



# UPDATE

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## Hello ONU Members and Friends across America!

We've never before had such exciting news to report. We're rushing this newsletter to print so we can inform you about a number of extremely encouraging legal developments which, not surprisingly, have been totally ignored by the mainstream media. You won't read anything about these landmark court decisions in your local newspaper or hear of them on any national TV/radio news reports.

The U.S. Supreme Court recently issued several enormously significant, precedent-setting rulings. Decisions that may permanently change the entire direction of BOTH state and federal Indian policy for generations to come...

Our court system generally lags far behind the public-at-large in awareness of the hardships suffered by “real people” and small businesses in local communities due to unjust government policies. Yet you are well aware that ONU has been laboring hard for years now to help bring about these long overdue policy changes. And these rulings by the highest court in the land affirm that our tenacious efforts have truly borne fruit! We've clearly helped start a national debate on these issues.

Thanks again to ALL of you for your letters, phone calls, faxes, and emails sent to elected officials and to the media over the past two decades. And thank you, too, for your dedicated financial support of ONU so that we that could pursue our ongoing litigation research, lobbying, press outreach, and public educational efforts. The nation's Highest Court obviously heard our compelling message.

It's an indisputable fact that tribal sovereignty has seen consistent erosion for at least the last fifteen years. Examples of this trend in decision-making by the Supreme Court include: (1) *Strate v. A-1 Contractors* (1997) which held that tribal courts lack

jurisdiction over civil claims against non-Indian citizens/non-member Indians; (2) *Kiowa Tribe v. Manufacturing Techs* (1998) in which the Supreme Court strongly voiced its distaste for tribal sovereign immunity principles and encouraged Congress to take action to do away with or greatly modify the concept; and (3) *C&L Enterprises v. Citizen Band Potawatomi* (2001) holding that a tribe's sovereign immunity from suit can be waived even when the parties' agreement to arbitration for dispute resolution contains no express waiver of tribal immunity from suit.

Members of the Supreme Court have become increasingly aware of the outrageous constitutional abuses resulting from several very poorly reasoned rulings by the High Court in the 1830s. They've become much less willing to allow tribes to use sovereign immunity as a litigation “shield” because they've seen how tribes have instead been using it as a “sword”. They've also come to see how terrible congressional policy decisions in recent years are causing severe hardship to state and local governments, as well as to essential law enforcement efforts nationwide. (See Page 10 for information about the resolutions passed by the National Assn. of Counties in response to these problems)

The Justices have heard time and again the horror stories of how abuse of tribal government authority over non-Indians is badly hurting people. With the steadily increasing number of tribal cases coming before them in recent years, it was inevitable that they would come to see the urgent need for fundamental change. Our Supreme Court is apparently the one branch of government that the tribes couldn't “buy off” with their unrivaled political power and millions in tax-free casino profits.

Case law on Indian affairs has been guided for over one hundred and fifty years by several egregious decisions handed down in the 1830s under Chief Justice Marshall. Known as the Marshall Trilogy, the High Court  
*(over, please)*

declared Indians to be “dependent wards” subject to governance by “separate sovereign (tribal) governments” with which the U.S. government would have a fiduciary responsibility called a “federal trust relationship.”

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## HISTORIC VICTORIES SCORED

The bold decisions issued this year under Chief Justice Roberts likewise promise to set historic precedents that will help steer our nation on an entirely NEW course and away from the blatantly segregationist policies promulgated by the Marshall Court. These recent rulings set legal and political precedents affecting state and local governments as well as individual citizens, landowners, and small business owners across the nation who have suffered for decades under deeply flawed federal Indian policies put into place due to the failed Marshall precedents.

The *New York Times* recently called Roberts a “canny strategist” who is laying the groundwork for fundamental changes in many areas of the law, in line with his understanding of the Constitution’s original intent. They speculate that he appears to be prepared to “strike down or overhaul” a number of major legal precedents. Legal experts report that Roberts has demonstrated a willingness to go beyond the arguments presented by the parties in deciding a number of important cases.

Current Indian policies purposely trample state’s rights and give far too much weight to federal government authority. These new rulings help restore balance, at long last, between our states and the federal government when it comes to Indian policy. Such balance is required under core principles of America’s well-respected “federalism” policy.

Numerous provisions of the 10th and 11th Amendments to the U.S. Constitution protect state sovereignty, while tribal sovereignty is protected only implicitly. Thus, the federal government (at the tribes’ urging) has clearly been overreaching and stripping us of our constitutionally guaranteed civil rights.

Since 1934, the feds (operating under the banner of the U.S. Dept. of the Interior and the Bureau of Indian Affairs) have been systematically removing land from state jurisdiction for the benefit of Indian tribes and, thereby, eroding state sovereignty without state consent. No thought at all has been given to the negative impacts on local citizens, their retail businesses, or their communities’ tax base and quality of life.

The feds accomplished this unconstitutional feat by use of raw, unchecked political power, routinely moving “land-into-trust” without ANY meaningful regulatory process or adequate public notice and few (if any) public hearings - - until the last few, very recent years - - or even any action required by Congress or the courts.

The feds simply took whatever piece of land the tribes wanted to have. And they possessed the unbridled political power to easily accomplish this...

That’s why the significance of these recent rulings High Court cannot be emphasized enough. The “rule of law” is now ON OUR SIDE!

Here’s a brief overview of these key (often unanimous or next to unanimous) decisions, which tribal advocates are now referring to as “infamous” (as we often call the *Boldt* decision), “bad news,” and “very hostile” to Indian tribes:

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## RECENT LANDMARK RULINGS

On February 24, 2009, the Supreme Court ruled 8-1 in *Carcieri v. Salazar* that tribes who were not under federal jurisdiction by June 18 of 1934 cannot put land-into-trust. Justices held that the Department of Interior was acting beyond its authority when it began carving land out from within the borders of sovereign states and moving it into trust status (as they’ve been doing since 1934) unless the tribe who benefits from the land transfer existed on or before that date (when the “Indian Reorganization Act” (IRA) was passed by Congress).

This means that tribes who were NOT acknowledged until after 1934 who have pending or future plans to move land-into-trust will now have to PROVE they existed under “federal jurisdiction” PRIOR to that date. The ruling places a new litigation hurdle in front of hundreds of tribes across the country who wish to have land placed in trust.

Legal observers say this probably means a majority of the current 562 federally recognized tribes can no longer have ANY land placed into trust, whether for purposes of gambling or to open tribal businesses with which nearby non-Indian retailers can’t compete because of the tribes’ routine refusal to collect or remit state and local taxes.

Tribal lawyers have publicly stated that they believe the decision will also likely lead to “legal questions over the validity of tribal lands taken into trust for tribes” in the decades SINCE 1934. Legal experts believe *Carcieri* may even give state governments the authority to take back lands currently held in trust by ANY tribe not recognized by that 1934 date.

Connecticut communities such as Preston, Ledyard, and North Stonington, for example, who have lost large amounts of revenue because of land illegally removed from their tax rolls could demand recompense. Annexed lands should be returned to the tax rolls in each town, as well. And the federal government should certainly reimburse towns like these the hundreds of thousands of dollars they’ve spent on legal fees fighting the land-into-trust issue.

Members of Congress and tribal leaders are keenly aware of this ruling’s huge implications, viewing it as a frontal attack on Indian sovereignty. Congress has already begun holding hearings on proposed legislation to overturn it, as well as the BIA conducting three “consultation sessions” with tribal representatives.

Newly appointed Interior Secretary Ken Salazar recently informed tribal leaders that the Obama Administration is doing a

“top to bottom review” of tribal gambling policy, while urgently pursuing possible congressional action to “remedy” *Carcieri*. They’ve indicated that their plan is to overturn the ruling by amending IRA.

Yet our legal advisors believe, based on the High Court’s sound reasoning, that a congressional “fix” is probably impossible. And just because both houses of Congress are controlled by Democrats doesn’t mean a “fix” will pass easily because a large number of members (including Democrats) live in districts experiencing serious tribal casino conflicts.

## LAND-INTO-TRUST REFORM

We are asking you to please join us in insisting that when Congress addresses this issue for post-1934 tribes, it simultaneously addresses the interests of local communities -- by changing the trust land acquisition process to ensure fairness and objectivity in the BIA’s trust land decisions.

Under 25 C.F.R. Part 151, the BIA allows only perfunctory review and comment by third parties, even though they may experience major negative impacts from federal trust land decisions. The BIA only accepts comments from the affected state and the local governments, and then only on the questions of lost tax revenue and zoning conflicts.

As a result, under current practice, trust acquisition requests are reviewed under a one-sided and incomplete record that does not provide an adequate representation of the long-term consequences of the BIA’s decision.

We must secure the help of our respective Congressional delegations to ensure that Congress addresses both sides of this issue: the absence of federal authority to acquire trust lands that affects post-1934 tribes, and the lack of meaningful standards and a fair process for states, local governments, local businesses, and non-tribal communities. If Congress opens the trust land issue, reform that is in the interest of ALL affected parties is essential.

Can we count on your help? This is an opportunity we may never have again. We urge you to please:

- 1) Notify appropriate allies in your state, county and local governments of this opportunity to even up the trust land acquisition playing field. Ask them to contact:
  - Members of your State’s Congressional Delegation
  - Members of Congressional committees of jurisdiction (U.S. Senate Indian Affairs Committee and House Natural Resources Committee)
- 2) Contact members of your Congressional delegation on behalf of your organization or yourself personally. Inform them that both sides of this issue must be addressed to achieve true reform of the trust land acquisition process.
- 3) Also make a personal appeal when your Congressional representatives visit your district, or when you visit Washington, D.C.

In response to *Carcieri*, Rhode Island Attorney General Patrick Lynch said: “Thanks to the crystal clarity of this decision, there can be no confusion that Rhode Island has the power and ability to protect our citizens’ rights, health, safety and welfare everywhere in our state.”

Numerous elected officials obviously share Lynch’s view that the decision is a victory for state’s rights and are eager to protect it. Tax revenue, water rights, and land use authority are all at stake. Local and state governments are gearing up for a fight, both on legal grounds and by lobbying members of Congress to support the Supreme Court’s ruling based on city, county, and state economic arguments.

Seventeen state attorneys general (seeking state law enforcement authority over Indian lands as well as collection of much needed property tax revenue) recently signed a joint letter to the Senate Committee on Indian Affairs and the House Resources Committee urging members to move slowly, if at all, on any *Carcieri* “fix.” They asked to be included in all future discussions concerning the Interior Secretary’s ability to move land-into-trust.

