2008. The opinion of the highest Louisiana court is contrary to federal law and jurisprudence, and forms the basis for this petition.

REASONS FOR GRANTING THE PETITION

1. The Tribal Exhaustion Doctrine should apply to issues of tribal law when Native American tribes are sued in the state courts as a matter of substantive federal law.

Suits against the Coushatta Tribe are barred by sovereign immunity unless that immunity is explicitly waived. *See e.g. Okla. Tax Comm'n v. Citizens Band Potawatomi Indian Tribe*, 498 U.S. 505, 509, 111 S.Ct. 905, 909 (1991). "[T]ribal immunity is a matter of federal law and is not subject to diminutive by the States." *Id.* at 756. Federal law, not state law, provides the standard for determining whether a waiver is sufficiently explicit. *Kiowa Tribe of Okla. v. Mfg. Technologies, Inc.*, 523 U.S. 751, 754, 118 S.Ct. 1700, 1703 (1998). "Indian tribes are 'domestic dependent nations' that exercise inherent sovereign authority over their members and territories. Suits against Indian tribes are thus barred by sovereign immunity absent a **clear waiver by the tribe** or congressional abrogation." *Id.* (emphasis added).

This Court has previously addressed the issue of the "explicitness" of written waivers of sovereign immunity. The determination of whether a waiver is "explicit" is pointless if the authority for a written waiver is lacking. The Court has not given guidance to the lower courts (or the state courts) on the issue of challenges to the validity of waivers of sovereign immunities under

tribal law.[2] Furthermore, the federal courts have considered and applied the Tribal Exhaustion Doctrine, but the state courts are split on the issue of whether they must follow this jurisprudential rule. *See* Section 2, *infra*. This Court should rule on this issue, and require state courts to follow the same rule of deference to tribal court interpretations of tribal law that it requires of the federal courts. If not, Native American tribes will be subject to suits in the state courts where they would not otherwise be subject to suit, and they will face the prejudices that exist in courts unfamiliar with tribal laws and customs.

Sovereign immunity cannot be waived by unauthorized acts of officials. *U.S. v. U.S.F.&G.*, 309 U.S. 506, 513 60 S.Ct. 653, 657 (1940). In *U.S.F.&G*, this court held:

> It is a corollary to immunity from suit on the part of the United States and the Indian Nations in tutelage that this immunity cannot be waived by officials. If the contrary were true, it would subject the government to suit in any court in the discretion of its responsible officers. This is not permissible.

Id. The validity of the Chairman's attempted waiver of immunity is uniquely a question of Coushatta tribal law

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[2] Although the express nature of the "Governing Law" language in one of the contract amendments is not the issue, the Tribe continues to reserve its rights to dispute to the breath of such language and whether it applies prospectively to agreements not then in existence.

because there is no body of law establishing uniform rules of authority for Tribal officials. *See World Touch Gaming v. Massena Mgt.*, 117 F.Supp.2d 271, 275 (N.D. N.Y. 2000) (holding that waiver of tribal sovereign immunity is invalid when contrary to the tribe's constitution and judicial code). This Court should grant the Coushatta Tribe's petition and review this important issue of tribal law and tribal sovereignty, which **impacts all Native American tribes**.

The Louisiana Supreme Court dodged the issue of whether the waiver was legal under Coushatta law, and jumped to the conclusion that the waiver was valid. In fact, the ruling indicates that the state courts are not *required* to follow the federal rule of deference to tribal courts on issues of tribal law:

> As related by the court of appeal, the *United States Supreme Court has* ***never*** *held that the exhaustion of tribal remedies doctrine applies to the states.* If we assume that the doctrine does apply to state courts, it is axiomatic that the jurisdiction of the state court must be determined prior to the doctrine's application. The doctrine applies only when a federal court (or hypothetically, here, a state court) and a tribal court share jurisdiction. The doctrine mandates that a court *with* jurisdiction allow a tribal court which may have jurisdiction to determine its own jurisdictional question. . . . [T]he doctrine does not mandate that tribal courts be allowed to determine whether or not non-tribal courts have concurrent jurisdiction.

