

November 9, 2012

Office of Tribal Justice
United States Department of Justice
RFK Main Justice Building, Room 2318
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

To Whom It May Concern:

We write on behalf of the SPOA Tribes in response to Assistant Attorney General Christopher H. Schroeder's October 10, 2012 letter to tribal leaders seeking their input on the Administrative Conference of the United States' (ACUS) proposal to reform 28 U.S.C. § 1500. The SPOA group consists of approximately seventy-five (75) tribes listed in the enclosed attachment that have recently engaged in breach of trust litigation against the United States government, often through dual claims in the Court of Federal Claims and a United States district court.

Because § 1500 creates substantial and unnecessary hardships for plaintiffs, particularly including Indian tribes, the SPOA Tribes fully support the statute's outright repeal or, at an absolute minimum, its substantial reform. We therefore join with the National Congress of American Indians (NCAI) in expressing support for the pending ACUS proposal.¹

As recognized in the NCAI resolution calling for the reform or repeal of § 1500,² federal jurisdictional rules often require Indian tribes with valid claims against the United States to pursue claims in both the Court of Federal Claims and some other forum in order to obtain complete relief. Section 1500, as recently reinterpreted by the United States Supreme Court in *United States v. Tohono O'odham Nation*, 131 S. Ct. 1723 (2011), a case followed with great interest throughout Indian Country, makes it exceedingly and unnecessarily difficult for tribal plaintiffs to bring and prosecute the necessary actions in such instances. Instead, § 1500 unjustly forces tribes to choose between partial remedies available in different venues. That it does so without tolling the statute of limitations for the claim not immediately pursued compounds this problem, particularly in the context of Indian claims, which recent, widespread experience in the context of tribal trust litigation has shown often take many years to resolve despite the litigants' diligent efforts.

Section 1500's negative effects in Indian Country can only be addressed through the statute's repeal or significant reform. The Supreme Court itself recognized that the new interpretation of § 1500 set forth in its *Tohono O'odham* opinion would lead to "undue hardship" for plaintiffs and counseled that such hardship would have to be addressed through congressional action rather than the federal courts. While outright repeal would be preferable, the interests of

¹ The NCAI is the oldest and largest national organization representing American Indian tribes and Alaska Natives.

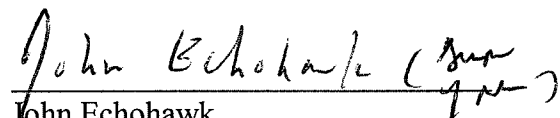
² NCAI Resolution No. SAC-12-061, enclosed, was adopted without dissent on October 26, 2012 at NCAI's 69th Annual Conference, which was attended by representatives of more than 140 tribes. Prior to presentation to the tribal delegates, the resolution was thoroughly vetted and unanimously approved by the members of the NCAI Litigation and Governance Committee.

justice require, at an absolute minimum, that § 1500 be reformed so that valid claims are never lost on limitations grounds as a result of compliance with the statute. By providing for the stay or transfer – rather than dismissal – of all but one of multiple contemporaneous lawsuits arising out of the same factual predicate, the ACUS proposal satisfies this minimal requirement of justice while preserving the original intent of § 1500.

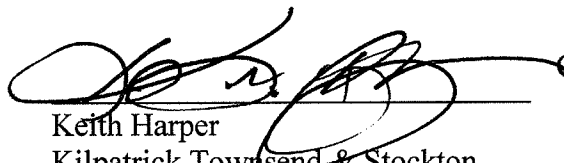
Because congressional action such as that proposed by ACUS is the only way to prevent the unnecessary and “undue hardship” that § 1500 currently imposes on Indian plaintiffs, we fully support the repeal or substantial reform of that statute. It should go without saying that tribes injured by federal misconduct should be able to seek redress without fear of stumbling into what ACUS accurately characterizes as a “pointless procedural trap” and without risking the forfeiture of otherwise valid claims for relief due to compliance with § 1500.

In expressing our support for the ACUS proposal, it is our hope that the Department of Justice will reconsider its position on this issue and join with Indian tribes and other litigants in recognizing the need for the repeal or reform of § 1500. But even if that does not occur, we nevertheless ask the Department’s representative to ACUS to make absolutely clear that there is strong Tribal support for such legislative change.