The AGs claim that numerous state and local interests firmly believe *Carcieri* should stand. “Taking land-into-trust deprives local units of government and the state of the ability to tax the land and calls into question the power of state and local government to enforce civil and criminal laws on the land,” wrote the attorneys general from states across America. AGs urged members of Congress to take a much broader view of the complex policy issues involved when they approve any land-into-trust conversion by congressional action -- whether or not it’s done for the purpose of siting a tribal casino -- since many competing interests are involved.

Lawrence Long, chairman of the Conference of Western Attorneys General (who is also Attorney General of South Dakota) recently testified before the Senate Indian Affairs Committee stating that “each BIA acquisition obtained on behalf of tribes has two immediate consequences -- reducing local tax revenues and stopping local governments from enforcing zoning rules.”

We’ll have to wait and see how this all plays out in upcoming months. But, in the meantime, we must continue ONU’s ongoing legal research, lobbying, media outreach, and public education. Our collaborative, grass roots efforts are working!

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## MORE BAD NEWS FOR TRIBES

Next came an even more significant 9-0 decision entitled *Hawaii v. Office of Hawaiian Affairs*, (129 S.Ct. 1436, 1440) issued on March 31, 2009. The State of Hawaii’s appeal on this case was joined by twenty nine other states as well as the U.S. Solicitor General’s Office, who **ALL** argued in favor of state’s rights. It’s also significant that the Obama Administration continued to support the State of Hawaii’s position, the same stand the Bush Administration had taken on this controversial case.

The basic constitutional question before the court was:

Does a federal government “Apology Resolution to Native Hawaiians” place any obligation upon the State government to transfer up to 2.1 million acres (UP TO HALF THE ISLAND’S TOTAL LAND BASE) to native citizens? The Court unanimously answered “NO” to this extremely divisive question.

Judge Alito, writing for the court, declared: “It would raise grave constitutional concerns” if Congress should seek to “cloud Hawaii’s title to its sovereign lands” after it joined the Union. “We have emphasized that Congress cannot, after statehood, reserve or convey lands that have already been bestowed upon a state.”

The court held that no federal law can trump a state’s sovereign authority over lands granted to that state in its founding documents. No obligation to Native Hawaiians exists because Hawaii - - like every other state across America - - was granted FULL ownership of ALL lands within its borders at the time of statehood. The decision also raises a distinct possibility that the Supreme Court might next consider whether all the existing “Hawaiians-only” programs (with their generous federal and taxpayer funding) should exist at all?

Our legal counsel believe this ruling will make it extremely difficult (maybe even impossible?) for the feds to create ANY MORE “NEW” Indian reservations.

Furthermore, said the High Court, the disclaimer in a congressional apology resolution prohibiting native land claims against one sovereign entity (our federal government here) does NOT create ANY obligation whatsoever on the part of a co-sovereign (the state government, in this case).

***“Importantly, the Court also noted that it would ‘raise grave constitutional concerns’ if any act of Congress purported to cloud Hawaii’s title to sovereign lands so long after its admission to the Union. This last point is perhaps most important to the ongoing debate over the ‘Akaka Bill,’ which would create a race-based entity to extract political and economic concessions from the state and federal governments on behalf of ill-defined ‘native Hawaiians.’ It is delicious irony that Hawaii’s Attorney General, Mark Bennett, an Akaka Bill supporter, secured this victory. Just as Hawaii is now allowed to develop state lands for the benefit of all its citizens, hopefully Congress will in future refrain from inflaming racial divisions and instead treat all Hawaiians, regardless of race, with the legal equality to which they are entitled.”***

**-- The Hawaii Reporter, March 31, 2009**

Although this case was remanded to Hawaii’s Supreme Court “for further proceedings not inconsistent with” the High Court’s findings, lawyers who are closely watching the case tell us it’s unlikely the State Supreme Court will issue any further rulings of significance.

This ruling was truly a “historic” win - - not only for the citizens of Hawaii - - but also for the millions of Americans OF ALL RACES living in the other 49 states across our great nation.

Finally, on April 6, 2009, the Supreme Court’s unanimous

decision in *Navajo Nation v. United States* came down. In this momentous ruling it was decided that the United States government does NOT have a federal “trust” relationship with the Navajos. It follows logically that the feds don’t have a “trust” relationship with any Indian tribe because the High Court held that it’s necessary to have a statute or regulation establishing such a “trust” relationship. There aren’t any.

Taken together, these three rulings undermine the BIA’s entire land-into-trust process. The highest court in the land struck a body blow to current federal Indian policy that promises to change the course of history. The tide has turned...

Despite much effort over the past several months, tribal lawyers still haven’t figured out a way for Congress to overturn these rulings. The good news is that legal counsel on our side say they don’t think any “fix” can be found! Outraged tribal leaders claim the rulings could cripple plans to build casinos by hundreds of tribes nationwide.

Good things have already started to happen as a result of these recent decisions. We’re hopeful the eventual result will be that from now on ANY land purchased by Indian tribes will be held in “fee” just like ALL property owned by non-Indian citizens. This means that tribes would pay property taxes on such lands and their properties would be subject to all state and local laws.

ONU is lobbying for this result. Please immediately contact your U.S. Senators and congressional representative urging them to pass legislation requiring this for ALL future land purchases by tribes. (See U.S. Senate phone numbers on pages 14 & 15)

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## COURT RULINGS’ REPERCUSSIONS

In Washington State, the *Carcieri* decision has blown a huge hole in the Cowlitz Tribe’s efforts to open a casino complex near La Center, WA. The Cowlitz weren’t recognized until 2002. And, even if the feds approve the tribe’s land-into-trust application, these recent High Court rulings give casino opponents a tremendous new tool to use in their fight against the tribe’s proposed gambling operation.

In a Wisconsin tribal casino case, the Obama Administration’s Justice Dept. recently filed a legal brief arguing that the St. Croix Band of Chippewa Indians cannot challenge new off-reservation gambling policies previously handed down by the Bush Administration. DOJ’s brief calls for immediate dismissal of the tribe’s lawsuit. Tribal attorneys are bitterly disappointed that the new administration offered exactly the same arguments made by the Bush Administration.

In California, a land-into-trust application pending for the Santa Ynez Band of Chumash Indians may be doomed because the band wasn’t listed as a federally recognized tribal government until 1979. The Chumash will now have to prove they were federally recognized prior to 1934, even though the BIA didn’t receive a copy of the tribe’s official constitution until 1964.

The *Carcieri* ruling might likewise put an end to plans by the Ione Ban of Miwok Indians to open a casino in Plymouth, CA, since this tribe didn't gain federal recognition until 1994 - - sixty years past *Carcieri's* 1934 deadline!

The BIA has also agreed to put "on hold" its decision on a pending land-into-trust transfer for the Rohnert Park, CA, casino operation planned by Federated Indians of Graton Rancheria. The federal government recently decided to delay their decision on the land transfer until after the 9<sup>th</sup> Circuit Court rules on the appeal filed by a local citizens group called "Stop the Casino 101." Recent High Court rulings certainly played a part in their decision. Trial is set to begin October 9, 2009.

Indian law experts say that the *Carcieri* ruling also struck a fatal blow to plans by the Mashpee Wampanoag Tribe of Massachusetts (who weren't recognized until 2007) to move 539 acres into trust for a casino in Middleboro. Stay tuned...

federal government also didn't address how the environment will be protected without local, county, or state regulation. New York elected officials pointed out how trust land erodes the tax base of local governments and creates "islands of non-jurisdiction" where local zoning rules don't apply, thus undermining land use planning efforts and disrupting settled communities.

**"The secret transfer of federal land into trust - - without notice to local communities and while other trust acquisitions were delayed pending the outcome of litigation - - was and is completely unacceptable."**

--U.S. Representative Michael Arcuri (D-24)  
in a press release dated July 19, 2009

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## SUPREME COURT TURNS DOWN TRIBAL APPEAL

On June 8, 2009, the Supreme Court refused to hear an appeal filed by six Western tribes in the "Sacred" Peaks case (*Navajo Nation v. Forest Service*, 08-846). The tribes were seeking to block expansion of the Arizona Snowbowl Ski Resort near Flagstaff. As we reported in ONU's Winter 2009 Update, tribal lawyers argued that the proposed expansion (including artificial snowmaking activities) violates the federal Religious Freedom Restoration Act. The unanimous court held that the tribes will still have full use of the mountain for their religious ceremonies and that artificial snowmaking would not affect that use. A nice win!

The impact on neighboring non-tribal businesses was also ignored by the BIA. Local elected officials say they've seen first hand how retailers have struggled in the past, attempting in vain to compete against tribal operations which don't collect or remit any sales taxes on purchases made by their non-Indian customers.

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## EXCITING NEWS FROM OKLAHOMA

The BIA announced in July that they're delaying a decision on a land-into-trust application in Oklahoma submitted by the United Keetoowah Band of Cherokee Indians by citing the *Carcieri* decision and noting that the UKB wasn't organized as a tribe until 1950.

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## GOOD NEWS FROM NEW YORK

In New York, legal experts believe that *Carcieri* has enormous implications for trust land plans by every tribe in the state. For example, NY Senator Charles Schumer recently joined other elected officials in calling on the Interior Dept. to do a more detailed study of how the local economy would be affected if 130 acres of upstate land are moved into trust for the Cayuga Indian Nation. He criticized the BIA's preliminary assessment (which found there would be little or no impact) as being woefully inadequate:

"They're not dealing with reality," Schumer claimed. "To say there would be no effect defies the imagination." Schumer said the BIA didn't take into account the full economic toll of moving land-into-trust, making it exempt from state and local law and taxation. "You cannot, in a densely populated county, take various lands and say they're under a totally different jurisdiction, totally different laws."

Schumer noted that the BIA ignored a number of pending lawsuits over this land transfer question. He claims that the

The Oklahoma Supreme Court also ruled this July on three different cases involving the Cherokee and Choctaw Nation's casinos that OK district courts have jurisdiction over tort claims against tribal gambling operations. Justices held that the state district courts are courts of competent jurisdiction (*Cossey v. Cherokee Nation Enterprises, LLC*, 2009 OK 6, *Griffith v. Choctaw Casino of Pocola, OK*, 2009 OK 51, and *Dye v. Choctaw Casino of Pocola, OK*, 2009 OK 52). The tribes asserted tribal sovereign immunity in all three cases and lost.

And on March 17, 2009, the U.S. Court of Appeals ruled against the Cheyenne-Arapaho Tribes in a lawsuit involving 7,000 acres in western Oklahoma. The appeals court upheld a district court ruling that dismissed the tribes' request for title to Fort Reno land. Five major victories scored in OK alone...Cheers!

