

No. \_\_\_\_\_

In The

**SUPREME COURT OF THE UNITED STATES**

Christine J. Williams,  
Petitioner

Versus

Poarch Band of Creek Indians,  
Respondent

On Petition for Writ of Certiorari to the United States  
District Court of Appeals for the  
Eleventh Circuit for the  
Southern District of Alabama Southern Division

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**PETITION FOR A WRIT OF CERTIORARI**

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### QUESTIONS PRESENTED FOR REVIEW

1. Who has subject matter jurisdiction over the Native American tribes (specifically Poarch Band of Creek Indians) when they are in violations of an employee's civil rights due to age discrimination amended (ADEA) disparate treatment, and 14<sup>th</sup> Amendment rights?
2. What was Congress objective by intentionally omitting abrogating tribal immunity when it affirmatively omitted the exemption from suit for Indian tribes from the definition of employer that was borrowed from Title VII?
3. Are Native American tribes (specifically the Poarch Band of Creek Indians) considered employers, and why do they not have to abide by the rules and regulations of the Equal Employment Opportunity Commission (EEOC)?
4. If the courts do not set a precedent, who will stop this injustice by Native American tribes (specifically the Poarch Band of Creek Indians) from mistreating employees and hiding behind the cloak of Indian tribal sovereign immunity?

**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT**

Petitioner, Christine J. Williams, certifies that the following is a complete list of the trial judges; attorneys involved in the case; and all persons, associations of persons, firms, partnerships, and corporations having an interest in the outcome of this case:

1. Petitioner, Christine J. Williams.
2. Respondent, Poarch Band of Creek Indians.
3. Honorable Ed Carnes, Chief Judge, Honorable Jordan, Circuit Judge, and Honorable Lynwood C. Smith Jr., United States District Judge for Northern District of Alabama.
4. Honorable Callie V. S. Granade, United States District Judge.
5. Honorable Bert W. Milling, Jr., United States Magistrate Judge.
6. James C. Pennington, M. Tae Phillips, and the attorneys for or with the firm of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Attorneys for Respondent.
7. (*former*) Appointed Counsel: Robert L. Wiggins, Jr., Candis A. McGowan, L. William Smith, and the attorneys working for or with the firm of Wiggins, Childs, Pantazis, Fisher & Goldfarb, (*former*) Attorneys for Petitioner.

Petitioner, Christine J. Williams, in this Writ of Certiorari is an individual. Petitioner has no knowledge of the Respondent's parent companies, subsidiaries, partners, limited liability entity members and managers, trustees, affiliates, or similar entities.

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**The District Court Proceedings**

Christine J. Williams (Petitioner) civil rights were violated due to the Age Discrimination Employment Act of 1967, as amended (ADEA) disparate treatment. After being employed with the Poarch Band of Creek Indians Health Department as Lab Manager for over twenty-one (21) years Petitioner was wrongfully terminated on June 17, 2014. The Poarch Band of Creek Indians (Respondent) intentionally ended the Petitioner's employment based on age, and not job performance. Petitioner is over the age fifty-five (55). The Respondent wanted to replace Petitioner with a younger Laboratory Manger. The Poarch Band of Creek Indians Health Department provided no evidence for the false claims against the Petitioner. The false accusations were presented in a memo by Edie Jackson only after Petitioner filed a grievance dated June 18, 2014. The Poarch Band of Creek Indians Health Department did not follow proper protocol and procedures as according to their own Poarch Band of Creek Indians Tribal Government Personnel Policies and Procedures Manual. The Respondent did not follow their own Constitutional by-laws and Ordinances. The memo was only a ploy to justify the termination, after the Petitioner refused to resign. Edie Jackson, Ginger Bergeron, and Susan Spurill stated, "If Petitioner did not resign that the Petitioner would not be able to find a job as a Laboratory Manager due to Petitioner's age." The Petitioner filed the initial complaint on December 22, 2014 in the United States District Court for the Southern District of Alabama, after filing the Equal Employment Opportunity Commission (EEOC) complaint dated September 22, 2014. Respondent requested dismissal on February 20, 2015. The Petitioner responded to dismissal request on March 16, 2015. A reply brief was submitted by Respondent on March 23, 2015. A supplemental authority was submitted by Petitioner dated April 15, 2015. The Magistrate Judge's Report and Recommendation dismissing the case was adopted on July 8, 2015. Petitioner filed an appeal dated August 7, 2015.



