



UPDATE

One Nation United

2060 East Ave de los Arboles D349, Thousand Oaks, California 91362-1372
P. O. Box 3336, Redmond, Washington 98073-3336
206-660-3085 January 2007 805-523-0524

Chairman Emeritus:

Alan Montgomery, Washington
President:

David Jaques, Oregon

Secretary-Treasurer:

Kim Halvorson, Washington

National Director:

Barbara Lindsay, California

Board of Directors:

George Garland, Washington

Dave Vickers, New York

Frank Messersmith, Florida

James Johnston, Ed.D., Washington

Dan Johnson, Idaho

Former Congressman

Jack Metcalf, Washington

Marianne Pender, Wisconsin

Marilyn Sherry, Washington

Rich Porter, Illinois

Cynthia Rasmussen, Washington

Advisory Committee:

Chip Worthington, Founder,

“Stop The Casino 101”,

Rohnert Park, California

Rheba Hewitt, President

Alliance for Community

Rights, San Bernardino,

California

Honorable Wally J. Leimgruber,

Imperial County Supervisor-

District 5, El Centro, California

Honorable Nicholas H. Mullane, II,

First Selectman, Town of North

Stonington, Connecticut

Jon Furbee, President, North Idaho

Citizens Alliance,

Harrison, Idaho

Dick Platfoot, Citizens Against

Casino Gambling,

Wapakoneta, Ohio

Nancy Smelcer,

Menominee, Wisconsin

Tom and Patty Mitchell,

Founders, Tulalip Community

Assn., Marysville, Washington

Elizabeth A. Campbell, Native

American Policy Alliance,

Seattle, Washington

Dear ONU Members, Elected Officials, and Law Enforcement Friends Across America,

As the New Year begins and a New Congress convenes, we send you our sincere best wishes! ONU has important political updates to share with you, as well as some great news on legal developments in our state and federal courts.

In November, we co-sponsored a very successful Leadership Conference in Washington, D.C. (details follow).

Of course, we again need to request your financial support for ONU's ongoing efforts in defense of private property rights, the rule of law, our free enterprise system, and comprehensive reform of flawed federal Indian policy. ONU could not have built our strong, focused, and activated grassroots network across America without your support!

Our momentum grows only through your involvement and continuing support. We are only as strong as the citizens, businesses, local governments, elected officials, and community groups ONU represents. Thank you again for your financial and moral support! We are making a difference...

Our nonpartisan, nonprofit membership organization is now celebrating twenty-three years of success since our founding in Washington State in 1984. We began as United Property Owners and, as you know, merged with Oklahoma-based One Nation to officially become “One Nation United” two years ago. ONU will continue to face our political opponents with truth, passion, and steadfast tenacity. Thank you for giving

us your vote of confidence with your dues renewal in 2007.

One of our most important goals as a public educational organization is to stimulate debate and a balanced discussion of current federal Indian policy - - and the fact that it undermines democracy and equality under the law guaranteed to all Americans. True debate is finally happening! ONU has played a key role in helping this national discussion start to happen.

Many more people have come to see how unfair current federal policies are... More voters are also becoming acutely aware of how much chaos and divisiveness is created when people share the same geographical space, but not the same set of laws, the same privileges, or even the same ideals. It simply doesn't work!

For example, we're now seeing truly worrisome impacts on our national security as a direct result of flawed Indian policies. In Arizona, the Tohono O'odham Nation recently banned armed National Guard observation teams from its land. Last November, the Nation passed a council resolution forbidding armed National Guard troops - - assisting U.S. Border Patrol agents in “Operation Jump Start” - - from using its mountains as observation posts. The tribal ban applies only to the Pisinimo District located on the Tohono reservation which is an area well known for people smuggling, as well as major drug trafficking.

The politically correct notion of inheriting guilt for our ancestors' sins is not only illogical, but how can anyone decide whose ancestors and which sins? Giving tribal members compensation today for claims of wrongs committed to and by people who have been dead for generations is impossible to do!

So, instead of demanding that past wrongs somehow be retroactively righted, we ALL need to recognize historic mistakes, learn from them, and focus our energies today on the glaring injustices in present day American society. This provides the strongest moral compass for current political action. It's certainly far better than wallowing in guilt over victimhood of long ago.

To give you an idea of how far the misguided idea of somehow righting past wrongs by giving more to Indian tribes today has gone, in Washington State, the "Northwest Water Resources Committee" (made up of more than 25 companies, including Burlington Northern, Puget Sound Power and Light, and the Weyerhaeuser Corp.) more than 18 years ago was advised by tribal advocates that the Pacific Northwest business community should form a coalition with Indian tribal governments. Washington business leaders were informed that the tribes' political objectives are:

1. Protection of tribal commercial fisheries income;
2. Expansion of the tribes' natural resource income base;
3. Recognition of Indian tribes as government entities;
4. Acceptance of Indian treaty rights by state elected leaders;
5. Acceptance of Indian treaty rights by non-Indian citizens;
6. Making commerce in the region dependent upon Indian treaty rights

Just how unworkable this last proposal really is can best be demonstrated by simply reading the following policy statement recently shared with ONU by the Western States Sheriffs' Association on the subject of Indian business expansion and tribal sovereignty:

"The Western States Sheriffs' Association has worked with federal and tribal representatives throughout the West to improve relationships with the various Indian tribes as it relates to providing public safety and law enforcement to their residents in Indian country and the non-members who visit tribal businesses. The WSSA is requesting support and sponsorship from Congress to enact legislation that would properly clarify for all, tribal sovereignty, and authority of individual tribal governments within the states. Indian gaming has caused numerous policing and taxing issues through out the West, and sovereignty clarification must be addressed. We look forward to a workable solution from our elected representatives to preserve our individual state's sovereignty and allow individual Native Indian tribes to prosper from their economic development programs."