In light of the *Carcieri* ruling, Tulsa City Councilor Bill Christiansen is now organizing a fight against the land-into-trust application made by the Muscogee (Creek) Nation. He stated: "I do not believe any of these area tribes had standing before 1934. That could have big ramifications." (NOTE: The Muscogee Nation, like a number of OK tribes, wasn't federally recognized until 1936 under terms of the Oklahoma Indian Act.)

Christiansen has drafted a resolution opposing efforts by the Nation to move two parcels of land-into-trust. He says the resolution is needed because the city would suffer the loss of even more property and sales tax income if the BIA approves additional land-into-trust transfers for the tribe. He noted that the city has already lost a large amount of tax revenue due to the tribe's non-taxable existence, while the city must still provide public services for the benefit of tribal members.

**“To be able to go into a city like Tulsa and to pick and choose what they (tribes) want to take, what’s to stop them from taking our biggest commercial sales tax generator, Woodland Hills Mall?” Christiansen asked. “And saying, ‘Oh we want to make this sovereign land’ - - there goes all of our sales tax revenue. Where does it stop?”**

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## WASHINGTON CULVERT CASE MAY GO TO TRIAL

The federal lawsuit filed in 2001 by nineteen Washington Indian tribes over how quickly the state should fix or replace approximately 1,800 highway culverts partially blocking fish runs has not been settled, despite years of negotiations. It may soon be headed to court. This litigation is a subproceeding of the infamous Boldt decision of 1974 (*U.S. v. Washington*) granting tribes the right to take half the harvestable salmon and steelhead in Washington waters. Tribes argue in the so-called “Culvert” case that the state has an obligation to preserve the region’s natural resources, particularly spawning steelhead and salmon.

Federal Judge Ricardo Martinez ruled in 2007 that the state has a duty under the treaties to “refrain from building or operating

If you live in Washington State, please let Attorney General Rob McKenna know that you strongly support the position he has taken on the “Culvert” case (*U.S. v. WA*). Thank him for his wisdom and courage in holding the line against any further financial concessions to the tribes. Be sure to tell Rob that you harbor NO ILL WILL TOWARD INDIANS, but firmly believe they are overreaching in their demand for more taxpayer money, especially in these tough economic times. Send your letter or postcard (keep your message short and be certain to check your spelling) to: The Honorable Rob McKenna, Attorney General of the State of Washington, P.O. Box 40100, Olympia, WA 98504-0100, or fax your message to: (360) 664-0228, or send an email to Rob using the “Contact Form” found on the AG’s website at: [www.atg.wa.gov](http://www.atg.wa.gov) Thank you for taking just a few minutes to act on this! It’s extremely important that the Attorney General receive your message prior to the Oct. 13<sup>th</sup> court date in Seattle when this pivotal case will be discussed in front of Judge Martinez. It is always best to use letterhead paper showing your home or business address and phone number(s). Community group, homeowner association, or local government letterhead is even better!

culverts under state-maintained roads that hinder fish passage and thereby diminish the number of fish that would otherwise be available for tribal harvest.” The question now before the court is how fast must the state act, in light of current budget constraints, to replace or repair culverts crossing three thousand miles of river and stream habitat? The two sides plan to meet in court on October 13 to discuss whether the case should go to trial.

Washington State argues that it’s already doing enough to protect regional fish runs. The state’s position is that tribes are simply NOT entitled to any more financial compensation than they’re already receiving thanks to a myriad of state and local government (as well as volunteer) natural resource enhancement programs. “The court doesn’t need to order us to do anything more,” said State Attorney Fronda Woods in a recent press release. Everyone knows this lawsuit is just another attempt to extract multiple millions of dollars from the taxpayers, we’re glad to see that state government officials are finally telling the tribes “enough is enough.”

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## PROBLEMS ARISE WITH SHELLFISH GROWERS’ SETTLEMENT

As many of you might remember about 75 Washington shellfish growers were able to negotiate what we all hoped would be a successful out-of-court settlement with the tribes regarding privately-owned commercial shellfish beds in the tidelands case (a subproceeding of *U.S. v. WA*). We’re extremely sad and disappointed to report that their settlement agreement (which was consummated approximately two years ago) appears to be unraveling.

ONU supported their efforts and, on behalf of the shellfish growers among our membership, helped lobby for the \$33 million dollar payment (\$22 million from the feds and \$11 million from the state) paid to the tribes under terms of the deal, in exchange for a guarantee from the tribes that commercial shellfish beds would NOT be subject to the 50/50 split ordered by Judge Rafeedie in his final decree.

The growers, after all, do have treaty language on their side, which clearly states that tribal harvest is off-limits on all shellfish beds which are “staked or cultivated.” Yet the tribes recently rejected nearly half of the 864 parcels of tideland beaches that commercial growers believe should be exempt from tribal harvest under terms of both the settlement and the treaty.

“People are angry,” says Dave Steele, who serves as treasurer for the growers involved in the case. “Some are saying that we just threw away our effort at cooperation. Now they (the tribes) have the money and I don’t think anyone can get it back... The fine detail they are requesting, I think, is way beyond what is necessary to prove that a farm is viable,” Steele added. “Some of these people can show they were in business for 50-60 years, but they were still denied.” The parties are, nonetheless, continuing with their negotiations over this issue. We pray that their settlement talks are successful so they won’t be forced to go back to court.

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## AKAKA BILL WOULD REWRITE HAWAII'S POLITICAL LANDSCAPE

ONU continues to lobby hard against the "Native Hawaiian Reorganization Act of 2009" (aka the "Akaka bill" S.1011 and H.R. 2314). This terrible legislation proposes to create a new race-based sovereign Native Hawaiian tribal government encompassing ethnic Hawaiians who live in all fifty states and numerous foreign countries - - For example, 65,000 live in California! Based on current demands for public lands, plus private lands belonging to ethnic Hawaiian institutions, this new race-based government could control more than half of all the land in Hawaii.

The proposed bill also puts the Islands' entire private sector in peril of tax-exempt competition from Native-owned businesses. And, if this bill becomes law, local government funding would likewise be negatively impacted because the new Native businesses will probably refuse to collect or remit state and local taxes.

*"The Commission recommends against passage of the Native Hawaiian Government Reorganization Act...(Currently pending in Congress as S.1011 and H.R.2314)...or any other legislation that would discriminate on the basis of race or national origin and further subdivide the American people into discrete subgroups accorded varying degrees of privilege."*

**--Opinion of the U.S. Commission on Civil Rights regarding Akaka Bill**

Peter Kirsanow, a member of the U.S. Commission on Civil Rights, says this of the Akaka Bill: "The bill is the triumph of the politics of racial identity and ethnic pleading over the American creed. It's the logical conclusion to multiculturalism run amok - - the balkanization of America. And it sets a very troubling precedent for further ethnic separatism."

Please take a few minutes right now to contact your congressional reps, urging them to vote "NO" on this outrageous bill. Send letters or postcards or fax their D.C. offices. Then follow-up with personal phone calls. A list of phone numbers for the entire U.S. Senate can be found on Page \_\_\_ of this newsletter. Simply locate your state (states are listed in alphabetical order) and you'll find both of your U.S. Senators and their D.C. phone numbers, for your convenience in calling them as soon as possible, please.

This newsletter is now posted on ONU's website at: [www.OneNationUnited.org](http://www.OneNationUnited.org) Please feel free to download and forward it to your entire email list, asking each of them to write and phone their own congressional reps regarding the Akaka Bill, as well as the other important issues discussed in our Fall 2009 Update, which are of deep concern not only to the members of ONU, but also to the large membership of many other well-respected organizations across America.

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## NONTRIBAL CITIZENS LEFT IN LIMBO BY TULALIP TRIBE

Nontribal homeowners whose homes are built on leased land within the borders of the Tulalip Reservation in Washington State still don't know what the tribe intends to do about renewing their leases. Many of their land leases are set to expire in 2012. Some lease holders have received letters from the Tulalip Planning Commission informing them that they can choose to extend their leases one final time until 2027. But nontribal homeowners are deeply concerned about what will happen to their properties beyond that date. Some homeowners on the reservation own deeded land, the future of which is also in question. Both property owners and leaseholders are deeply concerned about the tribe's reluctance to explain their land use plans for the years ahead. They fear that they'll be forced out of their homes.

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## WISCONSIN TRIBES SET WATER QUALITY STANDARDS

EPA officials recently decided to let three Wisconsin tribes set their own water quality standards. The Bad River Band of Lake Superior Chippewa will set water quality standards for state discharge permits issued to on-reservation facilities (including sewage plants owned by non-Indian governments as well as non-tribal businesses). The State agreed to follow the tribe's standards when it issues permits for ALL facilities upstream of the reservation.

Two other Wisconsin tribes, the Sokaogon Chippewa and the Lac Du Flambeau, already set their own water quality standards. Standards set by the tribes are subject to EPA approval. This is a very bad decision. We will keep an eye on this situation as it develops in the months ahead.

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## EPA WON'T CONSULT TRIBES ON GREENHOUSE GASES

Some good news is that, according to a public notice released on April 24, 2009, the EPA will NOT be consulting with Indian Tribes when they begin regulating greenhouse gases. A notice was posted in the Federal Register at 40 CFR, Chapter 1, Part III, entitled "Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." Regarding this newly proposed rule, the EPA states: "This action does not have tribal implications, as specified under Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this action." Very encouraging news!

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## FEDS VOW TO GIVE PRIOR NOTICE

More good news for us happened this February when the Obama Administration pledged NOT to take any more military “surplus land” into trust for Indian tribes without prior notice or a public comment process. The General Services Administration (GSA) stated in a court filing that, in the future, they will notify a judge, as well as state and local elected officials, at least 60 days in advance of transferring any land-into-trust.

The State of New York, along with Madison and Oneida Counties, went to court after learning GSA had turned over 18 acres in Verona to the Interior Dept. Local elected officials claimed they were given NO advance notice of this land transfer. (Interior is now holding the land in trust for the Oneidas; it's the state's first Indian trust land.) Military land transfers have created problems in a number of other states, too, so this is certainly a welcome change in federal policy! We're glad to see the feds are starting to realize there are many competing interests and complex issues to consider before they act to move land-into-trust for tribes.

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## DOJ REPORTS INCREASE IN INDIAN GANG ACTIVITY

In 2008, Congress called on the U.S. Dept. of Justice to study crime activity in Indian Country across the nation. Members of Congress were aware that Indian gang activity has recently moved from mostly graffiti and vandalism to violent crimes such as gang rapes, beatings, and drive-by shootings. The DOJ report was recently released and it gives an overview of the various agencies in charge of law enforcement and prosecution of tribal crimes. The study found that the crime rate in Indian Country is the highest per capita of ANY racial group in America.

