TRIBAL SUPREME COURT PROJECT

25th ANNIVERSARY REPORT

MARCH 2026

TRIBAL SUPREME COURT PROJECT

Lilia Shahbandeh (Chickasaw / Choctaw Nation of Oklahoma) is an accomplished visual artist and has created culturally based, powerful graphic designs for a variety of Native organizations. In preparation for the Tribal Supreme Court Project's 25th anniversary celebration, Lilia created the Project's first-ever logo.

The design features an eagle encircling the United States Supreme Court building, reflecting themes of protection and vigilance. In many Tribal traditions, the eagle is a messenger and protector, watching over the people. Symbolically, this aligns with the role of the Project in defending Tribal sovereignty at the highest court in the United States. Meanwhile, the circular shape of the logo represents continuity and the enduring presence of Tribal Nations.

There also are intentional numerical details in the building structure itself. For example, the Court has four columns, a number which is significant across many Native cultures and often tied to the four directions, balance, and interconnectedness. Altogether, the design reflects strength, protection, and the collective effort to uphold Tribal rights.

The Tribal Supreme Court Project is a joint project of the Native American Rights Fund and the National Congress of American Indians that supports Tribal interests at the highest levels of the United States' judicial system.

NATIVE AMERICAN RIGHTS FUND

National Congress of American Indians

EXECUTIVE SUMMARY

In 2001, the National Congress of American Indians and the Native American Rights Fund created the Tribal Supreme Court Project in response to decisions of the Supreme Court of the United States that threatened Tribal sovereignty. Because most Supreme Court cases involving federal Indian law affect all or many American Indian and Alaska Native Tribes, not just the parties involved, the Project seeks to unify, strengthen, and coordinate Tribal advocacy before the Court. In 25 years, the Project has monitored 550 cases, supported every major federal Indian law case argued before the Court, and built a network of more than 300 volunteers who collaborate on legal analysis, strategy, and *amicus* support. Through this dedication, outcomes have improved: Tribes have won 70% of their Supreme Court cases over the last decade, compared to losing 80% before the Project existed.

Key victories, including *Nebraska v. Parker* (2016), *McGirt v. Oklahoma* (2020), and *Haaland v. Brackeen* (2023), demonstrate the Project's role in bolstering Tribal sovereignty, shaping legal doctrine, and organizing national advocacy. Looking ahead, the Project aims to expand its lower-court tracking, provide more training and resources for Tribal attorneys, deepen jurisprudential analysis, and broaden partnerships to meet Indian Country's needs. After 25 years, the Project's mission—to defend and advance Tribal sovereignty in the nation's highest court—remains both essential and increasingly urgent in the face of new and aggressive challenges.

PART 1 — HISTORY AND SERVICE

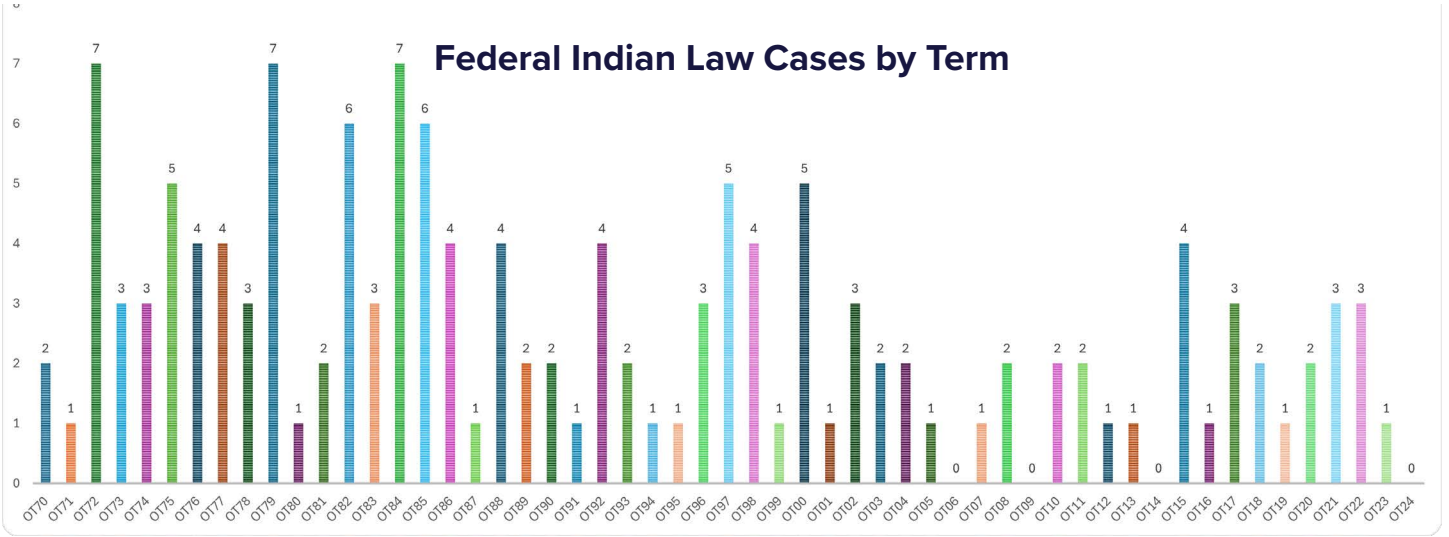
A. History of the Supreme Court of the United States and Federal Indian Law Cases

Since it began in 1790, the Supreme Court of the United States (SCOTUS or Court) has decided more than 30,000 cases. About 200 cases have involved the specific legal rights and interests of American Indian and Alaska Native (AI/AN) Tribes. Before 1960, the Court decided about 60 AI/AN cases. Since 1960, the Court decided more than twice that many. And since 1970, the Court heard an average of two to three AI/AN cases per term.[1] In eight of those terms the Court heard five or more AI/AN cases. In only four terms did the Court not hear an AI/AN case.

More than two centuries of AI/AN cases support several basic points. Because most involve treaties or agreements between Tribes and the United States, acts of Congress, and inter-sovereign relations (the relationship between Tribes and the United States and/or states) they are considered part of "federal Indian law." As in other areas of jurisprudence, the Court develops specific principles and rules to resolve the federal Indian law issues it is presented. However, the Court's decisions vary, with some affirming Tribal rights and others undermining them. Although outcomes range from major victories to narrow losses, the Court's reasoning frequently is inconsistent or insufficiently supported. In many instances, there is far from unanimity among the Justices about the existence, scope, and import of Tribal rights and claims. Some Justices' skepticism about federal Indian law itself is a genuine concern.

Since the 1960s, federal support for Tribal sovereignty stabilized the political status of Tribes and increased economic resources for many. All of which contributed to more Tribal SCOTUS cases, which Tribes often won into the 1980s. Then, changes in national sentiment, as well as the leadership and composition of the Court, seemed to affect case outcomes. As noted in the Ten Year Report[2] from the Tribal Supreme Court Project (TSCP or Project), by 2001, Tribes lost approximately 80% of their SCOTUS cases.

The losses were striking in many ways, but one trend particularly was conspicuous. While the Court affirmed Tribes' sovereignty "over both their members and their territory" (for example, in *United States v. Mazurie* (1975)), Tribal sovereignty over non-members within Tribal territory is an oft-contested issue. As Tribes increasingly exercised that element of their sovereignty and faced challenges, the Court largely resisted and limited Tribal efforts. Two decisions in 2001, *Atkinson Trading Company v. Shirley* and *Nevada v. Hicks*, epitomized this opposition and spurred Tribes to act.



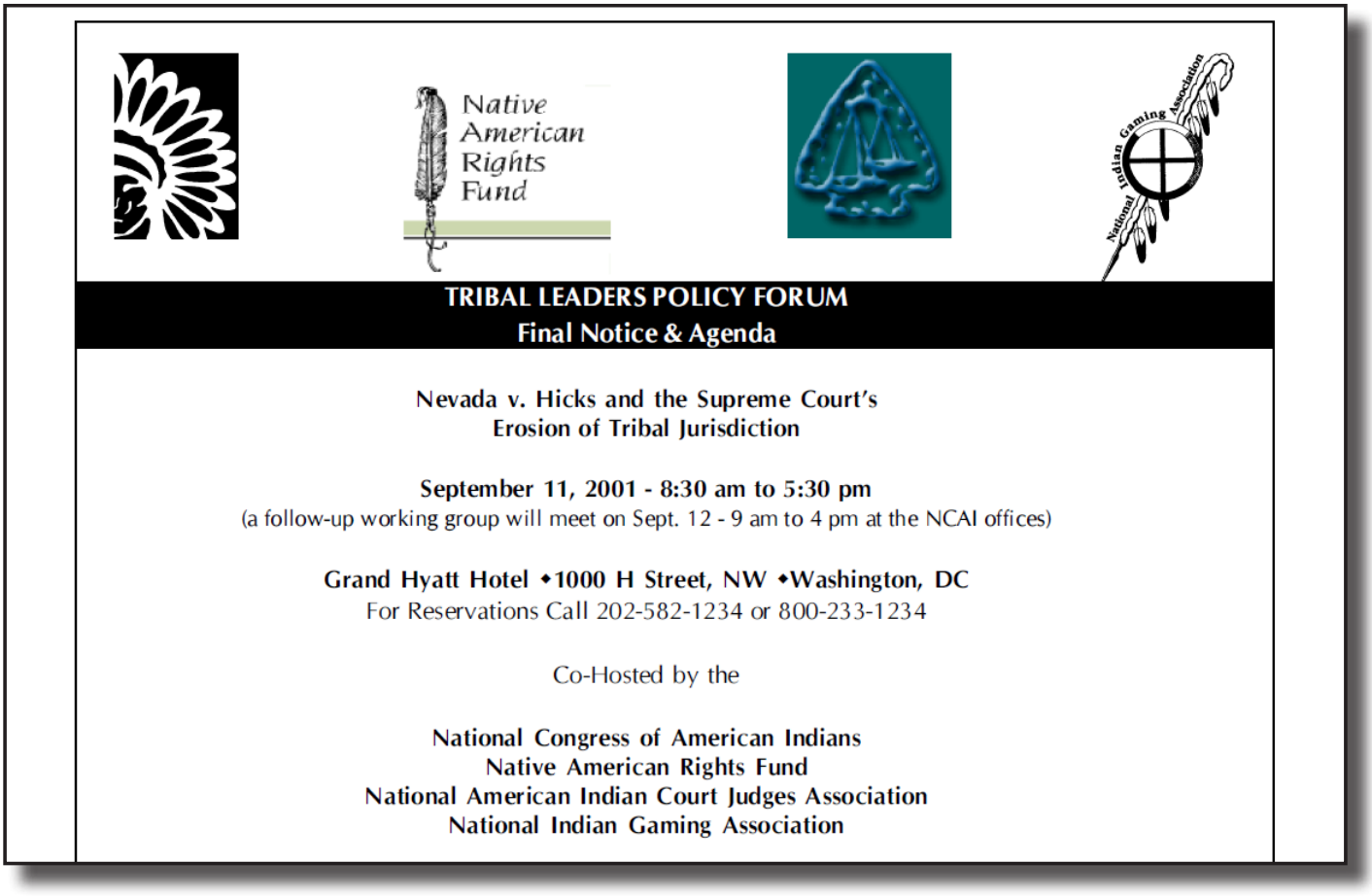
> "[T]he two great Indian organizations, NARF and NCAI, joined together and said we're going to build a project, we have to be better; we can complain about the Supreme Court or we can do something about it, and so they founded the [Tribal] Supreme Court Project."
>
> Timothy Q. Purdon, *Tribal Jurisdiction Under the Second Montana Exception: Implications of United States v. Cooley,* 97 N.D. L. Rev. 307, 312 (2022).

