TRIBAL SUPREME COURT PROJECT MEMORANDUM

JULY 6, 2006

UPDATE OF RECENT CASES

The Tribal Supreme Court 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 purpose of the Project is to promote greater coordination and to 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 effort to coordinate resources, develop strategy and prepare briefs, especially at the time of the petition for a writ of certiorari, prior to the Supreme Court accepting a case for review.

On Friday, June 30, 2006, U.S. Supreme Court issued its final orders and opinions for the October 2005 Term. The Court will stand in recess until the first Monday in October (October 2, 2006) when the new term will begin. At this time, the Court has not granted review in any case involving Indian law for the October 2006 Term. However, several significant Indian law cases are pending on petitions for writ of certiorari and should be scheduled for conference in late September or early October (see below).

The Project remains very busy, monitoring numerous cases at various stages of appeal within both state and federal courts, while directly participating in the preparation of amicus briefs in the U.S. Supreme Court and the U.S. Circuit Courts of Appeals. You can find copies of briefs and opinions on the major cases we track on the NARF website (www.narf.org/sct/index.html).

CASES RECENTLY DECIDED BY THE U.S. SUPREME COURT

GONZALES V. O CENTRO ESPIRITA BENEFICIENTE UNIAO DO VEGETAL (NO. 04-1084) – On Febrary 21, 2006, the Supreme Court issued a unanimous decision written by Chief Justice Roberts in *Gonzales v. O Centro Espirita Beneficiente Uniao Do Vegetal* ("UDV"). The UDV is a religious organization that is an outgrowth of a church in Brazil which uses a hallucinogenic tea called *hoasca* in religious ceremonies. UDV filed suit against the U.S. Attorney General under the Religious Freedom Restoration Act ("RFRA"), challenging the confiscation of its *hoasca* under the Controlled Substances Act ("CSA"). The Court rejected the government's argument that need for uniform enforcement of CSA bars individual exception for the UDV's sacramental use of *hoasca* and that such an exception would compromise its ability to administer and enforce the CSA. The Court also rejected the government's argument that the CSA is a "closed system" whose ban on all uses of dangerous controlled substances does not allow individualized exceptions.

The Court points out that in fact an exception has been made to CSA – the well-established peyote exception for the Native American Church. Chief Justice Roberts notes: "If such use is permitted … for hundreds of thousands of Native Americans practicing their faith, it is difficult to … preclude any consideration of a similar exception for the 130 or so American members of the UDV who want to

practice theirs." In dismissing the government's response that there is a "unique relationship" between the U.S. and Indian tribes justifying the peyote exception, the Court states that the government failed to explain how "if any Schedule I substance is in fact *always* highly dangerous in any amount no matter how used, what about the unique relationship with the Tribes justifies allowing their use of peyote? Nothing about the unique political status of the Tribes makes their members immune from the health risks [of peyote], nor insulates [the peyote] from the alleged risk of diversion."

The Project is concerned with the Court's opinion which fails to recognize that Indian tribes do have a "unique relationship" with the United States government that includes special protection of Native American cultural and religious freedoms. Although not directly on point, certain language used by the Court can be used by adverse parties in their attempts to undermine the unique government-to-government relationship between individual Indian tribes and the United States, or to challenge the special political status of individual American Indians and Alaska Natives.

WAGNON (FORMERLY RICHARDS) V. PRAIRIE BAND POTAWATOMI NATION (NO. 04-631) – On December 6, 2005, the Supreme Court issued a very disappointing decision in *Wagnon v. Prairie Band Potawatomi Nation.* In this extremely important case for tribal taxing authority, the Tenth Circuit had held that state taxation of motor fuel is precluded where the Tribe charges a tax equal to the state tax and builds and maintains the roads on its reservation. The Tenth Circuit found that the Prairie Band is not "marketing a tax exemption" but instead the tax revenues from the gas station are "reservation generated value."

