047

IN THE SUPREME COURT OF FLORIDA

CAROL FRANCIS HOUGHTALLING,

Petitioner,

v. CASE NO. 79,177

SEMINOLE TRIBE OF FLORIDA

Respondent.

APPEAL FROM THE CIRCUIT COURT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

AMICUS CURIAE BRIEF

KIMBERLY SANDS, ESQUIRE
Florida Bar #373605
Amicus Curiae Committee Member
ACADEMY OF FLORIDA TRIAL LAWYERS
Post Office Box 2010
Daytona Beach, FL 32115-2010
904/258-1622

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STATEMENT OF THE CASE AND FACTS

The Academy of Florida Trial Lawyers relies upon the Statement of the Case and Facts presented by the Petitioner, Carol Francis Houghtalling.

SUMMARY OF ARGUMENT

Section 285.16, Florida Statutes (1989) provides Florida courts with jurisdiction to resolve civil suits brought against Indians by private parties for the purposes of redressing a civil wrongs. Although Congress and subsequent caselaw has attempted to draw a distinction between civil laws which have to do with private rights and status as opposed to laws declaring or implementing the state's sovereign powers, no distinction has been made between use of the term Indians collectively as in a tribe or as individual members. Instead both Congress and the State of Florida intended to redress the lack of adequate forums for resolving private legal disputes between Indians and private citizens. These laws which have to do with private rights and status should apply equally to Indians acting collectively as a tribe as well as its individual members.

QUESTION PRESENTED

I. DOES SECTION 285.16, **FLORIDA STATUTES (1989) PROVIDE FLORIDA COURTS WITH JURISDICTION TO RESOLVE CIVIL SUITS BROUGHT AGAINST THE SEMINOLE TRIBE?**

The question presented by the lower court is one of great public importance inasmuch as the opinion of the lower court confers upon the Respondent an immunity that was not intended by the Legislature nor compelled by Federal law. As Judge Altenbernd noted in his concurring opinion, the lower court's opinion brings new meaning to the phrase "tourist trap." Seminole Tribe of Florida v. Houtalling, Slip Opinion, (Fla. 2d DCA December 4, 1991) at p.7.

At issue is the court's interpretation of Section 285.16, Florida Statutes, which was enacted in 1961 pursuant to a grant of authority provided to the states under Section 7, Chapter 505 - Public Law 280, August 15, 1953. Section 7 provides as follows:

> The consent of the United States is hereby given to any other state not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof.

Id. (Codified, Title 28, U.S.C., Section 1360). Section 4 of the Act conferred jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in all Indian country within the State of California and Nebraska and all Indian

country within Minnesota, Oregon and Wisconsin with the exception of specifically named reservations. Id.

Consistent with this grant of authority, Florida enacted Section 285.16, Florida Statutes which provides as follows:

> (1) The State of Florida hereby assumes jurisdiction over criminal offenses committed by or against Indians or other persons within Indian reservations or other civil causes of actions between Indians or other persons or to which Indians or other persons are parties arising within Indian reservations.
>
> (2) The civil and criminal laws of Florida shall obtain on all Indian reservations in this State and shall be enforced in the same manner as elsewhere throughout the state.

Section 285.16, Florida Statutes (1989).

In Bryan v. Itasca County, 426 U.S. 373, 96 S.Ct. 2102, 48 L.Ed 710 (1976), the Supreme Court noted that the primary concern of Congress in enacting Public law 280 that emerged from its sparse legislative history was with the problem of lawlessness on certain Indian reservations, and the absence of adequate tribal institutions for law enforcement. See Goldberg, Public Law 280: The Limits of State Jurisdiction Over Reservation Indians, 22 UCLA Law Review 535, 541-542 (1975); Bryan v. Itasco County, 426 U.S. C 379. The House report states:

> As a practical matter, the enforcement of law and order among the Indians in the Indian country has been left largely to the Indian group themselves. In many states, tribes are not adequately organized to perform that function; consequently, there has been created a hiatus in law enforcement authority that could best be remedied by conferring criminal jurisdictions on states indicating an ability and willingness to accept such responsibility.

H.R.Rep. No. 848, 83d Cong. 1st Sess. 5-6 (1953); U.S.Code Cong. and Admin. News, 1953, pp. 2409, 2411-12. Id. at 379-80. In marked contrast is the virtual absence of expression of congressional policy or intent respecting Sections 4 and 7's grant of civil jurisdiction to the states. Wrote the Bryan court:

> Piecing together as best as we can the sparse legislative history of Section 4, subsection (a) seems to be primary intended to redress the lack of adequate Indian forums for resolving private legal disputes between reservation Indians, and between Indians and other private citizens, by permitting the courts of the states to decide such disputes; this is definitely the import of the statutory wording conferring upon a state "jurisdiction over civil causes of action between Indians or to which Indians are parties which may arise in . . . Indian country. . . to the same extent that such state . . . has jurisdiction over other civil causes of action." If this is the primary focus of section 4(a) the wording that follows in section 4(a) "and those civil laws of such state . . . that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the state" authorizes application by the state courts of their rules of decision to decide such disputes.

