May an Indian Tribe Simultaneously Sue the United States in Two Forums for One Breach of Trust?

CASE AT A GLANCE

The Court of Federal Claims (CFC) has jurisdiction over claims for money damages against the government, but it cannot hear any claim "for or in respect to which" the plaintiff has a suit pending in another court. The plaintiff had one suit for equitable relief pending in a district court when it sued on the same underlying facts in the CFC for money damages. The Supreme Court must decide if the CFC has jurisdiction to hear the claim.

United States v. Tohono O'odham Nation
Docket No. 09-846

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ISSUE

Does 28 U.S.C. § 1500, which prevents the Court of Federal Claims (CFC) from hearing any claim "for or in respect to which" the plaintiff has already sued in another court, deprive the CFC of jurisdiction over a claim for monetary relief for the government's breach of trust when the plaintiff has another suit for equitable relief based on the same facts pending in federal district court?

FACTS

A bedrock principle of our system of limited government is, in the words of Abraham Lincoln, that "[i]t is as much the duty of Government to render prompt justice against itself, in favor of its citizens, as it is to administer the same between private individuals." Cong. Globe, 37th Cong., 2d Sess., App. 2 (1862). But it has not always been so. At the beginning of the republic, citizens with grievances against the government could petition Congress to pass an individual appropriations bill to settle their claims. Justice was subject to the whims of the political system and was often far from prompt. By the Civil War, that process had become impractical due to the large volume of war-related claims. At the urging of President Lincoln, Congress created the Court of Claims to render final judgment on claims for money damages against the government. The new court's jurisdiction was exclusive, thus ensuring the development of a uniform body of law in the area.

But Congress's plan soon ran into a snag. During the war, Union officials had sold the confiscated cotton of southern landowners and used the proceeds to swell the Union's coffers. After the war, landowners who contested the seizure of their property soon discovered that the new jurisdictional scheme allowed them to sue twice: once in the Court of Claims against the government under the Abandoned Property Collection Act, and once in other federal courts against the officials who had seized their cotton under common-law tort theories. Those duplicative lawsuits unfairly gave the landowners two bites at the apple and drained scarce government and judicial resources. Congress thus decided to limit the jurisdiction of the Court of Claims by removing its power to hear "any claim for or in respect to which [the plaintiff] shall have commenced and has pending any suit or process in any other court against [the agents of the United States]." Act of June 25, 1868, ch. 71, § 8, 15 Stat. 77 (codified as amended at 28 U.S.C. § 1500).

Almost 150 years later, that statute is still with us. Two significant changes, however, have developed.

First, the jurisdiction of the Court of Federal Claims (CFC), the successor to the Court of Claims, extends to a much broader area. Since the Civil War, certain legislation has increased the court's jurisdiction, including the Indian Tucker Act of 1946 that gave the court power to hear the suits of American Indian tribes against the government. One of the unique aspects of the tribes' quasi-sovereign status is that they are wards of the government, which has a duty to protect the tribes' assets in trust. Many of the suits under the Indian Tucker Act seek to ensure that the government is fulfilling its fiduciary duties as trustee of those assets.

Second, the CFC's jurisdiction is now less exclusive, as many claims in the CFC can also be brought in other courts. The key development came in 1988 with the Supreme Court's decision in *Bowen v. Massachusetts,* a suit against the United States for reimbursement of state health care expenditures under the Medicaid statute. 487 U.S. 879 (1988). Prior to *Bowen,* plaintiffs could bring claims for money damages against the United States only in the CFC.

Actions "seeking relief other than money damages," 5 U.S.C. § 702, by contrast, could be brought under the Administrative Procedure Act in district courts, so long as there was "no other adequate remedy in a court." 5 U.S.C. § 704. In a stunning disruption of that jurisdictional scheme, *Bowen* allowed the district courts to hear claims for monetary relief so long as the claim sought equitable declaratory or injunctive relief—essentially an order to pay money—rather than "money damages." The Court thus held that for jurisdictional purposes, equitable relief leading to money changing hands is meaningfully different from damages at law.

As a result, many parties today can choose to litigate in the CFC or in the district courts, merely by ensuring that they plead their claim in the correct form. Lower courts have extended *Bowen* beyond the context of Medicaid reimbursement suits to a variety of other contexts, including suits under the Indian Tucker Act for money the government failed to pay because of trust mismanagement. Before *Bowen,* tribes bringing such suits could seek only money damages in the CFC. Now, *Bowen*'s back door allows those tribes to choose the district courts so long as they ask "solely for a declaration of the defendants' trust duties and an accounting of money already existing in the account," rather than for damages. *Cobell v. Babbitt,* 30 F. Supp. 2d 24 (D.D.C. 1998). Courts have allowed such sleight of hand even though the end result—that the government pays the tribes what they are owed—is the same. The CFC's exclusive jurisdiction over such cases, for all practical purposes, no longer exists.