In the majority opinion (7-2) written by Justice Thomas, the Supreme Court reversed the Tenth Circuit ruling and held that because the Kansas tax is a non-discriminatory tax imposed on the off-reservation receipt of motor fuel by a non-Indian fuel distributor, the tax does not implicate tribal sovereignty and is a valid tax. Justice Thomas began his analysis by noting that "under our Indian tax immunity cases, the 'who' and the 'where' of the challenged tax have significant consequences." The decision upheld the Kansas tax because the state law places the duty to pay the tax on the fuel distributor, a non-Indian located off-reservation, and because the tax was imposed on the distributor's receipt of fuel off the reservation. The Court rejected the argument that it should apply the *White Mountain v. Bracker* balancing test, reasoning that this was a purely off-reservation tax that does not implicate tribal sovereignty. The Court declined to look beyond formal statutory placement of the tax at the actual consequences of dual taxation, finding this was "ultimately a complaint about the downstream consequences of the Kansas tax." Finally, the Court rejected the argument that the tax was discriminatory because it exempted from taxation fuel delivered to other sovereigns (including States and foreign countries), concluding that Kansas provides roads services to the Nation that it does not provide to those other sovereigns.

Justice Ginsburg wrote a lengthy dissent joined by Justice Kennedy. In her view, even if the legal incidence of the tax was on the off-reservation distributor, the relevant taxable event was the sale and delivery of the fuel to the reservation. Because that sale and delivery clearly occurred on the reservation, the validity of the tax should be determined by balancing the federal, state, and tribal interests at stake. Justice Ginsburg would have struck that balance in favor of the Prairie Band because the Tribe was not marketing a tax exemption, but was instead collecting a tax to meet important transportation needs not addressed by the State. She noted that the Court's holding was particularly troubling because it would reduce the likelihood of states and tribes resolving tax disputes through the use of state-tribal tax agreements, which she recognized as "the most beneficial means to resolve conflicts of this order."

The impact of this decision is likely to be limited to motor fuel and tobacco taxes because these are generally the only taxes where the point of collection is shifted up the distribution chain. Many tribes and states have entered into tax agreements or other arrangements on these taxes, so the effects may not be widely felt outside Kansas. However, there is the possibility that some states will read the decision as new authority to impose taxes on reservations. We are very interested in monitoring the reaction to this case and we urge tribal leaders and attorneys to contact us if conflicts or problems should arise.

In working on this case, the Tribal Supreme Court Project worked closely with the attorneys representing the Prairie Band and attorneys from throughout Indian country, coordinating four tribal amicus briefs on behalf of NCAI, the Intertribal Transportation Alliance, the National Intertribal Tax Alliance, the other Kansas tribes, and more than 30 individual Indian tribes. The Project also worked closely with the Prairie Band in persuading the U.S. Solicitor General's Office to support the Tribe.

WAGNON V. PRAIRIE BAND POTAWATOMI NATION (NO. 04-1740) – On December 12, 2005, the Supreme Court issued a "GVR" (grant, vacate and remand) in *Wagnon v. Prairie Band Potawatomi Nation* – a case involving whether federal law bars Kansas from refusing to permit the use of motor vehicle registrations and titles (tribal car tags) issued by an Indian tribe located within the State, when Kansas permits the use of registrations and titles issued by other states, foreign countries and even out-of-state Indian tribes. The Court granted cert, vacated the favorable ruling of the Tenth Circuit, and remanded the case for further consideration in light of its recent decision in *Wagnon (formerly Richards) v. Prairie Band Potawatomi Nation,* No. 04-631 (motor fuel tax case). On remand, the case has been briefed in the Tenth Circuit and was argued on May 9, 2006 in Denver, CO.

CITY OF SHERRILL V. ONEIDA NATION OF NEW YORK (NO. 03-855) - On March 28, 2005, the U.S. Supreme Court issued its decision in *City of Sherrill v. Oneida Indian Nation of New York*, a case that has been closely followed by many Indian tribes for its impact on tribal land claims and its application of a number of important principles of federal Indian law. In a difficult loss for Indian country, the Supreme Court ruled against the Oneida Nation, holding that while the Nation maintains a valid claim for damages for reservation lands sold in violation of the Nonintercourse Act, it may not assert tax immunity on repurchased lands within the reservation boundaries until those lands are placed into trust by the Secretary of Interior.

Justice Ginsburg wrote the opinion in the 8-1 decision against the Nation, stating: "Given the longstanding distinctly non-Indian character of the area and its inhabitants, the regulatory authority constantly exercised by New York State and its counties and towns, and the Oneidas' long delay in seeking judicial relief against parties other than the United States, we hold that the Tribe cannot unilaterally revive its ancient sovereignty, in whole or in part, over the parcels at issue. The Oneidas long ago relinquished the reins of government and cannot regain them through open-market purchases from current titleholders."

