

One NATION United

UPDATE

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The voices ONU represents are many and diverse -- concerned citizens, business owners, community groups, clergy, and elected officials on both sides of the aisle. Thank you for supporting us in this nonpartisan battle against the "Politics of Corruption and Personal Enrichment" ~ now so rampant on the local, state, and federal levels across America ~ which threaten to tear apart the very fabric of our great Nation.

Equal protection of individual rights is an American ideal, embodied in the famous declaration that all men are created equal. Thank you for standing with ONU to defend colorblind justice and our ongoing effort to end the unfair racial preference policies practiced by our own government under the guise of federal Indian law.

This is, after all, a marathon and not a sprint. The comprehensive governmental changes we're working to achieve have been very slow in coming. But we're happy to report that true reform is now within our reach. We've accomplished this by sheer persistence, working continuously to educate citizens and electeds and, in turn, influence public policy.

MOVING AHEAD WITH COURAGE AND CONVICTION

We remain convinced that reforms will be enacted because changes are already occurring! This Newsletter will give you an update on a number of very encouraging court decisions that bode well for America's future.

We also have exciting news to share with you about new policy changes recently announced by the U.S. Department of the Interior. For our beach property owner

Dear ONU Members, Friends,
Elected Officials, and Law
Enforcement Leaders,

In the six months since you last heard from us, One Nation United has remained hard at work in defense of your private property rights, your local community values, the rule of law, and our civil liberties as guaranteed in the U.S. Constitution.

**When you help ONU, you help
shape a better future for
America...your financial assistance is
urgently needed!**

members in Washington State, we share below the wonderful news of a recent out-of-court settlement, which will now keep tribal shellfish diggers off of many private tidelands. All of the above has happened as a direct result of our joint lobbying efforts and your steadfast financial help!

SHELLFISH-TIDELANDS LAWSUIT FINALLY CONCLUDED

In late May, Puget Sound shellfish growers and seventeen Indian tribes finally reached a solution to the dispute over tribal “treaty rights” to take shellfish from private tidelands. The agreement preserves the fiscal integrity of the commercial shellfish industry, will result in less pressure by Indian tribes to harvest shellfish from private tidelands, and also provides greater recreational harvest opportunity for everyone in Washington State.

“This ends more than twenty years of dispute and allows the tribes money to go and buy lands themselves, rather than going on the lands of growers or private individuals,” said U.S. Rep. Norm Dicks who sponsored the bill (H.R. 6119) providing this funding. **Other members of the State’s congressional delegation expressed similar sentiments, including Rep. Brian Baird, Rep. Jay Inslee, Rep. Dave Reichert, Rep. Jim McDermott, Rep. Rick Larsen, Rep. Doc Hastings, and Rep. Adam Smith -- all of whom were co-sponsors of legislation to fund the settlement. We owe the entire Washington delegation our deep gratitude.**

This settlement puts to rest the final unresolved issues from the 1994 federal court ruling regarding Indian shellfish harvest handed down by Judge Edward Rafeedie.

For example, although Rafeedie’s ruling prohibited tribes from harvesting shellfish from “staked and cultivated” beds enhanced by private owners, it upheld the tribes’ right to take half of the naturally occurring shellfish on those tidelands. Sorting out naturally occurring shellfish from those produced by the growers’ efforts proved to be impossible. So did answering the thorny question of how tribes could access private tidelands to harvest shellfish, which would be extremely disruptive and costly for commercial growers, who’ve spent decades enhancing their tideland beaches.

Further complicating things, the State of Washington sold off most of the best shellfish harvesting areas to private purchasers more than a hundred years ago. Those buyers were not informed that their tidelands would ever be subject to Indian shellfish harvest.

“Fault for creating this controversy lies squarely with the State of Washington and the United States, for selling the tidelands and not objecting to the sale, respectively,” the Court found. That is why taxpayer funding was ultimately used to resolve this legal conflict.

After the federal court ruling was handed down, representatives for commercial shellfish growers and the tribes began meeting to discuss finding an out-of-court resolution to our differences. We have a number of commercial growers among ONU’s membership.

One Nation United’s National Director, Barb Lindsay, participated in the early negotiations and members of our organization who are commercial growers have been closely involved in these sensitive talks since 1995.

These long-term efforts finally paid off.

ONU also successfully lobbied Washington State’s congressional delegation and State Legislature to obtain the state and federal funding that make this agreement possible. Decision makers in Olympia and Washington, DC, know that ONU represents thousands of private residential tideland owners, who wish to preserve the “private use and quiet enjoyment” of their shellfish-bearing beach properties around Puget Sound.

We thank all of you who stood by us over the past many years of talks. Thanks so much for supporting our efforts financially, which enabled ONU to effectively defend your privacy and property rights.

Here are highlights of the final terms of the settlement:

- The tribes agreed to forgo harvesting an estimated \$2 million of shellfish annually from commercial beds.
- Private growers will provide, over ten years, \$500,000 worth of shellfish enhancement to public tidelands of the State’s choosing, adding value to this agreement for the benefit of all the citizens of Washington State.
- Tribes will be given access to a \$33 million trust fund (established with \$11 million in State funds and \$22 million in federal funds) to purchase and enhance other tidelands to which Indian tribes will have exclusive access.

This agreement is truly a “win” for commercial shellfish growers (large and small), for every private tideland owner in Washington, and for tens of thousands of recreational users of State Park beaches, who will now enjoy more shellfish to harvest.

