



Legal Review

NATIVE AMERICAN RIGHTS FUND

The New Obama Administration and Indian Country

NARF's reputation as a leading force in the development of Indian law and its record in achieving justice on behalf of Native American people by providing excellent and highly ethical legal representation to Indigenous peoples has not gone unnoticed in national and international forums. The newly elected Obama Administration called on the Native American Rights Fund to help them prepare to implement their policies for our tribal nations. NARF Executive Director John Echohawk, and former NARF attorneys Bob Anderson and Keith Harper were called upon by President Obama to serve on his Transition Team. President Obama has already appointed Jodi Archambault Gillette, a member of the Standing Rock Sioux Tribe and daughter of former NARF Board member Dave Archambault, as one the three Deputy Associate Directors of the Office of Intergovernmental Affairs. This is the first time a Native has been appointed to this position.

In April, President Obama announced the nomination of Larry EchoHawk (brother of NARF Executive Director John Echohawk) as Assistant Secretary for Indian Affairs and the full Senate ▶



President Obama and Shahela Pourier/Eyre - photo by Lori Pourier

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confirmed his nomination on May 19, 2009. Mr. EchoHawk was officially sworn in on May 22. Larry Echohawk brings with him a wealth of knowledge in Indian law, government and public policy. Larry Echohawk is a former tribal attorney, a former Attorney General of Idaho, was most recently a law professor at Brigham Young University, and serves as of counsel to the EchoHawk Law Firm in Idaho. It is also expected that President Obama will soon be filling the positions of Office of the Special Trustee for American Indians, the National Indian Gaming Commission, and the Commissioner for the Administration for Native American Indians, with Native Americans.

Three other Natives have been nominated and are waiting for Senate confirmation or have been confirmed. Mary L. Smith, a member of the Cherokee Nation, has been nominated for the position of Assistant Attorney General for the Tax Division at the Department of Justice. Hilary Tompkins, a member of the Navajo Nation, has been nominated for Solicitor of the Department of the Interior. Yvette Roubideaux, a member of the Rosebud Sioux Tribe, has been nominated and confirmed as the Director of Indian Health Services. These Native women will bring with them outstanding expertise in Indian law, Indian health care needs, and in national Indian issues.

On June 15, 2009, in taped remarks to the 2009 National Congress of American Indians Mid-Year Conference, President Barack Obama announced the appointment of Kimberly Teehee, a member of the Cherokee Nation, as Senior Policy Advisor for Native American Affairs. As a member of the Domestic Policy Council, Teehee will advise the President on issues impacting Indian Country. Since January of 1998, Teehee has served as a Senior Advisor to the House of Representatives Native American Caucus Co-Chair, Congressman Dale Kildee (D-MI). President Obama also announced that the White House will hold a Tribal Nations Conference later this fall.

We have hope that President Obama and his Cabinet, with those fresh Native faces and an abundance of expertise, can begin to help steer this Nation into recognizing and embracing our tribal nations, our tribal histories, and our tribal knowledge.

During his campaign, President Obama stated that “Perhaps more than anyone else, the Native American community faces huge challenges that have been ignored by Washington for too long. It is time to empower Native Americans in the development of the national policy agenda.”... “We’ve got to make sure we are not just having a BIA that is dealing with the various Native American tribes; we’ve got to have the President of the United States meeting on a regular basis with the Native American leadership and ensuring relationships of dignity and respect.”

President Obama supports the principle of tribal self-determination, with recognition that the federal government must honor its treaty obligations and fully enable tribal self-governance. In furtherance of the government-to-government relationship, Barack Obama will include tribal leadership in the important policy determinations that impact Indian Country. Obama will appoint an American Indian policy advisor on his senior White House staff so that Indian Country has a direct interface at the highest level of the Obama Administration. In addition, Obama will host a White House “Tribal G8” – an annual meeting with Native American leaders to develop a national Indian policy agenda.

Barack Obama recognizes that honoring the government-to-government relationship requires fulfillment of the United States’ trust responsibility to tribes and individual Indians. More specifically, Obama is committed to meaningful reform of the broken system that manages and administers the trust lands and other trust assets belonging to tribes and individual Indians. Further, he is committed to resolving equitably with both tribes and individual Indians litigation resulting from the past failures in the administration and accounting of their trust assets.

We do have hope.

BARACK OBAMA'S PRINCIPLES FOR STRONGER TRIBAL COMMUNITIES
Health Care

The Indian Health Service estimates that it receives only 55 percent of the federal funding it requires. Federal per-capita funding for Indian health care amounts to about half of the federal per capita health funding for federal prisoners. Indians are the most at-risk minority group for health problems like diabetes, which they suffer from at a rate 249 percent higher than the national average. Moreover, Indians have the nation's highest death rates for tuberculosis and suicide. After Haiti, men on the Pine Ridge and Rosebud Reservations in South Dakota have the lowest life expectancy in the Western Hemisphere.

