



# UPDATE

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January 2008

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

Best wishes to you all across the miles! Please excuse the delay in getting this Update out. My beloved Husband of thirty-eight years, Victor Lindsay, passed away on October 4<sup>th</sup> after valiantly battling heart disease and lung cancer. Vic will be greatly missed as one of One Nation United's most devoted volunteers for the past 20+ years. My sincere thanks to all of you who sent letters of support and condolence. Vic would want us to carry on the fight for freedom, free enterprise, and equality... and so we will do so!

We are sending you this Newsletter to touch base and update you on our progress over



*Vic and Barb Lindsay on our wedding day, February 8th, 1969*

the past year. As you know, ONU has been working hard to build our base of support with coalitions of citizens, business groups, academics, clergy, local governments, community organizations, and various trade groups - - including law enforcement and agriculture leaders across America.

Our membership is truly nonpartisan because it includes Democrats, Republicans, and Independents, liberals as well as conservatives, and concerned individuals and families living in all 50 states.

Our success has resulted from sharing the facts about the ongoing abuses to our private property rights, the electoral process, and our constitutionally guaranteed civil liberties. But we need your help! Our grassroots success depends upon the generosity of ordinary people who care enough to make a generous annual donation to our efforts.

In the midst of a busy winter season, we ask you please not to forget ONU and the valuable

*(over, please)*

work we do representing you. As you must know, we're finally making some true progress. At long last, political tides are turning our way...

We're promised in the U.S. Constitution that ours is a "Government of, for, and by the People." But for too many years now our civil rights have been held captive by usurping government bureaucrats aided by a cowardly Congress, which ignored the People's right to govern ourselves.

Keep in mind that government reform is not a singular event. Instead, it's an ongoing process. And for the past few years we've been winning by small increments...

We are being vastly outspent by "the other side" but we are nonetheless making a difference and seeing changes occur in response to joint lobbying efforts and public educational efforts. See below the good news about new policies being adopted by the Interior Department as a direct result of our Petition for Rulemaking sent to the U.S. Secretary of the Interior.

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## **ONU IS MAKING PROGRESS**

That's why we need your dues renewal today - - to enable us to more effectively defend America's constitutional and common law heritage of private property rights, individual freedom, and a robust free enterprise system in which everyone follows the same rules (i.e. "Equality Under The Law" for all, rather than special privileges for a few).

One example is the current moratorium on "fee-to-trust" petition approvals for tribal casinos by the Department of the Interior. Our collective lobbying efforts and joint Petition for Rulemaking were heeded by the Bush Administration's top appointees (such as new Secretary of Interior Dirk Kempthorne, who responded by promising more meaningful input in the land-into-trust process for local citizens and our elected representatives.

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## **TOGETHER WE CAN MAKE A DIFFERENCE**

New fee-to-trust regulations were recently announced by the U.S. Department of the Interior and published in the Federal Register; rules that will make it harder for Indian tribes to go "reservation shopping" for new casino locations. This is a step in right direction and shows that our collective voices were heard in D.C. Thanks to all of you!

Please let your two U.S. Senators and member of Congress know that your support these improvements to the land-into-trust process. They need to hear that this is progress!

We've also seen the tribes' sovereign immunity chipped away in a number of key court rulings, such as the Krystal Energy v. Navajo Nation case decided by the 9<sup>th</sup> Circuit Court.

Our progress has also been evident in some important U.S. Supreme Court rulings (such as the City of Sherrill v. Oneida Indian Nation case, 544 U.S. 197 – 2005, decided by a margin of 8-1) that are being widely bemoaned by tribal leaders, their legal counsel, and most of the mainstream media.

We had another terrific win in Washington on September 13<sup>th</sup> in a key ruling handed down by the State Supreme Court in Swinomish Indian Tribal Community v. Western Washington Growth Management Hearings Board. (No.76339-9) Another 8-1 decision, in response to an agricultural issue in Skagit County, this ruling has statewide implications and applies far beyond agriculture. For example, the majority held that riparian buffers are not "mandatory" along rivers and streams under the Growth Management Act.

This High Court decision was an absolute victory for private property owners and an astounding blow to the tribes. Local officials now have the freedom to make balanced decisions and should no longer feel intimidated by the threat of tribal lawsuits, which routinely seek multiple millions for settlement and often force bad land use decisions.