### The Appellate Court Proceedings

The oral argument was heard before the Panel on August 16, 2016. The opinion was issued by the court on October 18, 2016. Petitioner moved for rehearing *en banc* on November 7, 2016. The petition for rehearing *en banc* was denied December 8, 2016.

### Petitioner's Statement

Sovereign immunity can harm those who are unaware that they are dealing with a tribe, who do not know of Indian tribal sovereign immunity, or who have no choice in the matter, as in the case of the Petitioner, Christine J. Williams. The Poarch Band of Creek Indians are in the process of opening a new amusement park called Owa in Foley, Alabama and employing over 400 people, as well as the 2,000 or more people at the Windcreek Casino. If the courts do not set a precedent, how are these employees to receive justice if wrongly discriminated, if sovereign immunity remains in place?

The laws have been outlined, and the Respondents do not have grounds for dismissal especially based on tribal sovereign immunity alone. The Respondents ended Petitioner's employment based on age alone, and not job performance.

### JURISDICTIONAL STATEMENT

The Panel erred when dismissing the case *Christine J. Williams vs Poarch Band of Creek Indians*. The decision conflicts with the Supreme Court case *Fitzpatrick v. Bitzer* and granting the Poarch Band of Creek Indian's entitlement to tribal sovereign immunity. Review is warranted because the outcome of this case will influence the rights of citizens to seek redress for disputes that result in the unlawful conduct of Native American tribes (specifically the Poarch Band of Creek Indians). The Petitioner is now moving for Writ of Certiorari.

The jurisdiction of this Court to review the Judgment of the Eleventh Circuit is invoked under 28 U.S.C. § 1254(1). The panel wrongly concluded that it lacked subject matter jurisdiction due to tribal sovereign immunity.

## REASONS WHY CERTIORARI SHOULD BE GRANTED

### I.

Who has subject matter jurisdiction over the Native American tribes (specifically the Poarch Band of Creek Indians) when they are in violation of an employee's civil rights due to age discrimination amended (ADEA) disparate treatment, and 14<sup>th</sup> Amendment rights?

In this case, the 11th Circuit Court of Appeals erred by affirming the district court decision to dismiss the case for lack of subject matter jurisdiction due to sovereign immunity. The 14th Amendment of the Constitution of the United States provides senior citizens due process of the law, and equal protection under the law. These civil rights apply to all employees, even when employed by an Indian Native American Tribe (specifically the Poarch Band of Creek Indians).

The courts need to take into consideration the cases *Mapp Vs. Ohio*; *Obergefell vs Hodges*, when deliberating Petitioner's case. The Respondents deprived the Petitioner of her rights, particularly her right to due process and equal protection of the laws as in the case *Brown Vs. Board of Education* pursuant to the Constitution of the United States and the State of Alabama, most notably the 14<sup>th</sup> amendment to the United States Constitution. The Petitioner, Christine J. Williams, did not waive her constitutional rights when she accepted employment with a Native American tribe (specifically the Poarch Band of Creek Indians). The

Petitioners 14th amendment rights have been violated. According to the equal protection clause, as in the case *Regents of the University of California vs. Bakke*, each state is required to provide equal protection to all people within its jurisdiction. "Equal justice under law". Allowing the case *Christine J. Williams vs The Poarch Band of Creek Indians* to be dismissed because of subject matter jurisdiction would not be allowing the Petitioner her equal justice.

