



Tribal Supreme Court Project Update

Presentation to the Affiliated Tribes of Northwest Indians
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Overview

- The work and mission of the Tribal Supreme Court Project
- A look back at the 2015 Supreme Court Term
- What is happening right now at the Court
- Looking ahead to the 2016 Term

Tribal Supreme Court Project

- October 2000 Term: *Atkinson Trading Co. v. Shirley and Nevada v. Hicks*
- 2001 David Getches' seminal article, *Beyond Indian Law: The Rehnquist Court's Pursuit of States' Rights, Color Blind Justice and Mainstream Values*
- September 2001: Tribal Leaders met in Washington, D.C., and established the Tribal Supreme Court Project as part of the Tribal Sovereignty Protection Initiative.

Tribal Supreme Court Project

- The purpose of the Project is to strengthen tribal advocacy before the U.S. Supreme Court by developing new litigation strategies and coordinating tribal legal resources, and to ultimately improve the win-loss record of Indian tribes.
- The Project is staffed by attorneys with the NARF and the National Congress of American Indians (NCAI) and consists of a Working Group of over 250 attorneys & academics from around the nation who specialize in Indian law and other areas of law that impact Indian cases.

2015 Term

- A very active term for Indian law cases
- 26 Cert Petitions filed, the most since 2010
- Five Indian law cases heard, Four wins, one loss
- By contrast:
 - 2014 term = 4 cert petitions, one granted, and no Indian law cases argued
 - 2013 = 16 cert petitions, 1 grant, one win (Bay Mills)
 - 2012 = 14 petitions, 2 grant, one argued, one loss (Adoptive Couple)

Cases During 2015 Term

- U.S. v. Bryant (8-0 win)
- Nebraska v. Parker (8-0 win)
- Menominee Indian Tribe v. U.S. (9-0 loss)
- Sturgeon v. Frost (8-0 win)*
- Dollar General v. Mississippi Band of Choctaw Indians (4-4 affirmance)
- At the close of the term, overall win-loss record of Indian country before the Roberts' Court stands at 5-wins and 10-losses
- This is a substantial improvement from the 0-wins and 7-losses from OT05 through OT10.

*Indian law related case

Where Are We Now?

- At this point, the Court has not granted review in any Indian law cases
- 6 pending petitions:
 - Jones v. Norton, (NO. 16-72) (dismissal of §1983 suit)
 - Kelsey v. Bailey, (NO. 16-5120) (tribal criminal jurisdiction)
 - Flute v. U.S. (NO. 15-1534) (Accounting of trust funds – U.S. sovereign immunity)
 - Lewis v. Clarke (NO. 15-1500) (tribal sovereign immunity)
 - Tunica-Biloxi Gaming Auth. v. Zaunbrecher (NO. 15-1486) (tribal sovereign immunity)
 - Pro-Football v. Blackhorse (NO. 15-1311) (Washington Football team name)
- We will likely know on October 3, when the Court holds its first session of the 2016 Term, whether any of those petitions were granted.

Looking Ahead . . .

- More than anytime in recent memory, the outcome of the Presidential election will have an immediate impact on the Court
- With only 8 justices, the Court is hampered
 - Less likely to grant cert because there are an even number of justices
 - Court is evenly split ideologically
- Four possibilities for filling the vacancy
 - Senate confirms Garland prior to election (chances are nearly non-existent)
 - Senate confirms Garland after the election, during lame duck (possible)
 - Obama withdraws nomination immediately after election (unlikely)
 - No confirmation vote and Garland nomination expires (possible)



Questions?