* **Indian Health Services:** Barack Obama voted in the Senate to provide an additional \$1 billion for IHS to address these disparities. Additionally, he was an original cosponsor of the Indian Health Care Improvement Act of 2007 which mandates modernization of the Indian health care system and strengthens urban Indian health facilities. Obama has fought against the Bush Administration's attempt to eliminate urban health care for Indians not living in reservation communities. Obama opposed a federal land acquisition program that would have diverted funds from the Special Diabetes Program for Indians and the Alcohol and Substance Abuse program. Obama supports sufficient funding for IHS and proper staffing and maintenance for IHS facilities.

Education

Education is the key to improving the lives of Native Americans and empowering tribal nations to build a better future. Educational policies in the 1970s attempted to reverse past federal policies aimed at eradicating Native American languages and cultures, but Native

Americans still suffer from some of the lowest high school graduation and college matriculation rates in the nation. We must continue to honor our obligations to Native Americans by providing tribes with the educational resources promised by treaty and federal law.

* **Indian Language Education:** Tribes are struggling to preserve their languages. It is estimated that by 2050 only 20 of the over 500 Native languages once spoken will remain. Research shows that instruction in tribal language increases Native American academic performance in other areas like math and science. Barack Obama supports funding for Native language immersion and preservation programs.

* **No Child Left Behind:** The goal of the No Child Left Behind Act is the right one – ensuring that all children meet high education standards – but the law has significant flaws that need to be addressed, including in Indian Country. Unfulfilled promises, ineffective implementation, and shortcomings in the design of the law itself have created countless obstacles for tribal educators. Barack Obama would fund No Child Left Behind and reform the law to better incorporate Title VII, the law's Indian, Hawaiian, and Alaskan education provision. Obama's plan would provide greater flexibility in integrating Native languages, cultures, and communities into school programs in a manner consistent with principles of tribal sovereignty.

* **Early Childhood Education:** Research shows that half of low-income children start school up to two years behind their peers in preschool skills and that these early achievement gaps continue throughout elementary school. Barack Obama supports increasing funding for the Head Start program, including the American Indian and Alaska Native Head Start Programs, to provide American Indian preschool children with critically important learning skills. He also appreciates the role of parental involvement in the success of Head

Start and has called on states to replicate the Illinois model of Preschool for All. Tribes should also be given the opportunity to implement culturally appropriate versions of this program.

- * **Indian School Construction:** Many government-funded Indian schools are dilapidated, and many are simply too small to meet the needs of growing Indian populations. A safe, comfortable place to learn is critical to receiving a proper education. Barack Obama is committed to repairing and building Indian schools.
- * **Tribal Colleges:** Tribal colleges have played a critical role in improving the lives of Native Americans. Obama supports increased funding for operations and facility construction, as well as the removal of bureaucratic impediments so tribal colleges can thrive.

Religious Freedom and Cultural Protection

- * **Cultural Rights and Sacred Places Protection:** Native American sacred places and site-specific ceremonies are under threat from development, pollution, and vandalism. Barack Obama supports legal protections for sacred places and cultural traditions, including Native ancestors' burial grounds and churches.

Economic & Infrastructure Protection

Native Americans experience some of the most severe socioeconomic conditions in the United States. Poverty and its effects are pervasive, with more than quarter of all Native Americans living in poverty and unemployment rates reaching 80 percent on some reservations. Obama's experience as a community organizer working in poor neighborhoods plagued by high unemployment has taught him that there is no single solution to community poverty. Therefore, he supports using a comprehensive approach that includes investment in physical, human and institutional infrastructure, increased access to capital, the removal of barriers to development, and above all, authentic government-to-government relationships between the federal government and tribes.

- * **Minimum Wage:** Barack Obama believes that people who work full time should not live in

poverty. In 2007, Obama supported legislation that increased the Federal minimum wage for the first time in 10 years. Even though the minimum wage will rise to \$7.25 an hour by 2009, the minimum wage's real purchasing power will still be below what it was in 1968. As president, Obama will further raise the minimum wage to \$9.50 an hour by 2011, index it to inflation and increase the Earned Income Tax Credit to make sure that full-time workers can earn a living wage that allows them to raise their families and pay for basic needs such as food, transportation, and housing – things so many people take for granted.

- * **Housing:** The federal government has a moral and legal responsibility to assist tribes in providing housing. Yet, Native Americans suffer from some of the worst housing conditions in the nation. Some 14 percent of all reservation homes have no electricity, and on some reservations, as many as 20 individuals are forced to live in a single-family home. Barack Obama supports increased funding for the Indian Housing Block Grant and other Indian housing programs as well as improving the effectiveness of these programs.
- * **Gaming:** The Supreme Court has upheld the right of tribes, as sovereign entities, to operate gaming operations on Indian reservations. A total of 225 of the 558 federally recognized Indian tribes operate gaming facilities, creating 670,000 jobs nationwide and paying \$11 billion to the federal and state governments through taxes and other revenue. The vast majority of Indian gaming operations are small enterprises providing jobs to tribal members. Because most tribes continue to suffer from high rates of poverty and unemployment, Barack Obama believes that gaming revenues are important tribal resources for funding education, health-care, law enforcement, and other essential government functions.
- * **Energy:** Tribal nations have joined in America's quest for alternative, renewable energy. Because of their rural land bases and access to natural resources, many tribes have

made great strides in economic development in the energy sector. Tribes have successful operations producing gas, solar, and wind energy. In addition to harnessing and producing energy, tribes have an interest in energy rights-of-way. Barack Obama encourages energy companies and Indian tribes to negotiate in good faith to ensure tribes receive just compensation and in furtherance of carrying sustainable energy to all communities.

