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

PLAINS COMMERCE BANK *v.* LONG FAMILY LAND & CATTLE CO., INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 07–411. Argued April 14, 2008—Decided June 25, 2008

Petitioner Plains Commerce Bank (Bank), a non-Indian bank, sold land it owned in fee simple on a tribal reservation to non-Indians. Respondents the Longs, an Indian couple who had been leasing the land with an option to purchase, claim the Bank discriminated against them by selling the parcel to nonmembers of the Tribe on terms more favorable than the Bank offered to sell it to them. The couple sued in Tribal Court, asserting, *inter alia*, discrimination, breach-of-contract, and bad-faith claims. Over the Bank's objection, the Tribal Court concluded that it had jurisdiction and proceeded to trial, where a jury ruled against the Bank on three claims, including the discrimination claim. The court awarded the Longs damages plus interest. In a supplemental judgment, the court also gave the Longs an option to purchase that portion of the fee land they still occupied, nullifying the Bank's sale of the land to non-Indians. After the Tribal Court of Appeals affirmed, the Bank filed suit in Federal District Court, contending that the tribal judgment was null and void because, as relevant here, the Tribal Court lacked jurisdiction over the Longs' discrimination claim. The District Court granted the Longs summary judgment, finding tribal court jurisdiction proper because the Bank's consensual relationship with the Longs and their company (also a respondent here) brought the Bank within the first category of tribal civil jurisdiction over nonmembers outlined in *Montana* v. *United States*, 450 U. S. 544. The Eighth Circuit affirmed, concluding that the Tribe had authority to regulate the business conduct of persons voluntarily dealing with tribal members, including a nonmember's sale of fee land.

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Held:

1. The Bank has Article III standing to pursue this challenge. Both with respect to damages and the option to purchase, the Bank was "injured in fact," see *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560, by the Tribal Court's exercise of jurisdiction over the discrimination claim. This Court is unpersuaded by the Longs' claim that the damages award was premised entirely on their breach-of-contract verdict, which the Bank has not challenged, rather than on their discrimination claim. Because the verdict form allowed the jury to make a damages award after finding liability as to *any* of the individual claims, the jury could have based its damages award, in whole or in part, on the discrimination finding. The Bank was also injured by the option to purchase. Only the Longs' discrimination claim sought deed to the land as relief. The fact that the remedial purchase option applied only to a portion of the total parcel does not eliminate the injury to the Bank, which had no obligation to sell any of the land to the Longs before the Tribal Court's judgment. That judgment effectively nullified a portion of the sale to a third party. These injuries can be remedied by a ruling that the Tribal Court lacked jurisdiction and that its judgment on the discrimination claim is null and void. Pp. 5–8.

2. The Tribal Court did not have jurisdiction to adjudicate a discrimination claim concerning the non-Indian Bank's sale of its fee land. Pp. 8–24.

(a) The general rule that tribes do not possess authority over non-Indians who come within their borders, *Montana* v. *United States*, 450 U. S. 564, 565, restricts tribal authority over nonmember activities taking place on the reservation, and is particularly strong when the nonmember's activity occurs on land owned in fee simple by non-Indians, *Strate* v. *A-1 Contractors*, 520 U. S. 438, 446. Once tribal land is converted into fee simple, the tribe loses plenary jurisdiction over it. See *County of Yakima* v. *Confederated Tribes and Bands of Yakima Nation*, 502 U. S. 251, 267–268. Moreover, when the tribe or its members convey fee land to third parties, the tribe "loses any former right of absolute and exclusive use and occupation of the conveyed lands." *South Dakota* v. *Bourland*, 508 U. S. 679, 689. Thus, "the tribe has no authority itself . . . to regulate the use of fee land." *Brendale* v. *Confederated Tribes and Bands of Yakima Nation,* 492 U. S. 408, 430. *Montana* provides two exceptions under which tribes may exercise "civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands," 450 U. S., at 565: (1) "A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts,

leases, or other arrangements," *ibid.;* and (2) a tribe may exercise "civil authority over the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe," *id*., at 566. Neither exception authorizes tribal courts to exercise jurisdiction over the Longs' discrimination claim. Pp. 8–11.

(b) The Tribal Court lacks jurisdiction to hear that claim because the Tribe lacks the civil authority to regulate the Bank's sale of its fee land, and "a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction," *Strate, supra*, at 453. *Montana* does not permit tribes to regulate the sale of non-Indian fee land. Rather, it permits tribal regulation of nonmember *conduct* inside the reservation that implicates the tribe's sovereign interests. 450 U. S., at 564–565. With only one exception, see *Brendale, supra,* this Court has never "upheld under *Montana* the extension of tribal civil authority over nonmembers on non-Indian land," *Nevada* v. *Hicks*, 533 U. S. 353, 360. Nor has the Court found that *Montana* authorized a tribe to regulate the sale of such land. This makes good sense, given the limited nature of tribal sovereignty and the liberty interests of nonmembers. Tribal sovereign interests are confined to managing tribal land, see *Worcester* v. *Georgia*, 6 Pet. 515, 561, protecting tribal self-government, and controlling internal relations, see *Montana, supra,* at 564. Regulations approved under *Montana* all flow from these limited interests. See, *e.g., Duro* v. *Reina*, 495 U. S. 676, 696. None of these interests justified tribal regulation of a nonmember's sale of fee land. The Tribe cannot justify regulation of the sale of non-Indian fee land by reference to its power to superintend tribal land because non-Indian fee parcels have ceased to be tribal land. Nor can regulation of fee land sales be justified by the Tribe's interest in protecting internal relations and self-government. Any direct harm sustained because of a fee land sale is sustained at the point the land passes from Indian to non-Indian hands. Resale, by itself, causes no additional damage. Regulating fee land sales also runs the risk of subjecting nonmembers to tribal regulatory authority without their consent. Because the Bill of Rights does not apply to tribes and because nonmembers have no say in the laws and regulations governing tribal territory, tribal laws and regulations may be applied only to nonmembers who have consented to tribal authority, expressly or by action. Even then the regulation must stem from the tribe's inherent sovereign authority to set conditions on entry, preserve self-government, or control internal relations. There is no reason the Bank should have anticipated that its general business dealings with the Longs would permit the Tribe to regulate the Bank's sale of land

it owned in fee simple. The Longs' attempt to salvage their position by arguing that the discrimination claim should be read to challenge the Bank's whole course of commercial dealings with them is unavailing. Their breach-of-contract and bad-faith claims involve the Bank's general dealings; the discrimination claim does not. The discrimination claim is tied specifically to the fee land sale. And only the discrimination claim is before the Court. Pp. 11–22.

(c) Because the second *Montana* exception stems from the same sovereign interests giving rise to the first, it is also inapplicable here. The "conduct" covered by that exception must do more than injure a tribe; it must "imperil the subsistence" of the tribal community. *Montana*, 450 U. S., at 566. The land at issue has been owned by a non-Indian party for at least 50 years. Its resale to another non-Indian hardly "imperil[s] the subsistence or welfare of the tribe." *Ibid.* Pp. 22–23.

(d) Contrary to the Longs' argument, when the Bank sought the Tribal Court's aid in serving process on the Longs for the Bank's pending state-court eviction action, the Bank did not consent to tribal court jurisdiction over the discrimination claim. The Bank has consistently contended that the Tribal Court lacked jurisdiction. P. 23.

491 F. 3d 878, reversed.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined, and in which STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined as to Part II. GINSBURG, J., filed an opinion concurring in part, concurring in the judgment in part, and dissenting in part, in which STEVENS, SOUTER, and BREYER, JJ., joined.