

IN THE SUPREME COURT OF THE UNITED STATES

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No. 22-227

LAC DU FLAMBEAU BAND OF LAKE SUPERIOR  
CHIPPEWA INDIANS, ET AL., PETITIONERS

v.

BRIAN W. COUGHLIN

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ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

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

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Pursuant to Rule 28 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 respondent and requests that the United States be allowed ten minutes of argument time. Respondent has agreed to cede ten minutes of his argument time to the United States, and therefore consents to this motion.

This case concerns the scope of the Bankruptcy Code's abrogation of sovereign immunity. Section 106(a) of the Code states that, "[n]otwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental

unit to the extent set forth in this section with respect to" specified provisions of the Code. 11 U.S.C. 106(a). The Code, in turn, defines the term "governmental unit" to mean "United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government." 11 U.S.C. 101(27). The question presented is whether that language provides the requisite "unequivocal[]" expression of Congress's intent to abrogate the sovereign immunity of federally recognized Indian tribes. Michigan v. Bay Mills Indian Cmty., 572 U.S. 782, 790 (2014) (citation omitted). Concurrently with this motion, the United States is filing a brief in support of respondent, taking the position that the Code's reference to "other \* \* \* domestic government," 11 U.S.C. 101(27), provides the requisite unequivocal abrogation of tribal sovereign immunity.

The United States has a substantial interest in the resolution of the question presented. 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 of Indians, 471 U.S. 845, 856 (1985), while recognizing that Congress may abrogate tribal immunity so long as it expresses its

intent to do so unequivocally, Bay Mills, 572 U.S. at 788-790. The United States has previously presented oral argument as amicus curiae in cases involving tribal sovereign immunity. See, e.g., Upper Skagit Indian Tribe v. Lundgren, 138 S. Ct. 1649 (2018) (No. 17-387); Lewis v. Clarke, 581 U.S. 155 (2017) (No. 15-1500); Bay Mills, supra (No. 12-515); Kiowa Tribe of Okla. v. Manufacturing Techs., Inc., 523 U.S. 751 (1998) (No. 96-1037); Oklahoma Tax Comm'n v. Citizen Band of Potawatomi Indian Tribe, 498 U.S. 505 (1991) (No. 89-1322). More generally, the United States seeks to ensure the correct application of the rule that Congress express any intent to abrogate sovereign immunity unequivocally, since the same rule applies to congressional waiver of federal immunity. See Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58 (1978).

The United States also has an interest in the proper functioning of the bankruptcy system. The United States is the Nation's largest creditor; federal entities participate in bankruptcy proceedings in various capacities; and United States Trustees supervise the administration of bankruptcy cases, see 28 U.S.C. 581-589a; see also 11 U.S.C. 307. The United States has previously presented oral argument as amicus curiae in cases involving interpretation of the Bankruptcy Code. See, e.g., Bartenwerfer v. Buckley, 143 S. Ct. 665 (2023) (No. 21-908); City of Chicago v. Fulton, 141 S. Ct. 585 (2021) (No. 19-357); Mission Prod. Holdings, Inc. v. Tempnology, LLC, 139 S. Ct. 1652 (2019)

(No. 17-1657); Lamar, Archer & Cofrin, LLP v. Appling, 138 S. Ct. 1752 (2018) (No. 16-1215); U.S. Bank Nat'l Ass'n v. Village at Lakeridge, LLC, 138 S. Ct. 960 (2018) (No. 15-1509); Husky Int'l Elecs., Inc. v. Ritz, 578 U.S. 355 (2016) (No. 15-145).

The United States' participation in oral argument in this case accordingly could materially assist the Court in its resolution of the question presented.

Respectfully submitted.

ELIZABETH B. PRELOGAR  
Solicitor General

MARCH 2023