



NATIONAL CONGRESS OF AMERICAN INDIANS

November 9, 2012

Christopher H. Schroeder
Assistant Attorney General
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Tracy Toulou, Director
Office of Tribal Justice
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

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NCAI HEADQUARTERS
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www.ncai.org

Re: NCAI Support for Repeal or Reform of 28 U.S.C. §1500

Dear Assistant Attorney General Schroeder and Director Toulou:

On behalf of the National Congress of American Indians, I write to state our support for repeal or reform of 28 U.S.C. § 1500 in a manner that will protect the ability of tribal plaintiffs to pursue claims against the United States that involve both monetary damages and injunctive relief. I also submit the recent NCAI Resolution SAC-12-061 on this topic. We urge the Department to support the Administrative Conference of the United States' proposal to repeal and replace 28 U.S.C. § 1500. NCAI is the oldest and largest national organization of American Indian and Alaska Native tribal governments.

Many Indian tribes have pursued claims against the United States for the loss or mismanagement of tribal assets and funds held in trust by the United States. The different nature of relief sought under these claims has necessitated the pursuit of such claims in both the Court of Federal Claims and other federal courts. The U.S. Supreme Court's interpretation of 28 U.S.C. §1500 in United States v. Tohono O'odham Nation reversed long-standing Federal Circuit precedent that allowed the Court of Federal Claims to retain jurisdiction over a claim under Section 1500 if a plaintiff sought different relief in the Court of Federal Claims than it sought in another forum. This has led to the dismissal of several lawsuits brought by several Indian tribes against the United States. This interpretation also restricts Tribes' abilities to obtain complete relief against the United States in many other contexts where a single factual predicate gives rise to two or more claims.

NCAI supports holding the United States accountable for injury to tribal trust assets and funds, and the removal of procedural barriers to such accountability. NCAI supports the reform or repeal of 28 U.S.C. § 1500 in a manner that would protect the ability of tribal plaintiffs to pursue claims involving similar operative facts against the United States in both the Court of Federal Claims and in other federal courts.

Sincerely,

Handwritten signature of Jefferson Keel

Jefferson Keel



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #SAC-12-061

TITLE: Supporting Efforts to Reform or Repeal 28 U.S.C. § 1500

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, it is well-established that a trust relationship exists between the United States Government, as trustee, and Indian tribes, as beneficiaries, and this sacred trust includes the fiduciary duty of the United States Government to properly manage the assets and funds it holds for the benefit of Indian tribes and, when those assets and funds are mismanaged, a fundamental right of an injured beneficiary to sue the United States, as trustee, for damages resulting from a breach of trust; and

WHEREAS, Indian tribes, as beneficiaries, are entitled to an accurate accounting of the assets and funds held for their benefit, and to sue the United States, as trustee, for such an accounting; and

WHEREAS, many Indian tribes have pursued claims against the United States for the loss or mismanagement of tribal assets and funds, and for an accurate accounting of these assets and funds, held in trust by the United States; and

WHEREAS, the different nature of relief sought under these claims has necessitated the pursuit of such claims in both the Court of Federal Claims and other federal courts; and

WHEREAS, in *United States v. Tohono O'odham Nation*, 131 S.Ct. 1723 (2011) the United States Supreme Court held that a federal law, 28 U.S.C. § 1500, prevents a plaintiff from pursuing a claim against the United States in the Court of Federal Claims if the claim shares substantially the same operative facts as a claim pending in another court; and

WHEREAS, the Supreme Court's decision reversed long-standing Federal Circuit precedent that allowed the Court of Federal Claims to retain jurisdiction over a claim under Section 1500 if a plaintiff sought different relief in the Court of Federal Claims than it sought in another forum; and

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WHEREAS, the Supreme Court's interpretation of 28 U.S.C. § 1500 has led to the dismissal of lawsuits brought by several Indian tribes against the United States, and may otherwise adversely affect the ability of Indian tribes to pursue valid claims against the United States; and

WHEREAS, the Supreme Court's interpretation of 28 U.S.C. §1500 also restricts Tribes' abilities to obtain complete relief against the United States in many other contexts where a single factual predicate gives rise to two or more claims against the United states and different courts have jurisdiction over those claims; and

WHEREAS, the Supreme Court observed in its decision that "[i]f indeed the statute leads to incomplete relief" or causes "undue hardship for plaintiffs, citizens are "free to direct their complaints to Congress;" and

WHEREAS, the Committee on Judicial Review for the Administrative Conference of the United States, an independent federal agency dedicated to improving the federal administrative process; is considering a draft recommendation to reform or repeal 28 U.S.C. §1500; and

WHEREAS, it is in the best interest of NCAI to support tribes in holding the United States accountable for the misuse of, or injury to, tribal interests, assets, and funds, and to remove procedural barriers to such accountability.

NOW THEREFORE BE IT RESOLVED, that the NCAI supports the reform or repeal of 28 U.S.C. § 1500 in a manner that would protect the ability of tribal plaintiffs to pursue claims involving substantially the same operative facts against the United States in both the Court of Federal Claims and in other federal courts; and

BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2012 Annual Session of the National Congress of American Indians, held at the Sacramento Convention Center from October 21-26, 2012 in Sacramento, California, with a quorum present.



President

ATTEST:



Recording Secretary