The Court's decision invoked the equitable doctrine of laches – that the long passage of time and the Oneida's inaction during that time prevents the Nation from asserting its tax immunity. The Court made clear that it was not invalidating the land claim, but only one of the remedies available for the claim. The Court's reliance on this doctrine, which was never presented or briefed by the parties, betrayed a deep lack of understanding of the legal and historical realities that prevented many tribes from being able to vindicate their rights until recent decades. While the decision should be construed as a narrow decision regarding the remedies that are available for land claims under the Nonintercourse Act, it raises concerns

that states will try to use the laches doctrine to diminish the remedies available in other tribal claims. (See discussion of *Cayuga and Seneca Cayuga v. New York* in pending cases below.)

The Court based its decision on concerns of "disruptive practical consequences." The Court specifically noted that other tribes in New York had already sought to invalidate local zoning and land use laws to build a bingo hall "located within 300 yards of a school." The decision shows again that the presentation of the facts and equitable issues to the Court is extremely important and often outweighs reliance on longstanding principles of law. Also important to the opinion, the Court found that Congress has provided a mechanism for reasserting tribal jurisdiction over lands through 25 U.S.C. §465, the Secretarial land-to-trust acquisition process. Essentially, this finding by the Court reaffirms the validity and purposes of the land-to-trust statute and regulations – a subject of considerable litigation in the lower courts.

PETITIONS FOR WRIT OF CERTIORARI GRANTED

Currently, no petitions for writ of certiorari have been granted in any Indian law cases.

PETITIONS FOR A WRIT OF CERTIORARI PENDING

As noted above, petitions for a writ of certiorari have been filed and are pending before the Court in several important Indian law cases:

MEANS V. NAVAJO NATION (NO. 05-1614) – In *U.S. v. Lara*, the U.S. Supreme Court upheld tribal criminal jurisdiction over nonmember Indians, holding that the Duro amendment is an affirmation of tribal inherent authority. However, the *Lara* Court expressly declined to answer the question of whether the tribal criminal prosecution of a nonmember Indian would violate the Equal Protection component and the Due Process clause of the Fifth Amendment of the U.S. Constitution.

On June 16, 2006, a petition for certiorari was filed in *Means v. Navajo Nation* seeking review of the Ninth Circuit's decision which held that under the 1990 amendments to the Indian Civil Rights Act (the *Duro* amendments), the Navajo Nation may exercise misdemeanor criminal jurisdiction over a person who is not a member of the tribe, but who is an enrolled member of another Indian tribe. First, relying on *Morton v. Mancari*, the court concluded that "the weight of established law requires us to reject Means's equal protection claim" on the basis that Indian tribal identity is political rather than racial. Second, the court found that Means's "facial due process challenge has no force" in light of the fact that the Indian Civil Rights Act confers all the protections Means would receive under the U.S. Constitution except the right to grand jury indictment (which is not available in a misdemeanor prosecution) and the right to appointed counsel (which is provided in the Navajo Bill of Rights). The Project is in contact with the attorneys for the Navajo Nation and the United States (which intervened as a defendant at the Ninth Circuit) whose briefs in opposition are currently due on July 20, 2006.

MORRIS V. TANNER (NO. 05-1285) – On April 6, 2006, a petition for certiorari was filed in *Morris v. Tanner* seeking review of the Ninth Circuit's unpublished memorandum opinion affirming the district court's grant of summary judgment in favor of the Confederated Salish & Kootenai Tribes and its courts based on its published decision in *Means v. Navajo Nation* (see above). The Project worked with the attorneys representing the Tribes and the United States who filed their briefs in opposition on June 9,

2006. On June 16, 2006, the Mountain States Legal Foundation filed an amicus brief in support of the petitioners, arguing that "[t]his case presents this Court with an opportunity to remove the confusion that surrounds this Court's Indian law jurisprudence by declaring that Congress may not subject American citizens to prosecution by tribal courts that are not constrained by the United States Constitution, whether on the basis of race, political affiliation, or for any other reason." The case has been scheduled for conference on September 25, 2006, and, given the current briefing schedule, may be considered by the Court at the same time as *Means v. Navajo Nation.*