B. The Tribal Supreme Court Project's Founding

In mid-2001, the National Congress of American Indians (NCAI) and the Native American Rights Fund (NARF), along with the National American Indian Court Judges Association and the National Indian Gaming Association (now the Indian Gaming Association), called a meeting of Tribe leaders in Washington, DC, to address what they identified as the Court's erosion of Tribal jurisdiction.

The meeting was scheduled for the Grand Hyatt Hotel on September 11, 2001.

With more than 200 Tribe leaders, attorneys, lobbyists, and staff from around the country, the meeting began. But within an hour, terrorists attacked the United States, including the Pentagon. Senator Daniel K. Inouye (D-HI) was speaking to the group when he was whisked away by his staff. Concern, fear, and chaos ensued as news reached


Native American Rights Fund

National Indian Gaming Association

TRIBAL LEADERS POLICY FORUM
Final Notice & Agenda

Nevada v. Hicks and the Supreme Court's
Erosion of Tribal Jurisdiction

September 11, 2001 - 8:30 am to 5:30 pm
(a follow-up working group will meet on Sept. 12 - 9 am to 4 pm at the NCAI offices)

Grand Hyatt Hotel •1000 H Street, NW •Washington, DC
For Reservations Call 202-582-1234 or 800-233-1234

Co-Hosted by the

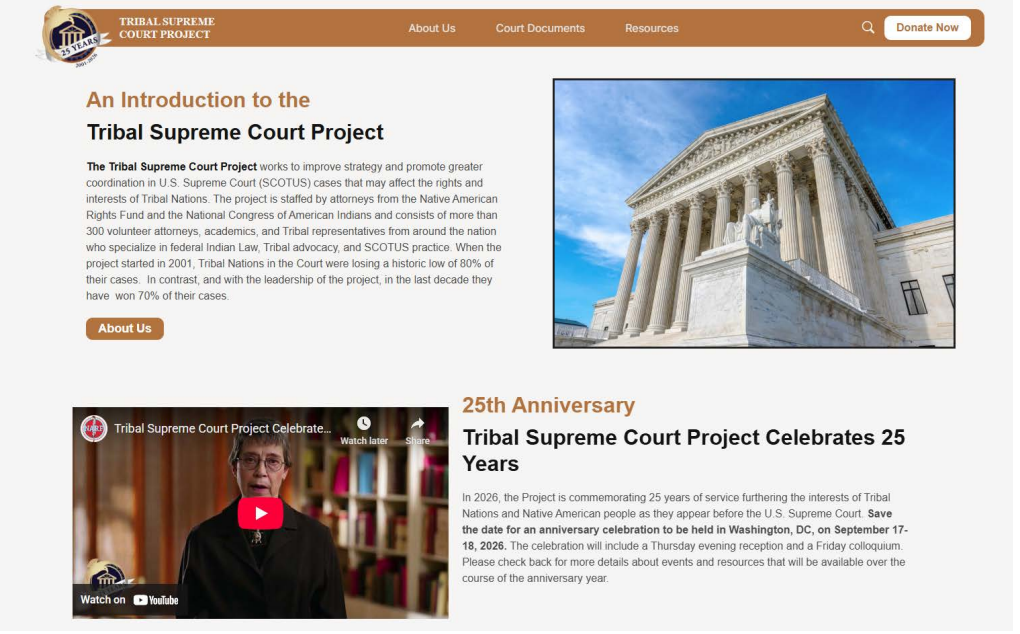
National Congress of American Indians
Native American Rights Fund
National American Indian Court Judges Association
National Indian Gaming Association

attendees via televisions in the hotel lobby and early cellular telephones. Some attendees left, but many remained because travel was restricted. NCAI President Susan Masten enlisted a Tribe leader to lead a prayer for protection. Quickly coining the phrase "the United States is under attack, but so is our sovereignty," NCAI and NARF urged a return to the meeting's important purpose.

The meeting organizers had asked Riyaz Kanji, a former SCOTUS Law Clerk and an experienced federal Indian law and SCOTUS practitioner, to address litigation strategies to protect Tribal jurisdiction. He recommended specific action based on an existing successful model. In the 1990s, to improve their efforts before the SCOTUS, all 50 states established a Center for Supreme Court Advocacy. Mr. Kanji noted the Center's marked results and proposed that Tribes establish a similar unified institution.

Convinced by this suggestion, Tribe leaders formed a work group that, two months later, formally proposed the creation of a national TSCP. Later that month at its Annual Convention in Spokane, Washington, NCAI adopted *Resolution #SPO-01-042: Support for Supreme Court project*. The resolution directed NARF to implement the project to coordinate and improve Tribal SCOTUS advocacy. NARF accepted this role, and the TSCP began.

C. How the Project Serves Indian Country



Refreshed design of Tribal Supreme Court Project website (sct.narf.org). (2026)

CASE IDENTIFICATION AND MONITORING

- The Project identifies and monitors AI/AN and federal Indian law SCOTUS cases at both the petition stage (when the Court is considering whether to review a case) and the merits stage (when the Court has accepted a case for review). Since the Project's inception, the Project has identified and monitored 550 cases, an average of 23 cases per term.
- The Project identifies and monitors cases in lower courts raising significant federal Indian law questions likely to reach the Court. When resources permit, the Project typically selects two or three lower-court cases over a twelve-month period for direct assistance by the Project.

COORDINATION AND EDUCATION

- The Project coordinates a nationwide workgroup of more than 300 volunteers, including federal Indian law and SCOTUS practitioners, professors, and advocates.
- The Project regularly sends the workgroup important informational updates to keep these key partners and thought leaders informed on relevant cases.
- When the Court holds oral argument on an AI/AN or federal Indian law case or issues an opinion, the Project prepares and distributes a summary to the workgroup within 24 hours.

- The Project also prepares and distributes at least three aggregate updates of the relevant cases during each SCOTUS term.
- The Project maintains a website at sct.narf.org. The website is critical to providing organized and current information to federal Indian law practitioners, Tribe leaders, and partners. The most-used feature is the collection of the filings and orders in federal Indian law and AI/AN SCOTUS cases selected for monitoring.
- The website (see previous page) was redesigned in 2025. In addition to an improved design and menu structure, the site includes useful new features like a monthly calendar of important upcoming dates for the monitored cases, updates on monitored cases, a list of cases of potential interest but not selected for monitoring, and a page with links to resources like the SCOTUS Rules and Bar Admission forms and instructions.
- The Project offers direct assistance to attorneys with AI/AN parties or federal Indian law issues before the Court at the petition and merits stages. Since the Project's inception, the Court has heard on the merits and decided 36 AI/AN or federal Indian law cases, all of which the Project assisted. This assistance includes:
    - » Advising on the Court's rules and procedures
    - » Identifying and making referrals to SCOTUS or federal Indian law counsel
    - » Discussing case strategy
    - » Giving substantive feedback
    - » Providing research and technical support
    - » Hosting and participating in moot courts for arguing counsel

AMICUS SUPPORT AND COORDINATION

- In consultation with the parties' attorneys, the Project may establish *amicus* workgroups to address topics, perform research, and draft *amicus* briefs for specific cases. Through this coordination, *amicus* brief duplication is discouraged and quality is emphasized.
- The Project suggests appropriate *amicus* brief counsel and parties, including national and regional inter-Tribal and special interest organizations.
- The Project hosts virtual meetings and helps coordinate *amicus* brief scheduling, drafting, and review.
- The Project provides feedback on draft *amicus* briefs that are shared with the Project.
- In AI/AN or federal Indian law cases where the United States is not a party, the Project may assist the parties' attorneys with arranging meetings with the U.S. Solicitor General's Office to prepare and discuss *amicus* support and other strategy.
- The Project may assist the parties' attorneys with initiating and coordinating outreach to states that might be willing to support Tribes as *amici*.

> "In preparing to argue its case before the Supreme Court, the [Navajo] Nation was the grateful recipient of assistance from the ...Tribal Supreme Court Project. For decades, [the Project] has taken an active role in ensuring that matters with potential impacts in Indian Country are extensively and collaboratively briefed. In the Nation's case, [the Project] convened a working group of over 150 lawyers and scholars, resulting in the filing of eight supporting *amicus* briefs.
>
> M. Kathryn Hoover, *Up Shit Creek-Looking for a Paddle,* 59-AUG Ariz. Att'y 24, 28 (July/August 2023).

PART 2 — IMPACT

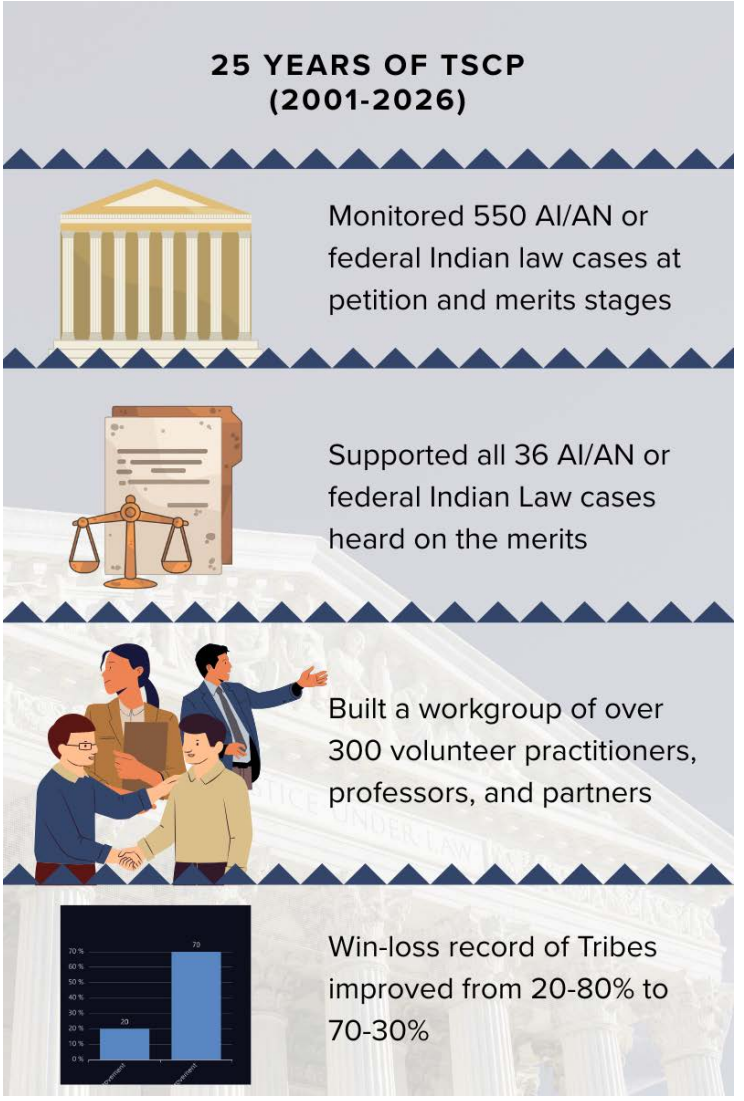
The Project's early years focused on keeping cases out of the SCOTUS, even where the decision below was not favorable to Tribal interests. This helped prevent further erosion of Tribal rights and interests. However, inevitably, the Court continues to take AI/AN cases, so the Project also aims to improve advocacy and strategy for AI/AN parties and their *amici*. These efforts help keep lower-court favorable decisions intact, narrow unfavorable decisions by the SCOTUS, and secure—sometimes surprising—victories in the Court.