Women's Health

Indians are often subject to unusually harsh conditions when it comes to women's health. A recent study by Amnesty International details the alarming rates at which Native women are subject to violence. The report states that one in three American Indian women will be raped in their lifetime, and they are more than three times as likely to be raped or sexually assaulted than other women in America.

* **Reproductive Health:** In the past, IHS has been criticized for performing forced sterilizations of Indian women. More recently, many Native women have been pushed to receive one type of contraception instead of more suitable alternatives. Although these women often have no alternative to IHS, the program often does not provide them with adequate reproductive health care, and many women are often denied equal access to birth control, and prenatal care. Barack Obama supports the reproductive health rights of American Indian women, and supports ensuring that they receive equal opportunities to make healthy reproductive choices.

* **Violence against Women:** Violence in Indian country is committed at alarmingly high rates, and all too often Indian women are the victims. Medical facilities are few and far between, and are often not adequately prepared to deal with assault victims. Also, because of the unique jurisdictional scheme on reservations, law enforcement can be slow and difficult to come by. If the perpetrator is non-Indian, then the tribe does not have jurisdiction over the

crime. This is alarming when more than 86 percent of assaults against Indian women are committed by non-Indians. State and federal law enforcement officials are often far removed from the situation, and the tribes are left without the authority to protect their people. Barack Obama will reexamine the legal framework that allows such injustices, and supports empowering tribes to combat violence against Native women irrespective of whether the perpetrators are Indian or non-Indian.

* **Law Enforcement:** Barack Obama also supports fully funding the Community Oriented Policing Services (COPS) program that many tribal law enforcement agencies have come to rely upon. He also recognizes the important role tribal courts play on the reservation. Obama will continue to support additional resources to strengthen tribal courts as well as correction by statute of the jurisdictional gaps that currently inhibit tribes' ability to protect their communities.

* **Detention Centers:** There is a demonstrable need for facility improvements and expansions of detention centers in Indian Country. Barack Obama understands that federal funding of such improvements is essential to enable tribe's to effectively protect their communities.

Methamphetamines

In a 2006 survey, 74 percent of tribal law enforcement officials reported methamphetamines to be the leading threat to their tribes' livelihood. The same survey reported dramatic increases in cases of domestic violence, child neglect, sex crimes, and weapons charges.

* **Combat Meth Act of 2005:** Barack Obama supported the Combat Meth Act of 2005, major parts of which became law in 2006. The act puts federal funds into the fight against methamphetamine, provides assistance to children affected by meth abuse, and places restrictions on the sale of the ingredients used to make the drug.

* **Tribal empowerment:** Barack Obama believes that funding tribal police programs and tribal

courts and resolving longstanding jurisdiction issues will enable tribal authorities to deal more effectively with the causes and effects of this and other crime problems on Indian land.

Veterans' Affairs

Native Americans serve in the armed forces at a higher rate than any other group in America. Native Americans have served in every war, and their special place in American military history is widely recognized. The first woman to die in combat in the Iraq war was a young Native American woman. World War II's Codetalkers are the most celebrated examples of how Indians have been critical to the success of American efforts overseas. As a member of the Senate Veterans' Affairs Committee, Obama supports several Veteran measures, including the sheltering and rehabilitation of homeless veterans, securing veterans' benefits, and easing service members' transition back into society.

Hunting and Fishing

Hunting and fishing are important to many tribes' diet, culture, and spirituality. Protecting hunting and fishing rights ensures that tribes are able to carry on those aspects of their traditional way of life.

* **Fishing Rights:** The fishing rights of Indian tribes are guaranteed not only by 150 year-old treaties, but by the Supreme Court's affirmation of the Boldt decision as well. It is our shared duty to uphold these obligations and protect fisheries in such a manner that allows tribal and non-tribal fishing to continue into the future. The path to equitable fishery man-

agement is paved with good science. Barack Obama supports initiatives to improve the science and our understanding of our nation's fish stocks. Through improved science, we can better guide decisions about how to protect the health of fish stocks, and, in turn, ensure a better, more secure and predictable future for our nation's fishermen. 🌟



Illustration by Walt Pourier - Nakota Designs.

NARF Bids Farewell to True Modern Day Warrior: Walter Echo-Hawk Jr.

