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GENERAL MEMORANDUM 26-011

Supreme Court Decision May Affect “Arm-of-the-Tribe” Status of Tribal Entities

The U.S. Supreme Court has issued a new decision that could have significant effects on tribal operations when tribes use corporate entities, boards, or authorities to carry out tribal governmental programs. In its March 4, 2026 ruling on *Galette v. New Jersey Transit Corporation*, a unanimous Court considered how and whether government-created entities, corporations, boards, and authorities are either protected by the government’s sovereign immunity or subject to suit and liability like any other corporation. In this case, the Court ruled that the corporation created to operate New Jersey’s transit programs was not an “arm-of-the-state” and was not protected by the state’s sovereign immunity. This decision could call into question the application of sovereign immunity to many tribal entities, including tribal housing authorities, economic development corporations, boards or entities controlling gaming enterprises, and healthcare authorities.

“Arm-of-the-State” Status

In this case, the Supreme Court determined what characteristics a government-created entity would need to show in order to be considered an “arm-of-the-state.” Like “arms-of-the-tribe,” “arms-of-the-state” share in state sovereign immunity, and are thus not subject to suit without their consent.

The New Jersey Transit Corporation (“NJ Transit”) was created by the state of New Jersey to handle transit operations in the state. The entity was created as a “body corporate and politic” in its charter, and “constituted as an instrumentality of the State exercising public and essential governmental functions.” While the corporation was located within the State Department of Transportation, it was independent from that Department’s supervision and control. However, all Board Directors were appointed by the Governor, members of the State Cabinet, or appointed by the Legislature; the Governor could remove any board member; the Governor could veto all of NJ Transit’s actions or decisions; and the Legislature could veto eminent domain actions by the entity. The state provided for NJ Transit’s budget.

Rather than looking at the control and financial support of NJ Transit, the Court focused on other matters that determined “whether the State structured the entity as a legally separate entity liable for its own judgments.” The Court said the clearest evidence that it would be legally separate is whether the State “created a corporation with traditional corporate powers to sue and be sued, hold property, make contracts, and incur debt.” The Court also placed great weight on whether the entity had “formal legal liability” for judgments and spending, instead of the

"practical financial relationship" with a state. A state subsidizing or even fully providing for a budget, or a state's promises to indemnify the entity, held little or no sway with the Court. The Court also minimized facts such as State control of board directors or leaders, the ability to oversee or veto actions, or even the power to create and destroy the entity itself. The Court pointed to formal liability for judgments as the strongest indicator of arm-of-the-state status.

For NJ Transit, the Court found it was not an "arm-of-the-state" primarily because of its corporate charter's language that the entity had the authority to "sue and be sued," and language stating any financial liability or debt of NJ Transit would not affect the State's funds. The Court did not credit NJ Transit's arguments that it was a public entity carrying out "public and essential governmental functions" with "substantial plenary public powers." Instead, the Court looked to determine "whether the State has chosen to serve those public functions through its own apparatus or through that of a legally separate entity."

Potential Impact on Tribally Created Entities

Many tribes have utilized independent boards and authorities to manage tribal programs. Purposes for this vary widely, from spreading out the burden of administration to insulating decision-making from political influence to separating operating funds and budgets. This independence has long been lauded as a best practice for developing tribal economies, and federal courts have often found that these entities share in the Tribe's sovereign immunity as an "arm-of-the-tribe." However, the holding in *Galette* may endanger the protections of those entities legally distinct from the tribal government itself.

In the dominant "arm-of-the-tribe" tests in federal courts, the courts have primarily weighed the following factors: 1) how the entity is created; 2) the purpose of the entity; 3) the intent of the tribe that the entity would share in tribal sovereign immunity; 4) the degree of tribal control of the entity through structure, management, and ownership; 5) the financial connection between the entity and the tribe; and, occasionally, 6) whether the purposes of tribal sovereign immunity are served by granting the entity immunity. Courts have looked at tribal status holistically, stating that none of the factors are determinative. *Galette* gave little-to-no weight to these factors, suggesting a more mechanical analysis of governmental status focused on entity structure and liability for debts or judgments, rather than a substantive analysis of connection and control by the government and the entity's purpose or role.

Many courts—including the U.S. Supreme Court—have held there are fundamental differences between tribal sovereignty and state sovereignty that require treating the two differently; there are also interests supporting tribal self-governance underpinning tribal sovereign immunity that are not the same for states. Still, it is likely courts will look to this new decision for guidance when considering "arm-of-the-tribe" cases. We recommend that tribes and tribal entities consider the structure and authority of their entities in light of this new decision, and consider this holding when creating new bodies independent of tribal government.

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