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The Supreme Court recently ruled against the Menominee Tribe of Wisconsin and declined to hear arguments in a NAGPRA case involving 12 Kumeyaay tribes.

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Supreme Court Rules Against Menominee Tribe, Denies Cert on NAGPRA Claim

SUZETTE BREWER | 1/26/16

In a unanimous decision January 25, the U.S. Supreme Court issued its ruling against the Menominee Tribe of Wisconsin in Menominee v. The United States, a case involving contract support costs against the Indian Health Service (IHS). The dispute

arose over claims for the years 1996-1998 and turned on whether the tribe filed its claims in a timely fashion.

Previously, the District Court for the District of Columbia initially ruled that the tribe was barred from filing for its contract claims because it had missed the six-year statute of limitations; however, the Court of Appeals ruled that the limitations period was not jurisdictional and thus did not necessarily prevent an extension of time. Similar disagreements in the lower courts created a circuit split for the Supreme Court to make a determination, as other tribes have been involved in similar litigation against IHS.

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At the Supreme Court hearing last December, none of the justices seemed compelled by the tribe's reasoning for its delay in filing and were concerned about the tribe's failure to exhaust administrative remedies, as well as its reliance on the potential outcome of other pending federal litigation that had not yet reached its terminal status.

“So you're really arguing a remarkable proposition, that if you get bad legal advice that justifies equitable tolling,” said Justice Scalia during the hearing. “Our cases refer to extraordinary circumstances that stood in the way and prevented timely filing. I would not qualify erroneous legal advice as preventing timely filing. I don't care how reasonable it was. It didn't prevent it.”

“Because the Tribe cannot establish extraordinary circumstances that stood in the way of timely filing, we hold that equitable tolling (or removing the statute of limitations) does not apply,” said Justice Samuel Alito, writing for the majority.

“The Indian Self-Determination and Educational Assistance Act (ISDA) and the Contract Disputes Act (CDA) establish a clear procedure for the resolution of disputes over ISDA contracts, with an unambiguous six-year deadline for presentment of claims.”

Indian law experts said the decision did not come as a surprise and that it resolves circuit splits in the lower courts. Additionally, it reaffirms that tribes must now file within the statutory limits of their contract claims—or risk losing crucial funding for contract health services for their tribal members.

“We do not question the ‘general trust relationship between the United States and the Indian tribes,’” Alito wrote, “but any specific obligations the Government may have under that relationship are ‘governed by statute rather than the common law.’”

Translation: Unless the specific obligation to the tribes are either outlined in a treaty or a Congressional statute, say legal experts, the tribes cannot seek redress to claims under “Common Law,” in which the courts make laws.

In other developments, the Supreme Court declined to hear arguments in *White v. Regents of the University of California*, a case involving 12 federally-recognized Kumeyaay tribes and claims arising under the Native American Graves Protection and Repatriation Act (NAGPRA).

In this case, the University of California transferred what came to be known as “the LaJolla Remains,” (prehistoric human remains approximately 9,000-years-old) to the La Posta Band of Mission Indians and the Kumeyaay Cultural Repatriation Committee (KCRC) under the aegis of NAGPRA over the objection of the petitioners, who are scientists at the university seeking to retain the skeletons for further study and genetic analysis known as “paleo-genomics.”

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In their petition, the scientists objected to the fact that the tribe in question had only 18 members, with plans to bury the remains in a ceremony and raised the question over whether the tribes had waived their sovereign immunity.

“Repatriation would irrevocably destroy the research potential of the remains, which are essential to understanding the population of the Americas during the last era of the Stone Age,” the scientists alleged in their petition.

The case began in 1976 when the ancient human remains were excavated at the University of California San Diego campus. In their petition, the scientists had asked for a declaration that the remains were not “Native American” as outlined in NAGPRA.

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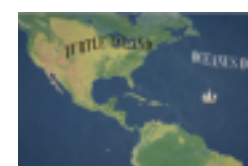
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In their response to the petition, however, the KCRC remained firm in their position in response to what they say are “inconsistent and confusing” information from the petitioners in regards to their compliance with NAGPRA.

“KCRC is charged with protecting and preserving all Kumeyaay human remains and objects. Also, KCRC is responsible for all such items found within Kumeyaay aboriginal lands held by federal agencies and museums (including institutions of higher learning) and to seek repatriation of these items on behalf of KCRC’s respective tribes,” wrote the KCRC. “KCRC is an outgrowth of tribal concerns over repatriation efforts, or lack thereof, in San Diego County.”

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