Congratulations on the Tribal Supreme Court Project's 25 years of service to the SCOTUS, the Native American community, and the Nation as a whole. The Project has had an enormous impact on the arc of the law. I first saw the Project from the perspective of the Solicitor General's Office where the positions taken by the United States were informed by the Project's efforts. I then had the privilege to benefit directly from the Project's efforts as I moved into private practice and saw firsthand all the work that goes in to coordinating support for those litigating on behalf of Tribes in the Court. For example, in *Nebraska v. Parker* (2016), the Project helped turn an unwanted grant of certiorari into an important victory for the Omaha Tribe. More often than not, a grant of certiorari does not bode well for the Respondents. But with the help of the Project's efforts, organizing *amici,* assisting with moot courts, and providing resources to a generalist like me, we were able to secure a unanimous victory for the Omaha.

Not every case results in victory, but in every case in which it's been involved the Project has made a difference. The beneficiaries of those efforts—many of them behind the scenes—include the Tribes, the advocates representing them, but above all the Court itself. The Court depends on adversarial presentation; the better the advocacy the more likely the Court will get to the right result. The advocacy on behalf of Native Americans has been sharpened and deepened thanks to the Project's tireless efforts.

Paul Clement, *Partner, Clement and Murphy, 43rd Solicitor General of the United States, June 2005-June 2008. Clement has argued more than 100 cases before the SCOTUS.*

A. Improved Win-Loss Record



The fact that Tribes were losing 80% of their SCOTUS cases was a major impetus for the Project's creation. In the Court's first four terms after the Project started (OT01-OT04), Tribes won 50% of their cases, a notable improvement.[3] But, with the appointment of Chief Justice John Roberts in 2005, Tribes' winning percentage plummeted to zero and stayed there for the next five terms (OT05-OT10).[4] From OT01 to OT14, Tribes' winning percentage was at 25%, only slightly better than the 20% from when the Project started.[5] Promisingly, the winning percentage rose to almost 35% by OT16. In 2018, Professor Alex Tallchief Skibine suggested that the improvement could be due in part to "the creation of the Tribal Supreme Court Project, a joint effort by the Native American Rights Fund and the National Congress of American Indians, to more closely monitor and control the kind of cases appealed to the Supreme Court by Tribal interests."[6]

Then, in the last ten terms (OT15-OT24), Tribes won 14 cases and lost only six. That is a 70-30% win-loss record. Other data is illustrative. During the Project's first 15 years, the Court accepted 13 federal Indian law cases over Tribal opposition to SCOTUS review. Of those cases, Tribes won only four. **But from OT15-OT24, where AI/AN parties did not want review, the Court accepted 10 cases, and six decisions were favorable to Tribal interests.** The Court accepted fewer cases that challenged Tribal interests and more often decided the cases that it did accept in line with Tribal interests. It is hard to discern the variables that caused these shifts, but the Project's work and Indian Country's investment in that work must be considered. An online survey conducted with members of the TSCP workgroup in 2025 identified "coordinating and strengthening Tribal advocacy before the SCOTUS" as what the Project does best. Based on the data, the Project's ability to marshal resources for Tribal interests in the Court has resulted in more wins for Tribes as well as fewer reviews of lower-court cases favorable to Tribes.

Another factor in the changing statistics could be the Court's composition. Of course, some Justices have stayed in place, including Chief Justice Roberts, appointed in OT05. Justices Thomas, Alito, Sotomayor, and Kagan were on the Court before OT15. However, Justices Scalia, Kennedy, Ginsburg, and Breyer have left the Court since OT15, replaced by Justices Gorsuch, Kavanaugh, Barrett, and Jackson. Notably, Justice Gorsuch, who replaced Justice Scalia in OT16, is credited as a having a deep understanding of and appreciation for federal Indian law. Of the 14 AI/AN or federal Indian law cases the Court decided since Gorsuch's appointment in which he partook, Tribes won 10 and lost four. In all but one of the wins, Justice Gorsuch voted with the majority. In three of the 10 wins, Justice Gorsuch wrote the majority opinion, including his acclaimed opinion in *Oklahoma v. McGirt* (2020), which is among the featured cases discussed below. In three of the four Tribal losses since joining the Court, Justice Gorsuch wrote the dissenting opinion.

THE 14 CASES WON FROM OT15 TO OT24 (ORGANIZED BY SUBJECT) ARE:

Reservation Boundaries

- *Nebraska v. Parker (2016)* unanimously held the boundaries of the Omaha Tribe of Nebraska's reservation remain intact and undiminished by Congress

- *Oklahoma v. McGirt (2020)* was a 5-4 decision holding that the Muscogee (Creek) Nation of Oklahoma's reservation boundaries remain intact and undiminished by Congress

Sovereign immunity from suit

- *Michigan v. Bay Mills Indian Community (2014)* was a 5-4 decision rejecting a challenge to a suit against a Tribe under the Indian Gaming Regulatory Act

- *Upper Skagit Indian Tribe v. Lundgren (2018)* was a 7-2 decision rejecting a challenge to a suit against a Tribe under the Quiet Title Act

State regulation and taxation

- *Herrera v. Wyoming (2019)* was a 5-4 decision upholding the off-reservation treaty hunting rights of Crow Indians free from state regulation

- *Washington State Department of Licensing v. Cougar Den (2019)* was a 5-4 decision upholding preemption by treaty of a state fuel tax on a Tribal business

Tribal Jurisdiction over non-Indians

- *Dollar General Corporation v. Mississippi Band of Choctaw Indians (2016)* was a 4-4 decision that by default left intact a lower-court ruling that a Tribal court had jurisdiction to hear tort claims brought by a Tribal citizen against non-Indians doing business on a reservation

- *United States v. Cooley (2021)* unanimously upheld the authority of Tribal police to detain temporarily and search non-Indians traveling on public rights-of-way running through a reservation for potential violations of state or federal law

Criminal Law

- *United States v. Bryant (2016)* unanimously upheld the use of prior Tribal court convictions in subsequent federal prosecutions

- *Denezpi v. United States (2022)* was a 6-3 decision upholding successive federal prosecutions of an Indian under federal law and under Tribal law

Other wins involved:

- The Indian Reorganization Act, *Patchak v. Zinke (2018)*

- The Indian Self-Determination Act, *Becerra v. San Carlos Apache Tribe (2024)*

- The Indian Gaming Regulatory Act, *Ysleta Del Sur Pueblo v. Texas (2022)*

- The Indian Child Welfare Act, *Haaland v. Brackeen (2023)*

THE 6 CASES LOST FROM OT15 TO OT24 (ORGANIZED BY SUBJECT) ARE:

The Indian Self Determination Act

- *Menominee Indian Tribe of Wisconsin v. United States (2016)* unanimously held that equitable tolling does not apply to a Tribe's claims for contract support costs under the Act

- *Yellen v. Confederated Tribes of the Chehalis Reservation (2021)* was a 6-3 decision holding that the Act's definition of Tribes as including Alaska Native Corporations (ANCs) determined ANC eligibility to share in funding allocations under the Coronavirus Aid, Relief, and Economic Security Act

Sovereign immunity from suit

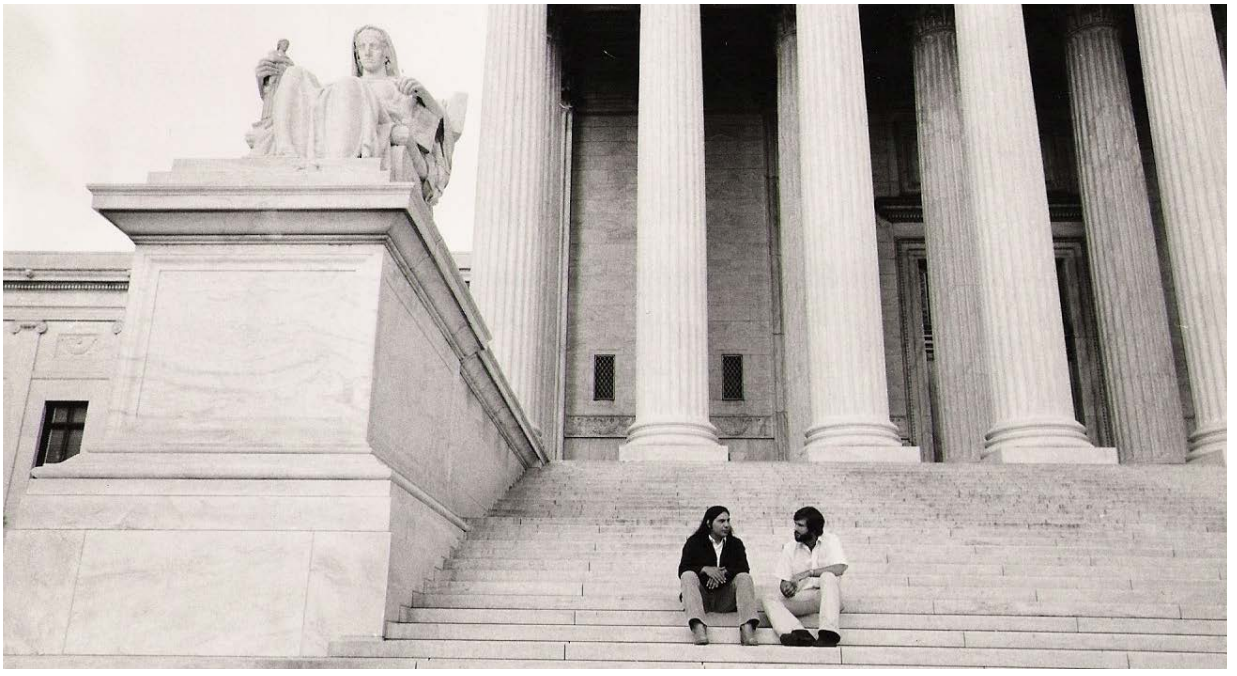
- *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin (2023)* was an 8-1 decision holding that the Bankruptcy Code abrogates the sovereign immunity from suit of all governments, including federally recognized Tribes

- *Lewis v. Clarke* (2017) unanimously held that like other sovereigns, Tribal sovereign immunity from suit does not extend to suits against Tribal employees acting in their individual capacities

Other

- *Oklahoma v. Castro-Huerta (2022)* was a 5-4 decision holding that states can prosecute crimes committed by non-Indians against Indians in Indian Country

- *Arizona v. Navajo Nation (2023)* also was a 5-4 decision rejecting a Tribe's efforts to assert that its treaty water rights required the United States to take affirmative steps to secure water for the Tribe



B. Enhanced *Amicus* Strategy

AMICUS BRIEFS IN THE COURT GENERALLY

From its inception, the Project has emphasized *amicus* strategy. *Amicus* briefs are an established part of SCOTUS practice whose significance is on the rise.[7] *Amicus* briefs can present scientific, technical, and other specialized information and expertise relevant to a case. They can offer interests, points of view, and arguments beyond those raised by the parties. They can emphasize the need for clarity and guidance on policy issues and implications. They can show actual and potential practical impacts and consequences of legal decisions or results.

While the number of cases the Court hears and decides on the merits has decreased in recent decades, the number of *amicus* briefs has increased, as have references by Justices to *amicus* briefs—whether during oral argument or in their written opinions. The Justices acknowledge the briefs as helpful to the Court's decision making and jurisprudence. Legal scholars and other commentators document the briefs' persuasiveness and value. In 2023, the Court made it easier to file *amicus* briefs by eliminating the party consent requirement.[8] *Amicus* briefs currently are filed in about 90% of SCOTUS civil cases.