An example of how this settlement will work to enhance public opportunity for shellfish harvest can already be found at State Park beaches in Mason, Pierce, and Thurston Counties. Over the past three years, the Squaxin Island Tribe planted more than 300,000 juvenile oysters for exclusive recreational harvest on several of the State's most popular and accessible beaches, including Frye Cove County Park on Eld Inlet and Kopachuck State Park near Gig Harbor. When naturally occurring shellfish populations are enhanced, the result is higher and more consistent levels of harvest.

Both Congress and the Washington State Legislature have endorsed the shellfish/tidelands settlement. The Legislature has already appropriated its share of the costs. Congress has also passed legislation authorizing an appropriation for the federal government's share.

But WHY did the tribes agree to this settlement, you might ask? The answer is that they were advised by their legal counsel that they could not win by appealing Judge Rafeedie's decision to the U.S. Supreme Court.

That's because the High Court handed down a very important, precedent-setting ruling on March 29, 2005, in the case called *City of Sherrill v. Oneida Indian Nation*. In this 8-1 decision, the Nation's Highest Court overturned many of the legal precedents upon which Indian treaty rights cases have been filed in previous decades, including those denied to ONU and the State of Washington in our defense against the tribes' shellfish-tideland claims in the Rafeedie case.

The U.S.S.C. found that fee title to all lands occupied by Indians when settlers arrived became vested in the sovereign - - "**Doctrine of Discovery**" - - first to the European



**Dave Vickers, Attorney at Law,
President of Upstate Citizens for Equality and member
of the Board of Directors of One Nation United**

nation that claimed the land and later to the original territorial and state governments and the United States. This defense would have denied Puget Sound tribes any 'treaty right' to take shellfish from public or privately owned beaches. The High Court also found that tribes who delay from the 1800s to the present day in seeking equitable relief against a state government and private property owners are indeed subject to the "**Doctrines of Laches**" - - meaning that the tribes waited too long to file their claims to take shellfish from public or private tidelands. (Our lawyers raised this defense, but Judge Rafeedie dismissed it.)

Finally, the long-standing assumption of jurisdiction by the State over an area that is predominantly non-Indian in population and land use creates, said the U.S.S.C., "justifiable expectations...(and) a contrary conclusion would seriously disrupt the justifiable expectations of the people living in the area" - - "**Doctrines of Acquiescence, Impossibility, and Justifiable Expectations**" - - which would, of course, apply to the reasonable expectations of private beach owners and commercial shellfish growers in the Puget Sound region of Washington State.

It stands to reason that their outrageous claims in the shellfish-tidelands case would have been thrown out of court if the tribes had filed this lawsuit after March of 2005, rather than in December of 1994. Thus, you can see clearly why the tribes' lawyers advised them to settle - - rather than pursuing further appeals in this case. (Keep in mind that the "time, place, and manner" restrictions put in place at our urging have resulted in very little shellfish being harvested by tribal members from residential tideland beaches in Washington.)

We all owe special thanks and appreciation to ONU member group, Upstate Citizens for Equality (UCE) in New York State who played an important role in helping to win the Sherrill case victory discussed above. Hats off to ONU Board member, attorney David Vickers, who worked closely with lawyers representing the City of Sherrill. Kudos to UCE for helping to win these vital new legal precedents, which mean that far fewer Indian lawsuits will be filed against innocent U.S. citizens and our governments.

Remember, too, that our group's legal counsel, James Johnson (now on the Washington State Supreme Court) convinced Judge Rafeedie that the Puget Sound tribes have no right to tell private beach owners what they can do with their own land: no "environmental servitude" rights for the tribes ~ no "permit authority" ~ and no "veto power" over uses of privately owned upland beach properties. The tribes were seeking this broad authority in the shellfish-tidelands case and Jim successfully defended your private property rights.

A MAJOR BREAKTHROUGH WITH THE DEPARTMENT OF THE INTERIOR

The U.S. Department of the Interior (DOI) has formally responded to the concerns expressed by One Nation United and our members, as well as communications they have received from so many local elected officials on the subject of off-reservation gambling proposals by Indian tribes.

The exciting news is that the Associate Deputy Secretary of the Interior, James E. Cason, has recently written a number of letters to tribal leaders across America, informing them that the Department intends to make changes in the rules. This will result in fewer off-reservation properties being accepted into trust status!

They are stating publicly that they expect to adopt new rules under which “the likelihood of accepting off-reservation land into trust decreases with the distance the subject parcel is from the Tribe’s established reservation or ancestral lands and the majority of tribal members.” Furthermore, they have formally announced that they plan to review their approach for “soliciting and accommodating the views of elected officials” (State, county, city, etc.) as well as giving more consideration to the views of “community members in the local area” when making fee-to-trust decisions. They also say D.O.I. plans to give more consideration to “the broad implications associated with new gaming operations within established communities where gaming is not currently conducted.”

In short, the Department is telling tribal leaders that “the statutory, regulatory, and policy environment is changing”. D.O.I. is flatly telling tribes that they should be aware of the “long, challenging, and expensive process” involved in seeking a fee-to-trust conversions and that they should give more thought to the less risky alternative of building on-reservation casinos.