Once tribes could sue for the same breach of trust in two different courts, it was only a matter of time before a case would test the limits of Congress's prohibition of duplicative suits in 28 U.S.C. § 1500. *United States v. Tohono O'odham Nation* is that case. In December 2006, the Tohono O'odham Nation filed two claims against the United States for breach of its fiduciary duties as trustee of the tribe's land and resources. The first complaint, filed in the District Court for the District of Columbia, sought declaratory judgment that the government had breached its fiduciary duties, an injunction ordering an equitable accounting and proper compliance with those duties in the future, and any equitable restitution necessary to restore the trust fund to its proper level. The second complaint, filed in the CFC, sought money damages for the government's failure to perform a proper accounting and for its mismanagement of the trust assets, which had denied the tribe the income to which it was entitled.

The government moved to dismiss the CFC suit under 28 U.S.C. § 1500. The CFC granted the motion, holding that the suits arose from the same set of operative facts, and that the relief they sought was virtually identical. On appeal, the Federal Circuit reversed, holding that the two suits did not seek the same relief. The tribe's CFC complaint sought "damages at law, not equitable relief," whereas its district court complaint requested "only equitable relief and not damages." The government then appealed that ruling to the Supreme Court.

CASE ANALYSIS

Section 1500 provides that

> [t]he United States Court of Federal Claims shall not have jurisdiction of any claim for or in respect to which the plaintiff or his assignee has pending in any other court any suit or process against the United States or any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, directly or indirectly under the authority of the United States.

The central dispute is whether the tribe's CFC suit brings a claim "for or in respect to which" the tribe already has a suit pending in its district court suit. The government contends that two suits are identical under § 1500 if they are based on substantially the same operative facts, even if they seek different relief. By contrast, the tribe argues that two claims are identical only if their requested relief is identical. The parties join the interpretative battle on four fronts: text, history, precedent, and policy.

Text

The government first emphasizes the breadth of the statute's terms, emphasizing that § 1500 applies whenever the plaintiff pursues "any claim" "for or *in respect to*" its CFC claim. According to the government, "in respect to" means "related to," and two claims can surely be related even if they do not seek the same relief. The tribe counters that each of the statute's terms modifies "claim," and that a "claim" is a request for a particular type of relief. By requiring a comparison of two "claims," § 1500 therefore requires a comparison of the two requests for relief. If the relief requested is different, the tribe concludes, the statute does not apply.

To support its argument, the government emphasizes that the statute assumes that a claim against an agent of the United States can be "for or in respect to" a claim against the United States itself. That fact is significant, says the government, because the claim against the United States seeks federal funds, while the claim against the agent seeks the agent's personal money. By including suits against agents, therefore, the statute expressly contemplates its application in a situation in which two suits seek different relief. The tribe's response is that the source of the funds is irrelevant, as two suits can still seek the "same" relief if they both seek money damages.

History

The parties sharply differ about the meaning of the historical context in which Congress first enacted §1500. Both sides acknowledge that the immediate cause of § 1500 was southern landowners who were able to sue twice to recover their confiscated cotton. At the least, therefore, the statute was written to prevent those landowners from suing in the Court of Claims if they already had a suit pending in other federal courts. If the landowners' suits sought different relief, § 1500 should continue to apply to suits seeking different relief today and § 1500 would not bar the tribe's two suits.

The government argues that the landowners' suits did seek different relief. The Abandoned Property Collection Act provided that the proceeds of the landowners' property should be paid into the U.S. treasury, which would then hold such proceeds in trust. A landowner suing in the CFC and proving his entitlement to the property under the Act could collect the proceeds, less the expenses of selling the property. A landowner suing for traditional tort remedies outside the CFC, however, could recover the entire amount. The government contends that the deduction of expenses in the CFC action shows that the relief in the two suits was different. By contrast, the tribe maintains

that both suits sought monetary compensation for the landowners' confiscated property. Thus, even if the details of calculation differed, the relief sought was duplicative. The tribe argues that its two suits do not seek duplicative relief, however, so the historical context does not compel applying § 1500 to the tribe's suits.

