SUPREME COURT OF THE UNITED STATES

No. 02–281

INYO COUNTY, CALIFORNIA, ET AL., PETITIONERS *v.* PAIUTE-SHOSHONE INDIANS OF THE BISHOP COMMUNITY OF THE BISHOP COLONY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[May 19, 2003]

JUSTICE STEVENS, concurring in the judgment.

In my judgment a Native American tribe is a "person" who may sue under 42 U. S. C. §1983. The Tribe's complaint, however, does not state a cause of action under §1983 because the county's alleged infringement of the Tribe's sovereign prerogatives did not deprive the Tribe of "rights, privileges, or immunities secured by the Constitution and laws" within the meaning of §1983. At bottom, rather than relying on an Act of Congress or a provision of the Constitution, the Tribe's complaint rests on the judge-made doctrine of tribal immunity—a doctrine that "developed almost by accident." *Kiowa Tribe of Okla.* v. *Manufacturing Technologies, Inc.,* 523 U. S. 751, 756 (1998). Because many applications of that doctrine are both anomalous and unjust, see *id.*, at 760, 764–766 (STEVENS, J., dissenting), I would not accord it the same status as the "laws" referenced in §1983.

It is demeaning to Native American tribes to deny them the same access to a §1983 remedy that is available to any other person whose constitutional rights are violated by persons acting under color of state law. The text of §1983—which provides that §1983 defendants are "person[s] who, under color of [State law]" subject any "other person" to a deprivation of a federal right—adequately

explains why a tribe is not a person subject to suit under §1983. For tribes generally do not act under color of state law. But that text sheds no light on the question whether the tribe is an "other person" who may bring a §1983 suit when the tribe is the victim of a constitutional violation. The ordinary meaning of the word "person" as used in federal statutes,[1] as well as the specific remedial purpose of §1983, support the conclusion that a tribe should be able to invoke the protections of the statute if its constitutional rights are violated.[2]

In this case, however, the Tribe's allegations do not state a cause of action under §1983. The execution of the warrant challenged in this case would unquestionably have been lawful if the casino had been the property of an ordinary commercial corporation. See *ante*, at 9 ("There is in this case no allegation that the County lacked probable cause or that the warrant was otherwise defective"). Thus, the Tribe rests its case entirely on its claim that, as a sovereign, it should be accorded a special immunity that private casinos do not enjoy. See *ibid.* That sort of claim to special privileges, which is based entirely on the Tribe's sovereign status, is not one for which the §1983 remedy was enacted.

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[1] The Dictionary Act, which was passed just two months before §1983 and was designed to supply rules of construction for all legislation, provided that "the word 'person' may extend and be applied to bodies politic and corporate . . . ." Act of Feb. 25, 1871, §2, 16 Stat. 431.

[2] Our holding in *Will* v. *Michigan Dept. of State Police*, 491 U. S. 58, 65 (1989), that a State is not a "person" within §1983 is fully consistent with this view. *Will* rested on "the ordinary rule of statutory construction that if Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute.' *Atascadero State Hospital* v. *Scanlon*, 473 U. S. 234, 242 (1985); see also *Pennhurst State School and Hospital* v. *Halderman*, 465 U. S. 89, 99 (1984)." *Ibid.*

Accordingly, while I agree with the Court that the judgment should be set aside, I do not join the Court's opinion.