Everyone wants tribal businesses to prosper, but not at the expense of non-Indian citizens, our businesses, and our local governments' ability to enforce the law, to provide for public

health and safety, and to protect the sovereign rights and land base of our state governments.

We urgently need a moratorium on recognition of new Indian tribes as well as an immediate moratorium on tribal fee-to-trust conversions for the purpose of commercial development

If your membership isn't current, please renew now and help us carry this message to Congress in 2007. New fee-to-trust rules are being written now! We need your financial help to carry on this important battle in the court of public opinion as well as lending support to lawyers involved in key pending court cases.

We must make certain that local citizens and our local governments have a more meaningful voice in shaping the future of our communities when Indian tribes buy land and remove it from the tax rolls. The playing field must be leveled so that more local voices are heard and federal policymakers consider our opinions.

LEADERSHIP CONFERENCE IN DC

As a key component of our public educational efforts, ONU was the lead sponsor of a successful and informative Leadership Conference (together with the American Land Rights Association and the Coalition Against Reservation Shopping) in Washington, DC, on November 13-14, 2006.

We were honored to have a stellar array of outstanding speakers, including respected lawyers, noted historians, courageous local elected officials, legal counsel to members of Congress, academia - - the University of Illinois, University of San Diego Law School, The Manhattan Institute - - and leaders of state and national trade groups, including convenience stores, petroleum marketers, crab fishermen, and law enforcement. Featured speakers came from the states of Alaska, California, Connecticut, Pennsylvania, Virginia, New York, Hawaii, Colorado, Oklahoma, Oregon, Washington, and elsewhere across the country.

One of our speakers, Attorney Neil Murray of O'Connell and Aronowitz in Albany, New York, reports the terrific news that, since our November gathering in Washington D.C., "The U.S. Supreme Court has rejected the Oneida Indian Nation's attempt to appeal the final decision by the New York Courts invalidating the Compact under which the Tribe claims the right to operate the Turning Stone Casino. Now that the Tribe has exhausted its legal challenges, it remains to be seen whether New York State officials will do their duty and take steps to close down the illegal operation and stop paying New York State personnel to oversee this illegal operation."



*Neil Murray of Albany, New York,
at the One Nation United Leadership
Conference, November 2006*

**From the speech by Kelly Clark, Esquire
Leadership Conference on Reform of
Federal Indian Policy
Washington, D.C. ~ November 14, 2006**

I have been asked to speak to you about the peculiar situation we have out in Oregon -- land of milk and honey, of pristine coastlines and sacred forests, of high mountains and low clouds, land of coffee shops and bookstores and populist politics, a red state dominated by a blue city, and a state whose constitution proudly proclaims that there shall be no casinos staining our public lands and our public virtue-- where, strangely, over the last decades our governors have sited nearly a dozen tribal casinos, and where more are being sited as I speak. Of course, I am honored to speak to you about that, as a lawyer who has filed two lawsuits and plans to file more to try to stop this absurd and plainly unconstitutional practice.

How is it in a state whose constitution prohibits casinos that our governors keep siting casinos?

For the last two years I have been privileged to represent a citizens' group of some of the finest people I have ever met, calling themselves "PACT: People Against a Casino Town." The Town is the coastal hamlet of Florence, Oregon. Now this is a quaint and quiet place on the stunning Oregon coast, a town that -- if you added some snow and took away the coastal setting -- might remind you of Jimmy Stewart's Bedford Falls: where folks know their neighbors, where fishermen and parents and business owners gather at the community center to talk out community problems, and where people are proud of the small town way of life.

Well, to cut to the chase, about ten years ago a confederation of native tribes petitioned the federal government to bring some land called the Hatch Tract into tribal dominion. And they made very public representations that they had no plans to build a casino on this land. Then, later, well, you might not be surprised to learn that they decided that, after all, a casino would be a good idea. And of course, this created quite a firestorm of controversy in Florence, which has in the last few years been host to more campaigns and elections and lawsuits than any small town should have to bear, pitting neighbor against neighbor and citizen against city hall, the result of which has been as ugly as anything I have ever seen in local politics. But the PACT remain committed to stopping the casino right where it is, a glorified tent that -- we are told -- because of our lawsuit cannot obtain permanent financing to build the massive bricks and mortar monstrosity that is planned and that would effectively turn Bedford Falls into Pottersville.

To understand the theory of our lawsuit is not difficult. In 1984 when the Oregon Lottery was created, Oregonians were cautious enough to add a provision to our state constitution that prohibits casinos. Seems as if scratch-it lottery tickets were one thing, but outright casino gambling was not something we were willing to tolerate. So as tribal casinos started being thrown up in the 1990's, more and more eyebrows were raised but nothing was done. Perhaps part of this is because the lottery itself was expanding hand over fist, video poker, line games, and all the rest. But along came PACT a few years ago and decided to call the Governor's bluff and demand that he do his sworn duty to uphold the Oregon Constitution. Four courts and three lawsuits later, we are still trying to get an answer to our Very Simple Question -- how is it legal for a governor to approve casinos in a state whose constitution expressly says "no casinos."

