

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

LEWIS ET AL. *v.* CLARKE

CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

No. 15–1500. Argued January 9, 2017—Decided April 25, 2017

Petitioners Brian and Michelle Lewis were driving on a Connecticut interstate when they were struck from behind by a vehicle driven by respondent William Clarke, a Mohegan Tribal Gaming Authority employee, who was transporting Mohegan Sun Casino patrons. The Lewises sued Clarke in his individual capacity in state court. Clarke moved to dismiss for lack of subject-matter jurisdiction, arguing that because he was an employee of the Gaming Authority—an arm of the Mohegan Tribe entitled to sovereign immunity—and was acting within the scope of his employment at the time of the accident, he was similarly entitled to sovereign immunity against suit. He also argued, in the alternative, that he should prevail because the Gaming Authority was bound by tribal law to indemnify him. The trial court denied Clarke’s motion, but the Supreme Court of Connecticut reversed, holding that tribal sovereign immunity barred the suit because Clarke was acting within the scope of his employment when the accident occurred. It did not consider whether Clarke should be entitled to sovereign immunity based on the indemnification statute.

Held:

1. In a suit brought against a tribal employee in his individual capacity, the employee, not the tribe, is the real party in interest and the tribe’s sovereign immunity is not implicated. Pp. 5–8.

(a) In the context of lawsuits against state and federal employees or entities, courts look to whether the sovereign is the real party in interest to determine whether sovereign immunity bars the suit, see *Hafer v. Melo*, 502 U. S. 21, 25. A defendant in an official-capacity action—where the relief sought is only nominally against the official and in fact is against the official’s office and thus the sovereign itself—may assert sovereign immunity. *Kentucky v. Graham*, 473 U. S. 159, 167. But an officer in an individual-capacity action—

Syllabus

which seeks “to impose individual liability upon a government officer for actions taken under color of state law,” *Hafer*, 502 U. S., at 25—may be able to assert *personal* immunity defenses but not sovereign immunity, *id.*, at 30–31. The Court does not reach Clarke’s argument that he is entitled to the personal immunity defense of official immunity, which Clarke raised for the first time on appeal. Pp. 5–7.

(b) Applying these general rules in the context of tribal sovereign immunity, it is apparent that they foreclose Clarke’s sovereign immunity defense. This action arises from a tort committed by Clarke on a Connecticut interstate and is simply a suit against Clarke to recover for his personal actions. Clarke, not the Gaming Authority, is the real party in interest. The State Supreme Court extended sovereign immunity for tribal employees beyond what common-law sovereign immunity principles would recognize for either state or federal employees. Pp. 7–8.

2. An indemnification provision cannot, as a matter of law, extend sovereign immunity to individual employees who would otherwise not fall under its protective cloak. Pp. 8–12.

(a) This conclusion follows naturally from the principles discussed above and previously applied to the different question whether a state instrumentality may invoke the State’s immunity from suit even when the Federal Government has agreed to indemnify that instrumentality against adverse judgments, *Regents of Univ. of Cal. v. Doe*, 519 U. S. 425. There, this Court held that the indemnification provision did not divest the state instrumentality of Eleventh Amendment immunity, and its analysis turned on where the potential *legal* liability lay, not from whence the money to pay the damages award ultimately came. Here, the Connecticut courts exercise no jurisdiction over the Tribe or Gaming Authority, and their judgments will not bind the Tribe or its instrumentalities in any way. Moreover, indemnification is not a certainty, because Clarke will not be indemnified should the Gaming Authority determine that he engaged in “wanton, reckless, or malicious” activity. Mohegan Tribe Code §4–52. Pp. 8–10.

(b) Courts have extended sovereign immunity to private healthcare insurance companies under certain circumstances, but those cases rest on the proposition that the fiscal intermediaries are essentially state instrumentalities, and Clarke offers no persuasive reason to depart from precedent and treat a lawsuit against an individual employee as one against a state instrumentality. Similarly, this Court has never held that a civil rights suit under 42 U. S. C. §1983 against a state officer in his individual capacity implicates the Eleventh Amendment and a State’s sovereign immunity from suit. Finally, this Court’s conclusion that indemnification provisions do not

Syllabus

alter the real-party-in-interest analysis for sovereign immunity purposes is consistent with the practice that applies in the contexts of diversity of citizenship and joinder. Pp. 10–12.

320 Conn.706, 135 A. 3d 677, reversed and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, BREYER, ALITO, and KAGAN, JJ., joined. THOMAS, J., and GINSBURG, J., filed opinions concurring in the judgment. GORSUCH, J., took no part in the consideration or decision of the case.