An employee's termination, such as the Petitioner's, should not be valid without adequate due process. The case, *White vs Poarch Band of Creek Indians*, is ambiguous to the Petitioner's case, *Christine J. Williams vs. Poarch Band of Creek Indians*. White, like the Petitioner, did not receive any form of notice of charges of neglect of duty or gross misconduct. The Respondent violated the Petitioner's due process right by not following their own Poarch Band of Creek Indians, Tribes and Tribal Nations Code of Ordinances, Title 33. Petition was terminated without the presence of her immediate supervisor, Doctor Estvold, which was in violation of the Poarch Band of Creek Indians Code of Ordinance Title 33. The Petitioner followed all the legal and ethical policies, but the Poarch Band of Creek Indiana's did not follow their own Code of Ordinances. The Poarch Band of Creek Indians have the authority to write their own Code of Ordinances, but they must also abide by their own Code of Ordinances written.

The Poarch Band of Creek Indians stated in their Code of Ordinances that age discrimination is prohibited, however they discriminated against the Petitioner. Please review the below:

Sec. 33-4-5 - Age; Exceptions and Special Cases

(a) The prohibition against employment discrimination on the basis of age applies only to discrimination against an individual who is age forty (40) or over.

The Respondents primary argument is lack of subject matter jurisdiction due to tribal sovereign immunity. This claim should be rejected by the courts. Especially with the extenuating circumstances of this case, where the Petitioner was unjustly terminated without the progressive discipline steps (oral warning, written warning, final written warning, and then termination) that were outlined in the Poarch Band of Creek Indian's employee policy and procedure manual.

The Respondent's claim of sovereign immunity must be examined in light of prior decisions of state court cases, and United States Supreme Court cases. The beginning of any such analysis must hearken back to the opinion of Chief Justice Marshall of the U. S. Supreme Court in *Cherokee Nation v Georgia*, 30 U.S. (5 Pet- ) 1 (1831). In that decision, Justice Marshall characterized Indian tribes and "domestic dependent nations"; he did not refer to the various tribes as "sovereign" entities. This description was expanded upon more than 50 years later when the U.S. Supreme Court, in the cases of *United States v. Kagama*, 118 U.S. 375, 384-85 (1886) and later in *United States v. Sandoval*, 231 U.S. 28 (1913). In *Kagama*, the Court opined, in part: " These Indian tribes are the wards of the nation. They are

communities dependent (emphasis not added by the undersigned) on the United States. — dependent largely for their daily food; dependent for their political rights... From their very weakness and helplessness... there rises the duty of protection, and with it the power." Clearly, with the advent of increased solicitous attitudes and laws towards Native American Tribes and the advent of highly lucrative non-taxed gambling enterprises, the Native American Tribes in the United States are now neither dependent upon the government for their "daily food"; nor are Native American Tribes "helpless" from "their very weakness".

American citizens cannot protect their civil rights, if the federal courts cannot oversee cases that involve Native American tribes (specifically Poarch Band of Creek Indians) due to subject matter jurisdiction and tribal sovereign immunity. Petitioner asserts that the panel erred when dismissing her claim for lack of subject matter jurisdiction, due to Indian tribal sovereign immunity. Petitioner's claim is relevant, and has been acknowledged by the Southern District of Alabama Southern Division with the cause 42:2000rt Job Discrimination/Retaliation. Therefore, the only task to be determined by the Supreme Court is the applicability of Indian tribal sovereign immunity in this case concerning age discrimination in the Age Discrimination Employment Act of 1967, as amended (ADEA) disparate treatment case. The purpose of Indian tribal sovereign immunity is to promote tribal economic development, self-sufficiency, and self-government. The doctrine of tribal sovereign immunity, intended in part to shield Native American tribes from exploitation by outsiders, is not also a weapon tribes may use to victimize Non-Indian employees (specifically Petitioner). The commercial activities of Native American tribes