The Obama Administration claims to have plans to bolster police protection and prosecutions on reservations, although Obama's budget doesn't include any additional funding for reservation law enforcement. Senator John Thune of South Dakota says of the study: “It points out that the system is failing. Crime remains endemic on reservations and I hope this report can be used in some congressional debates we're having to address these crime problems we're having on reservations.” On the Standing Rock reservation in North Dakota, for example, the crime rate is more than eight times the national average.

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## TEXAS TRIBE SEEKS HALT TO U.S.-MEXICAN BORDER FENCING

The Supreme Court announced on June 15, 2009, that it will not consider a challenge by the Ysleta del Sur Pueblo Indian Tribe to a federal government decision expediting construction of a 500-mile-long fence on the border between Mexico and the

United States. The tribe filed suit against former Homeland Security Secretary Michael Chertoff, claiming his decision to fast track the project was both “sweeping and unprecedented.” The tribe argued that the fence will block access to the Rio Grande River for tribal “religious and cultural” activities.

Thankfully, the Obama Administration urged the High Court NOT to hear the case, asserting that Congress gave our Homeland Security Secretary full authority to make such a decision (as confirmed by lower court rulings on this case) in an effort to stem the flow of illegal immigrants into Arizona and Texas. U.S. Customs and Border Protection Dept. officials say this urgently needed fence should be completed by year's end. Thumbs up! This is one key decision the feds got right.

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## CRISIS AT BORDER CROSSINGS

So far this year alone, law enforcement agents have seized over 800,000 pounds of marijuana crossing the border in southern Arizona running through the Tohono O'odham Indian Nation. This is \$1 billion dollars worth of pot and the Drug Enforcement Agency estimates they only catch about 20% of what's coming across. Agents report that a sizable number of tribal members are working for Mexican drug cartels. Over the past five years, tribal members have been involved in 30% of all drug cases prosecuted by the U.S. Attorney. Agents call the Tohono O'odham reservation a “smuggler's paradise” and admit the situation has reached “crisis” proportions.

Only tribal members are allowed to cross back and forth through simple iron gates and they resent the presence of hundreds of armed Border Patrol agents. Can you believe this degree of lawlessness is being allowed to continue? State and federal officials say their hands are tied because tribal “sovereignty” must be respected. But what about respect for the law? The tribes are clearly flaunting it, despite a number of federal court rulings to the contrary...

*(NOTE: Most members of the Tohono O'odham Nation live in desperate poverty, lacking money for food and basic living expenses. Yet this tribe has it's own casino, raking in multiple millions of dollars annually in tax-exempt profits. Members constantly ask where all those millions are going? The Tohono O'odham Legislative Council won't answer that question or any other. They don't allow outside reporters into tribal chambers for council sessions, either. Although all American citizens are guaranteed open, unfettered access to information from our governments, tribal members have no First Amendment, Freedom of Information Act, or state sunshine laws to protect their rights when dealing with their own governments. And they're afraid to speak out, for fear that they'll lose their benefits or be disenrolled.)*

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## U.S.-CANADIAN BORDER PROBLEMS

The *New York Post* reports that the federal government has frequently cited the St. Regis Mohawks in connection with a \$687 million dollar smuggling operation involving guns, liquor, and cigarettes. For the past eight years, the tribe has also done a brisk business smuggling people.

According to *Post* reports, more than 3,600 illegal aliens have been transported into America through the St. Regis reservation, which traverses the U.S.-Canadian border along the St. Lawrence River. The Mohawks have also occasionally been involved in shoot-outs with the Royal Canadian Mounted Police, Canadian Army, and New York State Police. The irony is that the Akwesasne Mohawks (a different band) have recently begun staging large protest demonstrations to voice their fierce opposition to a new Canadian government policy requiring border guards to carry handguns as a public safety measure.

In June of 2009, several hundred tribal members living both north and south of the U.S.-Canadian border came together in unified opposition to new government requirements for an “enhanced” driver’s license or U.S. passport to cross the border. Tribal representatives pulled down part of a barbed wire fence that separates land owned by the Colville Tribes of Washington and the Okanagan Nation Alliance of British Columbia, claiming not to recognize the border.

Now news that the Kootenai Tribe of Idaho has developed their own “enhanced” ID system for use by their members to cross back and forth into Canada from the United States. Kootenai tribal members won’t have to show a U.S. passport or new “enhanced” Idaho driver’s license in order to cross the border. The federal government recently signed an agreement allowing this ID substitution and a number of other tribes have announced plans to develop their own ID systems by 2010. But based on what we see happening with the Tohono O’odhams and St. Regis Mohawks, this is surely an invitation to big trouble.

Please let your elected representatives hear from you with your views on this new tribal I.D. program, as well as your opinion about the situation on our Mexican and Canadian borders.

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## **TRIBES SEEK AMENDMENTS TO “PACT” ACT**

The National Congress of American Indians (NCAI) is seeking to amend the “Prevent All Cigarette Trafficking” (PACT) Act to protect the tribes’ illegal direct mail tobacco industry. If passed without the tribal amendments, the PACT Act would put Indian-owned mail order tobacco businesses out-of-operation by prohibiting the U.S. Postal Service from delivering cigarettes and certain other tobacco products. The NCAI passed a resolution in June of 2009 urging the U.S. Senate to adopt amendments to the PACT Act guaranteeing “free trade in Indian Country” and confirming that Indian tribes can continue using the postal service to conduct their tobacco trade,

The U.S. Postal Service is the sole remaining delivery system available to Indian-owned mail order tobacco businesses because - -

under pressure several years ago from the National Assn. of Attorneys General - - U.P.S., FedEx, and DHL all signed agreements not to transport tobacco products of any kind. Approximately 95% of the direct mail tobacco businesses (run via the Internet and/or by telephone) now operating in America are owned by Indian tribes or tribal members. Of course, the sale by tribal businesses of untaxed or under-taxed cigarettes and smokeless tobacco products does enormous harm to many legitimate wholesale and retail operations as well as to state and local government budgets nationwide.

Please contact both your U.S. Senators urging them to vote “NO” on all of the tribes’ proposed amendments to the PACT Act. But ask them to vote “YES” on the PACT Act itself. And do it today! The Senate version of this bill is co-sponsored by Sen. Charles Schumer and Sen. Kirsten Gillibrand (among others), both Democrats of New York. (The House version of the PACT Act, sponsored by Rep. Anthony Weiner, also a NY Democrat, passed by a vote of 397-11 in May of this year.)

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## **COURT ORDERS TRIBAL CHAIR TO PAY INCOME TAXES**

We’re happy to report that the IRS is finally cracking down on tribal members with regard to payment of taxes. One example is that in April of 2009, the 10<sup>th</sup> Circuit Court of Appeals upheld a district court ruling, holding that John A. Barrett, Jr. is subject to payment of federal income taxes on the salary paid to him as Chairman of the Citizen Potawatomi Tribe. Barrett filed suit against the United States seeking a refund of federal income taxes, penalties, and interest paid by him pursuant to an IRS assessment for the tax year ending on December 31, 2001. Both the district court and the appeals court ruled against Barrett, who claimed that since his salary was paid from tribal trust funds, it was exempt from taxation. The courts wisely sided with the United States.

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## **IRS FILES TAX LIENS AGAINST INDIAN SMOKE SHOP**

Also in April of this year, the Internal Revenue Service filed federal tax liens totaling more than \$18 million dollars for tax years 2002-2004 against one of the eight tribal smoke shops on the Poospatuck Indian Reservation being sued by New York City. According to an IRS spokesperson, Native Americans who operate businesses on reservation are legally required to pay federal income taxes unless a treaty or statute specifically exempts them.

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## **LAWSUIT OVER FARMING OPERATION DISMISSED**

In April of 2009, U.S. District Judge Lawrence Piersol dismissed

a civil lawsuit involving a 40-acre farm owned by eleven Iowa farmers on the Yankton Sioux Indian Reservation. Yankton Sioux tribal members filed suit in April of 2008 against Longview Farm of Hull, Iowa. The lawsuit sought to stop construction on grounds that the farm didn't follow federal law requiring a search for "historic and cultural" resources.

Longview Farm asked the court to declare their project off limits to tribal jurisdiction because, even though it's located within reservation borders, it is privately owned. They noted that the project obtained or requested permits from all required government entities, asserting that tribal jurisdiction was wrongly claimed, including a tribal demand for sanctions assessing the farm more than \$350,000. The judge held a hearing in June, after which he issued an order concluding the farm is located on private property. He later issued an additional order, dismissing ALL claims made against the new farm operation. Longview Farm is now in full operation. Another nice legal victory...

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## NATIONAL ASSN. OF COUNTIES PASSES KEY RESOLUTIONS

In recent years, the National Association of Counties (NACo) has repeatedly passed a very important resolution seeking mitigation for the negative impacts of tribal casinos on local governments. In it, NACo calls on Congress to amend the Indian Gaming Regulatory Act (IGRA) to provide more regulatory oversight and strict auditing of all Indian casinos. They point out that the Interior Dept. has no statutory requirement to mitigate local impacts.

NACo is asking Congress to strengthen IGRA to explicitly provide regulatory authority over Class III gaming, especially in the absence of a state-tribal compact. NACo's resolution claims that counties incur significant costs due to tribal gambling expansion and currently have no authority to recoup these costs. Their resolution proposes that Congress amend IGRA to require the Interior Dept. to provide mitigation for the costs incurred by county governments. We sincerely thank Fremont County Commissioner Douglas Thompson of Wyoming for sponsoring this resolution. Way to go, NACo!

Please contact your local county elected representative, expressing your appreciation for NACo's willingness to address this issue, and urging him or her to actively support the much-needed reforms called for in NACo's resolution.

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## TRIBES WITHHOLDING PROPERTY TAXES

For many months now, the Chehalis Tribe in Washington State has been refusing to pay over one million dollars in county property taxes on their Great Wolf Lodge operation. Thurston County Assessor Patricia Costello believes the lodge should be taxed. If it's not on the tax rolls, she correctly notes that the tax burden is unfairly shifted to other local property owners. Taxes haven't been

paid since 2007.

Although the lodge is located on trust land and everyone agrees that property isn't subject to taxation, the question is whether the improvements (a \$100+ million dollar hotel and water slide complex) are taxable. Since the complex is nearly half-owned by a non-tribal corporation (a Delaware-based company), Costello contends it shouldn't be exempt from taxation.

The exciting news is that on July 2 Federal District Judge Benjamin Settle ruled in Thurston County's favor! He held that the tribe must pay property taxes. This is a federal case which sets a precedent for tribally owned operations, not just in Washington State, but also for hundreds more in states across the country.