See further details by reading the entire court ruling at: [www.courts.wa.gov/opinions/?fa=opinions.disp&filename=763399MAJ](http://www.courts.wa.gov/opinions/?fa=opinions.disp&filename=763399MAJ)

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## **WASHINGTON STATE NEWS**

As the storm damage assessment and clean up dominates Washington State's news, property owners must not lose sight of the Special Session of 2007, and the results which should bring all property owners to their feet!

For the first time in memory, a state legislative body came into session for the sole and express purpose of addressing property taxpayers' issues.

On November 8<sup>th</sup>, Washington's State Supreme Court threw out the provisions of Initiative 747, which limited property tax increases to 1%. In 2001 voters overwhelmingly approved I-747. The court decision threw property taxpayers on the mercy of more than 1,700 local taxing districts with authority to increase property taxes almost at will.

Immediately, public outcry led the Governor to call the Legislature into session, to remedy the mess created by the court decision. Legislators even circulated petitions to call themselves into session. Local government taxing authorities gleefully anticipated the loophole that would bring them a property tax receipts windfall.

On the 19<sup>th</sup> of November, the Governor issued the formal “call” to convene a Special Session, November 29<sup>th</sup>. Governor Gregoire included just two issues in the call: the I-747 “fix” and a tax deferral program for property taxpayers who find themselves facing hard times and unable to pay their property taxes.

While both parties, all four caucuses along with the Governor’s office were publicly in pursuit of property taxpayer protections, as suspected there was no easy “fix”. By the end of the one-day session, two bills were passed and signed into law by the Governor. Neither represents either a real “fix” to protect property owners, nor sound economic policy. Taxpayers can take some comfort in the partial fix, but must be vigilant in the upcoming session to strengthen the provisions.

Property owners and taxpayers must coalesce our message and work together to strengthen the 1% protection and eliminate the “banked capacity” loopholes for local governments.

Deferring property tax payments effectively puts the State into the “reverse mortgage” game, and looks more like predatory practices, than sound public policy.

For the first time in decades, the issues of property owners are in priority status in Washington State. The ultimate implementation of the recently formed Puget Sound Partnership, will bring even more threats to property owners’ interests. There’s no shortage of issues facing property owners.

Clearly, the 2008 elections can and SHOULD focus on property owners’ issues. Indeed, expanded engagement by individual property owners and their organizations, can prevent more ground being lost. We can ill afford property rights to continue to erode, overshadowing constitutional protections and promises as public policy evolves in our absence.

Now is the time to TALK TO YOUR LEGISLATORS. Don’t assume they know what you need, or agree with what you think...

In addition to the property tax issues, eminent domain abuse challenges remain front burner for policy makers, stakeholders, and property owners. More and more properties are being considered for removal from tax rolls, en route to being declared Tribal Trust Land. ONU National Director and Spokesperson, Barb Lindsay, was recently appointed by Washington Attorney General Rob McKenna to serve on his Eminent Domain Abuse Task Force. AG McKenna’s goal in appointing the Task Force is to draft legislation for submission to the State Legislature to address the problems resulting from eminent domain abuse. Eminent domain is a true threat to private property rights in Washington State, as well.

Barb is honored to be serving on the Task Force with a number of state and local elected officials, including Senator Adam Kline, Representative Lynn Kessler, Representative Larry Springer, and Benton County Commissioner Leo Bowman, as well as William Maurer, Executive Director of WA Chapter of the Institute for Justice and Paul Guppy, Vice President for Research at the Washington Policy Center. Barb has been regularly attending the Task Force meetings at the AG’s Seattle Office. The next meeting is scheduled for April of 2008.

## NEWS FROM CALIFORNIA

In the State of California, we succeeded in qualifying the “California Property Owners and Farmland Protection Act” for the June 2008 statewide ballot. This eminent domain reform measure, if passed by the voters, will stop government from taking homes, small businesses, family farms, and places of worship and giving the land to other private interests merely for financial gain. The goal is to prevent government bureaucrats from snatching private land from unwilling sellers to benefit private parties who happen to be well connected politically. Passage of the act will protect all CA property owners from eminent domain abuse.