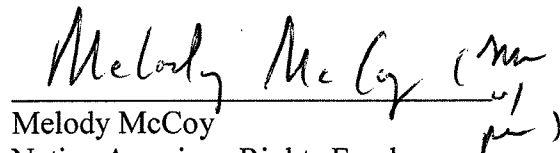
Sincerely,



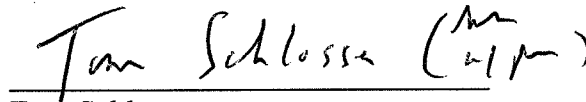
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cc: Administrative Conference of the United States

LIST OF TRIBAL MEMBERS OF THE SPOA GROUP

No.	Tribe Name
1.	Ak-Chin Indian Community
2.	Alabama-Quassarte Tribal Town
3.	Aleut Community of St. Paul island
4.	Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation
5.	Bad River Band of Lake Superior Chippewa Indians
6.	Blackfeet Tribe of the Blackfeet Indian Reservation
7.	Bois Forte Band of Chippewa
8.	Cachil Dehe Band of Wintun Indians of Colusa Rancheria
9.	Cheyenne-Arapaho Tribe
10.	Chippewa Cree Tribe of the Rocky Boy's Reservation
11.	Coeur d'Alene Tribe
12.	Confederated Salish & Kootenai Tribes
13.	Confederated Tribes of Siletz Indians
14.	Confederated Tribes of the Colville Reservation
15.	Duckwater Shoshone Tribe
16.	Gila River Indian Community
17.	Grand Traverse Band of Ottawa & Chippewa Indians
18.	Gros Ventre & Assiniboine Tribes of the Fort Belknap Reservation
19.	Hoopla Valley Tribe
20.	Hualapai Tribe
21.	Kaibab Band of Paiute Indians of Arizona
22.	Kenaitz Indians Tribe
23.	Kickapoo Tribe of Kansas
24.	Klamath Tribes
25.	Lac Courte Oreilles Band of Ojibwe
26.	Lac Du Flambeau Band of Lake Superior Chippewa Indians
27.	Leech Lake Band of Ojibwe
28.	Little Shell Tribe of Chippewa Indians
29.	Makah Indian Tribe of the Makah Indian Reservation
30.	Mescalero Apache Tribe
31.	Minnesota Chippewa Tribe
32.	Native Village of Atka
33.	Nez Perce Tribe
34.	Nooksack Indian Tribe
35.	Northern Cheyenne Tribe of Indians
36.	Osage Nation
37.	Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
38.	Passamaquoddy Tribe of Maine
39.	Pawnee Nation of Oklahoma
40.	Prairie Island Indian Community
41.	Pueblo of Zia
42.	Qawalangin Tribe

No.	Tribe Name
43.	Quechan Tribe of the Fort Yuma Reservation
44.	Rincon Luiseno Band of Indians
45.	Round Valley Indian Tribes
46.	Sac and Fox Nation
47.	Samish Indian Nation
48.	San Luis Rey Indian Water Authority
49.	Santee Sioux Tribe of Nebraska
50.	Sault St. Marie Tribe of Chippewa Indians
51.	Shoalwater Bay Indian Tribe
52.	Shoshone-Bannock Tribes of the Fort Hall Reservation
53.	Skokomish Tribal Nation
54.	Soboba Band of Luiseno Indians
55.	Spirit Lake Dakotah Nation
56.	Spokane Tribe of Indians
57.	Standing Rock Sioux Tribe
58.	Summit Lake Paiute Tribe
59.	Swinomish Indian Tribal Community
60.	Te-Moak Tribe of Western Shoshone Indians
61.	Timbisha Shoshone Tribe
62.	Tlingit & Haida Tribes of Alaska
63.	Tohono O'Odham Nation
64.	Tulalip Tribes
65.	Tule River Indian Tribe
66.	Turtle Mountain Band of Chippewa Indians
67.	Ute Indian Tribe of the Uintah & Ouray Reservation
68.	Ute Mountain Ute Tribe
69.	White Earth Band of Minnesota Chippewa Indians
70.	Yakama Nation
71.	Yankton Sioux Tribe
72.	Yomba Shoshone Tribe
73.	Yurok Tribe



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

EXECUTIVE COMMITTEE

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Chickasaw Nation

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*Central Council of Tlingit & Haida
Indian Tribes of Alaska*

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Cherokee Nation

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Scotts Valley Band of Pomo Indians

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Larry Townsend
Lumbee Tribe

SOUTHERN PLAINS

George Thurman
Sac and Fox Nation

SOUTHWEST

Joe Garcia
Ohkay Owingeh

WESTERN

Ned Norris, Jr
Tohono O'odham Nation

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Jacqueline Johnson Pata
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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

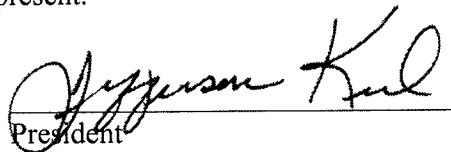
WHEREAS, it is in the best interest of NCAI to support tribes in holding the United States accountable for the misuse of, or injury to, tribal interests, assets, and funds, and to remove procedural barriers to such accountability.

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

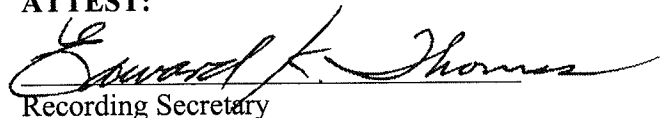
BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

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