

## SUPREME COURT SAYS BANKRUPTCY RULES APPLY TO TRIBES

*Lac du Flambeau Band of Lake Superior Chippewa Indians v. Brian W. Coughlin*  
143 S. Ct. 1689, 216 L. Ed. 2d 342 (2023).

### I. INTRODUCTION

In *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Brian W. Coughlin*, the U.S. Supreme Court examined if the Bankruptcy Code overrides tribal sovereign immunity. The case required the Court to resolve the conflict between a tribe's intrinsic right to oversee activities on its land and federal law. It culminated in a jurisdictional tug-of-war, pitting tribal self-governance against state regulatory power, raising inquiries concerning the extent of state authority applicable to indigenous reservations.

The Court held that the Bankruptcy Code overrides all governmental bodies' sovereign immunity, including federally recognized Indian tribes. This holding permits legal actions, such as stays against debt-collectors stemming from Chapter 13 bankruptcy cases, to be brought against tribal entities, lifting their prior immunity protection.

### II. RULES OF LAW

#### A. CHAPTER 13 BANKRUPTCY

Chapter 13 bankruptcy, often referred to as "reorganization bankruptcy," is a specific form of bankruptcy available to individuals.<sup>1</sup> It offers a structured approach for debtors to reorganize their financial affairs and develop a manageable plan to repay their debts over a period of time. Unlike Chapter 7 bankruptcy, which involves the liquidation of assets to satisfy debts, Chapter 13 focuses on debt repayment without liquidation.

The core principle of Chapter 13 bankruptcy is the formulation of a repayment plan. Debtors submit a comprehensive plan to the bankruptcy court, detailing how they intend to repay their creditors over a period usually ranging from three to five years. The plan must demonstrate the debtor's ability to make regular payments and adhere to the proposed terms.

Similar to other bankruptcy chapters, filing for Chapter 13 triggers an "automatic stay." This legal injunction immediately halts most creditor actions, including collection efforts, foreclosure proceedings, and repossessions. The automatic stay provides debtors with temporary relief from creditor actions, allowing them to work on their repayment plan without the threat of further financial pressure.

#### B. ABROGATION OF SOVEREIGN IMMUNITY

11 U.S.C. §106(a) waives the sovereign immunity of

specific "governmental units" for enumerated purposes.<sup>2</sup> In essence, the statute details when sovereign immunity can be bypassed, permitting certain claims against governmental bodies.

To fully grasp the statute's waiver of sovereign immunity, it is necessary to consult the "governmental unit" definition in Chapter 11 of the United States Code.<sup>3</sup> This definition's broad reach encompasses entities ranging from federal to local levels and beyond. Notably, federally recognized Indian tribes are included within this expansive definition of "governmental unit" as detailed in §101(27).<sup>4</sup>

#### C. CONGRESSIONAL INTENT

To abrogate sovereign immunity, Congress must have unmistakably expressed its intent within the language of the statute. This requirement hinges on the clarity with which Congress articulates its intention to override the immunity that entities might otherwise possess.

Despite the broad language of the Bankruptcy Code, the question was whether it clearly intended to abrogate tribal sovereign immunity. The Court noted that while Congress need not employ specific phrases, it must nonetheless effectively convey its intention to strip immunity from tribal entities or any other governmental units.

### III. *LAC DU FLAMBEAU V. BRIAN W. COUGHLIN*

#### A. FACTS

The Lac du Flambeau Band of Lake Superior Chippewa Indians ("the Band"), a federally recognized tribe, operated several businesses, including Lendgreen.<sup>5</sup> In 2019, Brian Coughlin ("Coughlin") secured a \$1,100 loan from Lendgreen, a business owned by the Band. Following this transaction, Coughlin filed for Chapter 13 bankruptcy, triggering an automatic stay against his creditors. Despite the automatic stay, Coughlin alleged that Lendgreen persisted in its collection efforts to recover the outstanding loan amount.

#### B. ISSUE AND HOLDING

The crux of the case was the scope of the Bankruptcy Code's sovereign immunity abrogation provision. Specifically, this issue hinged on whether the Bankruptcy Code's abrogation provision<sup>6</sup> for "governmental unit[s]"<sup>7</sup> encompasses such tribes,

exemplified by the Lac du Flambeau Band of Lake Superior Chippewa Indians.

The Court underscored that the Bankruptcy Code’s phrasing and structure indisputably overrode tribal immunity.<sup>8</sup> The term “governmental unit” was interpreted broadly, confirming tribes are considered governmental entities, thus subject to the Bankruptcy Code’s stipulations. Justice Thomas concurred and advocated for the reevaluation of the sovereign immunity concept. Justice Gorsuch dissented, and pushed for clearer congressional wording to revoke tribal sovereign immunity.<sup>9</sup>

### C. ANALYSIS

During its deliberations, the Court engaged in a thorough analysis of the Bankruptcy Code, meticulously examining its textual content, structural components, and legislative intent to unveil Congress’s stance on the abrogation of sovereign immunity for various governmental units, tribes included.<sup>10</sup> The Court’s examination revealed that the definition of “governmental unit” was deliberately inclusive, encompassing a wide spectrum of domestic and foreign governmental forms. The Court rejected arguments that advocated for the exclusion of tribes based on rigid foreign-domestic categorizations.

### **Delving into historical precedents and practices, the Court emphasized that Congress had historically recognized tribes as legitimate governing bodies.**

Delving into historical precedents and practices, the Court emphasized that Congress had historically recognized tribes as legitimate governing bodies. The Court also highlighted the comprehensive overhaul of bankruptcy law evident in the Code and underscored its intent to establish a coherent and unified framework. Consequently, the Court dismissed the notion of extending historical practices to inform interpretations of the new Code.

The Court’s determination reinforced its commitment to interpreting statutes based on clear language and legislative intent, ensuring legal predictability and coherence. The endorsement of the clear statement rule underscored that abrogation of tribal sovereign immunity requires explicit statutory language from Congress, preserving tribal uniqueness while acknowledging federal law’s applicability.

### IV. CONCLUSION

*Lac du Flambeau Band of Lake Superior Chippewa Indians* definitively addressed the inclusion of Indian tribes within the scope of the Bankruptcy Code’s sovereign immunity abrogation. In doing so, it casted a spotlight on the intricate interplay between federal law and tribal sovereignty. Situated at the complex nexus of tribal self-governance and external commercial transactions, the case amplified the nuanced jurisdictional challenges faced and the intricacies of harmonizing tribal regulations with external legal frameworks.

The ruling notably established a clear precedent: the Bankruptcy Code unambiguously dismantled the sovereign immunity protection for all governmental entities, including tribes. Consequently, tribes may be subjected to bankruptcy proceedings

and related obligations without the refuge of sovereign immunity. This definitive interpretation paved the way for a more equitable treatment of tribes alongside other governmental bodies in the context of bankruptcy law.

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1 11 U.S.C. §§1301-1330.

2 11 U.S.C. §106(a).

3 11 U.S.C. §101(27).

4 *Id.*

5 *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 143 S. Ct. 1689, 1694 (2023).

6 11 U.S.C. §106(a).

7 11 U.S.C. §101(27).

8 *Lac du Flambeau*, 143 S.Ct at 1696.

9 *Id.* at 1702-06.

10 *Id.* at 1696-1701.