## NEW YORK STATE NEWS

On Tuesday, October 30<sup>th</sup> of 2007 U.S. District Court Judge Joseph Bianco struck down the Shinnecock Indian Nation’s plans to build a casino on a parcel of land in the Hamptons. He said historical documents prove the tribe’s aboriginal title to the land was extinguished in the 17<sup>th</sup> century, ruling that the Hampton Bays site is not Indian land (which means the Tribe must follow local zoning and building regulations which forbid casinos). He also cited a U.S. Supreme Court ruling that barred building a casino if it would have “highly disruptive consequences” to the local area. Another big win!

## NEWS FROM HAWAII

House approval in October of the Akaka bill for Native Hawaiian sovereignty by a vote of 261-153 fell far short of the two-thirds majority needed to override a Presidential veto, therefore rendering futile continued efforts to pass the Akaka bill while President George W. Bush remains in office. This, too, is a win for “our side”!

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## UNITE TO FIGHT

While we celebrate our recent victories, we recognize there are still challenges ahead. Will you please send a 2008 donation now to help us meet those challenges? Remember that this fight is not with the Indians. It is with our own federal governments and their bad policies.

We are deeply grateful for your previous financial support, which helped to ensure the survival of this organization since our founding in the 1982. ONU remains committed to expanding our nationwide nonpartisan coalition and reaching out to many more concerned citizens, trade groups, local governments, and like-minded organizations.

When we formed this organization back in 1983, we knew it had to be grown from the “bottom up” -- from the grassroots in dozens of states. ONU slowly, but surely, has grown to become a widely

respected national group made up of local and state leaders of many other statewide groups and regional/national organizations who share our concerns.

Our opponents, on the other hand, work by using “top down” intimidation and pressure tactics. They exercise their political clout primarily by contributing B-I-G money to politicians on both sides of the aisle.

But their huge war chest can't fool all the people of all the time. Millions of concerned citizens are finally waking up to the fact that our political system is being bought off by enormous tribal campaign contributions. They are coming to realize that the “tribal loophole” in campaign finance rules allows Indian tribes to circumvent the aggregate donation limits all other citizen groups must follow. And that the tribes are using tribal “government” funds and tax-exempt casino “corporate” profits to make federal, state, and local contributions to candidate campaigns, as well as to ballot measures. None of the rest of us can do this. And it must be changed.

Indian tribes are now the biggest campaign contributors of ANY special interest group in the United States - - outspending the defense industry, teachers unions, labor, and even the manufacturing industry. And no other “governments” can make campaign donations. Nor can other Americans give “corporate” money to federal candidates.

Because tribal governments are providing millions of dollars more than the rest of us can to political parties, candidates, and incumbents, they are essentially acting as if they are political parties. Thus, the tribes have become unregulated parties to America's political system. Our ability to have a meaningful voice in how our own government is run is threatened when any special interest group has such inordinate power to control the outcome of our elections.

“It should be the highest ambition of every American to extend his views beyond himself, and to bear in mind that his conduct will not only affect himself, his country, and his immediate posterity; but that its influence may be co-extensive with the world, and stamp political happiness or misery on ages yet unborn.”

—George Washington

That is why we must continue ONU's public educational outreach efforts by presenting our persuasive arguments to additional elected officials on the local, state, and federal level, as well as to the print and electronic media. Our political influence has increased thanks to your past financial help! Your support in letting your elected representatives know how these important issues impact you is also greatly appreciated.

But to continue expanding our audience and increasing our

influence, ONU needs to pay our bills and stay in business. Please use the enclosed return envelope to send your most generous possible check to One Nation United today. Your help is urgently needed. Use ONU's remittance form or call 206-660-3085 if you wish to donate using your credit card.

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Here are some of the other key issues of concern to ONU at the present time:

The Interior Department is asking Congress to pass H.R. 2837 in an effort to speed up recognition of more new Indian tribes. Their goal is to “expedite approvals” by removing the federal acknowledgment process from the Bureau of Indian Affairs and transferring that responsibility to an independent Commission on Indian Recognition. The Commission would be composed of individuals recommended by the tribes. It would allow the recognition of Native Hawaiians, Guamanians, Samoans, Puerto Ricans, and other ethnic groups. The bill would also allow tribes previously denied recognition to re-apply. Petitioners would only need to prove they were a tribe back to 1900. The historic requirement (governmental existence prior to 1900) would be abolished. The Department wishes to establish firm timelines so that tribal petitions for recognition move along more quickly. DOI is also seeking funding from Congress to hire more staff to work on recognition proposals. ONU must oppose this bill (now pending before the House Natural Resources Committee).