Appendix A at pp. 6a-7a (emphasis added). The Louisiana Supreme Court determined that the state courts had jurisdiction over the Coushatta Tribe (based on the contractual language) and then refused to follow the Tribal Exhaustion Doctrine.[3] That court interpreted and applied Coushatta law, rather than sending the issue to the Tribal Court. With all due respect, the court got it wrong. Because this is a federal issue, the court should have followed federal law and jurisprudence.

As part of its decision to refuse to follow the Tribal Exhaustion Doctrine, and in finding the waiver of sovereign immunity to be valid under Coushatta law, the Louisiana Supreme Court interpreted and applied Tribal Code § 1.1.05[4] differently from the Coushatta Tribal Court:

> Here, the Tribal Council's restriction of its wording to "[n]othing in this Code" makes clear that the codal (sic) article applies only to the language of the Code, and not to waivers extraneous to the Code.

Appendix A at p. 10a. The issue was whether Section 1.1.05 described the only ways that the Tribal Council

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[3] The "Tribal Exhaustion Doctrine" is shorthand for the Court's holding in a line of cases, including *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 107 S.Ct. 971 (1987), which requires federal courts to require that parties exhaust their remedies in the tribal court system before the case can be heard in federal court, where the adjudication of issues in federal court could infringe upon tribal law making authority.

[4] The complete text of this law is found in Appendix G.

could waive sovereign immunity. The Louisiana Supreme Court's interpretation would mean that Section 1.1.05 does not contain a requirement that waivers of sovereign immunity be specific, or that they be accomplished through a resolution or ordinance. That law reads, in part:

> The Coushatta Tribe of Louisiana, as a sovereign government, is absolutely immune from suit. . . . Nothing in this Code shall be deemed to constitute a waiver of the sovereign immunity of the Coushatta Tribe of Louisiana except as expressly provided herein or as specifically waived by a resolution or ordinance approved by the Tribal Council specifically referring to such.

The Louisiana Supreme Court's interpretation is contrary to the Tribal Court's interpretation of that same statute in the case of *Celestine v. Coushatta Tribe of Louisiana*, Appendix E, at p. 64a.

Mr. Celestine had an employment contract that contained a waiver of sovereign immunity, yet there had been no proper authorization for the waiver. Judge Little found that sovereign immunity protected the Tribe and dismissed the suit:

> There is however, no specific resolution or ordinance approved by the Tribal Council that waives sovereign immunity as to the employment contract with Mr. Celestine. Case law in other jurisdictions may provide for implicit waiver, but there is no Coushatta

> authority that trumps or refines the specific requirement for a specific ordinance or resolution.

Celestine, Appendix E at p. 66a.[5]

The majority opinion below, hypothetically assumes that both the state and tribal courts would have jurisdiction over the matter.[6] The court then jumped to the conclusion that the immunity waivers were valid based on general language in Resolution 2003-04. "[T]he Tribe validly executed waivers of sovereign immunity and expressly subjected itself to the jurisdiction of the district court. . . ." Appendix A at p. 10a. The court came to that conclusion even though there is no specific authority for the waivers. The contracts at issue are not mentioned in Resolution 2003-04 and the words "waiver" and "sovereign immunity" are not to be found in that resolution.

This is exactly the type of problem that the Tribal Exhaustion Doctrine is designed to prevent–state courts

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[5] This jurisprudential authority was provided to the Louisiana Supreme Court, yet the opinion is not referenced by any of the Justices in the majority or minority opinions.

[6] A proper analysis of tribal court jurisdiction would have required application of the facts in *Montana v. U.S.*, 450 U.S. 544, 101 S.Ct. 1245 (1981), all of which would have led to the conclusion that the Coushatta Tribal Court had subject matter and personal jurisdiction over this case.

bastardizing tribal law to force litigation in the state courts.

> "[T]he existence and extent of a tribal court's jurisdiction will require a careful examination of tribal sovereignty, the extent to which that sovereignty has been altered, divested, or diminished, as well as a detailed study of relevant statutes, Executive Branch policy as embodied in treaties and elsewhere, and administrative or judicial decisions."

