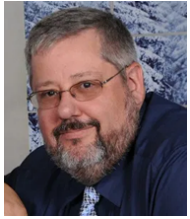


Sovereign Immunity



By Paul Engel

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- In the United States, who is sovereign?
- Did we replace a sovereign monarch with a sovereign oligarchy?
- Do you need government's permission to sue it?

When can you sue the government? What started out as an erroneous credit report filing has turned into the heart of the question brought before the Supreme Court in the case Department Of Agriculture Rural Development Rural Housing Service V. Kirtz (USDA v. Kirtz). What the court found, and how it got there, points to a serious flaw in the constitutional education of lawyers and judges throughout this nation.

Background

Although not at the heart of our story, this begins with a simple violation of the Constitution.

This case arises from a loan Reginald Kirtz secured from The Rural Housing Service. The Service, a division of the United States Department of Agriculture (USDA), "issues loans to promote the development of safe and affordable housing in rural communities."

[USDA v. Kirtz](#)

The Constitution does not authorize the United States to issue loans for any reason. As the Tenth Amendment states:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

[U.S. Constitution – Amendment X](#)

This may seem like a trivial thing, but if Congress had not passed legislation to allow agencies to loan money, then Mr. Kirtz would not have had the problems that led to this case. Yes, Mr. Kirtz's problems began after he paid off the loan, but that is not the heart of this case.

According to Mr. Kirtz, he repaid his loan in full by mid-2018. ... Despite this, the USDA repeatedly told TransUnion, a company engaged in the business of preparing consumer credit reports, that his account was past due. ... These misrepresentations damaged his credit score and threatened his ability to secure future loans at affordable rates. ... In an effort to resolve the problem, Mr. Kirtz alerted TransUnion to the error, and the company, in turn, notified the USDA. But, Mr. Kirtz says, the USDA failed to take "any action to investigate or correct" its records. So he eventually decided to sue the agency under the FCRA.

[USDA v. Kirtz](#)

Yes, any lending firm could have erroneously reported past due a loan that had been paid in full. And any lending agency could fail to take action to resolve the error, which could lead to a lawsuit. In this case, Mr. Kirtz sued under the Fair Credit Reporting Act (FCRA).

According to his complaint, the USDA furnished information to TransUnion. The agency had notice that the information it supplied was false. That false information impaired Mr. Kirtz's ability to access affordable credit. Yet the agency failed to take any steps to correct its mistake—either willfully (in violation of §1681n) or negligently (in violation of §1681o). By way of remedy, Mr. Kirtz sought money

damages consistent with what the FCRA allows.

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Mr. Kirtz's complaint seems simple enough. The lender, the USDA, had been notified that the information it provided to credit reporting service TransUnion was false, and either negligently or willfully refused to correct its mistake. For this violation of the law, Mr. Kirtz sought monetary damages. The response from the USDA is when Mr. Kirtz's issues went from bad to worse.

In response, the USDA moved to dismiss the complaint. The agency did not dispute that allegations like Mr. Kirtz's state a viable claim for relief. Instead, it pointed to this Court's precedents holding that, as sovereign, the federal government enjoys immunity from suits for money damages unless Congress waives that immunity.

[USDA v. Kirtz](#)

The USDA did not dispute the fact that Mr. Kirtz had a viable claim. They simply claimed "You can't sue us, we're the government." Notice that the USDA did not claim they had immunity based on a constitutional or even statutory argument, but because the court had previously said so.

Sovereign Immunity

What is this "Sovereign Immunity" the USDA was claiming?

Sovereign immunity is a judicial doctrine that prevents the government or its political subdivisions, departments, and agencies from being sued without its consent. The doctrine stems from the ancient English principle that the monarch can do no wrong.

[Sovereign Immunity – The Free Legal Dictionary](#)

Did you catch that? This whole sovereign immunity comes from

the idea that the monarch, the sovereign, can do no wrong. This is exactly what we tried to get away from in 1776. Read the Declaration of Independence and count how many times they complain that the king could do what he wants? There were not consequences for the monarch, because they believed he could do no wrong. This of course was because the king was sovereign.