UTAH V. SHIVWITZ BAND OF PAIUTE INDIANS (NO. 05-1160) – On March 9, 2006, the State of Utah filed its petition for cert to seek review of the U.S. Court of Appeals for the Tenth Circuit decision which upheld the Secretary of the Interior's authority to take land into trust on behalf of Indians and Indian tribes, pursuant to 25 U.S.C. § 465 (§ 5 of the Indian Reorganization Act), rejecting the state's argument that § 5 is an unconstitutional delegation of the legislative power. At present, three Circuits have rejected this argument by various states. *See Carcieri v. Norton* (1st Cir. No. 03-2647); and *South Dakota v. United States Department of the Interior* (8th Cir. 04-2309). The Tribe filed its brief in opposition on May 12, 2006 and the United States' filed its brief in opposition on June 12, 2006. In addition, 15 states joined an amicus brief filed by the States of Connecticut and Rhode Island in support of Utah's petition for cert. The case is now scheduled for conference on September 25, 2006.

SOUTH DAKOTA V. UNITED STATES (NO. 05-1428) – On May 8, 2006, the State of South Dakota filed its petition for cert to seek review of the U.S. Court of Appeals for the Eighth Circuit decision which also upheld the Secretary of the Interior's authority to take land into trust on behalf of Indians and Indian tribes. The Eighth Circuit held that 25 U.S.C. § 465 is not an unconstitutional delegation of legislative authority when viewed in the light of statutory goals and the legislative history of the Indian Reorganization Act. The United States requested and was granted an extension of time to file their brief in opposition which is due on July 12, 2006. The Project is in contact with the U.S. Solicitor General's Office in relation to both cases challenging the Secretary's authority to take land into trust.

MURPHY V. STATE (NO. 05-10787) – On June 26, 2006, the Supreme Court issued an order requesting that the U.S. Solicitor General submit a brief expressing the views of the United States in a death penalty case arising from a decision of the Oklahoma Court of Criminal Appeals regarding the definition of Indian country. Specifically, the petition for cert asks the Court to review (1) whether an Indian allotment is "Indian country" if mineral interests, but no surface interests, remain under restriction; and (2) whether congressional allotment of tribal lands causes the disestablishment of an Indian reservation and thereby removes all lands within tribal boundaries from the definition of "Indian country" as defined by 18 U.S.C. § 1151(a). According to the petitioner, answers to these questions will resolve not only whether he can be subjected to death penalty, but will define the scope of state criminal jurisdiction over Indian lands that are of critical economic importance to Indian tribes in Oklahoma and elsewhere.

PETITIONS FOR WRIT OF CERTIORARI DENIED

SMITH V. SALISH KOOTENAI COLLEGE (NO. 05-10357) – On June 19, 2006, the Court denied review in *Smith v. Salish Kootenai College* which sought review of a favorable decision issued by an en banc panel of the Ninth Circuit. In *Smith*, the Ninth Circuit held that under the *Montana* test, the tribal court has civil jurisdiction over a tort action that arose as a result of a traffic accident on a public highway within the Reservation which involved a non-member Indian who was a student at the tribal college and who was

driving the vehicle as part of a vocational program at the college. The Tribal Supreme Court Project prepared and filed an amicus brief in support of the petition for rehearing en banc, supporting position of the college and the Tribes. The Project also worked directly with the attorneys representing the college and the Tribes to coordinate the drafting and review of the briefs in opposition to cert.

MATTAPONI INDIAN TRIBE V. VIRGINIA (NO. 05-1141) – On June 12, 2006, the Court denied review of the Virginia Supreme Court decision which held that the issues relating to the Mattaponi Indian tribe's treaty arise under state law, not federal law, because the treaty was signed before the American Revolution and not created "under the authority of the United States." Therefore, in applying state common law, the court held that the State of Virginia is immune from suit. In 1677, representatives of colonial Virginia, on behalf of the British Crown, signed a peace treaty with Indian tribes, including the Mattaponi Indian Tribe. In the litigation below, the Mattaponi asserted that the State of Virginia violated the terms of the treaty by authorizing the construction of a reservoir that would encroach on the Tribe's lands and interfere with the Tribe's fishing rights. The question presented to the Court is whether the obligations imposed by an Indian treaty with a prior sovereign should be enforceable as a matter of federal law under the Supremacy Clause. The Tribal Supreme Court Project coordinated the preparation of a tribal amicus brief on behalf of NCAI in support to the petition for cert which was filed on May 10, 2006 with the pro bono assistance of (name of law firm).