I will spare you the details of the amazing shell games PACT has faced, getting bounced back and forth between the state and federal courts, the Tribes and the State playing good cop/bad cop -- all the while avoiding the Very Simple Question. But in essence the State has argued that the federal IGRA

requires the Governor to site these casinos, that the Oregon Constitution in this circumstance is nothing more than a “state regulation” to be overridden by IGRA, and that, since we have a lottery that allows some types of Class III gaming, he is powerless to stop the Tribal casinos. In response to this we have pointed out that IGRA is not the issue. We want a simple answer to a simple state law question: under the Oregon Constitution, can the Governor lawfully sign a compact for any casino? We point out that IGRA specifically defers to state policy on gaming and nowhere requires a state to violate its own constitution to site casinos. This is why there are no casinos in Utah -- their state constitution outlaws gambling. Oregon’s Constitution, we keep reminding anyone who will listen, outlaws casinos.

Now, our latest attempt at justice -- the third lawsuit -- landed us in federal court; how that transpired I won’t go into. But a federal judge decided last Spring that we could not maintain our suit, since the Tribes -- whom we had only reluctantly sued -- have sovereign immunity. Right. We knew that -- which is why the previous lawyers handling the case before I got involved, and then I, did not sue the Tribes in the first place. But way back then, at the State’s motion, the first court threw our case out because the Tribes weren’t named. Hmmm.

Anyway, while some people saw this most recent decision as a defeat, I thought, and still think, that it proves that PACT’s original theory and lawsuit was correct -- that, under state law, a lawsuit against the Governor, not the Tribes, is the proper vehicle for answering the Very Simple Question. We are now able to prove what we could only argue before -- that, because of tribal sovereignty, we cannot obtain a remedy through the normal legal channels-- we have no “adequate remedy at law,” and so we simply need a court to issue a mandamus and order the Governor to abide by the Oregon Constitution. That question is now before the Oregon Court of Appeals, and if we lose there, we will go on up to the Oregon Supreme Court.

Let me highlight this dizzying procedural history. I must confess that, after 23 years of practicing law, much of it public and constitutional law, I am astounded at what is transpiring here. First, that a group of citizens is forced to act as de facto Attorney General, seeking to enforce the Oregon Constitution, because neither the official Attorney General nor his client the Governor will do their job. They, not we, should be the ones rising up indignantly and saying: “over my dead body will I violate the Oregon Constitution. I cannot trade my first duty -- and my public integrity -- for any purpose, good or not, even in exchange for Tribal promises to sprinkle lots of cash around the community. I cannot and will not do it.” That is what he should be saying. Instead, we are left to ask a court to order him to say it.

The second staggering fact is that, so far, the courts won’t do it. They seem paralyzed by a fear of rocking the boat. They seem to believe that under IGRA, the fix is in. “Shut up and

go away,” the court seems to whisper: “Don’t you get it? Congress has cut the deal in Washington. IGRA means that the federal government has chosen to throw the Tribes some bones and in exchange they will be quiet about historical and economic injustice.

So the deal is done and the fix is in. Now, will you just shut up?” Well, no, we won’t. PACT won’t and I won’t. I have been in long battles before -- twice in my career it has taken me a decade or more to get a case up the appellate courts and back down to trial, and half a dozen times I have been at a case for 5 or 6 years. So long battles are no big deal to me. And after this latest decision by the federal court, my law partner -- a hotheaded Irish Catholic who has a passion for what is right -- he and I and our whole team have committed to doing the rest of this case pro bono, for as long as it takes. 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 -- this is the most outrageous of all -- the outlandish charge that anyone with the unmitigated temerity to raise these issues is racist.

**From the speech by Joel S. Rose
Leadership Conference on Reform of
Federal Indian Policy
Washington, D.C. ~ November 14, 2006**

Good morning, and thank you all for inviting me to address you today. The issue that brings me here is gambling. In some states, including my home state of New York, gambling has become entangled in Indian law, so to that extent I’ll be talking about that as well.

The 1988 Federal Indian gaming Regulatory Act was intended to bring order to what had become judicial chaos regarding the right of Native Americans to have gambling. The authors of IGRA intended to limit Indian gambling to reservation lands, but the legislation was not tightly drawn. As a result, Native gambling promoters and their non-Native backers have begun to acquire land where the people are -- in large urban areas like Buffalo and resort areas like the Catskills, irrespective of their prior historical or current cultural connection to such locations. Sadly, our state and local politicians have been in the thick of the chicanery. A former high-ranking public official in Buffalo once candidly acknowledged that “the only reason we’re using the Indians is that it’s the only way we can get around the Constitution.”

“As a County Official, we have a fiduciary responsibility to our entire constituency. When you begin the transfer of wealth from taxpaying entities, to non-taxpaying entities, your ability to provide county services (like police, fire, sanitation, roads) is greatly diminished. We must continue to speak out against this taking of lands from fee-to-trust for casino developments.”



**Imperial County (California) Supervisor,
Wally Leimgruber at the One Nation United
Leadership Conference, November 2006**

(Continued from page 4)

Native sovereignty is a concept intended to ensure self-governance for Native peoples, but it has been twisted to provide a mechanism of dubious legality for suspending local and state laws to allow for the establishment of casinos in places far from the prior reservations, where the authors of IGRA never intended. These land acquisitions are not adjacent or near to existing centers of Indian residents, and so they do nothing to enhance the lives of ordinary Indians. In New York, some of these proposals involve land where the tribes in question have never lived, such as the Mohawk proposal to open a casino at the racetrack in Monticello. In Buffalo, the Seneca Nation has acquired a parcel on land it had not held since the 1830s. Whether such land, once acquired, can become sovereign, is a matter currently being litigated in Federal Court, in *Citizens Against Casino Gambling et al v. Norton et al.*

Indians of several tribes have told me that most of the Indians themselves do not want gambling. They are the captives of

non-responsive governments just as the rest of us are. In the case of the Seneca Nation, a referendum was required among the Seneca to approve the Compact whereby they have opened two casinos and are planning a third, in Buffalo. Approximately half of the members of the Seneca Nation consider themselves Traditionalists. The Traditionalists are opposed to gambling, but unfortunately for our cause, they do not believe in voting. The Seneca Council ran a \$4 million advertising blitz to achieve a yes vote. They won by 101 votes out of 2053 votes cast. Gambling was approved among the Seneca by approximately 15% of the tribe's enrolled members. So this was never a project embraced by the Seneca people.

