

TRIBAL SUPREME COURT PROJECT



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COURT PROJECT



MEMORANDUM UPDATE **OF SELECTED CASES DURING THE OCTOBER 2024 TERM**

JULY 21, 2025

The Tribal Supreme Court Project (Project) is part of the Tribal Sovereignty Protection Initiative and is staffed by the National Congress of American Indians (NCAI) and the Native American Rights Fund (NARF). The Project was formed in 2001 in response to a series of U.S. Supreme Court cases that negatively affected tribal sovereignty. The purposes of the Project are to promote greater coordination and improve strategy on litigation that may affect the rights of all Indian tribes. We encourage Indian tribes and their attorneys to contact the Project in our efforts to coordinate resources, develop strategy, and prepare briefs, especially when considering a petition for a writ of certiorari, prior to the Supreme Court accepting a case for review. You can find copies of briefs and opinions on the major selected cases we track on the NARF website (<http://sct.narf.org>).

The Court did not take any Indian law cases during its October 2024 Term. Of the selected cases that the Project was tracking, the Court denied petitions in ten cases. Most of these left intact lower court decisions that were not favorable to tribal interests, but the Court also denied review in the *Lexington Insurance Company* cases, leaving intact lower court decisions favorable to the issue of tribal court jurisdiction over non-members. At the close of the Court's October 2024 Term, there are three petitions pending selected by the Project for tracking. Also pending is the petition for rehearing of the denial of the petition for a writ of certiorari in *Apache Stronghold v. United States*. The selected Indian law cases from the October 2024 Term are detailed further below.

SELECTED PETITIONS FOR A WRIT OF CERTIORARI PENDING

MAVERICK GAMING LLC V. UNITED STATES, ET AL. (24-1161)

Petitioner: Private entity

Petition Filed: May 9, 2025

Subject Matter: Rule 19 and the Administrative Procedures Act

Lower Court: U.S. Court of Appeals for the Ninth Circuit

Recent Activity: Petition filed May 9, 2025

Upcoming Activity: Response to Petition due August 11, 2025.

Maverick Gaming LLC (Maverick), a private entity, sued the United States in federal district court under the Administrative Procedures Act (APA), challenging the Secretary of the Interior's approval of the State of Washington's amendments to tribal-state gaming compacts that allowed for sports betting. Maverick alleged violations of the Indian Gaming Regulatory Act and the U.S. Constitution's Equal Protection Clause and Tenth Amendment anti-commandeering principle. The district court granted the Shoalwater Bay Indian Tribe's motion to intervene as a defendant and granted the Tribe's motion to dismiss on the ground that the Tribe is a required party under Federal Rule of Civil Procedure 19 but could not be joined because of its sovereign immunity from suit. The U.S. Court of Appeals for the Ninth Circuit affirmed. Maverick seeks U.S. Supreme Court review of whether Rule 19 requires dismissal of its APA suit.

STITT V. CITY OF TULSA, OKLAHOMA (25-30)

Petitioner: Non-Member Indian

Petition Filed: July 7, 2025

Subject Matter: State Criminal Jurisdiction over Indian in Indian Country

Lower Court: Oklahoma Court of Criminal Appeals

Recent Activity: Petition filed July 7, 2025

Upcoming Activity: Response due August 8, 2025.

Marvin Keith Stitt is a citizen of the Cherokee Nation. Mr. Stitt's conviction for driving over the speed limit within the boundaries of the Muscogee (Creek) Nation was upheld by the Oklahoma Court of Criminal Appeals. Mr. Stitt argues that the City of Tulsa lacks jurisdiction over him because he is an enrolled tribal citizen and the conduct occurred within the boundaries of an Indian reservation. The Oklahoma Court of Criminal Appeals ruled that under its prior decision in *City of Tulsa v. O'Brien* (2024), Tulsa's exercise of jurisdiction in this case does not unlawfully infringe on tribal self-government. In his Petition, Mr. Stitt argues that the City's (State's) jurisdiction is lacking due to the absence of a valid congressional grant of authority.

UNKECHAUG INDIAN NATION V. LEFTON (24-1240)

Petitioner: Indian Tribe

Petition Filed: June 2, 2025

Subject Matter: Daubert Expert Testimony and Treaty Interpretation

Lower Court: U.S. Court of Appeals for the Second Circuit

Recent Activity: Petition filed June 2, 2025

Upcoming Activity: Responses due August 6, 2025.