This is true progress for us, folks, because we’ve been actively urging the Department to change their rules and our suggestions did not fall on deaf ears. Clearly, ONU’s “Petition for Rulemaking” (sent to the Secretary of Interior last year and co-signed by several other key statewide and regional citizen groups) made a difference!

This is a huge change in policy at the D.O.I. In the past, they just about “rubber stamped” approval for anything a tribe wanted. They have finally come to recognize that there are many competing issues and interests to consider before they act to approve construction of tribal casinos in local communities. Now, the Department is finally taking a broader view of these complex policy decisions.

For an electronic copy of the DOI letter, see our website at www.OneNationUnited.org or for a paper copy, call Vic at 818-707-0619 or write to P.O. Box 3336, Redmond, WA 98073. You may also request a copy of our Petition for Rulemaking.

What happens when the U.S. Department of the Interior moves land into federal “trust” status?

Trust land is removed from state and local property tax rolls.

The land becomes exempt from state and local jurisdiction including all zoning regulations.

Land is exempt from the Growth Management Act and Shorelines Management Act.

Business projects on this land are not subject to local permits or any government fees.

Tribal business projects on trust land do not pay income taxes.

State and local environmental laws, public safety laws, and food and health codes do not apply.

Businesses are exempt from state labor laws and unemployment insurance that protect employees.

State minimum wage laws and state smoking regulations do not apply.

Customers and visitors have no redress for grievances, except in tribal court.

Water and utilities codes do not apply.

Plus, many tribal businesses refuse to collect or remit both State and local sales/excise taxes, even though the U.S. Supreme Court has ruled that they should do so because taxes are lawfully owed on all purchases made by non-tribal/non-member customers.

States and local governments cannot enforce the laws because of tribal sovereign immunity from suit. Trust lands are routinely carved out of sovereign state domain without a vote by local citizens or by their State Legislature.

CONSISTENT EROSION OF TRIBAL SOVEREIGNTY

Ladies and Gentlemen, our collective efforts are making a difference!

Many observers and key experts on federal Indian law tell us there is no doubt that tribal sovereignty has been consistently eroded in various court rulings handed down over the past decade, including important decisions by the U.S. Supreme Court. Here are just three examples of the gradual deterioration of previously well-established principles of Indian law:

Ten years ago, in 1997, the U.S.S.C. held in *Strate v. A-1 Contractors* (520 U.S. 438) that tribal courts lack jurisdiction over civil claims against non-tribal/non-member U.S. citizens when an accident occurs on any public highway running through an Indian reservation. People who are hurt aren't forced into tribal court.

In 1998, the Highest Court in the Land voiced its very strong distaste for tribal sovereign immunity from suit in *Kiowa Tribe v. Manufacturing Techs* (523 U.S. 751) and urgently called upon Congress to take action to do away with the court-created concept of sovereign immunity for tribes. The U.S.S.C. told Congress that they could correct the many problems created by the tribal immunity doctrine by simply amending the "Foreign Sovereign Immunity Act" to include Indian tribes. Under this federal law, any sovereign foreign nation doing business in America is subject to all the same laws and taxes as everyone else ~ and can be sued in all the same courts ~ just like all other domestic businesses.

Then in 2001, the U.S.S.C. in *C&L Enterprises v. Citizen Band Potawatomi* (532 U.S. 411) found that although there was no express waiver of tribal sovereign immunity, the parties' agreed to arbitration for dispute resolution and, therefore, this was sufficient reason to waive a tribe's sovereign immunity. In other words, the High Court ruled against the tribes and was not at all sympathetic to their sovereignty arguments.

BIG WIN FOR EMPLOYEE RIGHTS

A federal appeals court recently refused to revisit a decision by a three-judge panel involving California's San Manuel Band of Mission Indians which could have broad implications for tribal sovereignty and labor relations nationwide because ~ if this ruling stands ~ it would force

tribes to allow union organizers and picketing by employees on tribal reservations.

According to a labor ordinance adopted when most tribes signed gambling compacts with the State of California in 2000, workers at tribal casinos are barred from striking and all their labor complaints must be taken up with the tribal government, not the federal government.

But, in 2004, the National Labor Relations Board ruled it has jurisdiction over tribal casinos.

Overtaking 30 years of precedent, the NLRB said in May of 2004 that tribal enterprises ~ even those located on reservations ~ have to comply with labor law if they impact or employ a significant number of non-Indians: "As tribal businesses prosper, they become significant employers of non-Indians and serious competitors with non-Indian owned businesses," the decision stated. "When Indian tribes participate in the national economy in commercial enterprises, when they employ substantial numbers of non-Indians, and when their businesses cater to non-Indian clients and customers, the tribes affect interstate commerce in a significant way."

Then in February of 2007, a three-judge panel of the U.S. Court of Appeals in the District of Columbia held that the National Labor Relations Board should have jurisdiction over tribal casinos because workers at the gambling facilities are not necessarily members of a tribe.

This June, the full appeals court denied the tribe's request to hear their case. This is a huge win for employee rights and sets a major legal precedent. This high-profile sovereignty case may now be headed to the U.S. Supreme Court for final resolution. If no action is taken, tribes will have to comply with requirements of the National Labor Relations Act. "You're soon going to have labor unions knocking on your door," said National Congress of American Indians general counsel, John Dossett, in response to the ruling.