In Washington State, an important legal case that could set a nationwide precedent is a subproceeding of U.S. v. Washington called the culvert case. Here's a brief historic overview:

Washington tribes have long been pushing for full control over the environment. They've filed a series of lawsuits intended to win a greater role in managing Western Washington's environment - - even on private properties - - calling these their “habitat” claims.

In 1980, U.S. District Court Judge William Orrick, in the case known as “Boldt II,” declared that Judge George Boldt's 1974 ruling gave Indian tribes the right to a habitat that sustains the salmon and steelhead that are crucial to their culture. Orrick's ruling gave the tribes jurisdiction over much of the environment. Thankfully, the State appealed. Two years later, the 9th Circuit Court of Appeals overturned Orrick's ruling.

In 1989, the tribes filed suit again. This time using shellfish as their excuse for seeking “environmental servitude” rights over all public and private beach properties in most of Western Washington. Once again, their goal was to obtain permit authority and veto power over all upland and tideland properties so as to extract hundreds of millions of dollars from local governments and sewer districts as

well as from private landowners whenever someone sought to add a septic tank, remodel their home, or even repair a bulkhead or dock.

Our organization hired legal counsel and successfully intervened in the case to become a formal party so we could defend our collective property rights. Our group's legal counsel, James M. Johnson (who now sits on the WA State Supreme Court) succeeded in getting Judge Edward Rafeedie to put language into his final court decree stating that as long as private landowners followed all federal, state, and local land use laws the tribes had no veto powers, no permit authority, and no environmental servitude rights over privately-owned tidelands or adjacent upland properties. Rafeedie's ruling was upheld by the 9<sup>th</sup> Circuit Court and the U.S. Supreme Court refused to hear the tribes' appeal.

Despite these previous losses, tribes now say they plan to push new habitat claims, even if it means more costly court battles. This means they plan to sue anyone who pollutes the Puget Sound region's environment. Tribes have now sued the State of Washington for control over the region's culverts, which carry runoff along and under roads. Control over culverts, say tribal leaders, is crucial to keeping pollution out of most rivers, creeks, and streams.

Their goal in this lawsuit is to extract hundreds of millions of dollars from state and local taxpayers by suing over lack of stream flow and water quality in culverts throughout the state. This essentially amounts to blackmail through the equivalent of 'permit fees' being paid to tribes.

That's where private landowners come in because anywhere water stands on private property - - even if only for a few weeks a year - - the tribes want to extract compensation. Their culvert lawsuit could cost taxpayers millions and infringe on our private property rights.

Private property is their primary target, after public lands owned by local governments. Farmers, for example, cannot possibly meet the water quality standards required for fish when they have animals and crops to raise.

Tribes have been attempting to get this sort of 'permit authority' over the use of public and private lands ever since the Boldt Decision was handed down in the mid-1970s. They lost their first attempt in Boldt II when the 9th Circuit ruled that giving tribes this sort of "sweeping power" over land use would have "disastrous economic consequences" for the Puget Sound region. They attempted it again in the Shellfish/Tidelands case, again losing when Judge Edward Rafeedie (at our attorney Jim Johnson's urging) put specific language into his final decree prohibiting the tribes from having environmental "veto power or permit rights" over privately-owned beaches and adjacent upland properties.

Now tribes are making their third overreaching attempt in the Culvert case. Small landowners and business owners cannot afford to pay Indian tribes huge permit fees. The U.S. Constitution promises that we will be taxed and regulated by a republican form of government in which we have a voice and vote, clearly lacking for us with tribal governments to which we cannot belong.

This case must be appealed to the 9th Circuit and perhaps all the way to the U.S. Supreme Court because our Nation's Highest Court

held in the Sherrill case two years ago that tribes cannot wait more than a hundred years to bring suit over such land issues (Doctrine of Laches) and also that local governments and property owners are protected in their "Justifiable Expectations" that local land use rules and zoning laws will be upheld, rather than subjecting landowners to tribal governance.