That happenstance has made it possible for our organizations and their leaders to be attacked as racist, by the sort of folks who view any sort of opposition to any tribal venture, regardless of the actual basis of the opposition, as racist in origin. Back in May 2006, *in my role as CAGNY Chairperson*, I expressed some satisfaction in a ruling in State Court that the compact under which the Oneida casino, Turning Stone, was opened was never ratified by the State Legislature and was therefore unconstitutional under the State Constitution. One Michael Niman, politically correct writer for our otherwise very good progressive weekly *ArtVoice*, wrote to me privately, saying: “Interesting Joel how you revel in the possible closing of one foreign nation’s casino 150 miles from here but seem sooo silent on another foreign nation’s casinos just miles from Buffalo (Ft. Erie Slots) and Niagara Falls (Casino Niagara). Can I take this to mean you don’t harbor any ethnic hatred [*sic*] against Canadians?” I wrote back, explaining the basis of the distinctions, but he was not hearing me. His attack soon appeared in the pages of *ArtVoice*, and later on various blogs and in *Indian Country Today* (owned by the Oneidas). *ArtVoice* published a rebuttal from me, and CAGNY Vice Chairperson Rev. James David Audlin, aka Distant Eagle, a Mohawk, recently published a response in *News from Indian Country*.

This is not about Indians. It is about gambling, and particularly about gambling in its most egregious forms. We know we are not racists, and the people who know us well know we are not racists. Nonetheless this episode has been a painful and bitter experience, both for me, and for others who were similarly recklessly accused. Well, that is the nature of the fight in which we find ourselves, and we have to be tough enough to endure what comes our way. So we resolve to continue to tell the truth about gambling; when we are criticized we will consider the source; and when we are defended by decent, honest friends like Distant Eagle, we will take joy and strength from those friendships.

Joel S. Rose is Co-Chair, Citizens Against Casino Gambling in Erie County. joelrose@buffalo.edu



ONU President David Jaques and National Director Barb Lindsay at our Leadership Conference in Washington D.C. November 2006

KEY WINS IN THE COURTS

U.S. Supreme Court Rejects Two Major Tribal Cases

In November of 2006, the U.S. Supreme Court refused to hear two precedent-setting Indian law cases, closing the doors on another tribal land claim as well as a contentious tribal sovereignty case. In *Delaware Nation v. Pennsylvania* (No. 06-364) the justices refused to consider the Delaware Nation's claim to 315 acres in Pennsylvania. The Oklahoma-based tribe wanted to trade this claimed land for gambling rights.

The Delaware Nation of Oklahoma left its homelands in the East during the 1800s. But the tribe claims that one of its ancestors, Chief "Moses" Tundy Tetamy, held onto a 315-acre reservation in Pennsylvania. In hopes of using that land as leverage to open a casino, the tribe filed suit in 2003 against the state and local landowners. At the time, Pennsylvania was in the process of legalizing slot machines. In December of 2005, however, a federal judge ruled that Lenni Lenape chiefs willingly gave up their land in what has been called the Walking Purchase of 1737.

The tribe took their case to the 3rd Circuit Court of Appeals on May 4, 2006, but failed to win their claim. The tribe then asked to the U.S. Supreme Court for review. Thankfully, without comment, the High Court justices rejected the Delaware's petition.

Tribal land claims haven't fared well in the courts in recent years. Last May, the Supreme Court rejected the Cayuga claim in New York, creating an exciting new precedent to allow Indian law cases to be dismissed simply due to the

passage of time. Tribal leaders and their lawyers fear courts across the country may adopt similar stances on land, hunting, fishing, and treaty rights cases. We are making progress...slowly, but surely.

In *Narragansett Tribe v. Rhode Island*, No. 06-414, the justices rejected an appeal from the Narragansett Tribe of Rhode Island. The Tribe's reservation was raided by state troopers, who arrested tribal leaders and members, seized tribal property, and shut down an illegal Indian smoke shop. On July 14, 2003, television stations nationwide broadcast the raid on the Narragansett Reservation. State troopers, acting on orders from Gov. Donald Carcieri, shut down a smoke shop that was selling tobacco products without collecting or remitting state taxes. The

Tribe sued the State, claiming its rights were violated. In a May 2005 ruling, a three-judge panel of the 1st Circuit Court of Appeals agreed that the State could impose taxes on the reservation, recommending a compact be negotiated. After a rehearing, the 1st Circuit issued an even broader ruling in May, 2006. By a 4-2 vote, the court held that the State can enforce all of its laws on the reservation, citing a land claim settlement approved back in 1983. The Tribe subsequently filed a writ of certiorari to the Supreme Court. Without comment, the High Court denied the writ, upholding the 1st Circuit ruling, which will now set a precedent for other tribes in Maine, Massachusetts, and other states whose ancestors signed similar land claim settlements.

But the issue has come up again with another case in the 1st Circuit. Land taken into trust outside the Narragansett's land claim area could remain out of reach of state laws depending upon how the appeals court rules.