A chief ruler with supreme power; one possessing sovereignty. (q.v.) It is also applied to a king or other magistrate with limited powers.

[Sovereign – The Free Legal Dictionary](#)

What about here in the United States?

In the United States the sovereignty resides in the body of the people.

[Sovereign – The Free Legal Dictionary](#)

That means the government is not the sovereign, and therefore does not have sovereign immunity. That hasn't stop federal courts at all levels from pretending they do. Rather, courts have argued about whether or not Congress had waived said immunity in the Federal Credit Reporting Act.

Yet the lower courts have reached different views on the question whether federal agencies are answerable under the FCRA for their mistakes. Like the Third Circuit, the Seventh and D. C. Circuits have held that the FCRA authorizes suits against government agencies no less than it does private lenders. The Fourth and Ninth Circuits, by contrast, have held that sovereign immunity bars consumer suits against federal agencies. We agreed to hear this case to resolve that conflict.

[USDA v. Kirtz](#)

While the Supreme Court notices that the circuit courts are

split, it's not on the question of sovereign immunity, but whether Congress had waived said immunity under FCRA.

Opinion

The court gave a unanimous opinion, written by Justice Gorsuch.

The Executive Branch may question the wisdom of holding federal agencies accountable for their violations of the Fair Credit Reporting Act; certainly the many and resourceful arguments it advances today suggest as much. But Congress's judgment commands our respect and the law it has adopted speaks clearly: A consumer may sue "any" federal agency for defying the law's terms. Because it faithfully followed this legislative direction, the judgment of the Court of Appeals for the Third Circuit is

Affirmed.

[USDA v. Kirtz](#)

While I admire the court for respecting the acts of Congress, I point to a superior law they completely ignore in this opinion. That the United States has limited and enumerated powers, and that among those powers delegated to it, the power of sovereign in not one of them.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

[U.S. Constitution, Amendment X](#)

Furthermore, that when the justices took office, they were required to swear or affirm that they would support the Constitution of the United States.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive

and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution;

[U.S. Constitution, Amendment VI](#), Clause 3

As such, the court should have found for Mr. Kirtz not because Congress said the people could sue under FCRA, but because no federal branch, department, or agency has sovereign immunity.

Conclusion

There was plenty more in the opinion of this case, but in my estimation it's pure distraction. The federal courts, at all levels, agreed that the United States has sovereign immunity, even though that is not a power delegated to it in the Constitution. There was not a single point in the opinion about sovereign immunity being constitutional, yet they still uphold it. How could that be?

For years I've asked those who have attended law school a simple question. "When you were in law school, did you study the Constitution or "constitutional law". In the 4-5 years I've been asking that question, I have had exactly one person tell me they studied the Constitution in law school. The supreme law of the land is not studied in law school? The document that every government official is required to swear or affirm they will support, is not studied in law school? This is the fundamental and abject failure in our legal education system.

I doubt a single judge or justice who has heard this case actually studied the Constitution in law school. That explains why the very men and women who took an oath to support it placed the opinions of judges above the supreme law of the land. Although Mr. Kirtz got the outcome he wanted, which was to be allowed to sue the USDA, this is the reason why this case is actually a further corruption of our judicial system. Think about this for a second: Mr. Kirtz was ALLOWED to

petition the government for a redress of grievance, a right protected by the First Amendment. However, Congress can allow federal agencies to violate the law without concern they may be sued, based on this false idea from some court that the government is sovereign, but not the people. Is any of this different than some of the grievances we had against King George?

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States:

For depriving us in many cases, of the benefits of Trial by Jury:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

[Declaration of Independence](#)

Saddest of all, neither the judges, justices, attorneys, nor parties to this case, seem aware of the fundamental coup d'etat this represents. It's the destruction of our Constitution and a fundamental alteration of our form of government.

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