(specifically Poarch Band of Creek Indians) such as health departments, casinos, restaurants, gas stations, and hotels were not taken into consideration when the doctrine of tribal sovereign immunity was adopted. The primary purpose to establishing Indian tribal Sovereign immunity was to "*protest against any title claim or demand the American Congress may set up for or against Indian lands, Settlements, and hunting Grounds in Consequence of the Said treaty of peace between the King of Great Britain and the States of America.*" The expansion of tribal sovereign immunity in civil rights cases that violate individual rights due to the Age Discrimination Employment Act of 1967, as amended (ADEA) disparate treatment should not be supported.

The Poarch Band of Creek Indians has continued to hide behind the cloak of tribal immunity and this is not only an injustice for Petitioner, but also an injustice for all employees of Indian tribes. The Petitioner is requesting that this injustice be corrected. According to Supreme Court Judge Clarence Thomas in the case *Michigan V. Bay Mills Indian Community*, "*The tribal immunity a tribe may claim in court is because the law provides it, not because it is inherently entitled to it as a sovereign.*" The effect of tribal sovereign immunity allows Indian tribes to be placed above the law and ensures that individuals who have suffered wrongs will be unable to receive amends for their affliction. No one, including Native American tribes, should be placed above the law. The continued allowance of Indian tribal sovereign immunity, a *stare decisis* doctrine, to be upheld undermines the Constitution of the United States and the laws made pursuant to the Constitution by not recognizing the laws as the Supreme law. The wrongful dismissal of *Christine J. Williams vs Poarch Band of Creek Indians* case permits Indian tribal

sovereign immunity to override the Constitution of the United States and disallows the courts the power to enforce and uphold the Constitution. Sovereign immunity conflicts with other, more important traditions in American law like enforcing the Constitution and ADEA laws, ensuring that Indian tribes are accountable and provide the due process of the law. The courts should prohibit Indian tribal sovereign immunity from violating the Constitution or laws of the United States without accountability. Constitutional and statutory rights can be violated by the Indian tribes, but individuals are left with no remedies for protection of civil rights. The case *Christine J. Williams vs Poarch Band of Creek Indians* presents important questions of subject matter jurisdiction and tribal sovereign immunity.

The courts should take into consideration the Supreme Court case *Fitzpatrick vs Blitzer* 427 U.S. 445 (1976). The issue of sovereign immunity has pierced the courts with this case before, despite any strong presumption against waiver of immunity. Respondent argues that waiver cannot be implied from the Tribe's actions, "but must be unequivocally expressed." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58-59 (1978). However, such premise is inconsistent with both the Ninth circuit and district court's ruling in cases where the court has found a waiver of tribal immunity. *State Eng'r v. S. Fork Band of the Moak Tribe of W. Shoshone Indians*, 66 F. Supp 2d 1163 (1999); *United States v. Oregon*, 675 F.2d 1009 (1982). Moreover, the Supreme Court has never "required the invocation of 'magic words' stating that the tribe hereby waives its sovereign immunity". *Val-u Constr. Co. v. Rosebud Sioux Tribe*, 146 F.3d 573 (1998). In such cases the court has carefully analyzed the actions of the tribe in making its



determination. Here, there are no intramural matters involved. Petitioner was discriminated against by the Poarch Creek Health Department because of her age.

## II

**What was Congress objective by intentionally omitting abrogating tribal immunity when it affirmatively omitted the exemption from suit for Indian tribes from the definition of employer that was borrowed from Title VII?**

ADEA prohibits discrimination in employment basis of age. Employees and job applicants are protected under ADEA if they are 40 or over. Congress is silent regarding its application to Indian tribes. Congress did not lean to the right or to left on tribal sovereign immunity. The Supreme Court has the right to final jurisdiction. Congress elected to make two critical changes to that definition, first deleting the words exempting "a State or political subdivision thereof" in 1974. The two changes were as follows:

ADEA in 1967: "the term 'employer' mean a person engaged in an industry affecting commerce. . . but such term does not include the United States, a corporation wholly owned by the Government of the United States, or a State or political subdivision thereof."