Sadly, in October of 2006, the U.S. Supreme Court refused to hear a constitutional challenge by the State of South Dakota to the Indian Reorganization Act, the 1934 law that authorized the BIA to acquire land. The inaction essentially upheld the legality of Section 5 of the IRA. That is why we must ask Congress to reform the fee-to-trust process. And why BIA rules for lands-into-trust are so important.

"Citizens of the United States should not have their rights limited by separate governments within the United States."

— Former U.S. Senator Slade Gorton; Washington State

Excerpt From
“BE CONCERNED”

By Chad Hills for “Focus on the Family”

December 2006

(www.citizenlink.org/FOSI/gambling/A000003400.cfm)

All U.S. citizens should be concerned about tribes taking off-reservation lands into trust because ownership of your land and/or home is in jeopardy. Approximately 10 percent of all tribal casinos are located on land taken into trust after 1988. The Indian Gaming Regulatory Act (IGRA) allows for off-reservation casinos in rare instances, but gambling tribes are exploiting these exceptions and building new Indian casinos in states where they never owned land.

Your property, community or state may play host to the next large-scale Indian casino - - without your input or consent. Under current procedures, non-Indian citizens, states and local governments have little meaningful input. IGRA requires only that the Secretary of State and the Governor of a State approve federally recognized tribes before Indian casinos can open in your community.

Also know that land taken into trust by tribes will leave state tax rolls, making your tax burden heavier. Expect home and land values to drop sharply. Citizens need to realize that local government and law enforcement agencies have no jurisdiction on tribal land in trust, as tribes are sovereign nations - - lacking state accountability.

Speak up now and change tribal procedures for taking land into trust. Be sure that the federal government includes citizen and local government input during the final decision-making process before tribal casinos are built.

**CASE WILL SET NATIONAL
PRECEDENT ON LAND-INTO-TRUST
& SOVEREIGNTY**

The 1st Circuit Court of Appeals in Boston will rehear a major land-into-trust case that we have been monitoring very closely. The judges will again rule on a dispute involving the Narragansett Band, the State of Rhode Island, the Town of Charlestown, and the Interior Department. The outcome will settle some crucial issues relating to tribal sovereignty and Indian casino placement, as well. If upheld, this ruling would apply to numerous tribes and their lands in states across America.

According to attorney Joseph Larisa, Jr., who represents the Town of Charlestown, the state and town are attacking both

the tribe’s federal Acknowledgment and its right to take fee land into trust.

“We’re challenging Interior’s right to take land into trust for this tribe and (all) other tribes that were not both federally recognized and under federal jurisdiction at the time of passage of the Indian Reorganization Act of 1934 without an act of Congress,” says Larisa. The state and town argue that the tribe gave up its sovereignty over all property in the State of Rhode Island in the process of acquiring their 1,800-acres of settlement lands. As to tribal sovereignty, the town and state define it as the power a tribe has to determine its membership and other internal issues only.

The case presents an issue that has not previously been fully considered by the U.S. Supreme Court. The 1st Circuit ruled that the State cannot exercise jurisdiction over the 31-acre parcel because it sits outside the 1,800-acre reservation created by Congress. Rhode Island argues that the BIA cannot acquire new land for the Narragansetts because the Tribe is subject to a land claim settlement act.

This case primarily impacts tribes in New England, whose land claims were settled by Congress, but it affects others in Texas and South Carolina who come under similar acts and tribes in other states, including Washington and California, which also exercise jurisdiction over Indian Country under Public Law 280.

The decision to rehear the disputed land into trust case is directly related to the Supreme Court’s rejection of the tribe’s appeal of another 1st Circuit Court ruling that said Rhode Island can enforce all of its criminal and civil laws on the 1,800-acres of Narragansett settlement lands. Town and state lawyers are encouraged by the High Court’s definition of tribal sovereignty in that ruling.

After the 1st Circuit held that all state criminal and civil laws apply on the Narragansett reservation, the tribe submitted a fee-to-trust petition for a 31-acre parcel outside of their reservation. The Bureau of Indian Affairs approved their application.

Although the BIA’s approval only allows the tribe to use this site for housing purposes, the state and town are convinced that it could be used for gambling since the tribe has sought to open a casino for the past ten years. (More than 40 tribes and two organizations representing more than two hundred tribes submitted briefs when the case was first heard by the 1st Circuit, along with Attorneys General for ten states and the National Coalition Against Gambling Expansion).

This November (2006) voters in Rhode Island overwhelmingly rejected a State ballot initiative that would have given the



Kathy McDonald (left) of Vancouver, WA, with Congresswoman Cathy McMorris-Rodgers (R-WA). Rep. McMorris-Rodgers sits on the House Natural Resources Committee. McDonald, a speaker at our recent Leadership Conference, is working in SW Washington to stop the Cowlitz Tribe from building a Mega-Casino. The tribe is seeking reservation status for a land site many miles from their indigenous reservation land. Our conference attendees met with a number of House and Senate staffers as well as members on both sides of the aisle and staff at several key agencies in D.C., including the U.S. Dept of the Interior.

Justice Ming W. Chin conceded that the decision was “an abrogation of the sovereign immunity doctrine” that protects tribes from lawsuits. But he said the ruling was justified by the State’s need to provide “a transparent election process with rules that apply equally to all parties” involved in the political process. “Allowing tribal members to participate in our state electoral process while leaving the State powerless to effectively guard against political corruption puts the State in an untenable and indefensible position without recourse,” wrote Justice Chin.