AMICUS BRIEFS IN FEDERAL INDIAN LAW CASES HISTORICALLY

Amicus briefs in AI/AN and federal Indian law SCOTUS cases are customary. The United States' appearance as an *amicus* began in the early 1900s and continues to this day, sometimes in response to the Court's request for the views of the Solicitor General. In the 1940s, Tribal organizations and an occasional Tribe appeared as *amici*. In the 1970s, Tribes appeared regularly as *amici*. With the high number of AI/AN and federal Indian law cases in the 1980s, the number of *amicus* briefs also increased. Tribes, Tribal organizations, and their attorneys were eager to support Tribal issues in the SCOTUS, but there was little or no coordination. The *amicus* briefs often duplicated each other and repeated the parties' arguments. Knowing this was not helpful to the Court or to Tribal interests, sporadic coordinating attempts began in the late 1980s and early 1990s. Still, there was no concerted effort to improve AI/AN and federal Indian law case *amicus* strategy.

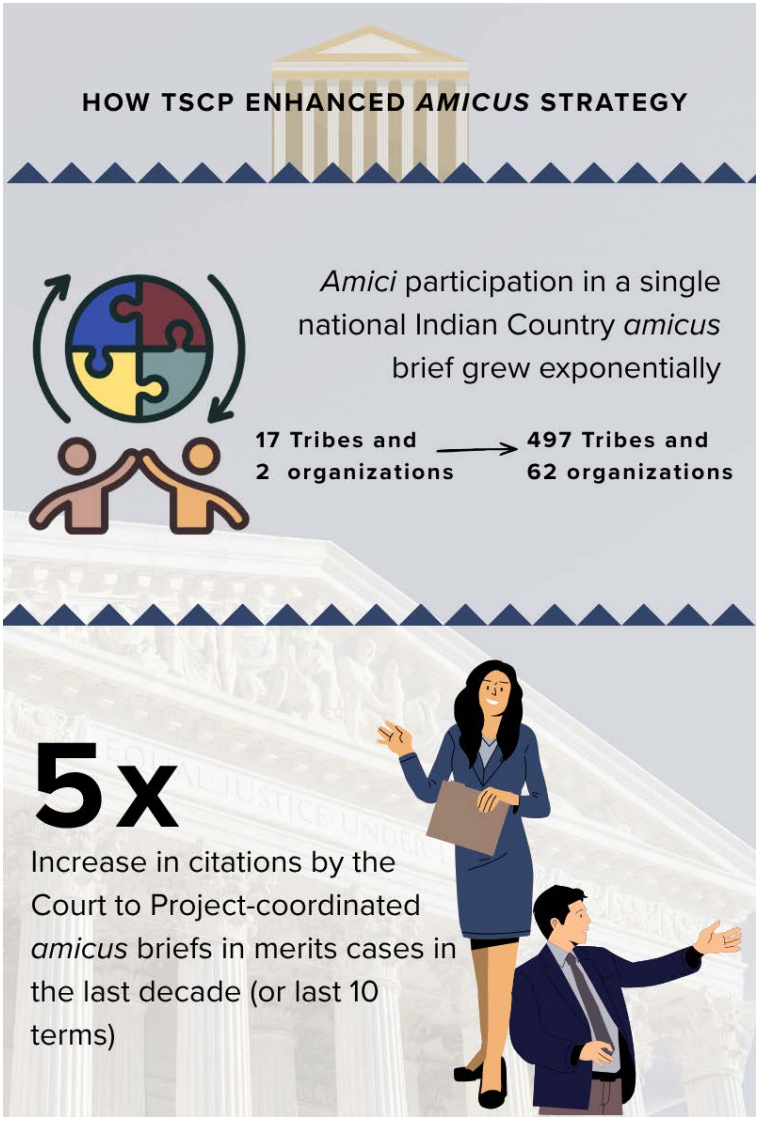
> The Project has helped immensely with generating cooperative, cohesive, and consistent SCOTUS advocacy for Indian Country in cases at the petition stage, merits stage, and with *amicus* support. The Project organizes and facilitates well-thought-out SCOTUS practice and federal Indian law legal strategies for specific Tribes, large groups of Tribes, and Tribal and non-Tribal advocacy organizations and their attorneys so that we join together towards common legal goals before the highest court in the United States to maximize the likelihood of success.
>
> Paul Spruhan, *Assistant Professor of Law, University of New Mexico School of Law and former Assistant Attorney General for the Navajo Nation Department of Justice (July/August 2023).*

> As soon as the Supreme Court issued writs of certiorari in *Murphy*, and later, *McGirt*, representatives from the Tribal Supreme Court Project reached out to counsel for the Creek Nation to plan an *amicus* strategy and isolate the [*amicus*] briefing into key issue areas.
>
> Julie Combs, *A Coherent Ethic of Lawyering in Post-McGirt Oklahoma,* 56 Tulsa L. Rev. 501, 504 (2021).

THE DEVELOPMENT OF THE PROJECT'S *AMICUS* STRATEGY

The Project addresses this shortcoming at both the petition and merits stages. *Amicus* efforts involve counsel for the parties and workgroup professors and federal Indian law and SCOTUS practitioners with preeminent experience and reputations. When a Tribe seeks to preserve a favorable lower-court ruling by keeping a case out of the Court, every effort is made to discourage *amicus* filings that might call undue attention to the case. When a Tribe is seeking the Court's review of an unfavorable lower-court decision, the aim is to enhance the parties' arguments about the case's importance and the need for SCOTUS review, often by limiting the number of *amicus* briefs to get them read by SCOTUS law clerks who might be inundated with filings at the petition stage.

When the Court takes an AI/AN or federal Indian law case, the workgroup examines closely the *amicus* strategy. A single nationwide Tribal and Tribal organization *amicus* brief often is ideal, but Tribe-specific *amici* briefs also may be desirable. The participation and views of the United States are analyzed, and other non-Tribal government *amici* are considered. Beginning with *Michigan v. Bay Mills* (2014) and *Nebraska v. Parker* (2016), legal scholars' and historians' briefs are contemplated, along with *amici* non-Tribal organizations. Regardless of the number of *amicus* briefs in a case (which under the Project's direction has ranged from one to 23), every effort is made to have each brief convey unique information that complements the parties' briefs and gives useful guidance to the Court.



I knew federal Indian law practice in the Court before the Project, and it wasn't ideal. Practitioners were on their own with little coordination amongst themselves and no central place where they could speak candidly about their cases and those of others. There was plenty of collective handwringing after cases were lost but little collective strategy while cases were getting to the Court and this stymied the forward evolution of federal Indian law. The Project has helped turn this around by substantially improving how cases are presented to the Court.

What has made the Project so successful is its ability to gather all the diverse voices across Indian Country, to hear divergent views about how to best support the litigating parties, and then to organize an integrated strategy to execute the best thinking in each case. Indian Country respects the expertise the Project brings to each case, and it is that brilliance matched with diplomacy that has made the Project so effective. I have watched the Project navigate difficult waters with grace, intelligence and compassion and with an ability to look beyond a particular case to the movement of the law, to assess risks up and down of specific cases to see how Tribes can secure incremental wins that ultimately move the cause of justice in profound ways.

The expertise, support, and coordination the Project brings to Tribal SCOTUS advocacy is vital. Tribes face formidable and often united opponents. One Tribe easily is out matched, but the Project helps level the playing field and when that happens Tribes have a real chance at victory, which in tight cases we may see by only one vote, but it is a victory.

Lloyd B. Miller, *Partner, Sonosky, Chambers, Sachse, Endresen & Perry, LLP. Miller has been central in five SCOTUS AI/AN cases during the Project's tenure, two of which he argued and won.*

Lloyd B. Miller with San Carlos Apache Tribe leadership, 2023.

C. Seven Cases that Illustrate the Project's Evolution

1-3. The OT02 trio: *United States v. White Mountain Apache Tribe* (2003); *United States v. Navajo Nation* (2003); and *Inyo County v. Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony* (2003).

The year after the Project began, the Court agreed to hear three federal Indian law cases: *United States v. White Mountain Apache Tribe; United States v. Navajo Nation, and Inyo County v. Bishop Paiute Tribe.* The Project assisted in all three cases.[9] "NARF, as counsel [of record for] NCAI, filed an *amicus curiae* brief in support of the Tribe in *White Mountain Apache*."[10] This was the first *amicus* brief done under the Project's direction. And it was the sole *amicus* brief in the case.

At issue in *White Mountain Apache* was whether the Tribe could sue the United States for breach of trust for money damages under an act of Congress that required the United States to hold in trust the former Fort Apache Military Reservation until the property was transferred to the Tribe. When the transfer occurred, the property was damaged. In a 5-4 decision, the Court ruled in favor of the Tribe, with the majority interpreting the act to find that Congress intended to give the Tribe the right to sue the United States for money damages.

Conversely, in *United States v. Navajo Nation*, also a breach of trust claim by a Tribe for money damages, but under the Indian Mineral Leasing Act, the Court ruled 6-3 in favor of the United States. The majority interpreted that act to find that Congress did not intend to allow the Tribe's claim. In *Navajo Nation*, NARF and NCAI again teamed up on an *amicus* brief on which a SCOTUS practitioner, not NARF, was counsel of record. And two other separate *amicus* briefs were filed by Tribes represented by their private counsel.

Inyo County involved a California county's investigation of Tribe members for alleged off-reservation crimes. County law enforcement officers executed a state court warrant for the Tribe's casino employment records kept on its reservation. The Tribe asserted sovereign immunity from the state court processes. A unanimous Court ruled that the Tribe's basis for its suit, 42 U.S.C. § 1983, a federal statute that allows citizens and other persons within the jurisdiction of the United States to seek legal and equitable relief from persons who under color of state law, deprive them of federally protected rights, was unavailable to the Tribe, interpreting Section 1983's term "person" not to include Tribes.

As *amicus* in *Inyo County*, NCAI again was represented by a SCOTUS practitioner as counsel of record. NCAI's brief was joined by the National Indian Gaming Association and 17 individual Tribes. One other regional Tribal organization filed its own *amicus* brief, but there were no *amicus* briefs by individual Tribes. The United States as *amicus* supported the county in part, on the main issue, and the Tribe in part, on the issue of state seizure of Tribal property. The county's supporting *amicus* briefs included one by 10 states. But remarkably, an *amicus* brief of four other states supported the Tribe in part, urging the Court not to extend state criminal jurisdiction on Indian reservations and telling the Court that law enforcement within reservations is best left to states and Tribes to be determined cooperatively. This perhaps is the first instance of states as *amici* supporting Tribes before the Court and it is directly attributable to the Project's efforts to broaden Indian country's SCOTUS *amicus* strategy.

Though early in the Project's history, these three cases show important elements of improved Tribal SCOTUS advocacy. Retaining SCOTUS practitioners as counsel of record on Tribal *amicus* briefs was new in 2002. Today, the Project has numerous partnerships with SCOTUS firms who assist in continuing this trend. A principal national Indian Country *amicus* brief was new in *Inyo County* but now is typical. *Inyo County*'s novel approach of engaging states as *amici* in support of Tribes is now a regular part of *amicus* strategy discussions.