GRAND JURY ISSUES KEY INDICTMENT

On June 14, 2007, a federal grand jury issued a 58-count money-laundering indictment seeking \$84 million from two Spokane wholesalers accused of supplying untaxed cigarettes to Coeur d'Alene tribal businesses who, in turn, smuggled those tobacco products back into Washington State.

The indictment states that the Spokane wholesale companies sold approximately four million cartons of untaxed

cigarettes to Coeur d'Alene smoke shops, who then shipped the cigarettes to retail outlets across Washington. This new indictment is the latest development in a federal and state investigation which started in 2003 with a series of raids on smoke shops on the Coeur d'Alene Indian Reservation.

The raids led to guilty pleas from eight defendants involved in the conspiracy to smuggle millions of dollars of untaxed cigarettes from tribal smoke shops on the Coeur d'Alene reservation to twelve locations on Washington State Indian reservations ~ where they were sold without tax stamps to non-Indians at lower-than-retail pricing.

“This is a significant case – that’s obvious by the amount of money involved,” U.S. Attorney Jim McDevitt said after the grand jury indictment was handed down. The conspiracy cost the state of Washington an estimated \$23 million in lost taxes between 1999 and 2003. State taxpayers were big losers in this scandal.

The indictment accuses defendants of three conspiracy counts; twelve counts of trafficking in contraband cigarettes; twelve counts of record-keeping violations; twenty-seven counts of money laundering, and four counts of counterfeit goods trafficking.

The indictment seeks a \$78 million from the L.A. Nelson Company (doing business as Burke’s Distributing) as well as forfeiture of the company’s warehouse. Burke’s Distributing has been in business as a wholesale cigarette distributor in Spokane for over forty years.

The indictment also seeks forfeiture of \$384,240 obtained from the sale of almost twelve million contraband cigarettes seized by federal and state agents in May 2003 in Plummer, Idaho, \$399,000 in U.S. currency seized from a bank account, plus another \$500,000 seized by agents in Plummer.

Thank goodness the law is finally being enforced!

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION

In this key ruling from December of 2006 by the California Supreme Court, it was held that Indian tribes can be sued in state court for violating state election campaign reporting laws. (Fair Political Practices Commission v. Santa Rosa Indian Community C044555 (Super. Ct. No. 02AS04544) - - FPPC also sued the Agua Caliente tribe).

The court found that the state’s interest in holding clean

elections “trumps” tribal sovereign immunity from suit. Justices determined that providing an exemption to Indian tribes from lawsuits that seek to enforce contribution rules would have “the effect of substantially weakening” applicable laws that “apply equally to all parties” who enter the electoral process.

Two tribes were sued for failing to disclose millions of dollars in contributions made to California candidates and campaign committees between 1998 and 2002, in spite of strict donation limits imposed under state law. The court said: “Allowing tribal members to participate in our state electoral process while leaving the state powerless to effectively guard against political corruption puts the state in an untenable and indefensible position without recourse.” They noted that casino tribes spent over \$200 million in the state’s political arena over the past decade ~ on lobbying, candidates, and ballot measures ~ including \$70 million on their failed effort in 2004 to expand their gambling monopoly.

The tribes can appeal this decision to the U.S. Supreme Court and run the risk of having that Court take up the issue of inherent tribal sovereignty in a detailed way, or they can just accept the California decision and be subject to the state’s campaign finance laws.

This California Supreme Court decision is extremely important because it could have wide-ranging impact upon tribal sovereignty itself. Numerous legal observers see this ruling as a key development in chipping away at the concept of sovereignty.

If the tribes appeal, there should be a number of amicus (“Friend of the Court”) briefs submitted and we believe that will be the time for major arguments from One Nation United to be made. We must prepare for this.

That’s why we ask that you please not forget ONU and the valuable work we do to represent you. We rely 100% upon the generosity of supporters like you and must ask again for your financial support. Please send ONU a check for \$35, \$50, \$75, \$100, \$200, or even \$5000. today!

BASIS FOR SUITS AGAINST TRIBES

Unfortunately, there are no simple answers to winning lawsuits over FIP and fee-to-trust. Over the years, we’ve heard many so-called “slam-dunk” legal theories touted to potentially resolve the terrible problems that so many individuals and communities have with local Indian tribes and their special rights. Most of these theories are based on an erroneous interpretation of the U.S. Constitution and totally

ignore over 200 years of settled case law.

The fact is that NO broad constitutional “one size fits all” theories have ever prevailed and changed how our federal government empowers tribes. These broad constitutional arguments have simply not worked.

Yet there is no doubt that the divisive results of failed federal Indian policies will ultimately force fundamental challenges ~ both in the courts and in Congress ~ to the existing precepts of Indian law.

“Self-regulation” when so many billions of dollars in cash is involved isn’t a good idea ~ whether the business is banking or tribal gambling ~ and recent disclosure of money laundering and tribal corruption are just the beginning. It will take time, but this whole unregulated industry and its relationship to local communities and innocent tribal members is evolving and will produce some exciting opportunities for comprehensive reform.

On the legal front, basing lawsuits on constitutional issues like “equal protection” have never gained results, but one area that may open up through cases with the right facts, is the concept of “inherent tribal sovereignty,” which only came into existence in the mid-1900s ~ largely crafted by a member of the Interior Solicitor’s office (Felix Cohen) and bolstered by like-minded judges and court cases that allowed them to develop this outrageous theory.