CAYUGA AND SENECA CAYUGA V. NEW YORK (NOS. 05-982 AND 978) – On May 15, 2006, in a disappointing and somewhat surprising result, the Court denied petitions for cert challenging the decision of the United States Court of Appeals for the Second Circuit to dismiss the land claims of the Cayuga Nation against the State of New York. In its June 2005 decision, relying on the Supreme Court's decision last term in *Sherrill*, the Second Circuit held that the doctrine of laches can be used to bar tribal claims that are "disruptive," even when those claims are for only money damages. Laches is a legal concept that prevents parties from unjustified delay in asserting their rights in a way that disadvantages the adverse party. The defense of laches had not been commonly applied against tribal claims because of the longstanding legal and practical impediments to tribal enforcement of their rights.

The Second Circuit's ruling not only threatens to extinguish tribal land claims in the Second Circuit, but could be used by other courts to fashion a new legal doctrine that the substantive rights of Indian tribes to their lands and resources are unenforceable wherever the court finds that their recognition would seriously disrupt the *status quo*. This could affect other tribal treaty claims regarding land, water, hunting and fishing rights or related claims. The Tribal Supreme Court Project coordinated three tribal amicus briefs in support of the petitions for cert based on our concern about the implications for other tribal claims regarding land, water, or hunting and fishing rights given the Second Circuit's broad and harmful reading of *Sherrill*.

In the wake of the Court's decision to deny cert, it is likely that the laches defense will be asserted more frequently against tribal claims, and tribal attorneys will need to prepare both factual and legal responses to a laches defense. Some tribes will face difficult strategy questions about whether to bring claims now in order to avoid any further delay – or to wait for a more favorable legal climate or relief from Congress. To assist the Tribes, the Project has formed a "Laches Workgroup" comprised of tribal attorneys and law professors who will be developing strategies and coordinating resources in order to effectively rebut the laches defense in pending and future cases.

SALINAS V. LAMERE (05-1189) – On May 22, 2006, the Court denied review of a decision by the California Court of Appeals which held that Public Law 280 does not grant state courts jurisdiction in

civil suits that implicate an Indian tribe's sovereignty. Former members of the Temecula Band of Luiseno Mission Indians of the Pechanga Reservation (Pechanga Band) had been seeking an injunction in state court to prevent them from being disenrolled from the Tribe.

DOE V. MANN (NO. 05-815) – On May 1, 2006, the Court denied review of the Ninth Circuit decision granting state jurisdiction over a child custody decision involving an Indian child within the boundaries of an Indian reservation. The Ninth Circuit opinion holds that under the Indian Child Welfare Act, tribes that fall under Public Law 280 do not have the "exclusive jurisdiction" provided by ICWA Section 1911(a).

PENDING CASES BEFORE THE U.S. COURTS OF APPEAL AND OTHER COURTS

SAN MANUEL INDIAN BINGO AND CASINO V. NATIONAL LABOR RELATIONS BOARD (NO. 05-1392) – On September 30, 2005, the National Labor Relations Board issued a decision and order finalizing its earlier May 2004 ruling that held that the National Labor Relations Act (NLRA) applies to tribal businesses on tribal lands. The NLRA generally exempts governmental employers from the provisions of the NLRA on collective bargaining, etc. The Board departed from longstanding precedent and created a new doctrine not found in the statute – that tribal government "commercial" activities are subject to the NLRA, while "traditional" governmental activities are not.

The San Manuel Band of Mission Indians filed a petition for review in the U.S. Court of Appeals for the D.C. Circuit on October 6, 2005. The Tribe's opening brief was filed on March 21, 2006. The Tribal Supreme Court Project, in close coordination with the Tribe's attorneys and attorneys throughout Indian country, has prepared a tribal amicus brief which argues: (1) the Board's new interpretation is inconsistent with the historical context of the NLRA and with established rules that safeguard tribal self-government; and (2) the Board's new construction is unworkable and would, if accepted, abrogate tribal sovereignty. The tribal amicus brief was filed on April 7, 2006. The NLRB filed their response brief on June 5, 2005.