This ruling permits the State’s Fair Political Practices Commission (FPPC) to sue the Agua Caliente Band of Cahuilla Indians for failing to report multiple millions of dollars in campaign

Narragansetts a casino gambling monopoly. More than 63 percent of RI voters decided against amending their State Constitution to give the tribe exclusive rights to operate the State’s only casino. Public sentiment is running against tribal gambling expansion in a number of other states, as well, including Nebraska and California, where residents voted in 2004 to deny tribes an expansion of their gaming monopoly. Proposition 70 garnered barely 23% of the CA vote... Hooray!

contributions. The FPPC said the tribe refused to follow the law when it contributed more than \$8 million to campaigns from 1998 to 2002.

The FPPC requires full disclosure of contributions, both from the donors and the recipients. The commission sued the tribe, arguing that it had violated the disclosure law.

Two years ago, the 3rd District Court of Appeals ruled 2-1 that the “constitutional right of the State to sue to preserve its republican form of government trumps the common law doctrine of tribal immunity.” The tribe argued that it was immune from lawsuit and appealed to the California Supreme Court after losing in both the trial and appeals courts.

The court majority noted the Supreme Court has “grown increasingly critical of its continued application in light of the changed status of Indian tribes as viable economic and political nations.”

California has the right to regulate its electoral process under the U.S. Constitution’s 10th Amendment, which protects state rights, and the guarantee clause, which gives states the duty and power to maintain a republican form of government, the majority said. The court agreed that, by filing required campaign reports late, the tribe deprived voters of details to make informed decisions about candidates and propositions on the ballot. “The voters want to know where the money is

CALIFORNIA SUPREME COURT ABROGATES TRIBAL SOVEREIGN IMMUNITY FROM LAWSUIT

As ONU correctly predicted, the California Supreme Court ruled on December 21, 2006, that Indian tribes (far and away the State’s wealthiest special interest group) can be sued for violating the State’s campaign disclosure laws. The 4-3 ruling is unprecedented and could be appealed to the U.S. Supreme Court. The State high court justified this sensible ruling by citing the growing role of Indian casino money in State elections and the State’s need to protect against political corruption. California’s one hundred-plus tribes are major campaign donors, having given more than \$200 million to candidates and ballot measures over the past decade.

coming from and where it is going,” said Fair Political Practices Commission Chairwoman Liane Randolph.

The court said that without the ability to enforce tribal compliance, the Political Reform Act of 1974 would be substantially weakened. “Preserving the integrity of our democratic system of governance is too important to compromise with weak alternative measures that the state may not be able to enforce,” the majority wrote.

Chairwoman Randolph called this ruling “extremely important toward ensuring that all participants in the political process follow the law.” Although the tribe has been reporting its contributions and lobbying activities on what it calls a voluntary basis since 2002, “but we think an essential element of the law is the ability to enforce it.”

The ruling could have national ramifications for public disclosure of contributions by tribes across America.

We firmly believe voters have a right to know who is peddling political influence at what price and also that Indian tribes should not be allowed to pick and choose which laws to follow.

LAND USE LAUNDERING

By Arnold Buchman of Oregon

We have become all too familiar with the term “Reservation Shopping.” It describes the practice of tribal governments, utilizing loopholes in fee-to-trust and other federal Indian law and aided by Abramoff-style lobbyists, contribution-grateful politicians and pro-tribal gambling regulators to acquire off-reservation casino sites.

Now, we have a new term to reckon with: “land use laundering”. This is a name for the ploy some local governments are using to facilitate casino expansion without accounting for the impacts on land planning as usually is required by zoning and other land use processes.

The (Vancouver, Washington) *Columbian* recently ran an editorial criticizing a 2004 “Memorandum of Understanding” by Clark County commissioners agreeing to provide county water, public safety and similar services to a Cowlitz Tribe casino near La Center. However, in their haste to be dealt into this mega-casino project, the commissioners failed to give proper regard to procedures required by the County’s comprehensive land-use plan.

These “intergovernmental” arrangements providing municipal services that enable casino-site expansion follow no such processes. They are set in place without regard to the impacts of the tribal development on tribal neighbors, the citizens living under the local government’s authority and protection.

Generally, the arrangement is justified in terms of some form of “contribution” over and above the cost of the services provided. The adequacy of such payments is not the point.

The avoidance of the impacts of tribal-property growth on the surrounding community’s land use planning, resources and services is the point. Once enabled, that growth is not subject to local government control. Agreements for the municipality to provide services that facilitate expanded development on tribal trust land result in “off the books” growth.

Because tribal land is beyond the reach of local law, it is important that citizens hold their local government to account for “land use laundering”. Local citizens must insist that before “on reservation” growth is enabled, the local government must consider it within the context of the goals of local use management and comprehensive planning. Otherwise, “partnering” with a tribe is a free pass to evade planning.

Florence, Oregon, is a case in point. But for the timely intervention of a private citizen willing to go to go to the state land court, the extension of sewer services to tribal trust land would have enabled totally unregulated development of a 100-acre site of the Three Rivers Casino.

A bit of quick money can be tempting to shortsighted mayors and city managers. But, these officials are not there to turn a fast buck. We rely upon them to carefully consider long-term implications and to recognize that enabling “off the books” growth with land use laundering is contrary to the spirit, purpose, and policy of growth and land use planning.

A SWEET SUCCESS STORY

Hats off to Douglas County (Oregon) Commissioner Marilyn Kittelman, who survived a recall campaign funded by the Cow Creek Band. Her re-election dispels the myth that being opposed to unnecessary fee-to-trust land acquisitions by Indian tribes is the “kiss of death” in politics. A majority of voters decided that the well being of Native Americans should not require the federal government to remove thousands of acres from the tax rolls to open more regulation-free and tax-exempt tribal businesses. And thumbs up to the Douglas County Commission, who recently voted unanimously to formally oppose an additional fee-to-trust petition by the Cow Creeks, noting the unfair loss of property taxes for vital local services.