From the beginning, the theory was seized upon by tribal representatives who now treat it not just as a legal theory but as one of the original concepts describing the legal status of tribes vis-a-vis the states. This concept goes well beyond the limited quasi-sovereignty that most people understand, under which tribes are fully subject to the plenary powers of Congress.

We believe that, over time, factual situations will arise in which this entire theory can be tested in federal court. Several are discussed in the legal cases cited above. The Agua Caliente and Santa Rosa decisions by the California Supreme Court are on point, since they uphold the State’s ability to regulate tribal political contributions. This has put these two tribes in a very tough spot.

Tribal lawyers are fearful that, if they do appeal, the current U.S. Supreme Court will seize on the opportunity to eliminate tribal sovereign immunity altogether.

Why? Because in 1998, a unanimous Supreme Court held in the famous *Kiowa Tribe of Oklahoma v. Manufacturing Technologies* case (see Page 5) that this court-created doctrine should be eliminated for Indian tribes doing business inside the borders of the United States. Clearly, the courts have become

less willing to allow tribes to use sovereign immunity as a shield against lawsuits by wronged parties. (In fact, courts are increasingly coming to see that tribes too often use sovereign immunity as a pro-active “sword” against others, rather than as a “shield” to protect themselves, as it was intended to be used.)

ADVISORY BOARD MEMBERS

ONU is proud to have community leaders from across the country serve as advisors. Here’s a brief introduction to two of our advisory board members.

Ron Briggs serves on the El Dorado County, California, Board of Supervisors representing District 4, in the Sierra Nevada foothills.



Ron Briggs

District 4 is home to 30,000 residents living a “rural convenient” lifestyle which is rich in history, agriculture, forests, rivers, and wilderness ~ all within half an hour’s drive of community centers. Ron married Kelly in 1976 and, in 1996, they began living as farmers. Today under the “Z & B Ranch”

brand they are El Dorado County’s largest producer of USDA certified organic fruits and vegetables. Ron is a commercial and residential property owner who was elected in large part due to his firm belief in keeping District 4 rural and casino free.



Elizabeth Campbell

Elizabeth Campbell is a graduate of the University of Washington, with BAs in Laws, Societies, and Justice/Sociology, as well as History, with a minor in American Indian Studies. She will be attending graduate school this Fall at the UW’s Evans School of Public Affairs.

Elizabeth is strong in academics, public policy, and community environments. She is from

a family engaged for generations in the politics of Washington State. Her paternal great, great grandfather ~ John Rogers ~ was the third Governor of the State of Washington. She quietly emanates a passion for “good government”, her particular strength being her tenacious research and writing skills.

“We are now in a situation where the laws intended to give Indians a break are doing unfair and unjust harm to communities all over the country.”

—David Crosby, singer/songwriter of The Byrds and Crosby, Stills, Nash and Young fame in testimony before the Senate Indian Affairs Committee (David lives in California near the Chumash Casino)

MEDIA OUTREACH IS CRITICAL FOR SUCCESS

ONU has long believed that media outreach is a key part of our public educational efforts. We receive calls and emails every week from press outlets, staff to elected officials, and leaders of other organizations nationwide asking us to weigh-in on these vital issues. We work very hard to ensure that key decision makers hear “our side” of the story - - articulated in the most persuasive way possible.

In 2006-2007, we are pleased that media coverage of our issues and organization in print publications, on radio talk show interviews, and television was consistent at many state and national outlets. Our spokespersons voiced ONU’s views on such major news outlets as CNN, MSNBC, Fox News, ABC, NBC, CBS, Associated Press, Los Angeles Times, Wall Street Journal, Investor’s Business Daily, New York Times, Washington Post, Bloomberg News, The Kansas City Star, Seattle Times, and Business Week Magazine. We issue press releases and follow up with interviews and editorial board meetings whenever possible.

Our biggest success goes beyond major media, however, because ONU uses email messaging, websites, and direct mail to carry ONU’s concerns to the millions of citizens who need to be educated

Due to such pro-active effort, our National Director was recently interviewed for a Finnish daily newspaper article and for a Danish TV documentary, which will air in prime time across all of Europe later this year.

THE AKAKA BILL

One Nation United is working with The Heritage Foundation, The Center for Equal Opportunity, Americans for Tax Reform, and other concerned organizations on a national campaign to raise public awareness about the egregious Akaka bill (S.310/H.R.505), now ready for a vote in both the House and Senate.

The Akaka bill would create a race-based “tribal” government in Hawaii. Twenty percent of Hawaii’s population, along with 400,000 other citizens nationwide, would belong to our Nation’s newest and largest Indian ‘tribe.’ Never before in American history has Congress carved up a state along racial lines to create a government to benefit just one “elite” group of people. This unconstitutional legislation would put the Bill of Rights of every U.S. citizen on the table as bargaining chips.

If the Akaka bill becomes law, it would be the first step in the breakup of the United States. The premise is that Hawaii needs two governments: One in which everyone can vote, that would become smaller and weaker; The other in which only Native Hawaiians could vote, growing ever more powerful since transfers of lands and waters, governmental authority, as well as civil and criminal jurisdiction are unlimited in scope under the terms of this anti-American measure.

Remember that there are living descendants of indigenous people now residing in every state. They will surely take notice and demand their own self-governing “tribal” governments, too. ONU members and supporters are urged to contact your U.S. congressional representatives and senators, asking them to vote “NO” on S.310/H.R.505. Write also to President Bush, thanking him for strongly opposing this bill last June and urging him to please veto it if it passes Congress.

