

Federal Indian Case Law Update

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United States Supreme Court

Carpenter v. Murphy (Pending)

- Otherwise Covered in Tomorrow's Agenda

Supreme Court Filings- Interesting to Read

- Petition for Cert
- Response Brief by Murphy

Supreme Court Activity

- Amicus Briefs in Support of Petitioner
 - United States
 - Environmental Federation of Oklahoma
 - Oklahoma Cattlemen's Association
 - Oklahoma Farm Bureau Legal Foundation
 - Mayes County Farm Bureau
 - Muskogee County Farm Bureau
 - Oklahoma Oil & Gas Association
 - State Chamber of Oklahoma
 - Oklahoma Independent Petroleum Association

Supreme Court Activity

- Amicus Briefs- in Support of Petitioner
 - The International Municipal Lawyers Association
 - The International City/County Management Association
 - The National Sheriffs' Association
 - Oklahoma Sheriff's Association
 - Oklahoma District Attorneys Association
 - Ten Oklahoma District Attorneys

Supreme Court Activity

- Amicus Briefs- in Support of Murphy-

- “The Oklahoma Elected Officials Brief”

- David Boren
- Brad Henry
- Tom Cole
- Neal McCaleb
- Danny Hilliard
- Kris Steele
- Daniel Boren
- T.W. Shannon
- Lisa Johnson Billy
- The Chickasaw Nation
- Choctaw Nation

Supreme Court Activity

- Amicus Briefs- in Support of Murphy-
 - National Congress of American Indians
 - Historians
 - Legal Scholars
 - Cherokee Nation
 - Muscogee Creek Nation
 - Former United States Attorneys
 - Troy Eid
 - Barry Grissom
 - Thomas Heffelfinger
 - David Iglesias
 - Brendan Johnson
 - Wendy Olson
 - Timothy Prdon
 - Danny Williams

Supreme Court Activity

- Amicus Briefs- in Support of Murphy-
 - National Indigenous Women's Resource Center
 - And additional advocacy organizations for survivors of domestic violence and sexual assault.

Check it Out!

- <https://www.scotusblog.com/case-files/cases/royal-v-murphy/>
- Listen to oral arguments before tomorrow's presentation if you have time!

Herrera v. Wyoming (Pending)

- Treaty of 1868 secured in the Crow Tribe of Indians the right to hunt on “unoccupied lands of the United States”.
- Crow member engaged in subsistence hunting on off-Reservation lands that were within the treaty territory.
- Wyoming Supreme Court determined the treaty right **did not still stand**.
- Issue- whether Wyoming’s Statehood OR Establishment of the Bighorn National Forest abrogated the Crow Tribe’s Treaty Rights.

Amicus Briefs Filed in Favor of Treaty Rights

- Indian Law Professors
- Crow Tribe of Indians
- Anthropology Professor, Founding President of Little Big Horn College, Public Health officials, Health Professor, ACLU representatives
- United States
- Eastern Shoshone Tribe
- Southern Ute and Ute
- Shoshone-Bannock
- Natural Resources Law Professors
- Pacific and Inland Northwest Treaty Tribes
- National Congress of American Indians

Amicus Briefs Filed in Favor of Abrogation

- Western Association of Fish and Wildlife Agencies
- Nebraska, Kansas, Louisiana, North Dakota, South Dakota, and Texas
- Association of Fish and Wildlife Agencies
- Wyoming Stock Growers Association, Wyoming Farm Bureau Federation, Wyoming Wool Growers, Montana Farm Bureau, Idaho Farm Bureau, Utah Farm Bureau, Colorado Farm Bureau, South Dakota Cattlemen
- Safari Club International
- Citizens for Equal Rights Foundation, Mille Lacs Equal Rights Foundation, City of Wakhon, Minnesota

Check it Out!

- <https://www.scotusblog.com/case-files/cases/herrera-v-wyoming/>

Washington State Department of Licensing v. Cougar Den

Treaty Language (Article III, Yakama Treaty of 1855)

- “If necessary for the public convenience, roads may be run through the said reservation; and on the other hand, the right of way, with free access from the same to the nearest public highway, is secured to them (*Yakama*); as also the right, in common with citizens of the United States, to travel upon all public highways.”
- State of Washington Supreme Court struck down application of the state statute that would impose the tax- as it was an importation tax on the transportation of fuel.

Supreme Court Affirms

- Treaty preempts the tax
- Treaty protects Yakama's right to travel on a public highway, even with goods for sale
- Tax was not on possession of the fuel- but instead on travel with it
- Taxing travel with goods burdens travel
- Indian Canons of Construction- resolve ambiguities in favor of the tribe

Interesting Concurrence

- **Gorsuch and Ginsberg**

“As the State reads the treaty, it promises tribal members only the right to venture out of their reservation and use the public highways like everyone else. But the record shows that the consideration the Yakamas supplied was worth far more than an abject promise they would not be made prisoners on their reservation. In fact, the millions of acres the Tribe ceded were a prize the United States desperately wanted. ... The Yakamas knew all this and could see the writing on the wall: One way or another, their land would be taken. If they managed to extract from the negotiations the simple right to take their goods freely to and from market on the public highways, it was a price the United States was more than willing to pay. By any fair measure, it was a bargain-basement deal.”

Best Line...

- “The State is now dissatisfied with the consequences of one of those promises. It is a new day, and now it wants more. But today and to its credit, the Court holds the parties to the terms of their deal. It is the least we can do.”

Dissents- As Expected

Roberts, Kavanaugh, and Thomas

- Tax was on possession, not travel

Kavanaugh and Thomas

- Tribe only bargained for travel- not travel with goods.

Supreme Court Denial of Cert

- Lower Court Victories Stand
 - Osage Nation (wind farm)
 - North Fork Rancheria of Mono Indians (tribal trust land)
 - Ute Tribe (tribal court exhaustion doctrine)

Federal Appellate Courts

9th Circuit

- United States v. Cooley
- Knighton v. Cedarville Rancheria of Northern Paiute
- Chemehuevi Indian Tribe v. Newsom
- Franks Landing Indian Community v. NIGC

5th Circuit

- Texas v. Alabama Coushatta Tribe of Texas
- Brackeen v. Bernhardt (Pending)

Lower Federal Courts

- “Montana” issues
- Criminal Prosecutions
- Off-Reservation Sovereign Immunity
- Choice of Law/ Contracts Issues
- Medical Cannabis
- Aboriginal Title and Reservation Status Issues

Questions?