Natl. Farmers Union Ins. Cos. v. Crow Tribe of Indians, 471 U.S. 845, 855-56, 105 S.Ct. 2447, 2453-54.

The analysis by the Louisiana Supreme Court should have been:

1. Does the Tribal Court have jurisdiction over these parties and this matter?

   The answer is "yes," according to the application of *Montana v. U.S.*, 450 U.S. 544, 101 S.Ct. 1245 (1981):

   A. "[T]ribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian lands. 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.* at 565 (emphasis added).

B. "[A] tribe may also retain 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**." *Id.* (emphasis added).

2. Since the Tribal Court has jurisdiction over the case, does the case involve important issues of tribal law, government, and sovereignty?

The answer is "yes," because the issue of tribal sovereignty is one of utmost importance to the Tribe and its government. *Natl. Farmers*, 471 U.S. 845; 105 S.Ct. 2447 (1985).

A. The question of whether the Tribal Court has jurisdiction is a question of federal law. *Id.* 471 U.S at 852, 105 S.Ct. at 2452.

B. The Louisiana Supreme Court should be bound by the Supremacy Clause to follow federal law on the

issue of the Tribal Exhaustion Doctrine. U.S. Const. Art. VI, cl. 2.

C. Congress has a policy of supporting **tribal self-government and self-determination** which the Louisiana Supreme Court has violated. *Natl. Farmers*, 471 U.S. at 851, 102 S.Ct. at 241.

D. "We believe that examination [of jurisdiction] should be conducted in the first instance in the Tribal Court itself." *Id.* 471 U.S. at 856, 105 S.Ct. at 2454; "Exhaustion of tribal court remedies, moreover, will encourage tribal courts to explain to the parties the precise basis for accepting jurisdiction, and will also provide other courts with the benefit of their expertise in such matters in the event of further judicial review." *Id.* 471 U.S. at 857, 102 S.Ct. at 2454.

The Louisiana Supreme Court engaged in a self-centered analysis, that did not take into account federal law or policy.[7] That analysis consisted of:

1. Do the Louisiana Courts have jurisdiction over the Tribe?

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[7] It was apparent that no consideration was given to the fact that the Coushatta Tribe's suit in the Coushatta Tribal Court was the first-filed suit.

> They answered that question in the affirmative, based on their own interpretation of Coushatta law on the issue of the waiver of sovereign immunity, and ignoring Coushatta Tribal Court jurisprudence.
>
> 2. The Louisiana courts have jurisdiction over the Tribe because sovereign immunity was validly waived under Coushatta law.

Again, that analysis is flawed, because it is contrary to the prior rulings of this Court, it violates federal law and policy, and it deprives the Coushatta Tribe of the right to have its laws interpreted by the Coushatta Tribal Court. This Court should grant the petition, review this issue, and order the Louisiana Supreme Court to follow federal law and policy, and reverse its erroneous ruling.

2. The State courts have inconsistently ignored, recognized and applied the Tribal Exhaustion Doctrine.

Multiple state supreme courts have addressed the application of the Tribal Exhaustion Doctrine in state court. The majority of these cases suggest that states are bound to follow this federal doctrine. The courts that have determined otherwise base this determination on the particular facts of the case, usually because a tribe itself is not a party, tribal interests are not implicated,

or the subject matter of the suit did not occur on tribal land.[8]

If this petition is granted, this Court will have the opportunity to require the state courts to follow federal law and policy as applied to Indian tribes, and the state courts are in need of guidance. Although dicta from this Court's previous decisions suggest that state courts are required to defer to tribal courts for an original determination of jurisdiction, there has been no explicit holding from this Court on the issue.[9] The same interests that compel federal courts to apply the Tribal Exhaustion Doctrine equally compel a similar result in state courts.

A review of state court decisions reveals that the treatment of Tribal Exhaustion is not uniform. This means that Indian Tribes in one state are treated differently that those in another state based on different interpretations of substantive federal law.

An Indian Tribe in Connecticut will be afforded the opportunity of exhausting its remedies in Tribal Court before being required to proceed in state court. *Drumm v. Borwn*, 245 Conn. 657, 681, 716 A.2d 50, 62-62 (1998).