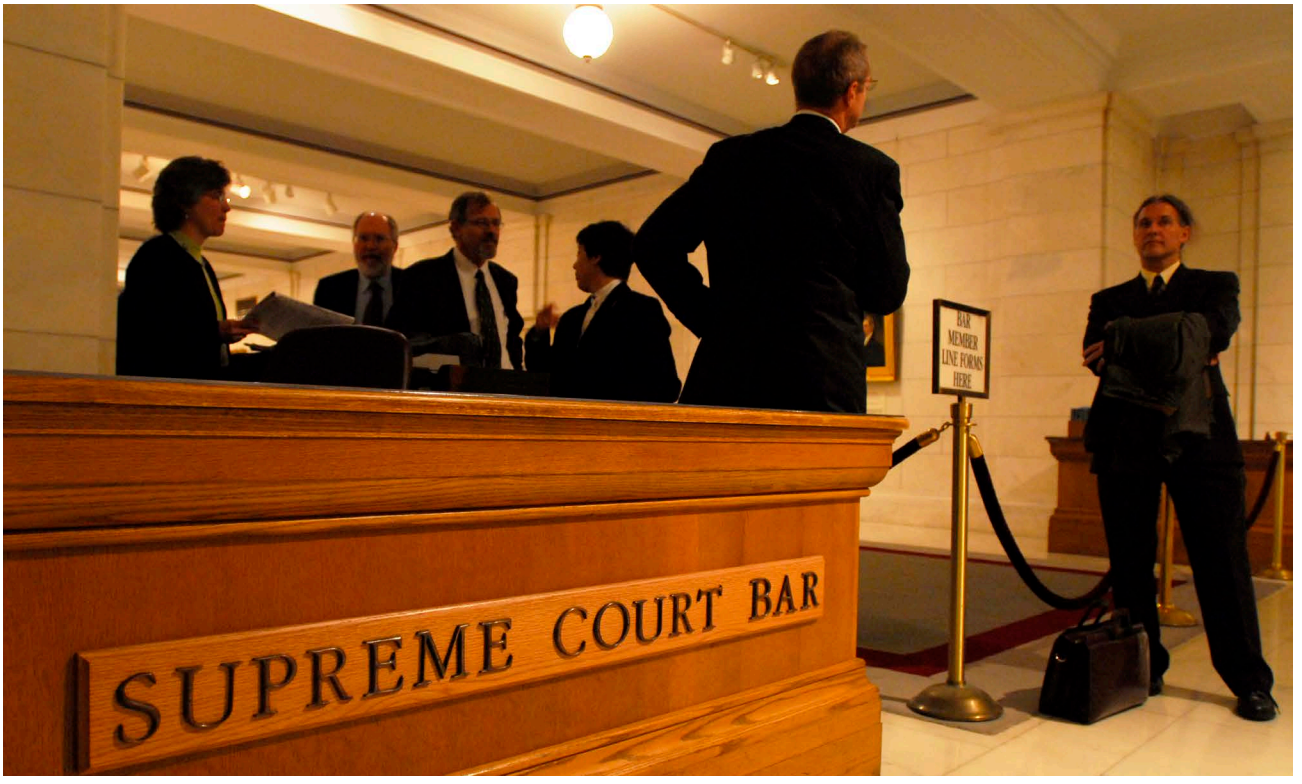
4. *United States v. Lara* (2004).

The Project's improved *amicus* strategy in *United States v. Lara* contributed to a significant victory.[11] This is best understood in the context of two prior SCOTUS decisions: *Oliphant v. Suquamish Indian Tribe* (1978) and *Duro v. Reina* (1990).

In *Oliphant*, Mark David Oliphant, a non-Indian who lived on an Indian reservation, was arrested by Tribal authorities on the reservation during the Tribe's annual Chief Seattle Days celebration and charged with assaulting a Tribal officer and resisting arrest. Oliphant challenged the Tribe's jurisdiction over him as a non-Indian. In a 7-2 decision, the Court held that Tribes do not have inherent criminal jurisdiction over non-Indians and may not assume that jurisdiction unless authorized by Congress. *Oliphant* is widely criticized for its legal reasoning and its negative practical effect on reservation public safety.

In *Duro*, a citizen of one Tribe allegedly shot and killed a citizen of another Tribe on whose reservation they both lived. The alleged perpetrator challenged the Tribe's authority to criminally charge and prosecute him. A 7-2 Court extended *Oliphant* to hold that by virtue of their "lesser" sovereign status in the United States, Tribes lost their inherent criminal jurisdiction over Indians who are not citizens of the Tribe. Again, the Court's reasoning was decried, and reservation safety was threatened. But Tribes immediately succeeded in getting Congress to enact "*Duro* legislation" which expressly affirmed their inherent power to exercise criminal jurisdiction over all Indians.[12]

Tribal criminal jurisdiction again was challenged in *Lara*. Billy Jo Lara, a citizen of the Turtle Mountain Band of Chippewa Indians, lived on the nearby reservation of the Spirit Lake Sioux Tribe. When the Spirit Lake Sioux Tribe banished Lara from its reservation for abusing his Spirit Lake Sioux wife, he refused to leave and struck a federal officer arresting him. Lara pleaded guilty in Spirit Lake Tribal Court to the Tribal crime of violence against a policeman. The federal government then charged him with the federal crime of assaulting a federal officer. Lara claimed that because key elements of that crime mirrored elements of his Tribal crime he was protected by the U.S Constitution's Fifth Amendment Double Jeopardy Clause and that the *Duro* legislation was unconstitutional.



When the Court granted the petition in *Lara*, the Project "Working Group fired up, holding dozens of conference calls about who should write *amicus* briefs and what arguments they should make."[13] The Working Group settled on two briefs, one on behalf of NCAI and the other on behalf of 18 Tribes. "The choices made in these briefs clearly reflect a Tribal perspective on both the Tribal-federal relationship and the lived realities of reservation communities."[14] The NCAI brief presented congressional power through the lens of Tribal sovereignty, emphasizing that Tribal sovereignty was inherent, and that is what allows the United States to relate to Tribes on a government-to-government basis and enact laws like the *Duro* legislation.

The Court ruled 7-2 for the United States, holding that because the Tribe was a separate sovereign, as the *Duro* legislation confirmed, the Double Jeopardy Clause did not prohibit federal prosecution. "The decision in Lara reflected the influence of both [*amicus*] briefs, citing the Tribes' brief for the status of Lara in the Spirit Lake Sioux community, and relying, both in oral argument, and in the decision, on the notion that congressional power over Tribal sovereignty was not a one-way ratchet."[15]

And as in *Inyo County*, the Project "encouraged sympathetic states to submit an *amicus* brief of their own, with the result that Washington, Arizona, California, Colorado, Michigan, Montana, New Mexico, and Oregon—most of the states with the largest Indian communities in the Nation—filed a brief fully supporting the United States."[16] "The brief was an effective counterweight to the far less supportive brief filed by six other states."[17] "Editorial assistance from the members of the working group also helped to ensure that the brief of the sympathetic states did not detract from the focus on Tribal sovereignty."[18]

Lara illustrates the fast development of the Project's *amicus* efforts including unifying Indian Country's message, coordinating substance and providing editorial support, and bringing in states as *amici* in support of Tribes. *Lara* also is a major milestone for the Project, in partnership with SCOTUS practitioners, contributing directly to the Court's doctrinal federal Indian law jurisprudence. While still early in the Project's history, *Lara* exemplifies the impact the Project can have when it is able to invest fully in supporting Tribal interests in a case.

5. *Dollar General Corporation v. Mississippi Band of Choctaw Indians* (2016).

Dollar General challenged Tribal court jurisdiction over tort claims brought by a Tribal member against a non-Indian corporation doing business on Tribal trust land within the Tribe's reservation and pursuant to a lease with the Tribe. The Dollar General store agreed to participate in a youth job training program operated by the Tribe. A Tribal member teenager who participated in the program and his parents brought an action in Tribal court alleging that the teen was sexually assaulted by the store's manager. The Tribes' courts and the federal lower-courts all upheld Tribal court jurisdiction over the tort claims.

The Court granted review of the case, one watched closely even by national mainstream media. Since 1990, the Court had ruled against Tribal civil jurisdiction over non-Indians in six separate cases. Dollar General and its *amici*, including six states, aggressively attacked the fairness of Tribal courts and sought a broad presumptive rule that Tribes lack civil jurisdiction over non-Indians on reservations.

The Project devised and coordinated a robust *amicus* strategy in support of Tribal court jurisdiction. Eight *amicus* briefs were filed, each with its own unique message, with an overall presentation to the Court of the inherent nature of Tribal sovereignty and its scope over non-Indians within reservations.

The 58 Tribes that joined NCAI's *amicus* brief in *Dollar General* set a record for the number of Tribes joining a single national Indian country *amicus* brief. The previous record was 51 in *Michigan v. Bay Mills Indian Community* (2014), and

DOLLAR GENERAL AMICI IN SUPPORT OF THE TRIBAL PARTIES:

1. **United States**
2. **State of Mississippi (joined by Colorado, New Mexico, North Dakota, Oregon, and Washington)**
3. **NCAI (joined by three other Tribal organizations and 58 federally recognized Indian Tribes)**
4. **National American Indian Court Judges Association (joined by numerous Tribal and inter-Tribal court systems)**
5. **Oklahoma Tribes**
6. **National Indigenous Women's Resource Center (joined by more than 100 domestic violence and sexual assault organizations)**
7. **Historians and legal scholars**
8. **American Civil Liberties Union**

before that 30 in *Wagnon v. Prairie Band Potawatomi Nation* (2005). The Project's efforts to coalesce Tribal support into single national Indian Country *amicus* briefs were mounting successfully.

The Court in *Dollar General* issued an equally divided (4-4) per curiam opinion which by default affirmed the federal appellate court ruling in favor of Tribal jurisdiction. The heavily anticipated "non-decision" is not precedent for the exercise of Tribal authority, but it avoided another stinging loss to Tribal sovereignty. In the decade since *Dollar General,* the Court has declined to review several cases involving issues of Tribal civil jurisdiction over non-Indians. The Project has assisted the parties' counsel in some of these cases to help preserve lower-court rulings favorable to Tribes on this issue.

6. *McGirt v. Oklahoma* (2020).

McGirt v. Oklahoma (2020) is a landmark SCOTUS decision with an eloquent majority opinion by Justice Gorsuch upholding the existence of the treaty boundaries of the Muscogee (Creek) Nation. Two hundred years of history and a contemporary related case, *Sharp v. Murphy* (2020), help convey *McGirt's* phenomenal result and impact.

In the 1830s, to accommodate demands by states and non-Indians for Indian land, the United States forcibly removed five Tribes—Cherokee, Creek, Chickasaw, Choctaw, and Seminole—from their homelands in the southeast United States to what is today the state of Oklahoma. The forced removal is known as "the Trail of Tears" because thousands of Indians died along the way. Treaties between the Tribes and the United States promised the Tribes new homelands "that would be forever beyond the reach of any state government."[19] After Oklahoma became a state in 1907, this arrangement was disregarded completely. "It has always been part of the Oklahoma creation myth that Indian reservations are fundamentally incompatible with Oklahoma statehood. The state's narrative—and sometimes that of federal officials—has been that Indian reservations were disestablished to pave the way for Oklahoma's admission to the Union."[20] This falsehood ultimately was tested in the judiciary.

Patrick Murphy, a citizen of the Muscogee (Creek) Nation, was convicted of murder in Oklahoma state court. He challenged the state's authority over him in federal court, asserting that, because the crime occurred within the Muscogee (Creek) Nation's reservation boundaries and because he is Indian, the state lacked jurisdiction. The federal district court disagreed but the federal appellate court reversed, finding that Congress had not disestablished the reservation boundaries. Accordingly, Murphy's state conviction and death sentence were invalid because the crime occurred in Indian Country and he was Indian.