**“No man in the wrong can stand up
against a man in the right
that keeps on a comin”
-Captain McDonald, Texas Rangers**

Also be sure to view a brief video by the Heritage Foundation explaining what passage of the “Native Hawaiian Reorganization Act of 2007” would mean to America’s future: <http://www.youtube.com/watch>

ABUSING HAWAIIAN HISTORY

By Erica Little and Todd Gaziano of The Heritage Foundation (*abridged from Web Memo #1117 originally written in 2006*)

The Senate is again considering the creation of a race-based government in Hawaii through passage of the misnamed “Native Hawaiian Government Reorganization Act of 2007” (S.310/H.R.505). The bill is a terrible idea for many reasons, not the least of which is that it is flatly unconstitutional. In addition to ignoring its grave constitutional defects, the bill’s proponents engage in a serious abuse of history to justify government-backed racial discrimination. Hawaiian history, in fact, rejects the idea of race-based rule. In 1959, Hawaiians voted overwhelmingly to approve statehood without “native” Hawaiian enclaves, showing by their numbers and their actions that they were all American citizens, the same as any other. In other words, regardless of what really happened in the 18th and 19th centuries, the people of Hawaii knew their history in 1959 and they did not want separatist enclaves in their future state. Thus, the creation of a sovereign, race-based government would contravene this political understanding.

Since the arrival of the first Christian missionaries (many of them from New England) in the 1820s, the racially diverse Kingdom of Hawaii had a strong relationship with the United States. An American was appointed as Attorney General for the Kingdom in 1844, and King Kamehameha III’s request for American annexation in the mid-1800s predates the eventual American annexation in 1898 by a half-century. Congress conferred U.S. citizenship on all Hawaiians in 1900, and after the unifying struggles during World War II, it was natural that Hawaiians and the U.S. Congress in the 1950s would consider making Hawaii the 50th state in the Union.

During the statehood debate, concerns were raised that a state with such a large minority population might not sufficiently share the American political culture and adopt the American way of life. In response, Hawaiians and their advocates trumpeted the high rate of racial integration within the state, including high rates of intermarriage. Moreover, proponents of statehood went to great lengths to describe the integration of races within Hawaii and to assure Congress

that Hawaiian culture most assuredly embraced the ideals of American citizenship.

Racial integration and the universality of American ideals in Hawaii carried additional weight at the time because Alaska was also being considered for statehood. Inuit and Eskimo enclaves still existed within Alaska, and many of these groups lived in villages that were isolated from other Americans, followed ancient ways of life, and governed themselves in tribal-like structures. As a result, the Enabling Act for the State of Alaska preserved some of these traditional lands similarly to American Indian reservations. For example, these Inuit lands would be exempt from taxation, and other state and federal laws allowed the Inuit to continue traditional hunting and fishing practices that were denied to others.

When asked whether descendants of aboriginal Hawaiians predominantly lived apart from other Hawaiians, advocates for statehood in the U.S. Senate repeatedly emphasized that Hawaii was a model of integration and assimilation for the rest of America. Senator Jon Kyl’s paper for the Republican Policy Committee, which debunks many of the bill’s historical fictions, includes a sample of those statements:

“Hawaii is America in a microcosm – a melting pot of many racial and national origins, from which has been produced a common nationality, a common patriotism, a common faith in freedom and the institutions of America.” – Senator Herbert Lehman (D-NY), Congressional Record, April 1, 1954, at 4325.

“Hawaii is living proof that people of all races, cultures and creeds can live together in harmony and well-being, and that democracy as advocated by the United States has in fact afforded a solution to some of the problems constantly plaguing the world.” – Testimony of John A. Burns, Delegate to Congress from the Territory of Hawaii, before the Senate Committee on the Interior and Insular Affairs, April 1, 1957.

Hawaii’s statehood referendum passed with an incredible 94.3 percent of the vote. About 95 percent of the Hawaiians who voted specifically agreed to all the terms of the admission act. Fewer than 8,000 Hawaiians voted no on either question. Because approximately 20 percent of the population in 1959 would have qualified as “native” under the definition in S.310, then at least three-fifths of that group must also have voted for statehood with no separate rights for individuals of their ancestry. Though a small minority opposed statehood, at no point in the statehood debate did anyone in Congress suggest that the U.S. should treat so-called “native Hawaiians” like an

Indian tribe. As the above statements demonstrate, Hawaiians' sentiment was, in fact, quite the opposite.

The people of Hawaii had the opportunity to raise an issue regarding separate rights for native Hawaiians. Not only did they fail to do so; they went to great lengths to convey that Hawaii did not and would not divide its people by race. That was the understanding of those in Congress and Hawaii who voted to bring Hawaii into these United States. Despite the distorted history of the S.310's supporters, many Hawaiians with aboriginal ancestry still share that understanding today. They understand that S.310 will change their state from a "microcosm of America" to an environment that pits race against race.

VIRGINIA MEMBERS BRIEF SENATORS ON TRIBAL ISSUES

A delegation of Virginia small business owners who belong to ONU recently met with Senator John Warner (R-VA) and Senator Jim Webb's (D-VA) Chief of Staff, Paul Regan, to discuss pending legislation to recognize six new Virginia Indian tribes. Both were attentive to the concerns of gas station/convenience store marketers regarding tax evasion on motor fuels and tobacco products by tribal businesses nationwide. This legislation passed the House in May and is currently pending in the Senate Committee on Indian Affairs. Participants tell us the meetings were productive. Please contact your two U.S. senators and urge them to vote "No" on S.480.