ONU is attempting to pull together a coalition of groups to appeal this ruling or, at least, file a joint amicus (Friend of the Court) brief to raise additional arguments in defense of our private property rights. Will you help us do so? The State and tribes are now in negotiations, which could compromise our collective interests. Thanks again for your support.

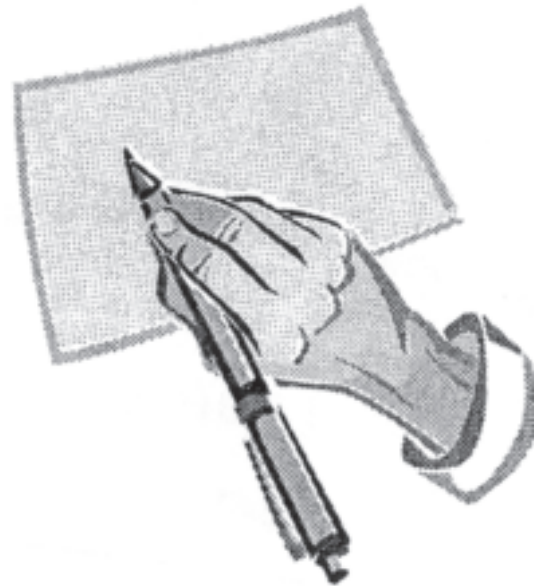
Please don't forget ONU and put your check in the mail today.  
Happy New Year 2008!

Best Wishes,



**Barb Lindsay for the ONU Board of Directors**  
**Website: [www.OneNationUnited.org](http://www.OneNationUnited.org)**

P.S. See the article on the next page about another important federal court victory!



# Court Rules Tribal Casino Is Merely a Casino

by I. Nelson Rose

The federal Court of Appeals has declared that, at least for labor law, tribal casinos are to be treated exactly the same as casinos that are owned by private citizens. In other words, a tribal casino is not a part of a government, but merely just another privately owned business.

At a minimum, this means that federal labor law applies to all employees at Indian casinos. This includes the laws surrounding the right to unionize, the major issue of dispute in the fight over new compacts in California.

At the maximum, the case could result in the virtual end of tribal sovereignty. Courts would never openly declare that tribes are not sovereign governments. Instead, using this decision, they could find that almost every federal and state statute and regulation applies to Indian casinos and to any other tribal business that is not limited to members of that tribe.

The case began with a dispute between two unions anxious to capture the workers at the San Manuel's Indian Bingo and Casino, the closest tribal gaming to Los Angeles. The Hotel Employees and Restaurant Employees International Union was denied access to the casino for organizing while its rival, the Communications Workers of America, was not. The federal government naturally ruled this was unfair.

But the major question was whether the tribe's casino is even subject to the nation's labor laws. In a long, detailed decision, the Court ruled that it is.

The Court focused on the facts that most of the patrons and even employees were not members of the tribe, that casinos are not a traditional part of Indian life, and that the gaming operation was only a way to raise money, and not an essential part of the tribe's self-government.

The Court then declared a fundamental change in the way courts will decide if a law applies to a tribe. It is well established that tribes have sovereignty. This includes the right to be exempt from federal and state laws and not to be sued without their consent. Tribes can voluntarily give up some of their sovereignty, as they often do when signing contracts.

Tribal sovereignty can also be taken away by Congress. Until now, courts have held that this can only happen if there is an express statement by Congress limiting a tribe's sovereignty. This Court ruled that the express statement is required only when a federal or state law will interfere with a tribe's governmental functions. In all other cases, outside laws apply to Indians, unless there is a clear indication that they are exempt. So, the law has been turned on its head. It used to be that tribes were safe in assuming a law, say the requirement that casinos report large cash transactions to the U.S. Treasury, did not apply to them, because there was no express statement that tribes were required to file these reports. Now the assumption has to be the opposite: All federal and state laws, including all statutes and regulations, apply to tribal casinos unless there is an explicit statement in the law itself that tribes are exempt. Tribes are right to be worried. The Court cited a recent case from California holding that a state law dealing with political donations applies to tribes.

But tribes should be careful about appealing. The Supreme Court has made it clear that it hates tribal sovereign immunity. This case would give the Court the opportunity to declare that not only all laws, but also lawsuits, apply to tribes unless they directly interfere with tribal governmental functions or there is an express declaration regarding the tribe in an act of Congress.



*I. Nelson Rose*