Problematic Issues Related to Tribal Sovereignty

By Richard Randall, Oregon, September 2006

First, I am not sure some people understand the implications of tribally annexed land. It is a secession of land from Oregon. It is land that is actually seceded from our state. I question if our local elected officials even understand this distinction because they seem very willing to hand it over to the Federal Government for the promise of a few dollars deposited in local government coffers.

Second, it is only relevant when you consider that the Tribe, with enormous tax free casino revenues, can neutralize local news media including our local radio stations, local papers, television and others.

Why is it that major national papers are covering significant issues concerning tribal expansion through annexation and other problematic issues related to tribal sovereignty, but our own local news media won't report it?

These are issues that involve the future of the National Scenic Area simply because there is a sovereign tribe expanding its 'territory' in the Columbia River Gorge. Why isn't our local news media reporting on this issue?

Regardless of what side of the fence one sits on in regards to tribal issues, isn't it the news media's job to present issues to the public and let the public decide what they think or believe?

That's when money becomes relevant because one has to pause and ask why? Could it be the millions of dollars in advertising revenue the news media outlets have received from the Grande Ronde and Warm Springs Tribes every year? One has to wonder.

Relevant when: Indian tribes can pay \$70 million dollars to lobbyist Jack Abramoff to fight off other Indian tribes from being able to sign compacts with their states because wealthy tribes don't want the competition. I thought there were laws AGAINST monopolies in this country.

Money is relevant when it becomes an aphrodisiac to the State, the county, the local community, and the local news media. When money flows from a non-transparent source it neutralizes valid criticism and is evidence of something terribly wrong. The Liberty Clarion stated it aptly as "Where dissent is discouraged, consent is a fraud".

Relevant when: Indian "nations" are allowed to rely on services and infrastructure provided by the hosting community,

but the community in turn cannot impose its regulatory system or property taxes for reimbursement because it is perceived as impeding on their sovereignty.

Relevant when: a bill, the Indian Gaming Regulatory Act (IGRA), intentioned to lift Native Americans out of poverty, but instead allows the majority of Native American's that were to benefit from a now \$23 billion Indian Gaming Industry to receive nothing.

LETTER SENT AS COMMENTS ON PROPOSED FEE-TO-TRUST RULES

Mr. George Skibine, Director,
Office of Indian Gaming Management
1849 "C" Street, NW, Mail Stop 3657-MIB
Washington, DC 20240

Fax: 202-273-3153

Re: Proposed rules regarding gambling on trust lands
#1076-AE-81

Dear Mr. Skibine:

We believe that as a federal agency, the Bureau of Indian Affairs ("BIA") has a duty not only to Native American tribes, but to the general populace as well. It is in this latter duty that the BIA appears to have failed. There is an ever-growing body of evidence from a variety of highly credible sources that document the negative net cumulative impacts of tribal casinos on the host community. The fact that the general public has very little input to the process cannot be allowed to continue.

The BIA has made a mockery of public process. It has repeatedly ignored the concerns and legitimate challenges made to environmental reviews if those concerns and challenges would thwart the attempt of a Native American tribe to take land into trust.

In promoting this sort of culture, the BIA has left the United States government more vulnerable to legal challenges, because, unlike the United States of even thirty years ago, tribal land acquisitions are increasingly located near established communities, and increasingly impinge on the Constitutional rights of the citizens of those communities, impacting their daily lives in numerous ways.

Community planning and zoning laws designed to protect us all are tossed to the wind whenever a tribe hides behind its "sovereign immunity" on trust land. In Rohnert Park, California, for example, the Graton Rancheria proposes to

build a sewage treatment plant on land zoned “Community Separator” that is adjacent to dozens of family homes.

The proposed fee-to-trust regulations constitute a step backward. They do not address the very real concerns of the communities that are impacted by tribal land acquisitions. We believe that the exceptions to IGRA should be done away with, but barring that, tribal land acquisitions under the exceptions should in all cases be subject to the two-part test. Any part of the process of a tribe acquiring lands for any purpose should include full and meaningful public process that includes the public and local governments, better defined roles of government agencies, more control by state and county government, and better options for appeal.

There needs to be a process that includes well-publicized public hearings at times and in locations easily accessible to the public. The advance notice of such hearings should include direct mailers to the residents of the host county. Such considerations are found nowhere in the proposed regulations.

The role of the National Indian Gaming Commission (“NIGC”) also needs to be defined in the regulations.

The regulations do not address the “stealth” determinations made by the BIA and/or its officers that are prepared in secret and released with little or no publicity. As the BIA is a public agency funded with our tax dollars, any and all restored lands, initial reservations decisions, or land determinations of any kind need to be conducted in a public forum with a public comment period of at least six months.

The definition of “significant historic connection” with regard to land acquisitions is far too vague to offer any protection to local citizens and even to other tribes. In the San Francisco Bay Area of California, for example, there are four “tribes” attempting to acquire land for a casino. All claim to have an “historic connection” with the proposed casino sites, but none actually do. They are attempting to leap frog over tribes in order to get into urban areas. The BIA’s proposed regulations will not only fail to protect the community at large, they will not even protect other tribes who may find territory that they claim as their own being usurped by a “Johnny-Come-Lately”.

In every instance, a thorough study of the net cumulative impact of tribal land acquisitions, whether or not for the purposes of a casino, should be routinely prepared by a Third Party chosen by the host community, not the BIA.