The Court granted review to determine whether the reservation boundaries had been disestablished. Justice Gorsuch was recused, presumably because he had been a judge on the federal appellate court. The United States as *amicus*

MURPHY AMICI IN SUPPORT OF THE TRIBAL PARTY:

1. **Muscogee (Creek) Nation**
2. **NCAI**
3. **Historians, Legal scholars, and Cherokee Nation**
4. **Chickasaw Nation, Choctaw Nation, and former Oklahoma state officials**
5. **Former United States Attorneys**
6. **National Indigenous Women's Resource Center**

Additional _amicus_ in _McGirt_:

7. **National Association of Criminal Defense Lawyers**

supported Oklahoma. While the Project before had gotten former U.S. attorneys to appear as *amici* in support of Tribal interests in the SCOTUS, exemplary of the Project's keen *amicus* strategy in *Murphy* was the appearance as *amici* of former Oklahoma state officials. A "collaborative brief between Indian nations and State officials" … "was a truly unique submission" to counter "the State's litigation rhetoric."[21]

At oral argument in *Murphy*, the Court was sharply divided, and after the argument, ordered supplemental briefing and announced that the case would be scheduled for re-argument. Re-argument had not been scheduled when, in December 2019, the Court granted review in *McGirt*, which presented the same reservation disestablishment question as *Murphy*. However, *McGirt* was a direct appeal from the state court system, thereby avoiding Justice Gorsuch's recusal.

Jimcy McGirt is a citizen of the Seminole Nation. He was convicted by an Oklahoma state court of three sexual offenses. After he unsuccessfully argued in state postconviction proceedings that the state lacked jurisdiction to prosecute him because the crimes took place within the Muscogee (Creek) Nation reservation, his petition to the SCOTUS was granted.

As in *Murphy*, the Project coordinated *amicus* briefs to combat the arguments of Oklahoma and its principal supporting *amicus* the United States. In addition to the six *amicus* briefs in support of Mr. Murphy, a seventh *amicus* brief was added in support of Mr. McGirt: an *amicus* brief of the National Association of Criminal Defense Lawyers. This brief addressed the "fact that the State of Oklahoma has asserted jurisdiction over the Muscogee Creek reservation for more than a century cannot supplant the jurisdictional balance that Congress has created and maintained for many decades."[22]

The Court ruled 5-4 for Mr. McGirt. Justice Gorsuch, writing for the majority, held that the Muscogee (Creek) Nation's removal treaties, confirmed by later acts of Congress, established a reservation. "On the far end of the Trail of Tears was a promise….[T]he Creek were promised not only a 'permanent home' that would be 'forever set apart'; they were also assured a right to self-government on lands that would lie outside both the legal jurisdiction and geographic boundaries of any State. Under any definition, this was a reservation."[23] The majority insisted that reservation boundaries' disestablishment could be accomplished only by a clear expression of congressional intent to do so, which the majority found not present in this case. On the same day it issued *McGirt*, the Court summarily affirmed *Murphy* based on *McGirt*.

Indian Country celebrated the *McGirt* Court's adherence to the law—the terms of a treaty—as opposed to the Court refashioning or ignoring bargained-for terms without clear congressional intent. Scholars laud *McGirt* for its straightforward adherence to textualist methodology rather than resorting to extratextual sources—including "settled" expectations of non-Tribal governments and citizens and/or common law—to divest Tribal sovereignty.[24] A New York Times opinion on *McGirt* was, "After a Trail of Tears, Justice for 'Indian Country.'"[25]

7. *Haaland v. Brackeen* (2023).

Perhaps no case to date better illustrates the Project's work and impact than *Haaland v. Brackeen*. In *Brackeen*, foster parents and the State of Texas asserted constitutional challenges to the 1978 Indian Child Welfare Act (ICWA), including arguments that Congress lacked constitutional authority to enact ICWA and that parts of ICWA violate the U.S. Constitution's Tenth Amendment anti-commandeering principles and Fourteenth Amendment Equal Protection Clause. This full-frontal attack threatened foundational concepts of federal Indian law and Tribes' abilities to care for and protect their children.

In a 7-2 decision, the Court affirmed Congress's authority to enact ICWA but did not reach the merits of the equal protection claims. SCOTUS practitioner Ian Gershengorn, of Jenner & Block, argued *Brackeen* for the Tribal parties.

The Project's work in *Brackeen* traces back to an earlier case, *Adoptive Couple v. Baby Girl* (2013), also an ICWA challenge. The decisive legal question in *Adoptive Couple* was whether "an unwed biological father who has not complied with state law rules to attain legal status as a parent" nevertheless qualifies as a "parent" for purposes of ICWA, a question the 5-4 Court answered in the negative. Attorneys for the *Adoptive Couple* petitioners engaged in an aggressive media campaign to portray ICWA as detrimental to the Indian child in that case. A majority of the Court relied on harmful stereotypes and misunderstood the nature and importance of Tribal sovereignty and citizenship.

After *Adoptive Couple*, the Project and NARF committed and deployed unprecedented resources to combat other attacks filed by consistent ICWA opponents in various federal courts around the country. *Brackeen* was identified as the case likely to reach the SCOTUS because of the legal questions it presented and the broad anti-ICWA position it took. The Project and NARF rallied Indian Country allies on legal and public relations strategies. NARF and a private law firm took the lead on one of four *amicus* briefs in *Brackeen* in the district court, representing 123 Tribes and several national and regional Native organizations. But the district court held ICWA unconstitutional on several grounds.

> Winning a case like *Brackeen* truly takes a village .... The collaborative approach is not unique to *Brackeen*. It is a hallmark of litigating federal Indian law cases, which involve partnerships developed as part of the Tribal Supreme Court Project. The Project is a resounding success, greatly improving outcomes for tribal nations in cases before the Court.
>
> Ian Heath Gershengorn, *Haaland v. Brackeen – A Window into Presenting Tribal Cases to the Court,* 56 Conn. L. Rev. 1103, 1105-06 (May 2024).

On appeal to the U.S. Court of Appeals for the Fifth Circuit, the case was heard first by a three-judge panel and then *en banc* (by all judges serving that circuit). Nine *amicus* briefs were filed in support of ICWA at the panel stage, including one on behalf of 325 Tribes. At the *en banc* stage, the number of Tribal *amici* grew to 486. In 2021, the highly divided appellate court issued a *per curiam* opinion upholding ICWA's constitutionality generally, while holding certain provisions unconstitutional. The fractured decision, with numerous concurrences and dissents, set up an inevitable road to the SCOTUS.

At the petition stage, the Project worked closely with the parties to frame the issues narrowly to urge SCOTUS review but mitigate the legal risks posed by that review. Because of the narrow focus, the Project streamlined *amicus* support for the United States and Tribal petitioners to just three briefs: 1) by NARF and its private law firm partner on behalf of 180 Tribes and 36 Tribal organizations; 2) by 25 states and the District of Columbia; and 3) by numerous Indian and non-Indian child welfare and adoption agencies.

After the Court agreed to hear the case, the Project mustered its greatest investment of time and resources in a single case to date. Twenty-one *amicus* briefs were filed at the merits stage in support of ICWA, including one on behalf of 497 Tribes and 62 Tribal and AI/AN organizations—a record-breaking number for a single united Indian Country brief. The Project helped ensure compelling ICWA support from diverse *amici* including a bipartisan coalition of 87 members of Congress; a bipartisan coalition of 23 states; the American Academy of Pediatrics, the American Medical Association, and the American Psychological Association; 27 of the nation's most well-respected child welfare, adoption, foster case, and social work organizations; 31 children's rights organizations; a variety of legal scholars and historians; and a brief from former foster children that focused on their lived experiences in foster care and dispelled misconceptions about Indian children's experiences with ICWA.

The Project paired veteran SCOTUS practitioners with *amici* in need of counsel. The Project and NARF provided substantive feedback and technical assistance to the pro-ICWA *amicus* briefs to ensure that all key arguments were made without duplication and with a unified message that hewed closely to the Tribal parties' narrative of the case. The *amici* helped counter every harmful narrative asserted by ICWA opponents.

The Project's participation in oral argument moot courts pushed for clarity on Congress's authority and the opposing side's lack of standing to bring the case—issues that eventually persuaded seven of the nine Justices. The Project also coordinated with NARF and its pro-ICWA partners on a comprehensive public relations campaign to ensure the anti-ICWA side did not control the narrative outside of the Court. All told on *Brackeen*, the Project and NARF invested more than 7,000 attorney hours in defense of ICWA—a worthy investment the Project hopes to be able to replicate in future cases of similar importance.

Brackeen demonstrates the importance of monitoring lower-court cases and of early, tactical involvement in a case. At the SCOTUS level, issues, strategy, and *amicus* support already were well-established. The Project could focus on refining existing briefs, recruiting additional *amici* to fill any key gaps, and responding at a high level to the unique needs of the Tribal parties and their counsel. In the end, the Project helped present the Court with the largest united Indian Country *amicus* support in history, in defense of ICWA and Tribal sovereignty--and with the backing of an extraordinarily broad *amici* coalition to preserve a statute that protects a key component of Tribal existence.

Native American Rights Fund staff at Brackeen *oral arguments, November 2022.*

PART 3 — GOALS AND VISIONS FOR THE FUTURE

The Need for Continued Investment in TSCP GOALS

A. Greater Tracking of and Involvement in Lower-Court Cases

The Project tracks lower-court cases to identify those that might reach the Court. To date, that tracking has been done largely on an ad hoc basis relying on general knowledge, free services, and some subscription services. But these sources typically offer only court decisions in cases after evidence, arguments, and strategy already have been submitted or determined. Moreover, they may not report decisions from all federal and state court dockets.

To address these limitations, the Project is experimenting with platforms that allow searching of pending federal and state court case filings. This allows tracking of cases filed, arguments being made, procedural posture and other interim rulings before cases are decided. With this broader and more inclusive search capability, the Project can identify better relevant lower-court cases. This need is heightened not just by the steady stream of lower-court AI/AN cases but by new challenges to Tribal sovereignty.

In the next two years, the Project's goal is to build out a method to track and communicate lower-court cases of interest to the workgroup and on the website. This may require increased Project staffing or forming additional partnerships with private law firms, nonprofits, or law schools.

Improved lower-court case tracking also will help the Project determine which, if any, cases might benefit from Project assistance. The Project responds to requests for assistance in lower-court cases on a case-by-case basis.[26] But with limited resources, the Project accepts very few requests, typically only two or three in a 12-month period.

In the next three years, the Project's goal is to identify a model to increase lower-court assistance with a goal of implementing it within five years. Involvement in lower-court cases on matters ranging from procedure and record-making to arguments and strategy could improve the posture of cases that do reach the SCOTUS. The Project feels strongly that helping to ensure the best advocacy in lower-court cases is the next step to improve Indian Country's record before the Court and safeguard Tribal sovereignty nationwide.

"The Project creates a venue for Indian Country and its advocates to coordinate and make strong arguments for the benefit of all of us, and the importance of that cannot be overstated. I hope that in the future the Project plays an even bigger role in how we advocate and create better case law that more fully embraces inherent Tribal sovereignty and the United States' debt-based trust and treaty obligations. With the Project's guidance, we can address the unfair doctrines embedded in federal Indian law."

Katie Klass (Wyandotte), General Counsel, United South and Eastern Tribes Sovereignty Protection Fund

B. In-Depth Analysis of the Court's Current Indian Law Jurisprudence

An in-depth analysis of the Court's contemporary federal Indian law jurisprudence would help identify and strategize about forthcoming issues. Within three years, the Project will partner with a law school professor or clinic to commission a review of the Court's recent federal Indian law jurisprudence, current Justices' voting patterns, and areas of future concern. Investing in this research and review should lead to information and a report that can be used by the Project and partner organizations and entities to improve Tribal SCOTUS strategy and resource allocation moving forward.