The Unkechaug Indian Nation (Tribe) is a state-recognized Indian tribe located in New York State. The Tribe sued in federal district court to enjoin the State from ticketing and arresting Tribe members for glass eel fishing and from seizing their catch. The district court granted summary judgment to the State, ruling that the State's regulations prohibiting glass eel fishing apply to Tribe members. The U.S. Court of Appeals for the Second Circuit affirmed. In seeking Supreme Court review, the Tribe argues that the State's expert testimony was improperly considered and that the Tribe's 1676 Treaty with the State preempts the State regulations.

SELECTED PETITIONS FOR A WRIT OF CERTIORARI DENIED

APACHE STRONGHOLD V. UNITED STATES (24-291)

Petitioner: Non-profit corporation

Petition Filed: September 11, 2024

Subject Matter: Religious Freedom

Lower Court: U.S. Court of Appeals for the Ninth Circuit

Recent Activity: Petition denied May 27, 2025; Petition for Rehearing filed June 23, 2025

Upcoming Activity: Disposition of the Petition for Rehearing.

Oak Flat is a significant and unique sacred place for Western Apache people and is located on federal land within Western Apache ancestral territory and the State of Arizona. In 2015, legislation authorized the United States to transfer Oak Flat to Resolution Copper Mining, LLC. The proposed copper mine will completely and permanently destroy Oak Flat. Apache Stronghold, a non-profit corporation, sued the United States and Resolution Copper in federal district court challenging the land transfer and destruction of Oak Flat under the Religious Freedom Restoration Act (RFRA) of 1993, 42 U.S.C. §§ 2000bb, *et seq.*, which requires strict scrutiny of government action that would substantially burden religious exercise, and the U.S. Constitution Free Exercise Clause, which requires heightened scrutiny when the government acts in a way that is not neutral or generally applicable.

The district court denied Apache Stronghold's requested preliminary injunction. On appeal to the U.S. Court of Appeals to the Ninth Circuit, a 3-judge motions panel upheld the preliminary injunction denial by a 2-1 vote. On plenary review, a divided 3-judge panel rejected Apache Stronghold's claims, with the majority holding that under existing Ninth Circuit law, a substantial burden only occurs when the government denies a benefit or imposes a penalty based on religious exercise. The dissent reasoned that preventing religious exercise entirely, by completely destroying a sacred site, is a substantial burden. *En banc* review by an 11-judge Ninth Circuit panel was granted, but Apache Stronghold's claims again were rejected by two different 6-5 majorities, issuing seven opinions in 246 pages. One majority held that, even if complete destruction of a sacred site is a substantial burden, the

RFRA substantial burden test is inapplicable when the government is managing its own land. The dissenters questioned this limitation, which stems from pre-RFRA decisions of the Supreme Court involving incidental effects on religious exercise but is not found in the text of RFRA and never has been applied to the government's prevention of religious exercise. After Apache Stronghold's petition for *en banc* review by the full Ninth Circuit was denied, Apache Stronghold petitioned for a Writ of Certiorari. Fifteen amicus briefs in support of the Petition were filed, including an amicus brief authored by NARF on behalf of fifty-two tribes and tribal organizations.

BIBEAU V. COMMISSIONER OF INTERNAL REVENUE (24-804)

Petitioner: Individual Indian

Petition Filed: January 24, 2025

Subject Matter: Federal taxation of individual Indian income

Lower Court: U.S. Court of Appeals for the Eighth Circuit

Recent Activity: Petition denied March 3, 2025.

Frank Bibeau is an enrolled member of the Minnesota Chippewa Tribe who lives and practices law on the Leech Lake Reservation. He did not pay federal income tax on certain income he earned from providing legal services on the Reservation. The Internal Revenue Service determined that his self-employment income is taxable. The U.S. Tax Court and the U.S. Court of Appeals for the Eighth Circuit affirmed under the rule that Indians are subject to federal taxation unless a treaty or act of Congress specifically provides otherwise. No treaty or congressional act provision was found to be applicable to exempt the taxes.