IMPORTANT FISHING NEWS

On June 13, 2007, a Federal District Court Judge in Spokane, Washington, issued a decision that overturned a federal policy to count naturally spawning hatchery salmon along with wild fish when making "listing" decisions regarding Endangered Species Act protection. This ruling directly contradicts a decision on the same topic handed down six years ago by a Judge in Eugene, Oregon, in which that Federal Judge said the National Marine Fisheries Service should indeed count genetically identical (or, in some cases, very similar genetically) hatchery fish along with their wild relatives. This means the entire subject is now headed to the 9th Circuit Court for resolution of these two conflicting opinions.

WHY INDIAN EXPANSION BEYOND GAMING IS TRIGGERING A BACKLASH ON MAIN STREET

Business Week, March 2007

Twenty-three billion dollars. That's what Indian casinos rake in each year, according to the National Indian Gaming Commission. That's more than the gambling revenues of Nevada and New Jersey combined. And it's the kind of money that buys a lot of commercial and political clout. "We're creating such opportunity," says Ray Halbritter, chief executive of the Oneida Indian Nation of New York, whose Turning Stone Resort & Casino near Syracuse generates some \$100 million in gross annual profit.

Tribes with gambling operations are expanding fast, and they're moving into an astounding variety of businesses. To name a few: banks, shopping malls, a women's basketball team, a mutual fund, and big brand-name companies like the Hard Rock International Inc. chain of cafés, hotels, and casinos.

Wall Street is all over this. The likes of Wells Fargo (WFC), CIBC World Markets (CM), and Bank of America (BAC) are all raising debt for the tribes. In February the chiefs and their financiers, lawyers, and political consultants met at the Venetian Resort Hotel Casino in Las Vegas for the semi-annual National Native American Finance Conference. There they talked shop and discussed various controversies bubbling up as the tribes move beyond gaming.

Indian commercial expansion is stirring up some ill will on Main Street. Because tribes are considered sovereign nations, they can operate businesses on their land without adhering to the same legal, tax, and regulatory rules as nontribal businesses next door. What's stirring much of the controversy is the tribes' practice of buying up land and asking the feds to put it "in trust," which effectively means extending tribal sovereignty over it. Not only does that take the land off local tax rolls, critics say, it gives the tribes an unfair advantage over mainstream business. In towns near reservations, there are increasing calls for Indians to operate on the same playing field as everyone else.

So far, the Indians are mostly competing with small businesses—gasoline sellers, B&Bs, convenience stores. But the Hard Rock deal reveals larger ambitions. And it may not be long before Indian sovereignty becomes a bigger issue for the restaurant, hospitality, and even manufacturing industries. Observes John W. Kindt, a professor of business administration at the University of Illinois who has testified against so-called reservation shopping before Congress: "All bets are off when businesses compete with tribes."

The tribes see in their newfound clout and wealth just desserts for historical wrongs. They are using their power to reclaim territory they believe is rightfully theirs. And they aren't shy about lobbying Washington to protect billions in federal aid and the right to operate in accordance with their own laws and regulations. Last year, according to the nonprofit Center for Responsive Politics, the tribes contributed \$7.4 million to national election campaigns. The tobacco industry gave half as much. Tribal Representative Max Osceola Jr. summed up the tribal zeitgeist in New York's Times Square in December when he announced the Seminoles' Hard Rock deal: "Our ancestors sold Manhattan for trinkets," he said. "We're going to buy Manhattan back, one burger at a time."

The Indians have been acquiring mainstream companies for a while. But nothing on the scale of Hard Rock. The Seminole Tribe of Florida, destitute as recently as the 1980s, paid \$965 million for the company's global operations. In early March, the Seminoles raised \$1.2 billion to complete the deal and restructure existing debt. Merrill Lynch & Co. (MER) raised the money, and Piper Jaffray & Co. (PJC) provided financial advice.

Over the next few years the tribe aims to open Hard Rock theme parks, casinos, and eateries from Myrtle Beach, S.C., to Macao. One possibility: expanding onto other tribes' land. "It's not only the largest deal an Indian tribe has done, it's one of the largest in the gaming industry," says Jeffrey Carey, a Merrill Lynch investment banker who worked on the deal. "It represents a change in the balance of power in Indian country."

The Hard Rock acquisition is notable not only for its size and ambition. It's also one of the few Indian companies that will operate as a taxpaying corporation. Yes, the Seminoles' seven Florida casinos generate the tax-free money that will help pay the interest on the debt. But the tribe can't very well claim sovereignty for Hard Rock properties when they're located in places like New Orleans' French Quarter, where Indians have no historic claim.

Most tribes, though, are happy to use sovereignty to further their business ambitions. Case in point: the Chickasaw Nation of Oklahoma. Along with foreign partners, it aims to play a role in the resurrection of the MG, the iconic British sports car. The tribe has tied up with China's Nanjing Automobile Group, which owns the MG brand. Last year the Chickasaws bought 25% of a 675-acre industrial park in Ardmore, Okla.—land that was once theirs. By fall, 2008, they hope to start building the MG TF coupé, with parts made in Nanjing and Birmingham, England.