C. Supporting Federal Indian Lawyers in SCOTUS and Appellate Practice

The workgroup has urged the Project to offer SCOTUS practice training and technical assistance, especially to Tribal, solo, and nonprofit attorneys who have limited exposure to SCOTUS practice. Within one year, the Project will provide more SCOTUS practice resources on its website, including links to the Court's rules and admission policies, as well as options for SCOTUS brief printers. In the next three years, the Project will strive to expand these resources to include exemplar briefs, advocacy tips, trainings, and/or SCOTUS practice manuals. The expansion will draw on the Project's expertise as well as that of its partners.

Since the 1970s, 13 AI/AN attorneys have argued before the SCOTUS. But the last time that happened was 2001—before the Project began. With the current Court, many Tribes opt for experienced SCOTUS practitioners, but some want the option of having an AI/AN attorney argue their case. The Project supports the goal of developing a Native SCOTUS bar. To advance that goal, the Project plans to convene and partner with law firms, Tribal attorney organizations like the Tribal In-House Counsel Association, state and regional Indian bar associations, law schools and Native law student organizations, and the Pre-Law Summer Institute at the American Indian Law Center, Inc. Through this collaboration, the Project and partner organizations and entities can identify and implement the best strategies for supporting Native attorneys appearing in front of the SCOTUS.

D. Expanded Outreach and Education

The Project will increase its presence in Indian Country, the legal profession, and the judiciary by including outreach and education as a component of its other stated goals. The Project will continue attending judicial and federal Indian law conferences and organizational meetings and will work to get on these events' agendas regularly. The Project also will broaden its connections with state attorneys general organizations like the National Association of Attorneys General and the Attorney General Alliance.

CONCLUSION

For 25 years, the TSCP has stood as a unifying force at the highest level of the American legal system. Born out of a period of crisis—when Tribes faced an overwhelming rate of loss in the Court—the Project transformed how Indian Country approaches SCOTUS advocacy. Through coordinated strategy, strengthened legal expertise, and a commitment to presenting unified, principled arguments, the Project has helped shift outcomes, elevate Tribal voices, and defend Tribal sovereignty.

Improved win-loss outcomes, more effective *amicus* participation, and landmark victories demonstrate that organized collective action can change the trajectory of SCOTUS jurisprudence. Equally important, the Project has built a national network of practitioners, scholars, and Tribal leaders who now approach the Court with shared strategy, deeper preparation, and an integrated vision of protecting sovereignty for all Tribes.

However, the work ahead is no less urgent than it was in 2001. The SCOTUS continues to revisit core legal doctrines, and new challenges threaten long-standing legal frameworks. As these pressures intensify, the Project's next phase—expanding lower-court engagement, deepening jurisprudential analysis, strengthening training for Tribal advocates, and widening outreach—will be essential to safeguarding Tribal rights and interests in the decades to come.

The TSCP's first 25 years demonstrate what is possible when Indian Country stands together. By continuing to invest in coordinated advocacy, shared expertise, and forward-looking strategy, the Project will remain a vital guard of Tribal sovereignty and a powerful voice for justice in the nation's highest court.

APPENDICES

APPENDIX A: Tribal Leaders Policy Forum Final Notice and Agenda (Sept. 11, 2001)

Native American Rights Fund

TRIBAL LEADERS POLICY FORUM
Final Notice & Agenda

Nevada v. Hicks and the Supreme Court's Erosion of Tribal Jurisdiction

September 11, 2001 - 8:30 am to 5:30 pm
(a follow-up working group will meet on Sept. 12 - 9 am to 4 pm at the NCAI offices)

Grand Hyatt Hotel •1000 H Street, NW •Washington, DC
For Reservations Call 202-582-1234 or 800-233-1234

Co-Hosted by the

National Congress of American Indians
Native American Rights Fund
National American Indian Court Judges Association
National Indian Gaming Association

The United States Supreme Court issued five decisions affecting the rights of Indian tribes in its 2000-01 term. In particular, the decisions in Nevada v. Hicks and Atkinson Trading Co. v. Shirley raise strong concerns that the Supreme Court is on an accelerating trend toward removing tribal jurisdiction over the conduct of non-Indians within tribal territory. This *Tribal Leaders Policy Forum* is open to all Indian Nations and tribal organizations and is intended to facilitate tribal leaders consideration of options to reverse the erosion and alter the decision making in the federal courts. The purpose of this forum will be the discussion of legislative proposals to restore tribal sovereignty and jurisdiction as well as tribal governance and litigation strategies for strengthening and protecting tribal jurisdiction. The format of the agenda is to be relatively brief presentations by key leaders in the field of Indian law and policy, followed by time for consideration and discussion by tribal leadership. We have an ambitious agenda, so we plan to start on time at 8:30 am.

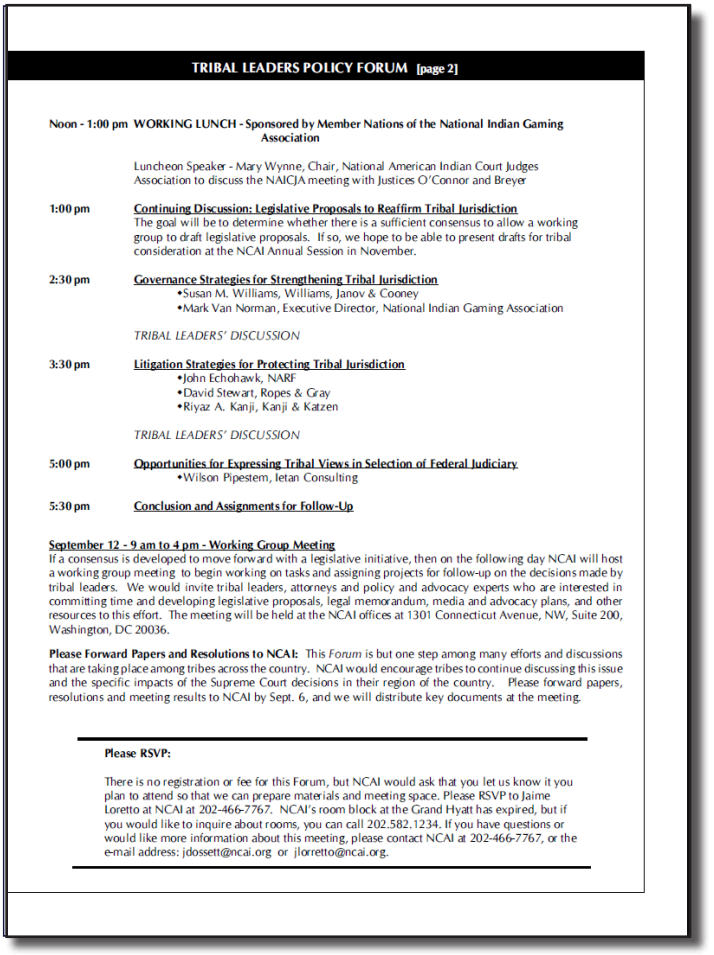
8:30 am **Opening Prayer**

8:35 am **Welcome** •Susan Masten, NCAI President

8:40 am **Introduction and Overview**
•John Echohawk, Executive Director of the Native American Rights Fund and Chairman of the NCAI Litigation and Governance Committee

9:00 am **What is the Problem Tribal Nations Are Facing With the Supreme Court and Should Tribal Nations Consider Initiating Federal Legislation to Reaffirm Tribal Jurisdiction?**
•Doug Endreson, Attorney, Sonosky, Chambers, Sachse & Endreson
•John Steele, Chairman, Oglala Sioux Tribe
•Kelsey Begay, President, Navajo Nation (invited)
•Patricia Zell, Senate Committee on Indian Affairs
•Paul Moorehead, Senate Committee on Indian Affairs

TRIBAL LEADERS' DISCUSSION



TRIBAL LEADERS POLICY FORUM [page 2]

Noon - 1:00 pm **WORKING LUNCH - Sponsored by Member Nations of the National Indian Gaming Association**

Luncheon Speaker - Mary Wynne, Chair, National American Indian Court Judges Association to discuss the NAICJA meeting with Justices O'Connor and Breyer

1:00 pm **Continuing Discussion: Legislative Proposals to Reaffirm Tribal Jurisdiction**
The goal will be to determine whether there is a sufficient consensus to allow a working group to draft legislative proposals. If so, we hope to be able to present drafts for tribal consideration at the NCAI Annual Session in November.

2:30 pm **Governance Strategies for Strengthening Tribal Jurisdiction**
•Susan M. Williams, Williams, Janov & Cooney
•Mark Van Norman, Executive Director, National Indian Gaming Association

TRIBAL LEADERS' DISCUSSION

3:30 pm **Litigation Strategies for Protecting Tribal Jurisdiction**
•John Echohawk, NARF
•David Stewart, Ropes & Gray
•Riyaz A. Kanji, Kanji & Katzen

TRIBAL LEADERS' DISCUSSION

5:00 pm **Opportunities for Expressing Tribal Views in Selection of Federal Judiciary**
•Wilson Pipestem, Ietan Consulting

5:30 pm **Conclusion and Assignments for Follow-Up**

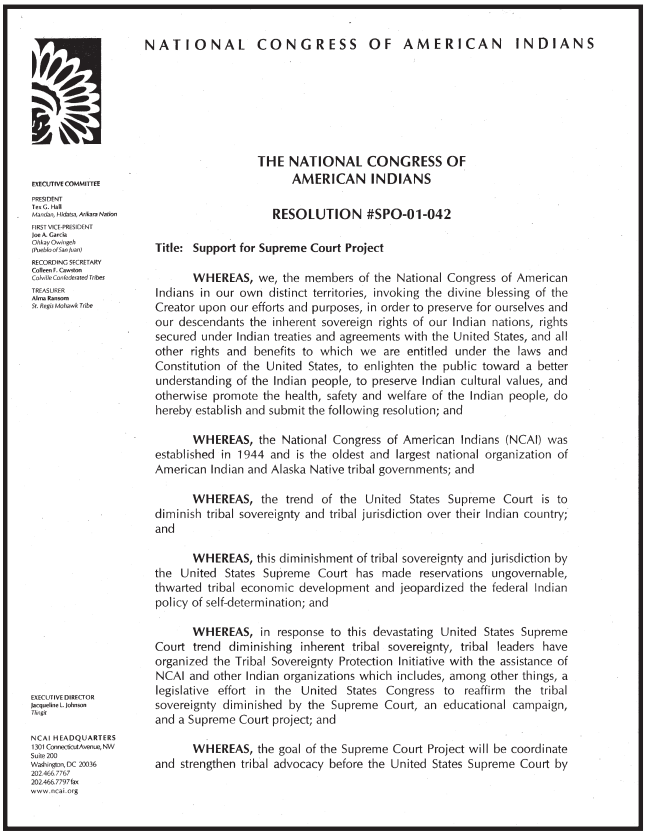
September 12 - 9 am to 4 pm - Working Group Meeting
If a consensus is developed to move forward with a legislative initiative, then on the following day NCAI will host a working group meeting to begin working on tasks and assigning projects for follow-up on the decisions made by tribal leaders. We would invite tribal leaders, attorneys and policy and advocacy experts who are interested in committing time and developing legislative proposals, legal memorandum, media and advocacy plans, and other resources to this effort. The meeting will be held at the NCAI offices at 1301 Connecticut Avenue, NW, Suite 200, Washington, DC 20036.

Please Forward Papers and Resolutions to NCAI: This *Forum* is but one step among many efforts and discussions that are taking place among tribes across the country. NCAI would encourage tribes to continue discussing this issue and the specific impacts of the Supreme Court decisions in their region of the country. Please forward papers, resolutions and meeting results to NCAI by Sept. 6, and we will distribute key documents at the meeting.