Precedent

The Supreme Court addressed § 1500 in *United States v. Keene,* 508 U.S. 200 (1992). The Court held there that "the comparison of the two cases for purposes of possible dismissal [turns] on whether the plaintiff 's other suit [is] based on substantially the same operative facts as the [CFC] action, at least if there [is] some overlap in the relief requested." But *Keene* expressly declined to answer the question before the Court in *Tohono O'odham Nation,* "whether two actions based on the same operative facts, but seeking completely different relief, would implicate § 1500."

Keene acknowledged that "Congress did not intend the statute to be rendered useless by a narrow concept of identity providing a correspondingly liberal opportunity to maintain two suits arising from the same factual foundation." According to the government, that reasoning suggests that the key factor is whether the claims arise from the same operative facts, not whether they seek different relief. The tribe, by contrast, downplays *Keene* and focuses on a long string of precedents in the Federal Circuit that has read § 1500 to allow two simultaneous suits so long as they seek different relief. Congress reenacted § 1500 several times while those precedents were in full effect, suggesting that Congress has approved the Federal Circuit's interpretation.

Policy

Finally, the tribe and several amici emphasize the injustice that will result if § 1500 applies to suits seeking different relief because plaintiffs will not be able to pursue both monetary and injunctive relief at the same time. Instead, § 1500 will force them to seek money damages in the CFC or injunctive relief in the district courts, but not both. The tribe, and future plaintiffs in a variety of other contexts, would then forfeit part of the relief necessary to remedy the government's wrongdoing. The government responds that the CFC has the power to supply all of the relief required because it can grant equitable relief incidental to money damages. Moreover, even if § 1500 were to deny some part of the necessary relief, the government insists that it is Congress's job to amend § 1500. The Court should not usurp that role by manufacturing a judicial exception that the text of the statute cannot justify.

SIGNIFICANCE

The complexities of § 1500 implicate every key facet of statutory interpretation. The decision of the Court thus will provide insight into the interpretive philosophies of the justices. In particular, it will force the Court to balance the text and history of the statute against a potentially unjust policy outcome. Many of the longer-serving justices have staked out positions on the question of the appropriate balance among those factors, with the purposivist wing of the Court giving more weight to policy outcomes than the textualist wing. Court watchers will be able to scrutinize the case for clues as to the interpretative philosophy of Justice Sotomayor, still fairly new to the Court, but not of Justice Kagan, who has recused herself because of her work as Solicitor General.

The case may also carry much greater significance, as it gives the Court the opportunity to reshape the jurisdictional scheme for claims against the government. One possible outcome is that the Court will avoid the knotty statutory question by finding that the relief the tribe seeks in its two suits is identical. In that case, *Keene* would require dismissal under § 1500, regardless of whether it applies when the claims seek different relief. Resolving the case that way would require finding no meaningful distinction between equitable and monetary relief when both result in money payments.

Recall, however, that *Bowen v. Massachusetts* rested on the premise that an equitable order to pay money is different from an award of money damages. Lower courts then extended that premise to Indian trust suits by reasoning that a claim for an equitable accounting and for payment of any deficiency seeks different relief than a claim for money damages. Any finding that the tribe's suits seek the same relief would thus undermine the key principle allowing the tribe to sue for monetary relief outside of the CFC in the first place. By following that path, the Court could conclude that an equitable accounting and money damages are identical and that *Bowen* thus does not justify the tribe's suit in the district court. It could then order that suit to be dismissed, making the § 1500 question moot and allowing the CFC claim to proceed.

An amicus brief from Professor Gregory Sisk argues for that outcome, pointing out that lower courts first allowed an Indian breach of trust claim in a district court only in 1996, fifty years after the Indian Tucker Act gave the CFC exclusive jurisdiction over such claims. Since that time, the lower courts have been thrown into chaos and are sharply divided over whether to allow Indian breach of trust suits outside the CFC. *Tohono O'odham Nation* represents the Court's first opportunity to restore order to the jurisdictional scheme and to provide direction to the lower courts about the reach of *Bowen*.

That opportunity raises an even broader question about the role of the CFC. One of the primary rationales for the continued existence of the CFC is that a specialized court will standardize a single body of law to adjudicate all claims against the government, increasing predictability and leading to more efficient adjudication. If the Court extends *Bowen*'s principle broadly, however, other courts will increasingly share the CFC's jurisdiction. The benefits of directing all claims for money damages against the government to a single court will then be diminished. *Tohono O'odham Nation* thus raises the question of whether the system established at the urging of Abraham Lincoln nearly 150 years ago continues to be the best means to ensure that citizens receive "prompt justice" against the government.

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PREVIEW of United States Supreme Court Cases, pages 60–63.

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