

Tribe Faults 'New Argument' In High Court Immunity Dispute

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Law360 (March 14, 2018, 4:05 PM EDT) -- The [Upper Skagit Indian](#) tribe urged the [U.S. Supreme Court](#) to reject a Washington couple's contention that tribal sovereignty doesn't preclude suits over nonreservation lands, claiming the fact that the couple is now changing course and making a "new argument" shows that their case is weak.

The Upper Skagit tribe's March 12 reply brief asked the justices not to consider Sharline and Ray Lundgren's argument that the tribe could not exercise its immunity in disputes over immovable property, such as the disputed land plot, in another sovereign's territory, arguing that the couple had not raised the theory before in the appeal.

The tribe also said that whether there is an immovable property exception to tribal sovereignty is a decision to be made by the executive and legislative branches of government, not the courts.

"The court should reject the Lundgrens' invitation to sidestep the political branches and narrow sovereign immunity by judicial action where Congress has not acted and the executive agrees that tribal sovereign immunity applies," the tribe said.

The tribe's reply brief said that the couple's argument falls outside the scope of the question that the high court agreed to tackle when it granted the tribe's petition for certiorari [in December](#). The tribe asked the Supreme Court to consider whether a court's in rem jurisdiction — the authority to exercise power over a property without having personal jurisdiction over the property owner — defeated tribal sovereign immunity.

The Lundgrens [argued in February](#) against overturning the Washington Supreme Court's [February 2017 ruling](#) saying that the tribe could not use its sovereign immunity to escape a 2015 quiet title suit from the couple over a disputed parcel of property in Skagit County.

The couple argued that such a ruling would wrongly expand the sovereignty of tribes to the detriment of the sovereignty of states and pointed to international law to demonstrate the existence of an immovable property exception to sovereign immunity.

But the tribe said the couple was wrong to draw comparisons between the sovereign immunity of states and foreign nations and that of federally recognized tribes, arguing that the immunity of tribes was like the immunity of the federal government. An immovable property exception would be counter to the Supreme Court's precedent, the Upper Skagit tribe said.

"And the court has never imposed an exception to tribal sovereign immunity for disputes involving immovable property within a state's territory," the tribe said. "Instead, the court has repeatedly held that tribal sovereign immunity extends beyond the borders of reservation land and applies to disputes that arise on land fully subject to a state's jurisdiction."

Counsel and representatives for the parties did not immediately respond to a request for comment on Wednesday.

The Upper Skagit Indian Tribe is represented by Arthur W. Harrigan Jr., Tyler L. Farmer, Kristin E. Ballinger and John C. Burzynski of [Harrigan Leyh Farmer & Thomsen LLP](#), and its in-house counsel David S. Hawkins.

The Lundgrens are represented by Scott M. Ellerby of [Mullavey Prout Grenley & Foe](#), and Eric D. Miller, Luke M. Rona, Jennifer A. MacLean, Charles G. Curtis Jr. and Lauren Pardee Ruben of [Perkins Coie LLP](#).

The case is Upper Skagit Indian Tribe, Petitioner v. Sharline Lundgren et al., case number [17-387](#), in the Supreme Court of the United States.

--Editing by Stephen Berg.