CARCIERI V. NORTON (NO. 03-2647) – On September 13, 2005, the U.S. Court of Appeals for the First Circuit announced its decision in response to the State of Rhode Island's petition for rehearing or rehearing en banc. The court had directed the parties to provide supplemental briefing on two issues: (1) whether the provisions of the Indian Reorganization Act ("IRA") apply to the Narragansett Tribe (federally recognized in 1983); and (2) if additional land were taken into trust on behalf of the Narragansetts, whether the trust must be restricted to preserve Rhode Island's civil and criminal laws and jurisdiction.

The First Circuit granted the petition for rehearing and issued a new panel opinion in which the court, once again, rejected the state's argument that the IRA does not apply to any tribe that was not "now under federal jurisdiction" in 1934. A significant number of tribes could have been hurt by the opposite ruling. Second, the court, once again, rejected the broad arguments that Section 5 is an unconstitutional delegation of legislative authority and that taking land into trust diminishes state sovereignty in violation of the Tenth Amendment, the Enclave Clause, and the Admissions Clause, and exceeds the authority of Congress under the Indian Commerce Clause of the U.S. Constitution.

The Tribal Supreme Court Project coordinated the writing of amicus briefs in the case with the attorneys for the Narragansett Indian Tribe and the United States throughout the appeals process. NCAI was represented pro bono by Ian Gershengorn and Sam Hirsh of Jenner & Block and Riyaz Kanji of Kanji &

Katzen. This case is an important victory for Indian tribes because of the significance of the IRA and the Secretary's land-to-trust authority. Once again, we anticipate an appeal by the State of Rhode Island.

NARRAGANSETT TRIBE V. RHODE ISLAND (NO. 04-1155) – On May 24, 2006, the U.S. Court of Appeals for the First Circuit issued its en banc decision holding that, under the language and intent of the Rhode Island Indian Claims Settlement Act, state officers are authorized to execute a search warrant against the Tribe and to arrest tribal members incident to the enforcement of the State's civil and criminal laws. The Narragansett Tribe's had sought relief in the federal courts from the State's violent efforts to close down a tribal smoke shop – forcibly serving a search warrant, seizing unstamped cigarettes, and arresting tribal officials. The en banc panel reversed the three-judge panel's finding that the State exceeded its authority in imposing a warrant on the Narragansett tribal government, holding that the Tribe's sovereign immunity had been waived by Congress under terms of the Settlement Act.

The Project worked with the attorneys representing the Tribe, and NCAI submitted an amicus brief in support of the Tribe which was prepared pro bono by the Nordhaus Law Firm. The Project is in contact with the attorneys representing the Tribe which has indicated an intention to seek review before the U.S. Supreme Court.

FORD MOTOR CO. V. TODECHEENE (NO. 02-17048) – On January 11, 2005, the Ninth Circuit issued its decision in a case involving the scope of tribal civil jurisdiction over a products liability action arising out of an accident on the Navajo Reservation on a road wholly owned by the Nation. The Todecheene family filed a wrongful death action in Navajo tribal court, and Ford filed a complaint in U.S. District Court challenging the Navajo court's jurisdiction. In an expansion of *Strate v. A-1 Contractors*, the 9th Circuit ruled that the Montana analysis applies even when on Indian land and ruled against tribal jurisdiction. On February 10, 2005, the Navajo Nation, in coordination with the Tribal Supreme Court Project, filed a petition for rehearing or rehearing en banc. On February 15, 2005, the court issued an order directing Ford Motor Company to file a response to the petition for rehearing. The case has been fully briefed and awaits a decision from the Ninth Circuit on the petition for rehearing.

CONTRIBUTIONS TO SUPREME COURT PROJECT

As always, NCAI and NARF welcome general contributions to the Tribal Supreme Court Project. Please send any general contributions to NCAI, attn: Sharon Ivy, 1301 Connecticut Ave., NW, Suite 200, Washington, DC 20036.

Please contact us if you have any questions or if we can be of assistance: John Dossett, NCAI General Counsel, 503-248-0783 (jdossett@ncai.org) or Richard Guest, NARF Senior Staff Attorney, 202-785-4166 (richardg@narf.org).