Id. at 384.

It is important to note that certain tribal reservations were completely exempt from the provisions of Public Law 280 precisely because each had a "tribal law and order organization that functions in a reasonably satisfactory manner." H.R.Rep. no. 848, p.7, U.S.C. Congressional and Administrative News (1953), p.2413; Id. at 385. Respondent does not occupy one of the exempt reservations and therefore must not have been deemed to have

provided adequate forums for resolving private legal disputes.

More importantly, the Bryan court was concerned with civil regulatory control, specifically taxation, over Indian reservations; and in fact all of the cases relied upon by the Respondent are distinguishable from the present case for this reason. In this regard, the Bryan court concluded that a fair reading of these two clauses suggest that Congress never intended civil laws to mean the entire array of State non-criminal laws, but rather that Congress intended civil laws to mean those laws which have to do with private rights and status. Therefore, civil laws of general application to private persons or private property would include the laws of contract, tort, marriage, divorce, insanity, dissent, etc., but would not include laws declaring or implementing the state's sovereign powers such as the powers to tax, grant franchises, etc. These are not within the fair meaning of "private laws." Id. at 385.

In this context, the distinction drawn by the Respondent between the tribe itself and individual members of the tribe is nonsensical. No such distinction is drawn by the Court in Bryan, which considered the state's ability to tax the personal property of an individual tribe member as opposed to the property of the tribe. By extension, it makes no sense to draw a distinction between the tribe and individual tribe members in the area of private, unregulatory disputes between Indians and private individuals. As indicated, Public Law 280 and by extension Section 285.16, Florida Statutes, was primarily intended to address the

lack of adequate forums for resolving private legal disputes between Indians and other private citizens by permitting the courts of the states to decide such disputes. Certainly such disputes may involve individual members of the tribe, or Indians in the collective sense as a tribe, so long as the dispute is between the tribe and private individuals seeking an adequate forum for private, non-regulatory disputes .

This is not a case in which the State of Florida is attempting to exercise regulatory authority over the Seminole Indians of Florida. The Petitioner is a private individual who is seeking redress for a civil wrong. The fact that the wrong was committed by the tribe, as opposed to individual members of the tribe, does not alter the nature of the civil action pursued by the Petitioner. Without question, in enacting Section 285.16, Florida Statutes (1989), the State of Florida was concerned with the lack of an adequate forum for the redress of criminal and civil transgressions. This applies equally to the tribe as well as its individual members. As noted by the Petitioner, hundreds of Florida residents and tourists flow through the bingo hall in Tampa and the Seminole reservation daily. The Respondent suggests that if an individual member of the tribe commits a civil wrong against one of these private individuals, the party may have redress under the laws of the State of Florida. However, if the tribe is the perpetrator of this wrong, that private party will be deprived of any forum for redress of the wrong except that which has been provided by the tribe. This system has implicitly, if not

expressly been recognized as inadequate by Congress and the State of Florida.

CONCLUSION

Public Law 280 provided a limited waiver of the Indians' sovereign immunity for both criminal and civil actions involving Indians. This Court should not narrow its interpretation of Section 285.16(1), Florida Statutes (1991), as applying only to Indian members of a tribe **and** not the tribe itself. To do so would render the statute meaningless and allow for the proliferation of tribal owned businesses that are not subject to the same standard of care as other private non-Indian corporations and businesses. Thus, this Court must protect the unsuspecting public which is at risk of sustaining civil damages through the negligence of the Indian tribe and not having an appropriate forum in which to address their complaints.

Respectfully submitted,

KIMBERLY SANDS, ESQUIRE
Florida Bar #373605
Amicus Curiae Committee Member
ACADEMY OF FLORIDA TRIAL LAWYERS
Post Office Box 2010
Daytona Beach, FL 32115-2010
904/258-1622

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail on this 4th day of February, 1992, to: Mary E. Mann, Esq., 100 Second Ave. S., Ste. 901, St. Petersburg, FL 33701; W. Douglas Berry, Esq., Bayport Plaza, Ste. 1100, 6200 Courtney Campbell Cswy., Tampa, FL 33607-1458; H. Irene Higginbotham, Esq., 100 Second Ave. S., Ste. 901, St. Petersburg, FL 33701; and Melinda J. Brazel, Esq., 6200 Courtney Campbell Cswy., #1100, Tampa, FL 33607.

KIMBERLY SANDS, ESQUIRE