It is with great sadness and with well wishes that NARF bids farewell to senior staff attorney Walter “Bunky” Echo-Hawk. Walter retired from NARF at the end of March. He has served as an attorney for NARF since 1973 and has been a true pioneer and icon of Indian law. His contributions to the field are far too numerous to entirely mention. Walter has tirelessly served as a lawyer, tribal supreme court judge, scholar, writer and activist for more than 36 years. His legal experience includes cases involving Native American religious freedom, prisoner rights, water rights, treaty rights, and reburial/repatriation rights.



Among Walter’s most important contributions to Native American rights was his involvement in the development and passage of The Native American Graves Protection and Repatriation Act (NAGPRA), a Federal law passed in 1990. NAGPRA provides a process for museums and Federal agencies to return certain Native American cultural items-- human remains, funerary objects, sacred objects, or objects of cultural patrimony – to lineal descendants, and culturally affiliated Indian tribes and Native Hawaiian organizations.

Through his important work with NARF regarding NAGPRA and defending Native American religious freedom, Walter has literally helped to enable millions of Indian people to practice their religion(s) without fear of reprisal; enabled tribes to repatriate their loved ones’ remains from countless museums and private collections in order to give them the rest, peace and dignity they deserve, and has helped tribes secure their rights to use and protect their natural resources.

Other important contributions by Walter include his representation of the Native American Church of North America to secure passage of the American Indian Religious Freedom Act Amendments of 1994 to protect religious use of peyote by Indians. Presently he represents the Klamath Tribes of Oregon to quantify treaty-protected water rights in Southern Oregon in a highly publicized and controversial set of federal and state litigation.

A prolific writer, his publications include an award-winning book *Battlefields and Burial Grounds* (1994). He has received various awards, such as, the American Bar Association “Spirit of Excellence Award” for legal work in the face of adversity and the “Civil Liberties Award” from the ACLU of Oregon for significant contributions in the cause of individual freedom. Since 1995, Walter has served as a member of the Carter Center’s International Human Rights Council. He is admitted to practice law before the United States Supreme Court, Colorado Supreme Court, U.S. Courts of Appeals for the Eighth, Ninth, and Tenth Circuits, and a host of federal District Courts.

Walter is a member of the Pawnee Nation, belonging to the Kitkehaki Band, born on the Pawnee reservation in Oklahoma. Upon his retirement, he and his family will return to Oklahoma. Walter’s new book, *In the Courts of the Conqueror: The Ten Worst Indian Law Cases Ever Decided*, will be published in 2010.

Words cannot express our gratitude to Walter for his many contributions to NARF and to all Native Americans. He is truly one of the greatest legal minds in the country and his work has impacted many past, present and future generations of Native Americans. Walter’s sense of humor, guidance, wisdom and unique sense of style will be missed by all here at NARF. Thank you Walter for all you have done. Your people are proud of you. Your relatives are proud of you, and the ones that have gone before us have looked down and I know they are proud of you. Thank you. 🌟

CASE UPDATES

Supreme Court continues to rule against tribes and Indian country

On February 24, 2009, the United States Supreme Court issued an extraordinarily troubling decision, limiting the authority of the Secretary of the Interior under the provisions of the Indian Reorganization Act (“IRA”). *Carcieri v. Salazar* involved a challenge by the State of Rhode Island to the authority of the Secretary to take land in to trust for the Narragansett Tribe under the IRA. The Court held that the term “now” in the phrase “now under Federal jurisdiction” in the definition of “Indian” is unambiguous and limits the authority of the Secretary to only take land in trust for Indian tribes that were under federal jurisdiction in June 1934, the date the IRA was enacted.

Writing for the majority, Justice Thomas, joined by Chief Justice Roberts, Justices Scalia, Kennedy, Breyer and Alito, reversed the decision of the U.S. Court of Appeals for the First Circuit and held that “the record in this case establishes that the Narragansett Tribe was not under federal jurisdiction when the IRA was enacted.” In concurrence, Justice Breyer wrote separately to make the point that Indian tribes federally recognized after 1934 may still have been “under federal jurisdiction” in 1934, particularly where the Interior Department made a mistake about their status or if there was a federal treaty in place. Justice Souter, joined by Justice Ginsberg, concurred in part (holding that the term “now” is unambiguous), but dissented to the Court’s straight reversal, finding instead that the case should be remanded to the lower courts to provide an opportunity for the United States and the Narragansett Tribe to pursue a claim that the Tribe was under federal jurisdiction in 1934. Justice Stevens dissented from the majority’s

opinion finding “no temporal limitation on the definition of ‘Indian tribe’” within the IRA.

The Supreme Court has invoked a strained and circular reading of a few sentences in the Indian Reorganization Act to create different “classes” of tribes. Given the fundamental purpose of the IRA was to organize tribal governments and restore land bases for tribes that had been torn apart by prior federal policies, the Court’s ruling is an affront to the most basic policies underlying the IRA.