<sup>1</sup>

ADEA in 1974: "The term 'employer' means a person engaged in an industry affecting commerce. . . . but such term does not include the United States, or a corporation wholly owned by the Government of the United States." <sup>2</sup>

See the following:

1) 81 Stat., Sec. 11 (b), Public Law 90-202, p. 605, December 15, 1967, 29 U.S.C. §630(b).

2) Compare 81 Stat., §11(b), Public Law 90-202, p. 605, December 15, 1967 with 88 Stat., §28(a)(3), Public Law 93-259, April 8, 1974 (codified as 29 U.S.C. §630(b)).

For all the forgoing reasons, the district court erred in favoring that the ADEA is "silent" about authorizing suits against Indian tribes. Congress authorized age discrimination claims to be brought against Indian tribes when it adopted a definition of "employer" which applies generally to all employers except those who are expressly excluded by the plain words of the statute.

This brings us to the issue of Congress intentionally abrogating tribal immunity when it affirmatively omitted the exemption from suit for Indian tribes from the definition of employer that was borrowed from Title VII. Please take note [that] Title VII... explicitly exempts Indian tribes, but the ADEA does not. Congress has expressed its' clear and unmistakable intent, and this was a deliberate choice by Congress. Rather than exempting "Indian tribes (s)" from the definition of employers who could be sued under the ADEA as Title VII did three years later, congress chose to eliminate that exemption in the ADEA when it adopted Title VII's definition of "employer" but omitted the following words: "The term 'employer' .. does not include...an Indian tribe" *42 U.S.C. 2000e*. The omission of those words was an affirmative act of Congress, not passive silence or a failure to act or indicate intent.

## III

Are Native American tribes (specifically Poarch Band of Creek Indians) considered employers, and why do they not have to abide by the rules and regulations of the Equal Employment Opportunity Commission (EEOC)?

The Supreme Court should merit this case as important, and intervene with clarifying legislation with the role of Native American Tribes (specifically the Poarch Band of Creek Indians) as employers.

The Equal Employment Opportunity Commission (EEOC) defines an employer as the following:

An employer must have a certain number of employees to be covered by the laws the Equal Employment Opportunity Commission (EEOC) enforces. This number varies depending on the type of employer (for example, whether the employer is a private company, a state or local government agency, a federal agency, an employment agency, or a labor union and age forty (40) or older. The U.S. Equal Employment Opportunity Commission enforces Federal laws prohibiting employment discrimination. These laws protect employees and job applicants against employment discrimination when it involves age discrimination, as in the cases *EEOC vs Hawaii Healthcare Professionals, INC.* and *Nickel v. Staples Contract & Commercial, Inc.*

The Poarch Band of Creek Indians meets all the above qualifications for the definition of an employer. As an

employer, the Poarch Band of Creek Indians should have to abide by the same rules and regulations as other employers, and not hide behind the cloak of Indian tribal sovereign immunity.

The U.S. Equal Employment Opportunity Commission (EEOC) is a federal agency that administers and enforces civil rights laws against workplace discrimination. The Health Department services Native Americans, and is fiscally independent from the tribal government and council. Thus, the Petitioner claim for age discrimination are based purely on employment laws and do not touch on any aspect of the tribe's exclusive right of self-governance (*please review the case EEOC vs. Forest County Potawatomi Community 2014 U.S. DIST. LEXIS 62353*).