The proposed regulations are insufficient to protect the public-at-large or even the tribes themselves. The BIA should go back to the table and re-draft these regulations with meaningful input from the both citizens and state and local governments

LAME DUCK SESSION OF CONGRESS

In December, House Republican leadership ended an attempt to pass a bill limiting off-reservation Indian gambling expansion. House Speaker Dennis Hastert, who opposes an effort by a Kansas-based tribe to build a casino in his Illinois district, and Majority Leader John Boehner (R-Ohio) tried to push the bill through, in a last-ditch effort to pass the measure which had previously been introduced by Rep. Richard Pombo (R-Calif.), outgoing House Resources Committee Chairman.

Tribal officials and their lobbyists instead urged members of Congress to instead wait for the Department of the Interior’s own effort to update the rules governing Indian casinos. The public-comment period on the proposed new rule closed on December 19, with a final rule expected to be released sometime late in the Spring of 2007.

A spokesman for the House Resources Committee said that the House measure provided stronger protections against the spread of Indian casinos than provided by Interior’s new rule. Generally, federal law limits the construction of Indian casinos to land acquired before 1988. But there are exceptions, in part to allow tribes that had been denied federal recognition in the past to develop casinos. Controversy lies in exactly when and how often these exceptions are applied.

Pombo’s bill sought greater assurances that local officials would have a meaningful say in the development of tribal casinos in their area. The proposed House bill required tribes to negotiate with local governments as part of efforts to build a casino off-reservation.

Opponents argued that this provision threatened Indian sovereignty by forcing tribes to negotiate with county and other local governments. Critics also object to the blanket provision in the Pombo bill that does not allow a tribe to build a casino “on lands outside the state in which the Indian tribe is primarily residing.” Opponents argue that a tribe’s historical connections to a land should be considered.

The two sides also disagree over how many “off-rez” casinos there really are. Tribal officials say that there are only three off-reservation gaming facilities. But bill supporters say the actual number is much higher than that, and that as many as fifty additional efforts are being made to build casinos outside the usual confines of a reservation. “Virtually any land in the country could be targeted for (tribal) gaming,” Rep. Pombo warned on the House floor.

“Self-government without self discipline, won’t work.” —Paul Harvey, Radio Show Host

MOST OUTRAGEOUS TRIBAL LAND CLAIM YET

A New Jersey Indian tribe plans to build a fancy gambling resort across the Hudson from New York City - - on some of the most secluded and expensive property in the state. The sprawling, \$3.2 billion, five-casino development would be located in Alpine, New Jersey, in the back yards of doctors, lawyers, CEOs, and numerous famous celebrities.

Critics blast the plan as being totally preposterous. But this claim is part of a pending federal lawsuit filed by the Unalachtigo Band of the Nanticoke Lenni-Lenape Nation, who want the State to hand over 1,500 acres to replace land it says was “unlawfully taken” from tribal ancestors two-hundred years ago. The Unalachtigos also claim another 1,500 acres in South Jersey, where they’d build “a more family-oriented casino development, with a theme park and water slides,” Tribal Chief Thomas added.

The Unalachtigo Band alleges three thousand acres of reservation land set aside in 1758 for its ancestors, was illegally sold in 1801. They say that violated a federal law banning the sale of Indian land without the consent of Congress, which was never officially obtained.

The 108 members of Unalachtigo Band originally asked the court to boot out all “non-Indians” living on their claimed land. But since the land claim area has long since been developed, Thomas proposed a settlement instead: Give him the largely undeveloped properties in Alpine and South Jersey, and he’ll give the State \$12 billion in revenue sharing for fourteen years.

“For the most part, the law schools and elite circles within the legal profession generally have been sympathetic toward tribal land claims, and this stance has persisted even as the injustice and destructiveness of that litigation has become obvious to the rest of us. One reason, I think, is that they think of themselves as siding with the underdog — which is not really a good way to figure out who’s right and who’s wrong in legal controversies, especially since yesterday’s underdog so often emerges as today’s overdog.”



Walter Olson of The Manhattan Institute, speaking at the One Nation United Leadership Conference on Nov. 13, 2006

A NOTE FROM OUR NATIONAL DIRECTOR

NEWS FROM FLORIDA

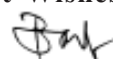
Bills are being filed again for the 2007 Florida Legislative Session, and that includes proposals by the Miccosukee Indian Tribe to repeal all of Florida’s civil and criminal law on their reservations. It is referred to by the title of retrocession.

The Miccosukee have attempted to pass retrocession for the last four years and have failed for a number of reasons, not the least of which is that Governor Jeb Bush stated he would veto the bill if it were passed.

A coalition of law enforcement, including the Florida Sheriffs Association, the Florida Department of Law Enforcement, and the Florida Prosecutors Association, joined the Governor in his opposition in the past. Newly elected Governor Charlie Crist, who was the former Florida Attorney General, refused to involve his office in the debate in the last four years on the basis that it should be a “legislative decision.”

We’re now working with a reporter for Business Week Magazine on a series of articles he is doing on the subject of the negative impacts on non-tribal local businesses due to tribal business expansion. Watch for these articles in upcoming issues of Business Week. It’s a great opportunity for public education. Be sure to read and respond to our Questionnaire, enclosed with this Newsletter. ONU must have a tightly focused and realistic agenda. We also need to meet with every newly elected member of Congress and each new committee leader in the year ahead. All of this costs money, which is why we need your financial support for 2007. Please use the enclosed envelope to return both your dues renewal and your completed Questionnaire. Your gift in any amount is most welcome! Thanks again.

Best Wishes,



Barb Lindsay for One Nation United (ONU)