The Court’s decision threatens to be destabilizing for a significant number of Indian tribes. For over 70 years the Department of the Interior has applied a contrary interpretation – that “now” means at the time of application – and has formed entire Indian reservations and authorized numerous tribal constitutions and business organizations under the IRA. There are serious questions about the effect on long settled actions as well as on future decisions. If the decision stands, the Interior Department will have to determine the meaning of “under federal jurisdiction” in 1934, an uncertain legal question and one that makes little sense from a policy perspective. By calling into question which federally recognized tribes are or are not eligible for the IRA’s provisions, the Court’s ruling in *Carcieri* threatens the validity of tribal business organizations, subsequent contracts and loans, tribal reservations and lands, and could affect jurisdiction, public safety and provision of services on reservations across the country.

The Supreme Court’s new interpretation of the Indian Reorganization Act is squarely at odds with Congress’ relatively recent direction to the federal agencies that all tribes must be

treated equally regardless of how or when they received federal recognition. In 1994, Congress enacted the Federally Recognized Indian Tribe List Act (“List Act”) in part to prohibit the Department of the Interior’s attempts to impermissibly “differentiate between federally recognized tribes as being ‘created’ or ‘historic.’” That same year, Congress enacted an amendment to the IRA which prohibits the federal agencies from classifying, diminishing or enhancing the privileges and immunities available to a recognized tribe relative to those privileges and immunities available to other Indian tribes. Congress has also enacted 25 U.S.C. § 2202 which authorizes the Secretary to acquire land in trust for “all tribes.” The Court entirely ignored subsequent Congressional action which made clear Congress’ intent that all tribes should be treated equally under the law regardless of the manner in which the tribe was recognized or the date on which the tribe was recognized.

To reverse the Court’s damage to Congress’ overall policy and intent, an amendment to the IRA is necessary to make clear that the benefits of the Indian Reorganization Act are available to all Indian tribes, regardless of how or when they achieved federal recognition. One Congressional hearing on the subject has already been held and more are expected.

On April 6, 2009, the Court decided *United States v. Navajo Nation (Navajo II)*, part of the ongoing litigation between the Navajo Nation, Peabody Coal and the United States (as trustee) which reached the Supreme Court in 2003. In *Navajo I*, the Court had held that the Indian Mineral Leasing Act of 1938 (IMLA) and its regulations did not constitute the substantive source of law necessary to establish specific trust duties which mandate compensation for breach of those duties by the Government, and remanded the case for further proceedings consistent with its opinion. On remand the Federal Circuit held that provisions of the Navajo-Hopi Rehabilitation Act of 1950 and the Surface Mining Control and Reclamation Act of 1977

(SMCRA) create specific trust duties which the Government had violated, as well as their violation of the “common law trust duties of care, candor, and loyalty” that arise from the comprehensive control exercised by the Government over tribal coal. Justice Scalia, writing for the Court, found that the IMLA governed the coal lease at issue here and, as the Court held in *Navajo I*, the IMLA does not constitute the requisite substantive source of law. The Court found that the provisions of the Navajo-Hopi Rehabilitation Act and SMCRA relied upon by the Tribe and the Federal Circuit on remand do not apply to the coal lease. Justice Souter, joined by Justice Stevens, concurred in the judgment, but expressed their regret that their dissent (along with Justice O’Connor) in *Navajo I* “did not carry the day” back in 2003.

NARF coordinated amicus support through the Tribal Supreme Court Project for both the *Carcieri v. Salazar* case and the *United States v. Navajo Nation (Navajo II)* case.

A week before, on March 31, 2009, the Court issued a unanimous opinion in *State of Hawaii v. Office of Hawaiian Affairs* and reversed the decision by the Supreme Court of Hawaii which had held that the State of Hawaii should be enjoined from selling or transferring “ceded lands” held in trust until the claims of the native Hawaiians to the such lands have been resolved based on the Apology Resolution adopted by Congress in 1993. Justice Alito, writing for the Court, found that the “State Supreme Court incorrectly held that Congress, by adopting the Apology Resolution, took away from the citizens of the Hawaii the authority to resolve an issue that is of great importance to the people of the state.” The Court did, however, remand the case for further proceeding based on possible state-law based property rights in the land in question, as well as “broader moral and political claims for compensation for the wrongs of the past” as a matter of Hawaiian law. On behalf of its client, the National Congress of American Indians, NARF filed an amicus brief in the *State of Hawaii v. Office of Hawaiian Affairs* case. ▶

Nation's Tribes Asking Congress for Swift Action on Climate Legislation

Tribal leaders from around the country have come to Washington, D.C., to press their Senators and Representatives for support of federal climate legislation in 2009. Historically, tribal communities have borne the brunt of negative environmental impacts generated primarily by non-tribal activities, and are recognized by the Intergovernmental Panel on Climate Change as disproportionately impacted by the effects of global warming.

