

Supreme Court deals setback to tribes in labor sovereignty dispute

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The Saginaw Chippewa Tribe owns and operates the Soaring Eagle Casino & Resort in Mount Pleasant, Michigan. Photo from [Facebook](#)

The [U.S. Supreme Court](#) dealt a big setback to Indian Country on Monday by declining to hear two closely-watched labor sovereignty cases.

Without comment, the justices issued orders denying petitions in [Little River Band of Ottawa Indians Tribal Government v. NLRB](#) and [Soaring Eagle Casino and Resort v. NLRB](#). That means the [Little River Band of Ottawa Indians](#) and the [Saginaw Chippewa Tribe](#), both from Michigan, won't be able to argue that their gaming facilities should be exempt from the [National Labor Relations Act](#).

The [6th Circuit Court of Appeals](#) ruled against both tribes a [year ago this summer](#) and Indian Country rallied at their side in hopes of resolving the controversy. The [National Congress of American Indians](#), the [National Indian Gaming Association](#), the [California Nations Indian Gaming Association](#), the [United South and Eastern Tribes](#), several individual tribes and even two states got on board.

But Obama administration urged the justices not to get involved, citing a lack of conflict among the lower courts. In addition to the 6th Circuit, the [D.C. Circuit Court of Appeals](#) -- whose [2007 decision on the matter](#) remains unchallenged -- has ruled that tribes can be subject to federal labor law.



The Little River Band of Ottawa Indians is completing an \$18 million expansion of the Little River Casino Resort in Manistee, Michigan. Photo from [Facebook](#)

Attorneys from the [Department of Justice](#) and the [National Labor Relations Board](#) also noted that the [9th Circuit Court of Appeals](#) has a similar case pending. If that decision conflicts with the 6th Circuit, the Supreme Court might then be inclined to step in, they argued in briefs.

Regardless of the way the litigation plays out, tribes will continue to lobby Congress to address the situation. The [House](#) passed [H.R.511](#), the Tribal Labor Sovereignty Act, last November in order to clarify that [tribes and their enterprises are exempt](#) from federal labor law in a manner similar to states and the federal government. A companion measure, [S.248](#), is [awaiting consideration](#) in the [Senate](#).

"These are modest bills in terms of language, less than two pages. But their importance is profound: they would expressly exclude tribal governments from the definition of 'employer' in the NLRA. Parity: no more, no less," [Ben Nighthorse Campbell](#), a retired U.S. Senator whose [lobbying and policy firm](#) represents the [National Indian Gaming Association](#), according to the [Center for Responsive Politics](#), wrote in [Indian Country Today](#) earlier this month.

Democrats and their longtime allies in labor unions have been pushing back. They say federal law remains the best way to protect the rights of casino employees, most of whom are non-Indian.



Labor union supporters turned out in large numbers at a Senate Indian Affairs Committee business meeting in June 2015 to protest S.248, the Tribal Labor Sovereignty Act. The committee advanced the measure but it has not been brought up for consideration on the Senate floor. Photo by Andrew Bahl for Indianz.Com

In a sign of the way the debate has since since the [National Labor Relations Board](#) first asserted [jurisdiction over Indian Country](#) in 2004, prominent Democrats are now supporting the effort. But tribes still need [at least 10 to 12 Democrats](#) in order to secure the super-majority required to prevent the bill from being blocked or filibustered in the Senate.

The [White House](#) issued a [statement of administration policy](#) against H.R.511 last year but left the door open for a potential compromise. If Congress can ensure that tribes adopt "reasonably equivalent" standards to those found in federal law and offers funding to help tribes meet that goal, then [President Barack Obama](#) might get on board.

The case that is pending before the 9th Circuit affects the [Pauma Band of Luiseño Indians](#) in California. It arose after the [Casino Pauma](#) barred its employees from wearing pro-union buttons on the job.

The National Labor Relations Board sided with the UNITE-HERE union, whose members were involved in the 2004 case that launched the debate. The first brief is due September 14, according to a [court order](#), so a decision is still several months away.

6th Circuit Court of Appeals Decisions:

[Soaring Eagle Casino v. NLRB](#) (July 1, 2015)

[NLRB v. Little River Band of Ottawa Indians](#) (June 9, 2015)

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[Tribal labor law rider killed by wide margin in House](#) (June 27, 2005)

[NCAI between 'rock and a hard place' on labor rider](#) (September 13, 2004)

[Tribal labor amendment fails in House vote](#) (September 13, 2004)

[Federal labor board expands jurisdiction over tribes](#) (June 4, 2004)