CROMWELL V. UNITED STATES (24-6364)

Petitioner: Individual Indian / Tribal Chairman

Petition Filed: January 17, 2025

Subject Matter: Hobbs Act application to tribal officials

Lower Court: U.S. Court of Appeals for the First Circuit

Recent Activity: Petition denied May 19, 2025.

Cedric Cromwell was the Chairman of the Mashpee Wampanoag Tribe. He was convicted in federal district court, *inter alia*, on charges of extortion and conspiracy to commit extortion under the Hobbs Act, 18 U.S.C. § 1951. He sought and obtained acquittal on the Hobbs Act charges on the ground that there is no clear evidence that Congress intended the Hobbs Act to apply to tribal officials. The U.S. Court of Appeals for the First Circuit reversed and reinstated his Hobbs Act convictions.

HCI DISTRIBUTION, INC. V. HILGERS (24-615)

Petitioners: Tribal economic entities

Petition Filed: December 2, 2024

Subject Matter: State taxation of tobacco product sales by tribal entities

Lower Court: U.S. Court of Appeals for the Eighth Circuit

Recent Activity: Petition denied April 21, 2025.

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HCI Distribution, Inc. and Rock River Manufacturing are economic entities of the Winnebago Tribe of Nebraska (Tribe). The State of Nebraska seeks to regulate their sales of tobacco products under a nationwide master settlement between states and cigarette manufacturers. The entities sued the State, arguing that State's attempted regulation was impermissible in part because the Tribe had entered its own tobacco company settlements. The federal district court held that the State could not regulate tobacco products sold by the entities on the Tribe's Reservation, but that it could regulate tobacco products sold elsewhere. In a 2-1 panel decision, the U.S. Court of Appeals for the Eighth Circuit vacated that holding. The panel majority held that the State could regulate the entities' on-reservation sales to non-members but not sales to tribe members. The dissent would have affirmed the district court's holding that the State could not regulate any on-reservation sales. The petition for rehearing and rehearing en banc was denied.

KANAM V. HAALAND (24-1019)

Petitioner: Individual Indian / Tribal Chairman

Petition Filed: March 24, 2025

Subject Matter: Federal Recognition

Lower Court: U.S. Court of Appeals for the District of Columbia

Recent Activity: Petition denied May 27, 2025.

Kurt Kanam (Kanam) is the Chairman of the Pilchuck Nation (Nation). Kanam sued in federal district court to require the U.S. Department of the Interior to add the Nation to the list of federally recognized tribes. The district court dismissed for lack of subject matter jurisdiction, finding that there was no legal basis conferring the right to the relief sought. The U.S. Court of Appeals for the District of Columbia summarily affirmed.

LEXINGTON INSURANCE CO. V. MUELLER (24-906)

Petitioner: Non-Indian insurance company

Petition Filed: February 24, 2025

Subject Matter: Tribal jurisdiction over non-Indians

Lower Court: U.S. Court of Appeals for the Ninth Circuit

Recent Activity: Petition denied May 19, 2025.

Lexington Insurance Company (Lexington), located in Massachusetts, underwrote insurance policies for commercial properties of the Cabazon Band of Mission Indians (Band), including the Band's resort and casino. During the COVID-19 pandemic, the Band temporarily closed its casino. The Band then made insurance claims for lost income during the shutdown which Lexington denied. The Band sued Lexington in Tribal Court, where Lexington's motion to dismiss for lack of jurisdiction was denied. The Tribal Court of Appeals affirmed jurisdiction under *Montana v. United States*' "consensual relationship" test for tribal jurisdiction over non-Indians on non-Indian fee land within a reservation. Lexington sought review in federal district court which upheld tribal court jurisdiction. Lexington appealed to the U.S. Court of Appeals for the Ninth Circuit, which affirmed. The Court of Appeals relied on a similar case, *Lexington Insurance Co. v. Smith*, involving the Suquamish Tribe, where tribal court

jurisdiction was upheld under the consensual relationship test. Lexington's primary argument was that tribal court jurisdiction is improper where a non-Indian never has physically entered tribal land.

LEXINGTON INSURANCE CO. V. SUQUAMISH TRIBE (24-884)

Petitioners: Non-Indian insurance companies

Petition Filed: February 18, 2025

Subject Matter: Tribal jurisdiction over non-Indians

Lower Court: U.S. Court of Appeals for the Ninth Circuit

Recent Activity: Petition denied May 19, 2025.