To fight global warming and preserve their ways of life, America's tribal governments call for national legislation that results in mandatory reductions in climate change pollution, the development of renewable energy sources within a time frame that prevents irreversible harm to public health, the economy and the environment, and includes dedicated funding for fish and wildlife conservation and restoration. The tribes also call for legislation that supports tribal efforts to lessen climate change impacts on tribal communities, lands and natural resources, and cultural traditions, and provides tribes with equal access to economic development opportunities presented by renewable energy development, energy efficiency, carbon trading mechanisms, and other mitigation strategies.

"Every day, our people are impacted by global warming and the changes to our environment," said Jerry Pardilla, Executive Director of the National Tribal Environmental Council (NTEC) and member of the Penobscot Nation. "It is important for tribes to participate in national efforts to mitigate the causes of global warming and to develop adaptation strategies for the anticipated changes in our homelands."

NTEC, the National Congress of American Indians (NCAI), and the Native American Rights Fund (NARF), supported by the national environmental organization National Wildlife Federation (NWF), are calling for federal climate

legislation that addresses the following:

- Indian tribes, as defined in the Indian Self-Determination and Education Assistance Act, must be sovereign partners in assessing and addressing the problem of climate change at the national and international levels. Legislation must accord tribes, and other indigenous peoples worldwide, at least the status and rights recognized in the U.N. Declaration on the Rights of Indigenous Peoples and other international law.
- Indian tribes shall be provided equitable access to the same financial and technical resources provided to states and local governments, without having to obtain treatment-as-a-state (TAS) status or meet a similar burden, to access such resources.
- Indian tribes shall be provided adequate resources by the federal government to enable them to assess the adverse impacts of climate change on their culture and resources, and in partnership with others, where appropriate, to address those impacts through adaptation and mitigation measures that will ensure the integrity of their cultures, homelands, infrastructures, services, natural resources, and off-reservation resources. These resources shall specifically include those necessary to gather the traditional tribal knowledge necessary to this process, with this knowledge given proper weight in assessing and addressing climate change.
- A set-aside of direct monies or allowances, amounting to five percent of the value of all allowances provided for under the legislation, shall be made available for distribution to Indian tribes. In accordance with a negotiated rulemaking process, a federal-tribal advisory

committee shall design and manage a program for the implementation of mitigation and adaptation strategies to address climate change, which shall include criteria as to how tribes would qualify for a monetary or allowance distribution. Tribes shall have their choice of direct monies or allowances, and considerable discretion in how to use such monies or allowances. This set-aside is justified by the disproportionate impact of climate change on tribes, the difficult economic situation of many tribes, the fact that their survival as peoples depends on safeguarding their resources on and off tribal lands, and the federal trust responsibility to tribes.

- Indian tribes shall have direct, open access to the necessary resources to actively engage in renewable energy development, enact and implement energy efficiency building codes, and provide green job transition assistance for tribal members.
- The federal tax code shall allow Indian tribes to take advantage of opportunities available to other entities.
- Indian tribes shall have direct open access to the necessary resources to improve their transportation, health, housing, water, and other infrastructures.
- Alaska Native Villages shall have direct, open access to funding and technical assistance to relocate those communities threatened by climate change, with their free prior and informed consent.
- Indian tribes shall have direct, open access to the resources provided for under any offsets program.

NTEC, NCAI, NARF, and NWF hope that climate legislation will help tribes address the many challenges posed by a changing climate.

(Contacts: Bob Gruenig, National Tribal Environmental Council, (505) 242-2175; Jose Aguto, National Congress of American Indians, (202) 553-7202; Myra Wilensky, National Wildlife Federation, (303) 725-3157; Kim Gottschalk, Native American Rights Fund, (303) 775-1315.)

The National Tribal Environmental Council (NTEC) is comprised of 184 member tribes with a mission to enhance each tribe's ability to protect, preserve and promote the wise management of air, land, and water for the benefit of current and future generations.



The National Congress of American Indians (NCAI) is the oldest and largest inter-tribal organization in the country with over 250 member tribes, serving as the major national tribal government organization, monitoring federal policy and coordinating efforts to inform federal decisions that affect tribal government interests.



The National Wildlife Federation (NWF) is America's conservation organization inspiring Americans to protect wildlife for our children's future. NWF partners with sovereign tribal nations to solve today's conservation challenges for future generations.



National Congress of American Indians

Yup'ik-Speaking Voters Ask Supreme Court To Uphold Voting Rights Act

Cite State's Discrimination against Alaska Natives

On March 25, 2009, four Alaska Native voters and four tribal governments represented by the Native American Rights Fund (NARF) filed an amicus curiae (friend of the court) brief with the United States Supreme Court asking that the Court find that Section 5 of the Voting Rights Act (VRA) is constitutional. That brief follows NARF's congressional testimony before the House Judiciary Committee last week about Alaska's continuing failure to provide Alaska Native voters with equal access to registration and voting opportunities.