The Petitioner, Christine J. Williams, is asking for an exercise of the Supreme Court's supervisory power. The Supreme Court sits to resolve unsettled issues of the law. The Poarch Band of Creek Indians Health Department Laboratory is regulated by the federal government through "Clinical Laboratory Improvement Amendments of 1988 (CLIA)." Through this amendment inspections must be completed, and specific protocol and procedures must be followed. Per the CLIA website, "In general terms, the CLIA regulations establish quality standards for laboratory testing performed on specimens from humans, such as blood, body fluid and tissue, for the purpose of diagnosis, prevention, or treatment of disease, or assessment of health." CLIA is a federally recognized amendment to law of the Public Health Service Act Amendment of 1988 (public law 100-578). Therefore, the Supreme Court has jurisdiction over the Poarch Band of Creek Indians laboratory.

## IV

**If the courts do not set a precedent, who will stop this injustice by Native American tribes (specifically the Poarch Band of Creek Indians) from mistreating employees and hiding behind the cloak of Indian tribal sovereign immunity?**


The 11<sup>th</sup> Circuit Appeals Court and lower courts erred in their opinion of the case *Christine J. Williams vs. Poarch Band of Creek Indians*. This case is not frivolous and a case of first impression. The Supreme Court should recognize that the Poarch Band of Creek Indians have violated the Fair Labor Standards Act (FLSA). The Ninth and Seventh Circuit leans toward the application of the Fair Labor Standards Act (FLSA) toward Native American tribes, as in the cases *Solis vs. Matheson and Federal Power Comm'n Vs. Tuscarora Indian Nation*. Petitioner was never compensated for the numerous overtime hours that she worked, nor received any payment for annual or sick leave, or any other benefit. Petitioner was stripped of all benefits including sick leave, annual leave, compensatory time, long term disability, the matching percentage of the 401 K retirement plan, and a life insurance policy provided by the Poarch Band of Creek Indians Health Department. Everything was stripped from the Petitioner. The FLSA prescribes standards for the basic minimum wage and overtime pay, and how these standards affect most private and public employment. The applicability of these statutes governs tribal employment activity because Indian tribes are not explicitly exempted from the FLSA laws.

Petitioner is a law abiding, tax paying senior citizen whose civil rights have been violated, according to the lower courts, and affirmed by the United States District Court of Appeal. Petitioner desire was to continue employment with the Poarch Band of Creek Indians until her retirement. If the Poarch Band of Creek Indians continue to discriminate against senior citizens because of their age, the injustice will continue to spread like an epidemic with no vaccination. The Native American Indian tribes (specifically the Poarch Band of Creek Indians) will continue to harm senior citizens with the mind frame that their will be no consequences for their immoral actions. The Petitioner's twenty- one (21) years of dedication and service brought the Poarch Creek Health Department laboratory from a "no lab" to a "state of the art, high tech performance lab". The Petitioner's job performance level was not taken into consideration when employment was unjustly terminated. Petitioner is a licensed professional Medical Technologist/Scientist who assisted the doctor with diagnosis of patients. As the Laboratory Manager, Petitioner aided with the medical diagnosis of 85% of the diseases that had to be treated. Petitioner's goal as a Laboratory Manager was to help save lives, not to harm lives as the Poarch Band of Creek Indians have done to her. Petitioner is pursuing this law suit so that no one else old or young has to be faced with this issue of age discrimination or violation of 14<sup>th</sup> Amendment rights by Native American Tribes again, and the only challenge stated is tribal sovereign immunity. The Petitioner worked for the Poarch Band of Creek Indians for over twenty-one (21) years, and should be compensated for all that she worked for.

CONCLUSION

For the foregoing reasons, the Petitioner, Christine J. Williams respectfully prays that this Supreme Court grant the Writ of Certiorari and reverse the judgement against Indian tribal sovereign immunity. As clearly stated in the laws above, Petitioner has grounds for this age discrimination claim. Petitioner is requesting that Indian tribal sovereign immunity be amended, repealed, or abolished. Justice for all United States citizens.

Respectfully Submitted,

  
Christine J. Williams, *pro se*