The Coquille Tribe of Oregon has also withheld over \$88,000 for 2009 payments to the City of North Bend that the tribe had previously agreed to pay in lieu of property taxes (the same amount all other local businesses must pay). In return, city officials are seriously considering the possibility of cutting off sewer service to the tribe's Mill Casino complex. They could even cut off emergency services, such as police and fire protection. It's also possible the city could go to court over this matter because there is a waiver of sovereign immunity in the tribe's contract with North Bend. No word yet on how the city plans to proceed. But Judge Settle's ruling certainly strengthens the city's hand. We'll keep you posted...

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## PROPOSED BILL WOULD REIMBURSE COUNTIES FOR LOST INCOME

Sen. Charles Schumer and Rep. Michael Arcuri introduced federal legislation on July 14 that would protect local taxpayers from having to pay higher property taxes when land is moved into trust and taken off the tax rolls. If passed, county governments that lose property tax income due to the land-into-trust process would be indemnified. We ALL need to urge our congressional representatives to support this bill. In a recent press release, Sen. Schumer said: "The decision to take land into trust is a federal one and the federal government should take responsibility to make up (for) the harm it can have on counties and local communities."

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## KLAMATH WATER RIGHTS CASE POSSIBLY SETTLED

In May of this year, a controversial settlement was announced between Oregon irrigators and the Klamath Tribes over the issue of tribal water rights claims in the Upper Klamath Basin. The tentative settlement covers water rights for the Klamath River and Upper Klamath Lake. The deal is contingent upon agreement over a broad restoration plan for the Klamath River and proposed plans to tear down four hydroelectric dams owned by PacifiCorp. Local farmers organized themselves into the "Klamath Water Users Association" several years ago and have been negotiating over these issues since then with the Klamath Tribes.

The tribes claim the right to adequate water to keep Upper Klamath Lake full enough to support endangered suckerfish, which they have a treaty right to catch. They also claim rights to enough water in the river to sustain local salmon, which have not reached the river or lake since the four dams went up in the mid-1900s.

*“Facts are stubborn things. When you’re on the wrong side of the law and facts, you resort to name calling.”*

*--U.S. President John Adams*

Under the agreement, irrigators would agree to withdraw their legal challenge to the tribes’ water claims and the tribes would agree not to litigate over water deliveries to farmers who comply with the terms of the settlement. Supporters of the agreement say it will provide “certainty” on water deliveries needed for irrigation, as well as adequate water to sustain both suckerfish and salmon. Opponents claim only local farms are getting a guarantee for water and that the settlement fails to account for how much water will go into the river in dry years. We wish the best to our friends in Oregon, who have so much at stake in the successful consummation of these talks.

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## MORE GREAT NEWS FROM OREGON

At ONU’s 2006 Washington D.C. “Conference on Federal Indian Policy,” Kelly Clark (legal counsel to PACT/People Against a Casino Town based in Florence, Oregon) informed our attendees that he previously made the following statement to the Governor of Oregon:

“So, Governor, listen up. I am not yet an old man, and I plan on being a thorn in your side, or that of your successor, for many years to come. And the people of PACT are made of pure steel. So, no, we won’t go away. Not because of delay or obfuscation or ‘Keystone Cop’ routines or not - - and this is the most outrageous of all - - the outlandish charge that anyone with the unmitigated temerity to raise these issues is ‘racist.’ We are not going away. Not until someone in a black robe gives us an answer to our Very Simple Question: How is it, in a state whose constitution expressly prohibits casinos, that our governors keep siting (tribal) casinos?”

The answer to PACT’s “Very Simple Question” is now one step closer to being answered because Oregon’s Supreme Court ruled on June 18, 2009, that this community group does indeed have the right to challenge the constitutionality of agreements made by the state’s governors in signing compacts allowing tribal casinos to open. After all, the citizens of Oregon voted in 1984 to amend their state constitution to ban casinos. (Note: This decision comes just one year after the Florida Supreme Court held that Governor Crist overstepped his authority in negotiating a deal to allow the Seminole Tribe to open gambling operations, which are illegal under that state’s constitution, too.)

PACT first got organized in 2003 after the Confederated Tribes of the Coos, Umpqua, and Siuslaw announced plans to open a casino near Florence. Of course, the tribes originally told state and federal officials, as well as the public and press, that the land being placed into trust (where their casino now stands!) would be used ONLY for “historic and cultural” purposes. Their tribal leader even sent a letter to the BIA declaring: “We envision that the (trust) land will become an important destination for tribal members wishing to remember history and Indian existence.”

Although no trial date has yet been set, Clark predicts a decision from the court by as early as later this year. He notes that federal statutes on Indian gambling do NOT require states to violate their own laws, citing Utah as an example of a state that has no casinos because the state constitution prohibits them.

“The issues are pretty clear cut: Does the Constitution mean what it says and does it apply to tribal casinos? The disagreement is not on the facts,” concluded Clark, “so it should be pretty straightforward.” And PACT will finally get their day in court. Hooray for PACT!

**PACT developed what they call the “Formula For A Casino” which includes the following six tactics used by tribes planning to open a casino:**

- Use legal loopholes to prevent public participation
- Mislead government officials and the public during “fee-to-trust” land acquisition process (“We don’t plan to build a casino”)
- Tell everyone “IT’S A DONE DEAL”
- Claim “racism” when anyone objects to a casino in their community
- Contribute generously to political campaigns
- Inflate claims of “sovereignty” to avoid responsibility

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## NEW YORK CITY CAN PROCEED WITH LAWSUIT

On March 16, 2009, Federal District Court Judge Carol Bagley Amon ruled that eight smoke shops on the Poospatuck Indian Reservation are NOT protected by sovereign immunity from New York City’s lawsuit. NYC is suing to collect \$200 million dollars in uncollected cigarette sales taxes. The court also held that the stores can be sued both under state law and the “Contraband Cigarette Trafficking Act,” a federal statute designed to prevent the massive sale of untaxed tobacco products.

In response, NYC Mayor Michael Bloomberg stated: “As we all pull together to do more with less, it’s just grossly unfair to hardworking taxpayers to allow any company to shirk their responsibilities.” He noted that the city has lost more than \$700 million dollars in cigarette tax revenue over the past five years. This

ruling sets a very important legal precedent and is a significant step toward leveling the playing field for many law-abiding retail businesses.

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## NY COUNTIES APPEAL COURT RULING

A million dollar lawsuit filed by NY's Cayuga Indian Nation against Cayuga and Seneca counties (over their raid last November of two tribal smoke shops) likewise centers on the issue of collecting badly needed taxes on cigarette sales. On July 10, 2009, the Appellate Court reversed a state judge's ruling which had blocked the sale of untaxed cigarettes at the Cayuga's two stores in Seneca Falls and Union Springs. Within days, Cayuga County legislators voted 14-1 to appeal the court's decision.

"If we don't appeal then we're conceding it's a sovereign reservation, and that would give them the right to do anything they want on the land," said Cayuga County Legislator Ray Lockwood. "They wouldn't be subject to any local laws and it would put gambling back on the table... Obviously it would erode (our) tax base, and would obviously dry up a stream of sales tax revenue - - it would be more than just cigarettes," he concluded. As we go to print on this newsletter, Seneca County elected officials are expected to vote in favor of joining the appeal process. Together, the two counties have spent over \$180,000 on legal fees. The Cayugas currently have an application pending with the BIA seeking to move 125 acres of land into trust which, if approved, would seriously threaten the livelihoods of numerous local dairymen and farmers who own property within the proposed trust land area.

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## OBAMA APPOINTEE SAYS INDIAN CIGARETTE SALES MUST END

Thomas Frieden, who was appointed by President Obama to head the "Center for Disease Control and Prevention," recently testified before a Brooklyn federal court in support of New York City's lawyers trying to shut down tribal smoke shops operating on the Poospatuck Indian Reservation. (For such a high-level Obama Administration official to speak out publicly on this thorny issue represents true progress for us, folks. Thanks again for your many letters, faxes, and phone calls!)

*"We are all Americans and should all live under the same set of rules... The Oneida enterprises' refusal to remit collected sales taxes and property taxes transfers their obligations to the taxpayers of Oneida and Madison Counties."*

--New York Assemblyman Dave Townsend

Frieden claimed in his May 2009 court testimony that by illegally selling tax-free smokes, tribal dealers are "flooding the city with millions of bootleg butts" which undercut the city's vigorous

cigarette tax collection efforts. Frieden stated that if the tribal sales pipeline from just this one reservation had been cut off, more than 1,000 smokers would probably have kicked the habit and 400 lives could have been saved.

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## OK ATTORNEY GENERAL SUES INDIAN SMOKE SHOPS

Attorney General Drew Edmondson, Democrat of Oklahoma, filed a lawsuit in February of 2009 suing more than a dozen Creek Nation smoke shop owners and several Creek Nation officials over violation of state and federal laws governing cigarette sales.

For the past four years, the Creeks have refused to sign a new state tobacco compact because the state won't promise to protect their historic pricing advantage over non-tribal retailers. The suit claims that the tribe is coordinating the delivery and sale of millions of packs of cigarettes without OK tax stamps.

The OK Tax Commission claims the conspiracy is costing the state millions of dollars annually in tax revenue designated to be spent on health initiatives. The state is seeking damages for the loss of tax revenues caused by the alleged conspiracy. According to the *Tulsa World*, this lawsuit was recently moved to federal court but no trial date has yet been set.

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## OK LAW TARGETS TRIBAL RETAILERS WHO DON'T COLLECT TAXES

Oklahoma Governor Brad Henry signed Senate Bill 608 in June of this year in an effort to crack down on tribal retailers selling cigarettes with the wrong tax stamps. The new legislation, which takes effect on January 1, 2010, changes state law to comply with current OK tribal tobacco compacts. It requires tribes without a compact to buy tax stamps. OK Tax Commission Administrator Tony Mastin says it will help the state's enforcement efforts. Way to go, Oklahoma!

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## OK SENATOR INTRODUCES IMPORTANT LEGISLATION

On June 3, 2009, Senator Tom Coburn, Republican of Oklahoma, introduced an amendment to H.R. 1256, the Family Smoking Prevention & Tobacco Control Act. Coburn's amendment would allow states to enforce federal tobacco laws in Indian Country. His amendment allows the Food and Drug Administration to enter into contracts with states to enforce the law. Coburn's amendment reads: "For a tobacco product, to the extent feasible, the Secretary shall contract with the States in accordance with this paragraph to carry out inspections of retailers within the State in connection with enforcement of this Act." The amendment is No. 1227. Again,

a good bill you should ask your congressional representatives to support.

a perfect solution but, at least, this will finally level the playing field between tribal smoke shops and non-Indian operations when it comes to tobacco pricing.