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[8] In the instant case, the Tribe is a party to the contract and the lawsuit, and the contract was to be performed on tribal land.

[9] This Court has held the Tribal Exhaustion Doctrine applies to "non-tribal courts." Some state courts have interpreted this to be a clear indication that the doctrine must be followed by state courts. *See Iowa Mut.*, 480 U.S. 9, 107 S.Ct. 971 (1987).

The Connecticut Supreme Court, after an extensive discussion of this Court's cases dealing with Tribal Exhaustion, had the following to say about the doctrine's application in state court:

> The Supreme Court cases do not conclusively indicate that the exhaustion rule is substantive federal law, which is binding in state courts pursuant to the supremacy clause of the federal constitution, as opposed to merely a federal procedural rule that is based upon, but separate from, the substantive legal strictures embodying the federal policy of supporting tribal self-government. Nevertheless, there are strong suggestions that the rule is substantive in nature.

Drum, 245 Conn at 681. These "suggestions" include this Court's repeated use of language suggesting the policy of promoting tribal self-government *compelled* the adoption of the doctrine. *Id, citing, Iowa Mut.*, 480 U.S. at 15-16, 107 S.Ct. at 976-977. The Connecticut court noted that in *Iowa Mut.* this Court explained the importance of allowing tribal courts to adjudicate, without interference, matters over which they properly are exercising jurisdiction, stating, "[a]djudication of such matters by *any* non-tribal court . . . infringes upon tribal law making authority." *Id, citing and quoting, Iowa Mut.*, 480 U.S. at 16, 107 S.Ct. at 977 (emphasis added). This Court should hold that the rule of deference to Tribal Courts, in this case and in similar cases, applies equally to state and federal courts as a matter of federal law. This is the only way that the

federal policy of Indian self-governance and self-determination can survive.

New York courts have also indicated a willingness to apply the Tribal Exhaustion Doctrine in state court. In *Seneca v. Seneca*, 293 A.D. 2d 56, 741 N.Y.S.2d 375, the court concluded that the doctrine did not apply because no action was pending in Tribal Court. "[W]e conclude that [the Tribal Exhaustion Doctrine] does not apply *because* there is no action pending in a Seneca Nation tribal court." *Id.* at 60, 379 (emphasis added). This suggests that had a case been pending in Tribal Court, New York would have applied the doctrine.

Wisconsin has also favorably addressed the issue of applying the doctrine in state court. *Teague v. Bad River Band of Lake Superior Tribe of Chipewa Indians,* 665 N.W.2d 899, 265 Wis.2d 64 (Ct. App. 2002). "The principles of comity applicable to state court-tribal court relations are built upon the goal of fostering tribal self-government through recognition of tribal justice mechanisms." *Id.* 665N.W.2d at 919, 265 Wis.2d at 104 (concurring opinion). "Consequently, the plaintiff's choice of forum and the application of state law are *outweighed* by the fact that the litigation involves tribal sovereignty and the interpretation of tribal law, and that the material events occurred on tribal land." *Id* (emphasis added).

Arizona has declined to apply the Tribal Exhaustion Doctrine in state court. *Astorga v. Wing*, 211 Ariz. 139, (App. 2005). The court stated, "the principle of exhaustion recognized by federal courts *in this context* does not similarly operate in Arizona state courts."

Id. at 142 (emphasis added). The "context" in *Astorga* is that an Indian plaintiff filed suit in state court against a non-Indian defendant. *Id.* at 143. Therefore, Tribal Exhaustion was not applicable. However, the court in *Astorga* does state in dicta that "[u]nlike Arizona state courts, federal courts retain the power to review an Indian court's exercise of jurisdiction over non-members. *Id.* at 142. "Thus, the relationship between Navajo courts and the federal courts is (at least in part) a vertical one, governed by the rule of exhaustion." *Id.* Although this vertical versus horizontal relationship may be a distinction, there is nothing suggesting this distinction is dispositive of the inquiry. In fact, the cases cited above indicate that state courts have the same interest in favoring tribal self-government, yet a state court's refusal to apply the Tribal Exhaustion Doctrine would undermine these federal interests. The state and federal courts should have the same policy regarding this federal issue.