Please RSVP:

There is no registration or fee for this Forum, but NCAI would ask that you let us know it you plan to attend so that we can prepare materials and meeting space. Please RSVP to Jaime Loretto at NCAI at 202-466-7767. NCAI's room block at the Grand Hyatt has expired, but if you would like to inquire about rooms, you can call 202.582.1234. If you have questions or would like more information about this meeting, please contact NCAI at 202-466-7767, or the e-mail address: jdossett@ncai.org or jloretto@ncai.org.

APPENDIX B: National Congress of American Indians Resolution #SPO-01-42, *Support for Supreme Court Project* (Nov. 2001)



NATIONAL CONGRESS OF AMERICAN INDIANS

EXECUTIVE COMMITTEE

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THE NATIONAL CONGRESS OF AMERICAN INDIANS

RESOLUTION #SPO-01-042

Title: Support for Supreme Court Project

WHEREAS, we, the members of the National Congress of American Indians in our own distinct territories, 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

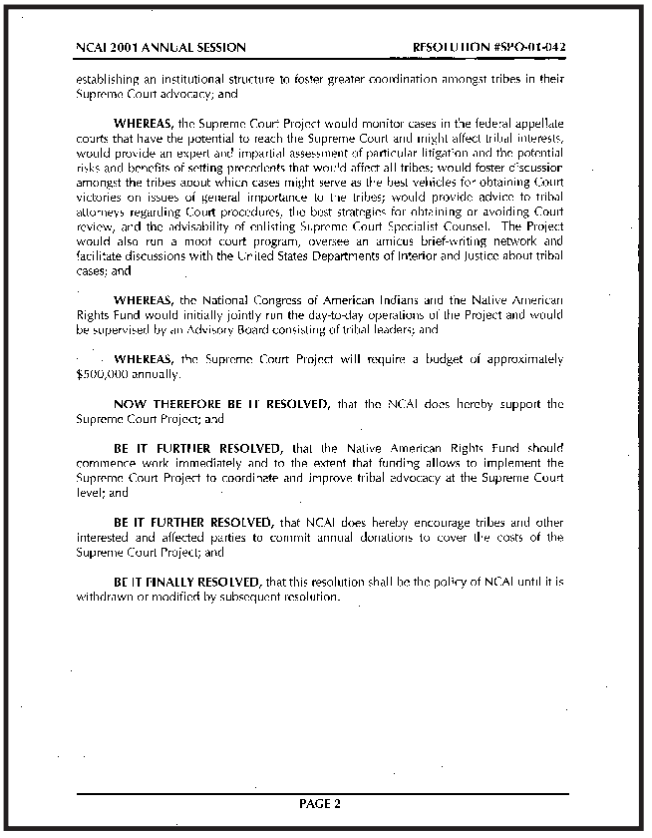
WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the trend of the United States Supreme Court is to diminish tribal sovereignty and tribal jurisdiction over their Indian country; and

WHEREAS, this diminishment of tribal sovereignty and jurisdiction by the United States Supreme Court has made reservations ungovernable, thwarted tribal economic development and jeopardized the federal Indian policy of self-determination; and

WHEREAS, in response to this devastating United States Supreme Court trend diminishing inherent tribal sovereignty, tribal leaders have organized the Tribal Sovereignty Protection Initiative with the assistance of NCAI and other Indian organizations which includes, among other things, a legislative effort in the United States Congress to reaffirm the tribal sovereignty diminished by the Supreme Court, an educational campaign, and a Supreme Court project; and

WHEREAS, the goal of the Supreme Court Project will be coordinate and strengthen tribal advocacy before the United States Supreme Court by



NCAI 2001 ANNUAL SESSION RESOLUTION #SPO-01-042

establishing an institutional structure to foster greater coordination amongst tribes in their Supreme Court advocacy; and

WHEREAS, the Supreme Court Project would monitor cases in the federal appellate courts that have the potential to reach the Supreme Court and might affect tribal interests, would provide an expert and impartial assessment of particular litigation and the potential risks and benefits of setting precedents that would affect all tribes; would foster discussion amongst the tribes about which cases might serve as the best vehicles for obtaining Court victories on issues of general importance to the tribes; would provide advice to tribal attorneys regarding Court procedures, the best strategies for obtaining or avoiding Court review, and the advisability of enlisting Supreme Court Specialist Counsel. The Project would also run a moot court program, oversee an amicus brief-writing network and facilitate discussions with the United States Departments of Interior and Justice about tribal cases; and

WHEREAS, the National Congress of American Indians and the Native American Rights Fund would initially jointly run the day-to-day operations of the Project and would be supervised by an Advisory Board consisting of tribal leaders; and

WHEREAS, the Supreme Court Project will require a budget of approximately $500,000 annually.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby support the Supreme Court Project; and

BE IT FURTHER RESOLVED, that the Native American Rights Fund should commence work immediately and to the extent that funding allows to implement the Supreme Court Project to coordinate and improve tribal advocacy at the Supreme Court level; and

BE IT FURTHER RESOLVED, that NCAI does hereby encourage tribes and other interested and affected parties to commit annual donations to cover the costs of the Supreme Court Project; and

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

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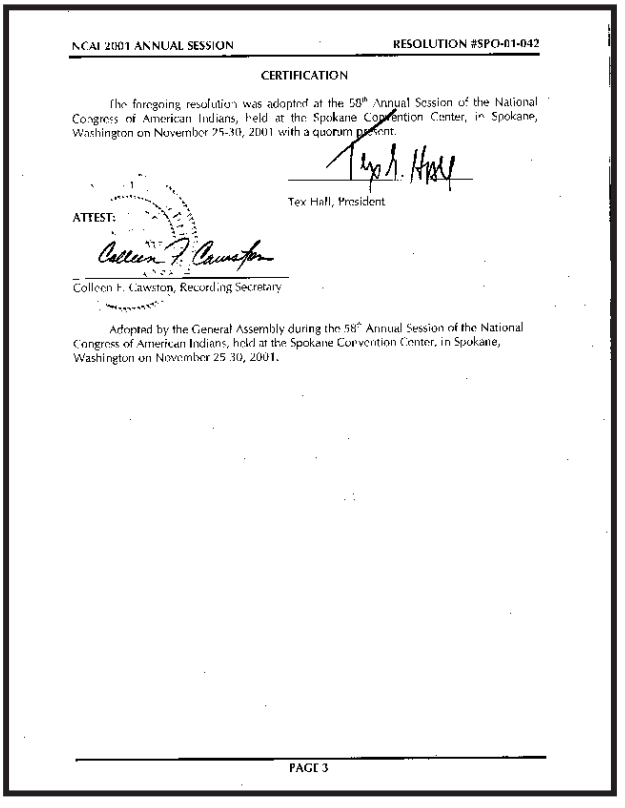

NCAI 2001 ANNUAL SESSION RESOLUTION #SPO-01-042

CERTIFICATION

The foregoing resolution was adopted at the 58th Annual Session of the National Congress of American Indians, held at the Spokane Convention Center, in Spokane, Washington on November 25-30, 2001 with a quorum present.

Tex Hall, President

ATTEST:

Colleen F. Cawston, Recording Secretary

Adopted by the General Assembly during the 58th Annual Session of the National Congress of American Indians, held at the Spokane Convention Center, in Spokane, Washington on November 25-30, 2001.

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NOTES

1 The SCOTUS operates on annual terms that begin on the first Monday of October. The terms are referred to as "October Term" followed by the calendar year of that October, for example, October Term 2025, October Term 2026, *etc.* This report uses the common short citation for the terms, for example, OT25, OT26, *etc.*

2 Tribal Supreme Court Project Ten Year Report, October Term 2001 – October Term 2010 (OT01-OT10) at 2, https://sct.narf.org/updatememos/tsct-10-year-report.pdf, (October 2011) citing David H. Getches, *Beyond Indian Law: The Rehnquist Court's Pursuit of States' Rights, Color Blind Justice and Mainstream Values*, 86 Minn. L. Rev. 267 (2001).

3 Tribal Supreme Court Project Ten Year Report at 3.

4 *Id.*

5 *Id.*

6 Alexander Tallchief Skibine, *The Supreme Court's Last 30 Years of Federal Indian Law: Looking for Equilibrium or Supremacy?* 8 Colum. J. Race & L. 277, 304 (2018).

7 *See* https://scholarship.law.columbia.edu/faculty_scholarship/3490.

8 NARF and NCAI supported other 2023 rule amendments that align Tribes with federal, state, and local governments in terms of the length of *amicus* briefs filed, allowing Tribes, like other sovereigns, to file longer briefs than non-governmental entities, *see* https://narf.org/supreme-court-rule-change-37/.

9 Tracy Labin, *We Stand United Before the Court: The Tribal Supreme Court Project*, 37 New Eng. L. Rev. 695, 699 (2003).

10 *Id.*

11 Bethany R. Berger, *United States v. Lara As a Story of Native Agency*, 40 Tulsa L. Rev. 5 (2004).

12 Similar legislation in 2013 affirmed Tribes' inherent power to exercise criminal jurisdiction over non-Indians in certain domestic violence situations, effectuating a limited congressional reversal of *Oliphant*.

13 Berger, 40 Tulsa L. Rev. 20-21 (footnotes omitted).

14 *Id.* at 21.

15 *Id.* at 22 (footnotes omitted)

16 *Id.* at 21 (footnote omitted)

17 *Id.* at 21-22.

18 *Id.* at 22.

19 Joel West Williams, *The Far End of the Trail of Tears: McGirt v. Oklahoma*, 68-FEB Fed. Law. 12 (Jan./Feb. 2021).

20 *Id.*

21 Riyaz Kanji, David Gaimpetroni, Philip Tinker, *Reflections on McGirt v. Oklahoma: A Case Team Perspective*, 56 Tulsa L. Rev. 387, 397 (Spring 2021).

22 Brief *Amicus Curiae* of National Association of Criminal Defense Lawyers, https://sct.narf.org/documents/mcgirt_v_ok/amicus_crim_defense.pdf; 2020 WL 774248, No. 18-9526 (Feb. 11, 2020).

23 *McGirt*, 591 U.S. 894, 902.

24 *See*, *e.g.*, *The Supreme Court 2019 Term: United States-Muscogee (Creek) Nation Treaty-Federal Indian Law- Disestablishment of Indian Reservations- McGirt v. Oklahoma*, 134 Harv. L. Rev. 600, 605 and 608 (Nov. 2020).

25 *See* https://www.nytimes.com/2020/07/14/opinion/mcgirt-oklahoma-muscogee-creek-nation.html.

26 Tribal Supreme Court Project Ten Year Report at 5, 16-17, and 20.

25TH ANNIVERSARY HONOREES

Tribal Council of Yuhaaviatam of San Manuel Nation

Riyaz Kanji, Esq.

NATIVE AMERICAN RIGHTS FUND ATTORNEYS WHO HAVE LED THE PROJECT

Tracy Labin Rhodes (Mohawk)
2001 - 2003

Richard Guest
2003 - 2017

Joel West Williams (Cherokee)
2017 - 2022

Melody McCoy (Cherokee)
2022 - present

IN MEMORIAM HONOREES

Professor Philip P. Frickey
Professor David H. Getches
Charles Hobbs, Esq.
Professor Alex Tallchief Skibine (Osage)
Professor Charles F. Wilkinson

WITH SPECIAL THANKS FOR THEIR CONTRIBUTIONS TO THIS REPORT

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Professor Matthew Fletcher (Grand Traverse Band of Ottawa and Chippewa Indians)
Richard Guest
Rem Katyal
Tracy Labin Rhodes (Mohawk)
Professor Daniel Lewerenz (Iowa Tribe of Kansas and Nebraska)
Morgan Saunders
Joel West Williams (Cherokee)
Melody McCoy (Cherokee)

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TRIBAL SUPREME COURT PROJECT