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## **SMOKE SHOP OWNERS FACE PRISON TERMS**

In March of 2009, U.S. District Judge James Robart sent several members of the Stillaguamish Tribe in Washington State to prison after they admitted not collecting more than \$25 million dollars in state sales taxes on the sale of contraband cigarettes. Their sentences range from fourteen months to two years of supervised release. They operated the Blue Stilly Smoke Shop in Arlington and together the four personally pocketed \$15 million dollars between 2003 and 2007. (Three of the defendants held leadership roles in the tribe.)

In June of this year, four members of Washington's Swinomish Tribe were also indicted by a grand jury in U.S. District Court for conspiracy to traffic contraband cigarettes. They ran the Trading Post Smoke Shop at March Point, near Anacortes, which was raided by government agents in May of 2007. Four million cigarettes and \$120,000 in cash were seized. Prosecutors claim these tribal members owe the state approximately \$11 million dollars in tobacco taxes. They all pleaded not guilty at a hearing in July. The charges carry prison terms of up to five years. Trial is set to begin in September. It's about time state government officials stood on the "rule of law" and acted forcefully in response to such blatantly illegal activity.

**A Massachusetts resident named Frances Dalton was looking for a "good deal" when she decided to buy cigarettes from a business located on a New York Indian reservation. The 80-year-old retired artist purchased five cartons of Seneca full-flavor smokes over the phone for \$13.49 each, about half of what they would cost her to buy locally. Little did she know this "good deal" would end up costing her so much more. In February of this year she received a bill in the mail from the Massachusetts Department of Revenue for \$91.58 in taxes and late payment fees. Dalton claims she was never informed of any taxes being due when she ordered the cigarettes and didn't believe any taxes were owed because she bought them from an out-of-state vendor. But, according to a spokesman for the Dept. of Revenue, state law requires her to pay the tax. Hats off to the State of Massachusetts!**

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## **FLORIDA LEVELS THE PLAYING FIELD**

Even better news is that ALL of the tribes in Florida recently agreed to start collecting sales tax on cigarette sales to their non-tribal customers. The new state law still allows tribal members to purchase tobacco products at reservation smoke shops without paying taxes. Each FL tribe is allotted coupons for tax-free cigarettes based on its tribal enrollment, with each member allowed to buy up to five tax-exempt packs per day.

The plan requires tobacco wholesalers to collect the coupons from tribal retailers in lieu of the tax. When wholesalers then turn coupons in to the Dept. of Business & Professional Regulation they won't be reimbursed by the state for any cigarette sales in excess of tribal allotments. Thus, if a tribe sells more cigarettes than the state believes it would sell only to its own members, the wholesaler will be stuck paying sales taxes on cigarettes presumably sold to non-tribal customers. Tax collection by the tribes is expected to raise more than \$900 million a year for state health care programs. Again, not perfect, but this is a HUGE STEP in the right direction. At long last, our message on this key issue was heard and correctly acted upon by government elected officials!

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## **JUSTICE FOR C&W CONSTRUCTION**

In April of 2009, Federal Judge Karen Schreier lifted her previous order blocking C&W Construction Company from collecting funds due to them by the Oglala Sioux Tribe. The tribe owed C&W Construction more than \$1.5 million dollars for work done on reservation roads in 2002-2003. The tribe fought C&W's collection efforts in tribal, state, and federal court. The 8<sup>th</sup> Circuit Court of Appeals then overturned Schreier's decision declaring the State of South Dakota did not have jurisdiction in the case. Schreier ultimately ruled in favor of the construction company, who were finally able to garnish tribal assets to collect their debt.

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## **BEHIND-THE-SCENES AT A TRIBAL CASINO**

A frustrated employee of the Emerald Queen Casino in Tacoma, WA (owned by the Puyallup Tribe) leaked a confidential copy of an investigative review and audit of the casino's operations to a News Tribune reporter in May of this year. Lamar Associates, a Native-owned security investigative firm headquartered out of Washington, DC, conducted the in-depth analysis, which was paid for by the tribe.

The newspaper reported that, according to this independent investigation, the Emerald Queen's operation is wracked with gross mismanagement, low morale, and inadequate security. The study

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## **WA TRIBES AGREE TO COLLECT CIGARETTE TAX**

The Colville Confederated Tribes reached an agreement this June with the State of Washington's Dept. of Revenue to impose their own cigarette tax in lieu of state and local taxes. The new tribal tax will equal 100% of the combined state and local tax rate. The State agreed not to impose taxes on non-Indians buying from Colville smoke shops in exchange for the tribes' agreement to administer and enforce collection of their own tax. Certainly NOT

found most casino workers to be extremely unhappy and their discontent is obvious to customers.

One big reason for the widespread discontent, according to the investigators, is a perception of 'favoritism' shown to employees who belong to the Puyallup Tribe. Workers complained that tribal members get preference on shift assignments and leave. They reported that tribal members are frequently promoted well beyond their level of expertise - - often skipping staff levels and sometimes starting employment as supervisors - - regardless of their educational background or work experience. The study also revealed the existence of up to 20 "ghost" employees, who rarely or never show up for work, but who still collect regular paychecks.

*"Show me one positive public policy benefit from these (gambling) compacts... Tens of thousands of workers will have no (labor) protections, despite the massive profits of the Indian casino industry."*

--Jack Gribbon, California Political Director of "Unite Here"(casino & hotel workers' union)

Reviewers reported they were especially struck by the high degree of fear evident among the casino employees they interviewed. According to the study: "So deep was their level of fear that many workers the reviewers spoke with were physically shaking and reluctant to answer the simplest of questions in anticipation of some form of retaliation. The report continued: "The majority indicated they believed they would lose their job if it were discovered they spoke up. Most employees asked to be interviewed away from the casino and only with a guarantee of anonymity."

As troubling as the report itself was, according to a high-ranking tribal administrator with intimate knowledge of the situation, the reaction from the Puyallup tribal council is even more troubling. No action was taken as a result of the study. "They pretty much threw it in the garbage," the administrator told the News Tribune. "They didn't make a single one of the suggested changes called for in the report."

*"The greatest danger of all is to allow new walls to divide us from one another... The walls between races and tribes; natives and immigrants; Christian and Muslim and Jew cannot stand. These now are the walls we must tear down..."*

--Barack Obama speaking in July of 2008 in the shadow of the Berlin Wall

## A CALL TO ACTION

Remember that citizen advocacy remains the single most effective way to win votes in the legislative process by helping to influence the minds of elected officials. Members of Congress consider one letter, phone call, or visit to their office to equal the opinion of at least 100 other voters. So keep up YOUR communication with YOUR congressional representatives on these politically sensitive issues. It's crucial to our success! You certainly must see - - based on the successes now being achieved - - that our collective voices ARE bringing about change.

**CALL U.S. CAPITOL SWITCHBOARD AT 1-866-220-0044 IF YOU NEED THE CONTACT INFO FOR YOUR OWN CONGRESSIONAL REPRESENTATIVES. IT'S NOT AT ALL DIFFICULT TO CONTACT THEM NOR DOES IT TAKE MUCH TIME! SEE LIST BELOW FOR THE PHONE NUMBERS OF YOUR OWN TWO U.S. SENATORS. YOU TRULY NEED TO ACT NOW! YOUR LETTERS & PHONE CALLS WILL MEAN THE DIFFERENCE FOR US BETWEEN SUCCESS AND FAILURE ON URGENTLY NEEDED FIP REFORM.**