Alaska is one of just three states that are covered in their entirety under Section 5 for a language minority group, and the only one covered for Native voters. Because of its coverage, Alaska must provide all election materials in the Alaska Native languages. State and local election officials also must obtain approval from the Attorney General of the United States before they implement any changes in registration or voting procedures. When Congress reauthorized the VRA in 2006, it found that recent evidence from Alaska had proven that there had been insufficient "time to eliminate the vestiges of discrimination" against Alaska Natives. The case before the Supreme Court, *Northwest Austin Municipal Utility District Number One v. Mukasey*, involves a constitutional challenge to Section 5 by a municipal utility district near Austin, Texas.

"Alaska's coverage under Section 5 has proven to be an unfulfilled promise to Alaska Natives to help them overcome the State's discrimination. For three decades, Alaska has largely ignored the mandate of providing language assistance," said NARF attorney Natalie Landreth, who is co-counsel on the amicus brief. "State officials only recently began taking steps to provide language assistance after Yup'ik voters and tribes sued



them, and a federal court ordered them to comply with the law," according to Landreth. She added, "Alaska's violations of the VRA show that far from an unnecessary relic of a bygone era, Section 5 remains essential to combat the present realities of voting discrimination and educational discrimination against Alaska Natives."

James Tucker, co-counsel on the amicus brief, noted, "The barriers that Alaska's election officials have put into place contributed to Alaska Native voter turnout that was about 20 points lower than statewide voter turnout in the 2008 Presidential Election." He further observed, "Alaska election officials have evaded the requirements of Section 5, routinely submitting discriminatory voting changes and then withdrawing them when the U.S. Department of Justice makes additional inquiries. They have attempted to realign predominately Native polling places that are sometimes more than 70 miles apart and inaccessible except by air or boat. Absent Section 5, the fragile gains that Alaska Natives have made are at risk."

Landreth added, "A former State official claimed that Alaska was 'in compliance' with the VRA and '[h]appily so.' The federal court and Justice Department found otherwise, particularly in view of admissions that Alaska's election officials have treated compliance with the VRA as a low priority to be 'put aside' in favor of other tasks." Landreth concluded, "Section 5 remains essential to ensure that Alaska provides all of its citizens, including Alaska Natives, with equal access to registration and voting." ❁

CALLING TRIBES TO ACTION!

It has been made abundantly clear that non-Indian philanthropy can no longer sustain NARF's work. Federal funds for specific projects are also being reduced at drastic rates. Our ability to provide legal advocacy in a wide variety of areas such as religious freedom, the Tribal Supreme Court Project, tribal recognition, human rights, trust responsibility, tribal water rights, Indian Child Welfare Act, and on Alaska tribal sovereignty issues has been compromised. NARF is now turning to the tribes to provide this crucial funding to continue our legal advocacy on behalf of Indian Country. It is an honor to list

those Tribes and Native organizations who have chosen to share their good fortunes with the Native American Rights Fund and the thousands of Indian clients we have served. The generosity of Tribes is crucial in NARF's struggle to ensure the future of all Native Americans. We encourage other Tribes to become contributors and partners with NARF in fighting for justice for our people and in keeping the vision of our ancestors alive. We thank the following tribes and Native organizations for their generous support of NARF thus far for our 2009 fiscal year – October 1, 2008 to September 30, 2009:

-
- Americans for Indian Opportunity
 - Chugachmiut, Inc.
 - Drumbeat Indian Arts
 - Native Village of Eyak
 - Mashantucket Pequot Tribal Nation
 - Pawnee Nation of Oklahoma
 - Saginaw Chippewa Indian Tribe of Michigan
 - San Manuel Band of Mission Indians
 - Seminole Tribe of Florida
 - Siletz Tribe of Oregon
 - Sycuan Band of Kumeyaay Indians
 - Viejas Band of Kumeyaay Indians



National Indian Law Library

Your Information Partner!

About the Library

The National Indian Law Library (NILL) located at the Native American Rights Fund in Boulder, Colorado is a national public library serving people across the United States. Since 1972 NILL has collected nearly 9,000 resource materials that relate to federal Indian and tribal law. The Library's holdings include the largest collection of tribal codes, ordinances and constitutions in the United States; legal pleadings from major American Indian cases; law review articles on Indian law topics; handbooks; conference materials; and government documents.

Library Services

Information access and delivery: Library users can access the searchable catalog which includes bibliographic descriptions of the library holdings by going directly to: <http://www.narf.org/nill/index.htm> or by accessing the catalog through the National Indian Law Library/Catalog link on the Native American Rights Fund website at www.narf.org. Once relevant materials are identified, library patrons can then choose to request copies or borrow materials through interlibrary loan for a nominal fee.

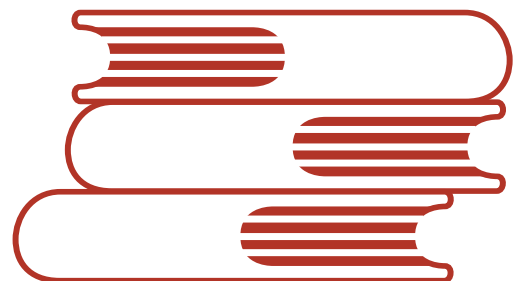
Research assistance: In addition to making its catalog and extensive collection available to the public, the National Indian Law Library provides reference and research assistance relating to Indian law and tribal law. The library offers free assistance as well as customized research for a nominal fee.

