

### **Dollar General v Choctaw – USSC Oral Argument, Dec. 7, 2015**

This past term the Supreme Court became convinced that the status of the Indians and Indian tribes is the source of this continuing extra-constitutional authority in the federal government. As the Supreme Court ruled in a series of cases, the use of this territorial war power has gone far beyond being an “Indian law” problem. This term the Supreme Court placed an actual limit on the territorial power as a matter of Constitutional law. The Justices were very careful not to punish the Indians or Indian tribes for this legal status they did not create.

### **Menominee v US USSC, January 25, 2016**

The Supreme Court in Menominee Tribe v. US changed the law so that contracts will no longer be read as a tribe would like it read. Contracts are now just plain contracts with no deference for Indians in how they will be applied and interpreted. Whether this will also apply to treaties which are by definition contracts was not determined.

### **Sturgeon v Frost – USSC, March 22, 2016**

The Court then issued the decisions in Nebraska v. Parker and Sturgeon v. Frost on the same day. In Nebraska, the Court upheld its precedent of Solem v. Bartlett Solem v. Bartlett, 465 U.S. 463 (1984) that only Congress can diminish an Indian reservation but added that because the reservation was “declared open” under the public land laws by act of Congress that the tribe’s jurisdiction was altered within the opened area.

### **Nebraska v Parker – Oral Argument Transcript, March 22, 2016**

In Nebraska, the Court upheld its precedent of Solem v. Bartlett Solem v. Bartlett, 465 U.S. 463 (1984) that only Congress can diminish an Indian reservation but added that because the reservation was “declared open” under the public land laws by act of Congress that the tribe’s jurisdiction was altered within the opened area. It was not determined what this means. Under traditional public land law it means the opened area is subject primarily to state jurisdiction. This ruling puts Indian land issues back under the public land laws. Our federal public lands are the remaining territorial lands located in the Western States that have not been disposed of by Congress.

### **Zubik v Burwell, May 16, 2016**

The first decision that began applying Indian law as full constitutional law and not just as its own tangent was Zubik v. Burwell. This major decision remanded a set of healthcare cases to the lower courts to be reconsidered after the Supreme Court had required the parties to brief a question created by how the federal government was regulating healthcare. In the subsequent briefing the Supreme Court realized the controversy between the healthcare insurance companies and States did not really exist, it only happened because of the way the federal regulators were attempting to manipulate the system to avoid paying for services. (Obamacare has been far more expensive than originally projected.) Using its prior precedent in the Indian law case of Madison County v. Oneida Indian Nation 562 U.S., a case dismissed after being federally manipulated to avoid Supreme Court review, the Supreme Court remanded the healthcare cases to prevent the federal manipulation in trying to reduce the costs of Obamacare.

### **Army Corp of Engineers v Hawkes, May 31, 2016**

This case was about how the US was trying to narrow the reading of the Administrative Procedures Act (APA) to prevent challenges of their jurisdictional claims. The US tried to argue that merely changing jurisdiction from state to federal was not harm. In Army Corps of Engineers v. Hawkes Co. the Supreme Court rejected the narrow reading of the APA and made a rather expansive interpretation of federal court jurisdiction under the APA to review any government action that causes actual harm to a party. The Court held that changing jurisdiction after permits had been acquired from the State entities was actual harm. The “trust” argument made by the US was an implied very broad application of the reserved rights doctrine.

### **Puerto Rico v Sanchez Valle, June 9, 2016**

Applying the ruling in Puerto Rico v. Sanchez Valle, Congress does not have the authority to rewrite how the political authority of the IRA was applied in 1934 to only the Indian tribes then recognized and under federal jurisdiction. Congress does not have the authority to “fix” Carcieri.

### **US v Bryant – Supreme Court Ruling, June 13, 2016**

The Court rejected Mr. Bryant’s claim that his due process rights were violated by the amendments to the Violence Against Women Act (VAWA) by ruling that Mr. Bryant never challenged that his due process rights were limited by the Indian Civil Rights Act or in any of the prior convictions under that act.

### **Puerto Rico v Franklin California Tax Free Trust, June 13, 2016**

The Supreme Court ruled that a territory cannot be deemed a “State” with its own separate sovereignty by a federal court. Again, major implications to Indian law.

### **Tarrant v Herrmann-06-2013-USSC, June 13, 2013**

A state has the absolute right and authority over all navigable waters and the soils beneath them for lands ceded to the state upon statehood.

### **Oliphant v Suquamish Indian Tribe**

Oliphant v Suquamish Indian Tribe, 435 U.S. 191 (1978),<sup>[1]</sup> is a United States Supreme Court case deciding “whether Indian tribal courts have criminal jurisdiction over non-Indians.” The Court held that they did not. The case was decided on March 6, 1978, with a 6–2 majority. The court opinion was written by William Rehnquist; a dissenting opinion was written by Thurgood Marshall, who was joined by Chief Justice Warren E. Burger. Justice William J. Brennan did not participate in the decision. Congress partially abrogated the Court’s holding in Oliphant when it enacted the Violence Against Women Reauthorization Act of 2013 which recognizes Tribes’ criminal jurisdiction over non-Indian perpetrators of domestic violence occurring in Indian Country when the victim is Indian.

### **New York State Land Issues**

#### **City of Sherrill Supreme Court Decision**

A tribe cannot restore sovereignty by purchase of lands on the open market. The City of Sherrill won the right to tax the tribe but due to sovereign immunity had no way to enforce the law even though SCOTUS ruled that the land was taxable.

After years of legal dispute the city reached a negotiated settlement with the tribe whereby the tribe paid in lieu of taxes for five years with a new agreement to be reached, which never happened.

See more here: <https://www.supremecourt.gov/opinions/04pdf/03-855.pdf>

### **CERA In-depth Supreme Court Case Analysis. Do tribal members have double jeopardy rights?**

#### **United States v Billy Jo Lara**

United States v Lara, 541 U.S. 193 (2004), was a United States Supreme Court case which held that both the United States and a Native American (Indian) tribe could prosecute an Indian for the same acts that constituted crimes in both jurisdictions.