### U.S. Senators by State

#### Alabama

Jeff Sessions – R

202.224.4124

Richard Shelby – R

202.224.5744

#### Alaska

Mark Begich – D

202.224.3004

Lisa Murkowski – R

202.224.6665

#### Arizona

John Kyl – R

202.224.4521

John McCain – R

202.224.2235

#### Arkansas

Blanche Lincoln – D

202.224.4843

Mark Pryor – D

202.224.2353

#### California

Barbara Boxer – D

202.224.3553

Dianne Feinstein – D

202.224.3841

#### Colorado

Michael Bennet – D

202.224.5852

Mark Udall – D

202-224-5941

#### Connecticut

Christopher Dodd – D

202.224.2823

Joseph Lieberman – D

202.224.4041

#### Delaware

Thomas Carper – D

202.224.2441

Ted Kaufman – D

(202) 224-5042

#### Florida

Mel Martinez – R

202.224.3041

Bill Nelson – D

202.224.5274

#### Georgia

Saxby Chambliss – R

202.224.3521

Johnny Isakson – R

202.224.3643

**Hawaii**

Daniel Akaka – D  
202.224.6361  
Daniel Inouye – D  
202.224.3934

**Idaho**

Mike Crapo – R  
202.224.6142  
Jim Risch – R  
202-224-2752

**Illinois**

Richard Durbin – D  
202.224.2152  
Roland Burris – D  
202.224.2854

**Indiana**

Evan Bayh – D  
202.224.5623  
Richard Lugar – R  
202.224.4814

**Iowa**

Chuck Grassley – R  
202.224.3744  
Tom Harkin – D  
202.224.3254

**Kansas**

Sam Brownback – R  
202.224.6521  
Pat Roberts – R  
202.224.4774

**Kentucky**

Jim Bunning – R  
202.224.4343  
Mitch McConnell – R  
202.224.2541

**Louisiana**

Mary Landrieu – D  
202.224.5824  
David Vitter – R  
202.224.4623

**Maine**

Susan Collins – R  
202.224.2523  
Olympia Snowe – R  
202.224.5344

**Maryland**

Benjamin Cardin – D  
202.224.4524  
Barbara Mikulski – D  
202.224.4654

**Massachusetts**

Edward Kennedy – D  
202.224.4543  
John Kerry – D  
202.224.2742

**Michigan**

Carl Levin – D  
202.224.6221  
Debbie Stabenow – D  
202.224.4822

**Minnesota**

Al Franken - D  
202.224.5641  
Amy Klobuchar – D  
202.224.3244

**Mississippi**

Thad Cochran – R  
202.224.5054  
Roger Wicker – R  
202.224.6253

**Missouri**

Christopher Bond – R  
202.224.5721  
Claire McCaskill – D  
202.224.6154

**Montana**

Max Baucus – D  
202.224.2651  
Jon Tester – D  
202.224.2644

**Nebraska**

Mike Johanns – R  
202.224.4224  
Ben Nelson – D  
202.224.6551

**Nevada**

John Ensign – R  
202.224.6244  
Harry Reid – D  
202.224.3542

**New Hampshire**

Judd Gregg – R  
202.224.3324  
Jeanne Shaheen – D  
202-224-2841

**New Jersey**

Frank Lautenberg – D  
202.224.3224  
Robert Menendez – D  
202.224.4744

**New Mexico**

Jeff Bingaman – D  
202.224.5521  
Tom Udall – D  
202.224.6621

**New York**

Charles Schumer – D  
202.224.6542  
Kirsten Gillibrand – D  
(202) 224-4451

**North Carolina**

Richard Burr – R  
202.224.3154  
Kay Hagan – D  
202-224-6342

**North Dakota**

Kent Conrad – D  
202.224.2043  
Byron Dorgan – D  
202.224.2551

**Ohio**

Sherrod Brown - D  
202.224.2315  
George Voinovich – R  
202.224.3353

**Oklahoma**

Tom Coburn – R  
202.224.5754  
James Inhofe – R  
202.224.4721

**Oregon**

Jeff Merkley – D  
202.224.3753  
Ron Wyden – D  
202.224.5244

**Pennsylvania**

Robert Casey, Jr. – D  
202.224.6324  
Arlen Specter – D  
202.224.4254

**Rhode Island**

Jack Reed – D  
202.224.4642  
Sheldon Whitehouse – D  
202.224.2921

**South Carolina**

Jim DeMint – R  
202.224.6121  
Lindsey Graham – R  
202.224.3841

**South Dakota**

Tim Johnson – D  
202.224.5842  
John Thune – R  
202.224.2321

**Tennessee**

Lamar Alexander – R  
202.224.4944  
Bob Corker – R  
202.224.3344

**Texas**

John Cornyn – R  
202.224.2934  
Kay Bailey Hutchison – R  
202.224.5922

**Utah**

Robert Bennett – R  
202.224.5444  
Orrin Hatch – R  
202.224.5251

**Vermont**

Patrick Leahy – D  
202.224.4242  
Bernard Sanders – D  
202.224.5141

**Virginia**

Mark Warner – D  
202-224-2023  
Jim Webb – D  
202.224.4024

**Washington**

Maria Cantwell – D  
202.224.3441  
Patty Murray – D  
202.224.2621

**West Virginia**

Robert Byrd – D  
202.224.3954  
John Rockefeller – D  
202.224.6472

**Wisconsin**

Russell Feingold – D  
202.224.5323  
Herb Kohl – D  
202.224.5653

**Wyoming**

John Barrasso – R  
202.224.6441  
Michael Enzi – R  
202.224.3424



## GROWING PUBLIC AWARENESS OF TRIBAL ABUSES

Public opinion has definitely changed when it comes to sympathy for the tribes:

\*\* More and more people are waking up to the fact that tribes impact the public, but have no accountability to the public.

\*\* That tribes routinely abuse their political power, defying laws put into place to protect the public's health and safety, then appeal to the public for sympathy.

\*\* That federal BIA bureaucrats in Washington, DC, continue to carry out flawed land-into-trust policy for our entire nation based upon the demands of a very small "special interest" group. According to the most recent U.S. census, American Indians (whether enrolled tribal members or not) account for only about one percent of our nation's total population.

\*\* That some federally recognized "tribes" have as little as one, two, or three enrolled members, yet the BIA still allows them to open tax-exempt casinos and other retail businesses. Of course, these tribal governments also qualify to receive various federal appropriations earmarked for "tribes" paid for by U.S. taxpayers.

\*\* That tribes are using their hundreds of millions in untaxed gambling profits to buy up land and take it off the tax rolls and out of state and local jurisdiction. They are now purchasing many nearby non-Indian businesses being driven to bankruptcy because they can't compete with the tribe's lower pricing. And they then quickly apply to the BIA requesting that these properties be moved into trust.

\*\* That the lack of any meaningful law enforcement on Indian lands has resulted in rampant drug trafficking, money laundering, and rapidly escalating crime rates.

(NOTE: That's why the Western States Sheriffs' Assn. has passed several significant resolutions calling on Congress to: (1) "Enact legislative changes to address (tribal) claims of sovereign immunity as they relate to communities adjacent to Indian lands" (2) "To further define the

role of Indian tribes to comply with city, county, and state building, health and safety, criminal, and environmental codes"(3) "To address tax issues and loss of revenues by non-Indian communities" (4) "To oppose granting tribal governments additional authority to enforce the provisions of the Homeland Security Act upon tribal lands" and (5) "To urge our U.S. Senators and Representatives to pass suitable and equitable legislation addressing these concerns for the benefit of all." *The American Farm Bureau Federation* has likewise passed key resolutions on this subject for a number of years now. ONU works closely with the leadership of both groups.)

***"No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally apply to all citizens or corporations."***

--Article I, Section 12, Washington State Constitution

\*\* That tribes are exempt from the contribution and issue-advocacy bans in the McCain-Feingold campaign finance law. They often ignore most state and local campaign finance and reporting regulations, claiming that tribes are exempt.

\*\* That because of this loophole in the law, tribal governments are allowed to contribute millions of dollars annually to influence the outcome of federal, state, and local political campaigns so as to encourage politicians to 'turn a blind eye' to their illegal activities. Tribes are now the largest donors to political races in most states.

\*\* That tribal issues have been silenced by the mainstream media due to "political correctness" and fear by most elected officials over angering powerful tribal leaders.

\*\* That tribal casinos and most profitable Indian businesses evade all state and local taxes used to fund essential public services like police,

# NEW YORK POST

## RESERVATION RACKET

July 27, 2009

You may have missed it, but New York got a brand-new Indian reservation this month -- consisting entirely of two Upstate convenience stores.

A state appellate court ruled that the outlets, owned and operated by the Cayuga Indian tribe on non-reservation land, count as a "qualified reservation" for taxing purposes, thus voiding local efforts to halt the Cayugas' illicit tobacco trade.

The tribe claims its "sovereignty" as a separate "nation" exempts it from paying state taxes on the cigarettes it sells.

Absurd? You bet.

Never mind that New York's supposedly "sovereign nations" subsist on all manner of federal and state handouts.

The very *notion* of tribal sovereignty now serves in no small way as a cover for illicit commercial enterprises -- and actively undermines the rule of law.

Longstanding treaties, to be sure, grant Indians the right to tax-free tobacco for their *own* use.

But New York's tribes have parlayed that right -- plus the state's sky-high cigarette taxes -- into a booming statewide trade in tax-free smokes illegally sold to *non*-Indians. And the Cayugas are the least of the offenders.

Cayuga County DA Jon Budelmann, who's moving to appeal the decision, says the two stores channel more than 6 million packs of untaxed cigs a year from the much larger Oneida reservation nearby.

Yet fully *275 million* packs of cigarettes flowed through New York's Indian reservations last year, depriving state and local governments of an estimated *billion dollars* in tax revenue -- *and* pushing law-abiding merchants out of business.

What's more, law-enforcement officials say that criminals with terrorist ties are actively involved in smuggling Indian smokes into the city.

The tribes argue, contrary to both state law and settled Supreme Court precedent, that such extracurricular commerce is fully within their sovereign treaty rights -- and, thus far, a weak executive and skittish judiciary have let them get away with it.

But it would be easier to take their claims to nationhood, and tax exemption, more seriously if they weren't already reliant on nontribal taxpayer dollars.

Indeed, New York's Indian tribes have all the *entitlements* of regular state citizenship -- schools, roads, etc. -- except where those programs are superseded by even more generous federal handouts.

The federal Indian Health Service, for instance, oversees a broad range of health grants and benefits *on top* of Medicare and Medicaid.

Federally recognized tribes can also qualify to receive welfare money directly from Washington. Good for them, we suppose.

But New York should expect its tribes to be, first and foremost, responsible, cooperative citizens.

If not, why should the state respect their "sovereignty" in the first place?

You may find this article on the web at: [http://www.nypost.com/seven/07272009/postopinion/editorials/reservation\\_racket\\_181504.htm](http://www.nypost.com/seven/07272009/postopinion/editorials/reservation_racket_181504.htm)

fire, hospitals, schools, libraries, highways, water, and sewer systems. So non-Indian citizens must, in turn, pay higher taxes to make up for this shortfall. Thus, taxpayers are saddled with the unfair burden of subsidizing the burgeoning Indian casino industry.

\*\* Yet Indian casinos and other tribal businesses operate without compliance to state and local laws that protect customers and employees and which also protect the environment and the local community's quality of life. For example, tribes are exempt from all Health and Safety laws, including inspections by public health officials. They also don't pay for worker's compensation insurance which all non-Indian businesses must pay. Employees at tribal casinos essentially forfeit their civil rights as American citizens. And no one protects consumers against rigged slots.

\*\* That existing regulatory controls over tribal gambling operations are completely inadequate and the interests of the public-at-large are represented very poorly, if at all. Current failed federal Indian policy leaves local communities unable to defend themselves against the tribes' aggressive casino expansion plans.

\*\* That by evading taxes (contrary to numerous court rulings to the contrary) and most overhead costs, tribal retailers enjoy an enormous pricing advantage over their non-tribal competitors, who are quite often forced out-of-business. For example the State of New York is now losing more than \$200 million dollars annually due to the tribes' refusal to collect or remit sales taxes on motor fuel and tobacco products.

Tribes are now selling not only tax-free cigarettes, gasoline, and automobiles, but they've also purchased shopping malls, banks, credit unions, hotels, golf courses, factories, a WNBA basketball team and have even created their own mutual funds.

(NOTE: The Chickasaw Nation of Oklahoma recently partnered with China's Nanjing Auto Group, which owns the MG automobile brand. The tribe plans to begin assembling the MG TFcoupe next year. They've applied to the BIA to move their land into trust so as to avoid paying property taxes on their industrial park and to avoid import and inventory taxes, too. Since the IRS allows investors operating on Indian lands to accelerate depreciation on investments, the Chickasaw's Chinese partner will likewise benefit from tax depreciation, resulting in tax losses to both the state and local governments.)

***"It is not the right of property which is protected, but the right to property. Property, per se, has no rights; but the individual - - the man - -has three great rights, equally sacred from arbitrary interference: The Right to his Life, The Right to his Liberty, and The Right to his Property. The three rights are so bound together as to be essentially one right. To give a man his life, but deny him his liberty, is to take from him all that makes his life worth living. To give him his liberty, but take from him the property which is the fruit and badge of his liberty, is to still leave him a slave."***

--U.S. Supreme Court Justice George Sutherland, 1821

\*\* That only a tiny minority of tribal members actually benefit from the huge profits generated at Indian casinos. Hence, the government continues to subsidize even wealthy casino tribes with hundreds of millions more taxpayer dollars each year in "federal assistance" while also funding their legal defense costs in court.