Keep up with changes in Indian law with NILL's Indian Law Bulletins: The Indian Law Bulletins are published by NILL in an effort keep NARF and the public informed about Indian law developments. NILL publishes timely bulletins covering new Indian law cases, U.S. regulatory action, law review articles, and news on its web site. (See: <http://www.narf.org/nill/bulletins/ilb.htm>) New bulletins are published on a regular basis, usually every week and older information is moved to the bulletin archive pages. When new information is published, NILL sends out



brief announcements and a link to the newly revised bulletin page via e-mail. Send an e-mail to David Selden at dselden@narf.org if you would like to subscribe to the Indian Law Bulletin service. The service is free of charge!

Support the Library: The National Indian Law Library is unique in that it serves the public but is *not* supported by local or federal tax revenue. NILL is a project of the Native American Rights Fund and relies on private contributions from people like you. For information on how you can support the library or become a sponsor of a special project, please contact David Selden, the Law Librarian at 303-447-8760 or dselden@narf.org For more information about NILL, visit: <http://www.narf.org/nill/index.htm> Local patrons can visit the library at 1522 Broadway, Boulder, Colorado. 🌟



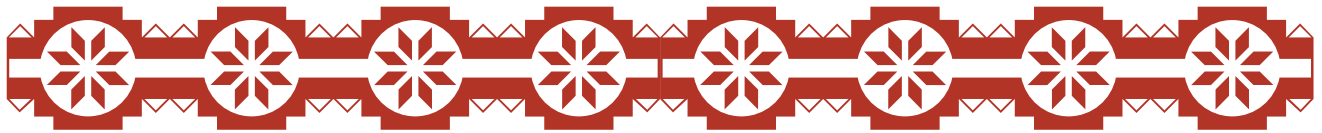
THE NATIVE AMERICAN RIGHTS FUND

The Native American Rights Fund (NARF) was founded in 1970 to address the need for legal assistance on the major issues facing Indian country. The critical Indian issues of survival of the tribes and Native American people are not new, but are the same issues of survival that have merely evolved over the centuries. As NARF is in its thirty-ninth year of existence, it can be acknowledged that many of the gains achieved in Indian country over those years are directly attributable to the efforts and commitment of the present and past clients and members of NARF's Board and staff. However, no matter how many gains have been achieved, NARF is still addressing the same basic issues that caused NARF to be founded originally. Since the inception of this Nation, there has been a systematic attack on tribal rights that continues to this day. For every victory, a new challenge to tribal sovereignty arises from state and local governments, Congress, or the courts. The continuing lack of understanding, and in some cases lack of respect, for the sovereign attributes of Indian nations has made it necessary for NARF to continue fighting.

NARF strives to protect the most important rights of Indian people within the limit of available resources. To achieve this goal, NARF's Board of Directors defined five priority areas for NARF's work: (1) the preservation of tribal existence; (2) the protection of tribal natural resources; (3) the promotion of human rights; (4) the accountability of governments to Native Americans; and (5) the development of Indian law and educating the public about Indian rights, laws, and issues.

Requests for legal assistance should be addressed to the Litigation Management Committee at NARF's main office, 1506 Broadway, Boulder, Colorado 80302. NARF's clients are expected to pay whatever they can toward the costs of legal representation.

NARF's success could not have been achieved without the financial support that we have received from throughout the nation. Your participation makes a big difference in our ability to continue to meet ever-increasing needs of impoverished Indian tribes, groups and individuals. The support needed to sustain our nationwide program requires your continued assistance.



NARF Annual Report. This is NARF's major report on its programs and activities. The Annual Report is distributed to foundations, major contributors, certain federal and state agencies, tribal clients, Native American organizations, and to others upon request. Ray Ramirez Editor, ramirez@narf.org.

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Tax Status. The Native American Rights Fund is a non-profit, charitable organization incorporated in 1971 under the laws of the District of Columbia. NARF is exempt from federal income tax under the provisions of Section 501 C (3) of the Internal Revenue Code, and contributions to NARF are tax deductible. The Internal

Revenue Service has ruled that NARF is not a "private foundation" as defined in Section 509(a) of the Internal Revenue Code.

Main Office:

Native American Rights Fund
1506 Broadway, Boulder, Colorado 80302
(303-447-8760) (FAX 303-443-7776)
<http://www.narf.org>

Washington, D.C. Office:

Native American Rights Fund
1712 N Street, NW, Washington, D.C. 20036
(202-785-4166) (FAX 202-822-0068)

Alaska Office:

Native American Rights Fund
801 B. Street, Suite 401, Anchorage, Alaska 99501
(907-276-0680) (FAX 907-276-2466)

Native American Rights Fund

1506 Broadway
Boulder, CO 80302

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