The tribe has applied to the Bureau of Indian Affairs to put its land in trust. That way they won't have to pay property tax or inventory taxes on the parts flown in. Also, because

the Internal Revenue Service allows investors operating on Indian land to accelerate the depreciation of investments, the Chickasaws' partners will benefit, too. The state's economic officials are backing the tribe because the project is expected to create 500 jobs—mostly for non-Indians.

'WE JUST COULDN'T COMPETE'

But increasingly the tribes are at loggerheads with their home counties and states, which have been going to court to fight Indian attempts to take large tracts of land off local tax rolls. One of the legal epicenters is central New York. There the Oneidas have parlayed the proceeds from their Turning Stone casino into five golf courses, two marinas, over 700 hotel rooms, an RV park, an animation production company, a national weekly newspaper called Indian Country Today, and a string of gas stations.

In some cases, the Oneidas' expansion has helped drive traffic to nontribal businesses. In others, say locals, the tribe's actions have put rivals in jeopardy. Fastrac Markets, a chain of convenience stores, found itself unable to compete with Oneida gas stations selling cigarettes and gasoline tax-free. After sales dropped by half at some locations, it says, Fastrac decided to sell four stations to the tribe. "Nobody likes to raise the white flag," says Fastrac's vice-president for sales, John D. Lytwynec. "We just couldn't compete."

In recent years the Oneidas have bought up 17,000 acres within a 10-mile radius of the original reservation. They are opening hotels and convenience stores, and declining to pay taxes. The local authorities, fearful of losing much-needed revenue, have taken the tribe to court. In 2005 the U.S. Supreme Court ruled that the Oneidas had to pay property tax on land they had acquired in Sherrill, N.Y., a hamlet of some 3,000 people about five miles from the casino.

Now the tribe is asking the Bureau of Indian Affairs to put all the newly acquired land in trust. Oneida and Madison Counties oppose that. But the BIA's new chief, Carl Artman, an Oneida from Wisconsin who was named to the post on Mar. 6, has vowed to approve quickly some 2,000 land-in-trust applications. (A spokesperson says Artman will recuse himself from decisions involving Oneidas.)

Local businesses complain that Congress isn't doing enough to restrain the tribes' power. Dan Gilligan is president of the Petroleum Marketers Assn., which represents gas stations. He has tried for years to get Congress to pass a law forcing tribes to pay the same state gasoline taxes as other operators. "Congress didn't want to tackle any Native American issues," he says. "There are very few entities that raise more political money than Native Americans."

Oneida Chief Executive Halbritter says it's important to remember how much tribal businesses help local and regional economies. He adds that gripes about unfair competition are sour grapes from businesses that would have failed anyway. Halbritter also notes that local governments often extend tax breaks to lure new businesses that create jobs. "For all the years we lived in poverty, we had no complaints," he says, "until we got successful." Still, the tribes find themselves under increasing pressure to operate just like everyone else.

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One Nation United provided Mr. Palmeri with extensive background information and references to assist him in preparing this article.

A FINAL NOTE

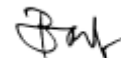
While discrimination against Indians is unfair and degrading, discrimination in favor of Indians is even more insidious and unfair. The goal should be for all U.S. citizens to have "equal rights under the law."

The good news is that our courts are finally starting to treat all citizens equally. And members of Congress are starting to wake up because the problems have become so widespread that enough people in enough states have begun contacting their elected representatives demanding change. (ONU now represents individuals, business organizations, and trade groups in all fifty states but receives no government funding) .

The final thing needed to ensure more success in the future is you. Your support in the past has enabled ONU to do a lot, as evidenced by public opinion, the media, and even court rulings now shifting against government-mandated racial preferences. Polling shows that most Americans believe everyone should be afforded the right to compete fairly in all aspects of life without receiving special benefits based upon their ethnic heritage.

But much more effort will be required. Please send your most generous possible donation today! Together we can fulfill our joint vision of an America in which each individual is judged only on his or her merits.

Kindest Regards,



P.S. We need your help now--not next week, but right NOW! Use the enclosed envelope now. We're turning things around and getting our elected representatives to see the many problems being created by our own government. But we can't continue without adequate dollars. That's why ONU needs your maximum donation today.



**National Director and Spokesperson,
Barb Lindsay**

NATIONAL BUSINESS LEADERS COMMENT ON ONE NATION UNITED

Lyle Beckwith, senior vice president of government relations for the National Association of Convenience Stores, said Lindsay has been instrumental in calling attention to questions about the fairness of policies toward tribal businesses.

"It's been very clear that her group has picked up increasing momentum in the past five years. This issue is coming to a head, in large part because of Barb's efforts," Beckwith said.

"We feel that because of tribal sovereignty tribes have been able to sell cigarettes and motor fuels without collecting state taxes," he said. "Barb's organization has been working toward the same goals."

Dan Gilligan, president of the Petroleum Marketers Association of America, said his group is also a member of One Nation United because of shared concerns.

"Barb is one of these high-energy, driven people who is passionate about her goals and objectives and makes things happen," he said.

(From the Los Angeles Daily News, by Staff Writer Eric Leach, "One Nation United says tribes should observe U.S. Laws, regulations". For the full article see www.OneNationUnited.org)

Learn More, Take Action: www.OneNationUnited.org