\*\* That due to sovereign immunity from suit, tribes can't be sued without their consent. Yet they frequently sue many innocent non-tribal citizens and businesses.

\*\* That enrolled tribal members are victims of failed federal Indian policy, too, because they have no legal recourse against their own governments, which lack sunshine laws and deny them freedom of speech, a free press, and even the secret ballot. Most tribes don't distribute casino profits evenly (per capita) among their membership either due to the fact that tribal leadership is usually so corrupt.

You don't have to be a Supreme Court Justice to understand that declaring Indians to be "individuals who are entitled to special protections and benefits" contradicts our U.S. Constitution's 14th Amendment guarantee of "equal protection under the law."

Award-winning journalist and political commentator Jill Stewart recently noted in her syndicated column that the public image of tribes has turned from that of "people who need a helping hand to become self-sufficient to sneaky backroom players in politics who are increasingly viewed as bad neighbors." Thankfully, this viewpoint has translated into growing public resistance to further tribal casino expansion. Our ongoing public educational efforts have clearly had an impact.



June 25, 2009

## WHO IS A NATIVE AMERICAN INDIAN?

By Jim Marino, Contributing Writer

With the rise of Indian gambling casinos all over the country — and in particular those 60 casinos in California with more on the way — the question naturally arises: Who exactly qualifies to call themselves an "Indian"?

The basic answer to what appears to be a simple question is that an "Indian" is whomever the particular tribe says is an Indian. Now any person can claim to be part Indian, just as many say they are part Irish on St. Patrick's Day.

Since the sympathetic attitude toward real Indians and descendants became a popular cause in recent decades and more recently, some Indian tribes and bands opened lucrative gambling casinos. More and more people are laying claim to be "Indian" or part Indian often with the hope of cashing in on the huge profit distributions in per capita payments paid out to tribal members of federally acknowledged Indian tribes, bands or communities with casinos.

The federal agencies charged with record keeping for recognized tribes refuse to get involved in the tribal enrollment practices, so enrollment is dependent, almost entirely, on tribal government and politics. Typically, there are controlling families within tribal groups who hold sway over membership issues.

There are several recognized groups of California "Indians" who have only one, two or perhaps a handful of members. So any new members admitted are often family members of existing members.

The only thing the responsible federal agency, the Bureau of Indian Affairs, will furnish is a calculation of the blood quantum of anyone seeking membership, if the tribe or band has such a limitation.

The tribe has sole discretion to set such a "blood" requirement and to submit the name and ancestry of any proposed member seeking enrollment. Whatever vague and incomplete historical records the BIA has are based on "field surveys" and "Indian Census taking" nearly a century ago and which were based entirely on forms filled out by those agents when they talked (sometimes) with the persons and families involved. They relied upon those sketchy and often incomplete interviews and replies in creating an official "Indian ancestry" record.

These federal Indian policies have created no shortage of hardship and injustice to real Indians and no shortage of corruption by those "wannabe" Indians trying to scam the system now that gambling casinos are here.

It has also created many absurd interpretations, particularly now that there are significant economic benefits, for a share of the millions in welfare and grant monies provided to Indian groups, on top of the monies they receive from their many economic endeavors, like gambling casinos, hotels, restaurants, amusement parks, shopping centers, marinas, ski resorts, etc.

A classic example of the potential for abuse of this federal “hands off” policy is the re-creation of a tribe calling itself the Mashantucket Pequot tribe. The founder, “Skip” Hayward, was able to trace a 1/34 ancestry to an old Indian woman living on an abandoned Pequot reservation near Ledyard, Connecticut. Jeff Benedict recounts the incredible story of how Hayward parlayed that connection into the billion dollar-a-year casino called Foxwoods, in his expose book titled “Without Reservation” (Harper Collins 2000).

Perhaps it is too simple a solution, but if one is more than 50 percent of a non-Indian ancestry, then they are not Indian for any legal purpose. After all, if one were 7/8ths German and 1/8th Arapaho it hardly seems like you would be “Indian.”

It is a graphic example of how federal Indian policy is so easily manipulated by outside, non-Indian gambling investors seeking to spread casino gambling beyond Nevada and Atlantic City by using the Indian Gaming and Regulatory Act of 1988 and so-called “Indian tribes” as a front.

***“Race has no place in American life or law. Ours is a nation dedicated to the proposition that all of us should be treated as equals under the law.”***

**--American Civil Rights Institute**

The ugliest side of this federal Indian enrollment policy is the power it puts into the hands of tribal governments and controlling families, because the fear of any disenrollment becomes a weapon to advance tribal corruption and silence members who do not agree with their government or its policies.

One such vivid example here in California occurred at the Pechanga tribe, another massive and profitable gambling casino between Riverside and San Diego. Once boasting about 900 members, in one fell swoop, tribal Chairman Mark Macarro dis-enrolled an entire extended family, the Gomez family, in a move commonly recognized as an effort to fatten the profits for the remaining members and families.

To sell this disenrollment to other suspicious tribal members, who suspected Macarro’s true motives, he paid for and commissioned an ethnological investigator from here in Santa Barbara County, John R. Johnson, curator of anthropology at the Santa Barbara Museum of Natural History. He is a renowned authority on California Indians and was hired at the tribe’s considerable expense.

His thorough investigation and report to the Pechanga tribal government concluded, essentially, that the Gomez extended family was as much entitled to enrollment as anyone else. The tribal government promptly dismissed his report out of hand, ignoring his findings. To this day, the Gomez family has not been re-enrolled. Because Indian tribes are allowed to disregard the U.S. Constitution, even though tribal members are, by law, U.S. citizens, the Gomez family has no legal recourse.

Congress attempted to rectify the injustice of tribal governmental power trumping the U.S. Constitution by enacting the Indian Civil Rights Act. But when they did that, they created a Bill of Rights in that law with no legal means to enforce those rights in any real court of law.

**“Contrary to what tribal leaders believe, sovereignty does not require secrecy. In fact, greater transparency for their casino operations is in the tribes’ interest. Transparency would enhance tribes’ credibility. Most important, a policy of openness would empower tribal members, who are too often in the dark about essential tribal business.”**

**--San Francisco Bay Guardian (editorial)**

Locally, the 152 enrolled members of the Chumash collect \$45,000 every month in per capita distribution of gambling profits, while the 700 or so descendants of 1/8th or less ancestry get no money at all.

Most of us remember the millions the tribes and their outside casino investors spent to legalize casinos in California, and their main argument was how it would get all Indians off welfare and make them self sufficient. They never mentioned “enrolled members” only.

Unless Congress or the U.S. Supreme Court does something to correct these blatant injustices created by federal Indian policies, then the question of who is and who is not Indian will always be answered, “Whomever the tribe says is Indian.”

Thanks for YOUR dedicated financial support over the years, which has enabled us to accomplish what we have. But there's MUCH MORE WORK TO DO... We must now lobby federal elected representatives and dozens of state attorneys general to ENFORCE the Supreme Court rulings we just won. Will YOU help us do so?

We're fighting for you! Be generous in your support! Mail your check now.

### FREEDOM ISN'T FREE

We will keep you informed of any important emerging developments. Your support is needed to continue our vital work. Remember that ONU depends solely upon the kind donations of supporters like you to conduct our ongoing legal research, public education, advocacy, press outreach, and lobbying efforts.

We appreciate every single dollar received and, rest assured, it will be put to good use on your behalf. Each dollar you send is used to continue this battle for the future of America as ONE NATION UNITED and indivisible.

The question we're asking is: Will American citizens continue living

under convoluted, contradictory, and divisive laws or will we live as One Nation under equally applied laws?

Thank you for standing with us in the year ahead! And please act soon on our urgent request that you communicate with your congressional representatives.

Warmest Regards,



Barb Lindsay, ONU National Director

Email: [Barb@OneNationUnited.org](mailto:Barb@OneNationUnited.org)

Tel. 206-660-3085

P.S. Several more lobbying trips to D.C. are necessary this fall and winter. Take action today to help us continue bringing about change by sending your check to ONU for \$40, \$70, \$100, \$250, \$500 or more, if you can, please. Members like YOU make it possible for ONU to function. Use the enclosed remittance envelope and mail it right away, OK? Thanks so much again for helping out!

## THE 5 "Ws" OF ONE NATION UNITED

When ONU leaders attend meetings and interact with supporters, we're often asked how our nonpartisan, nonprofit umbrella organization works, how we get our funding, and how our supporters can best help us do more to bring about government policy reform.

In response to these inquiries, we have composed the "5 Ws of ONU": Who, What, Where, When, and Why.

Here's a brief explanation of our mission, our group's needs, and how you can help us continue to grow!

**WHO?** We ask you, your family, your business, your neighbors, friends and co-workers, your homeowners association, and your local citizens group to help support our work. Like other nonprofits, we rely entirely on the voluntary donations of our supporters. ONU is made up of people who are average Americans, including concerned citizens, families, property owner and community associations, businesses large and small, state and national trade groups, local governments, academics, members of the clergy, law enforcement leaders, sport and commercial fishermen, agriculture groups and landowner organizations, as well as elected officials who share our views in thirty-nine states across the nation.

**WHAT?** Donations to ONU can be made in the form of a check or by credit card (we only accept VISA or MasterCard). Every dollar you give goes toward defending private property rights, the rule of law, and our free enterprise system by working to reform failed federal Indian policy.

**WHERE?** We look forward to receiving the mail as our supporters send their donations to: One Nation United, P.O. Box 3336, Redmond, Washington 98073-3336

**WHEN?** You may donate monthly, quarterly, or annually to help ONU achieve ongoing success. Donations in any amount are welcome!

**WHY?** ONU is proactive in the public policy arena, working to defend America's free enterprise system, our rule of law, and the constitutional rights of all U.S. citizens. On a daily basis, we advocate for average Americans in the often-hostile environment of the U.S. Congress. We represent your family, business, trade group, or community organization when we testify before committees, meet with lawmakers, speak at local and national conferences, and interact with the media. We provide an easy, effective way for concerned citizens to make their voices heard in the legislative process by informing and empowering our supporters. Keep in mind that, although ONU is a tax-exempt, nonprofit group, we still have bills to pay. Each month we must pay phone, fax, and Internet expenses, travel costs, expenses for numerous seminars we host or attend (including press conferences) plus office and administrative overhead. ONU incurs the very same expenses any other business or organization must pay. But we rely for funding entirely upon the generosity of those whom we represent. In order to continue this important work, we truly do need your help. We're good stewards of every donation because we fully understand how hard our supporters work for their money.

Thanks again for your support! Together, we are making a difference!