

IN THE SUPREME COURT OF THE UNITED STATES

No. 17-387

UPPER SKAGIT INDIAN TRIBE, PETITIONER

v.

SHARLINE LUNDGREN AND RAY LUNDGREN

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF WASHINGTON

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae supporting petitioner and requests that the United States be allowed ten minutes of argument time. Petitioner has consented to an allocation of ten minutes of its argument time to the United States.

This case presents the question whether the sovereign immunity of a federally recognized Indian tribe bars an action against the Tribe to quiet title to property purchased by the Tribe outside of its reservation, where the Tribe has not waived

its immunity and Congress has not unequivocally abrogated the Tribe's immunity. The Washington Supreme Court held that tribal sovereign immunity did not bar respondents' action to quiet title to land owned by an Indian tribe, based on the rationale that the state court could exercise in rem jurisdiction over the land itself without obtaining personal jurisdiction over the sovereign landowner.

The United States has long been "committed to a policy of supporting tribal self-government and self-determination." National Farmers Union Ins. Cos. v. Crow Tribe, 471 U.S. 845, 856 (1985). A tribe's sovereign immunity from suit is one important protection for tribal autonomy. Michigan v. Bay Mills Indian Cmty., 134 S. Ct. 2024, 2030-2031 (2014). The United States therefore has an interest in ensuring the correct application of the doctrine of tribal sovereign immunity. Additionally, the United States, as a sovereign landowner that has waived its immunity from suit only in specific circumstances and only in federal court, see Quiet Title Act, 28 U.S.C. 2409a, has an interest in ensuring that state courts do not quiet title to land owned by the United States based on the rationale adopted by the Washington Supreme Court.

On January 29, 2018, the United States filed a brief as amicus curiae supporting petitioner. In its brief, the United States argues that sovereign immunity bars suits against the

sovereign's property, and state courts therefore cannot circumvent tribal sovereign immunity by exercising in rem jurisdiction over tribal property.

The United States has participated in oral argument in other cases involving questions about the scope of tribal sovereign immunity. See, e.g., Lewis v. Clarke, 137 S. Ct. 1285 (2017); Bay Mills Indian Cmty., 134 S. Ct. 2024; Kiowa Tribe v. Mfg. Techs., Inc., 523 U.S. 751 (1998); Oklahoma Tax Comm'n v. Citizen Band of Potawatomi Indian Tribe, 498 U.S. 505 (1991); Puyallup Tribe, Inc. v. Dep't of Game of State of Washington, 433 U.S. 165 (1977). The government's participation in oral argument will provide the Court with the federal perspective in this case, and division of the argument time will therefore materially assist the Court in its consideration of the case.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

FEBRUARY 2018