Lexington Insurance Company (Lexington), located in Massachusetts, underwrote insurance policies for on-reservation business of the Suquamish Tribe (Tribe). During the COVID-19 pandemic, the Band temporarily suspended its business operations. The Band then made insurance claims for lost income during the suspension which Lexington denied. The Band sued Lexington in Tribal Court, where Lexington's motion to dismiss for lack of jurisdiction was denied. The Tribal Court of Appeals affirmed jurisdiction under *Montana v. United States*' "consensual relationship" test for tribal jurisdiction over non-Indians on non-Indian fee land within a reservation. Lexington sought review in federal district court which upheld tribal court jurisdiction. Lexington appealed to the U.S. Court of Appeals for the Ninth Circuit, which affirmed, also under the consensual relationship test. The Court of Appeals denied rehearing *en banc*, but six judges dissented from the denial. Lexington's primary argument was that tribal court jurisdiction is improper where a non-Indian never has physically entered tribal land. This argument was the basis for the dissent from the denial of rehearing *en banc* in the Court of Appeals and the non-dissenting judges responded in defense of upholding tribal court jurisdiction under the consensual relationship test.

SAN CARLOS APACHE TRIBE V. STATE OF ARIZONA (24-349)

Petitioner: San Carlos Apache Tribe

Petition Filed: September 25, 2024

Subject Matter: Mining permit under Clean Water Act regulations

Lower Court: Supreme Court of Arizona

Recent Activity: Petition denied November 4, 2024.

Resolution Copper, LLC, applied to the Arizona Department of Environmental Quality (ADEQ) under federal Clean Water Act regulations to renew an existing mine's discharge permit and included in its application a new mine site. ADEQ, which has delegated authority from the U.S. Environmental Protection Agency to administer discharge permits, renewed the permit, treating the new mine as materially connected to the existing mine. The San Carlos Apache Tribe challenged the ADEQ decision in state administrative and state court proceedings under the applicable federal regulations, arguing that the regulations required a new source analysis. The Arizona Supreme Court affirmed the ADEQ's decision to renew the permit.

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS V. HAALAND (24-622)

Petitioner: Indian Tribe

Petition Filed: November 25, 2024

Subject Matter: Michigan Indian Land Claims Settlement Act

Lower Court: U.S. Court of Appeals for the District of Columbia Circuit

Recent Activity: Petition denied April 28, 2025.

The Sault Ste. Marie Tribe of Chippewa Indians (Tribe) seeks to compel the U.S. Department of the Interior (Interior) to take into trust two off-reservation parcels of land owned in fee by the Tribe. The federal district court ruled for the Tribe. A 2-1 panel of the U.S. Court of Appeals for the District of Columbia Circuit reversed. The panel majority held that Interior had and properly exercised its discretion to refuse to take the land into trust under the Michigan Land Claims Settlement Act of 1997.

SOUTH POINT ENERGY CENTER V. ARIZONA DEP'T OF REVENUE (24-952)

Petitioner: Non-Indian private entity

Petition Filed: March 3, 2025

Subject Matter: State taxation of non-Indian on reservation

Lower Court: Supreme Court of Arizona

Recent Activity: Petition denied June 30, 2025.

South Point Energy Center (South Point), a non-Indian private entity, owns and operates a power plant located on trust land of the Fort Mojave Indian Tribe (Tribe) that the Tribe leases to South Point. The Tribe and the federal government regulate the power plant. Mohave County, Arizona (County), imposes state ad valorem property taxes on the power plant. South Point sued the County under state law for a refund in the Arizona Tax Court, claiming that federal law expressly or impliedly preempts the County's tax. The Tax Court upheld the imposition of the tax. The Arizona Court of Appeals reversed, holding that the Indian Reorganization Act of 1934, 25 U.S.C. § 5108, expressly exempts from tax permanent improvements on Indian trust lands regardless of whether the improvements are Indian owned or non-Indian owned. The Arizona Supreme Court granted review and vacated the Court of Appeals' decision, holding that Section 5108 exempts only Indian owned improvements, and remanding to the Court of Appeals to determine whether the tax is impliedly preempted. The Court of Appeals found no implied preemption under the balancing of state, federal, and tribal interests test as set forth in *White Mountain Apache Tribe v. Bracker*.