The Oklahoma appellate court indicated in dicta that "the exhaustion doctrine does not apply in state court actions." *Michael Minnis & Assoc., P.C. v. Kaw Nation*, 90 P.3d 1009, 1014 (Ok. App. 2003). However, in that case, the court concluded that the Kaw Nation had sovereign immunity from suit in state court. *Id.* at 1015. Thus, any application of the Tribal Exhaustion Doctrine was moot.

Cases from state courts around the country indicate the lack of a uniform treatment of Native American Tribes in the state courts. If courts, like the Louisiana Supreme Court, refuse to defer to the tribal courts for the interpretation and application of tribal law, tribal sovereignty will be jeopardized and eroded, and the

federal policies of self-government and self-determination will not be followed. The United States Constitution makes federal law supreme, and this Court should insist that the state courts follow federal law and policy. The ruling of the Louisiana Supreme Court should be reversed, and the case sent back to Coushatta Tribal Court for the interpretation and application of Coushatta law on the issue of whether there was a valid waiver of sovereign immunity by the former Chairman.

3. The Louisiana Supreme Court incorrectly interpreted and applied Coushatta law.

Coushatta Tribal Code § 1.1.05 requires that waivers of sovereign immunity must be in the form of a resolution or ordinance, and there is a requirement that the waiver be specific. As noted above, the Coushatta Tribal Court in *Celestine v. Coushatta Tribe of Louisiana*[10] interpreted this law to require a specific resolution or ordinance relating to a specific contract for there to be a valid waiver. In *Celestine*, the plaintiff was an employee of the Tribe, and the former Chairman, Lovelin Poncho, had signed an employment contract between the Tribe and Celestine shortly before Poncho left office. The Coushatta Tribal Court found that sovereign immunity had not been properly waived, and dismissed Celestine's case.

The Louisiana Supreme Court completely ignored this jurisprudence, and gave a different interpretation to the statute. Even though the words "sovereign immunity" are not contained in the authorizing

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[10] Appendix E, at p. 64a

resolution, that court found that Lovelin Poncho had been granted a general authority that would include waiving sovereign immunity.

The state court determined that it had jurisdiction over the Coushatta Tribe, even though the waiver of sovereignty did not comport with Coushatta law.

> "The federal policy favoring tribal self-government operates even in areas where state control has not been affirmatively pre-empted by federal statute. '[A]bsent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them.'"

Iowa Mut., 480 U.S. at 14, 107; 107 S.Ct. 971, 975 (1987), *quoting Williams v. Lee*, supra, 358 U.S. 217, 220, 79 S.Ct. 269, 271 (1959). This ruling by the Louisiana court violates the Coushatta Tribe's right to make its own laws and to be governed by them. The ruling below should be reversed.

CONCLUSION

The Coushatta Tribe of Louisiana enjoys sovereign immunity, and it cannot be sued unless it legally waived sovereign immunity. In this case, the Louisiana Supreme Court interpreted and applied Coushatta law, ignored Coushatta Tribal Court jurisprudence, and concluded that sovereign immunity was legally waived. The Coushatta Tribal Court was not given the opportunity to rule on this important issue of

sovereignty and jurisdiction. The Louisiana Supreme Court decided that it could perform its own ad hoc interpretation of tribal law, and it got the wrong answer.

This Court should hold, as a matter of federal law and policy, that the state courts should defer to tribal court interpretations of tribal law when an Indian party is a tribe and where tribal autonomy is at stake. This federal policy of tribal self-governance has been violated by the Louisiana court. A writ from this Court will settle the uncertainty and inconsistent application of federal law and policy in the state courts. The Constitution makes federal law supreme, and this case, as it currently stands, is contrary to federal law, as pronounced by this Court. The case below should be reversed, and the case remanded with instructions to have the Coushatta Tribal Court determine whether sovereign immunity was legally waived, under Coushatta law.

WHEREFORE, the Coushatta Tribe of Louisiana prays that the Court grant its petition.

Respectfully submitted,

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