



Legal Review

NATIVE AMERICAN RIGHTS FUND

THE INDIAN CITIZENSHIP ACT AT 100 YEARS OLD



PRESIDENT CALVIN COOLIDGE AND FOUR OSAGE INDIANS, WHITE HOUSE, 1925 ([HTTPS://WWW.LOC.GOV/PICTURES/ITEM/94508991/](https://www.loc.gov/pictures/item/94508991/))

The Promise of Citizenship

One hundred years ago, on June 2, 1924, the United States government conferred citizenship on Native American people by passing the Snyder Act, also known as the Indian Citizenship Act. Prior to that time, Native Americans had been explicitly denied citizenship—first in the United States Constitution and, later, through the 14th Amendment. However, while the Indian Citizenship Act of 1924 ensured

that all Native Americans born within the United States had citizenship, the Act failed to fulfill the promise of citizenship because Native Americans were not also granted voting rights. It would be decades before all 50 states granted Native American citizens the right to vote. And even today, due to the inequities that Native Americans endure when accessing registration, early voting, and Election Day polling places, the promise of full citizenship remains broken.

While the 15th Amendment declared that the right to vote could not be denied on account of race, many states were able to find other ways to deny Native American people the vote—residence on a reservation, tribal enrollment status, taxation,

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“We all know Congress granted the Indian citizenship in 1924, but we still have no privilege to vote. We do not understand what kind of citizenship you would call that.”

-- Pvt. Ralph W. Anderson (1943)

and incompetency were all used by states as reasons to disenfranchise Native people. One tragic outcome was that thousands of Native American veterans—including American Indian Code Talkers returning from World War II—found themselves prohibited from participating in basic civil liberties in the nation that they had risked their lives to protect.

In reality, Native voting rights often have come about only because of extensive advocacy and litigation by Native American individuals, organizations, and Tribal Nations. Native voters have had to fight (sometimes repeatedly) to have their voices heard. So, on this 100th anniversary, we reflect on 100 years of Native American efforts to fully realize their citizenship and obtain equal access to their freedom to vote. We also honor 100 years of Native American citizens working tirelessly to make things better for future generations.

100 Years of Fighting for the Freedom to Vote

Native voters have had to fight for the enforcement of their civil rights since the moment that they were granted citizenship 100 years ago. To that end, since its founding in 1970, NARF has undertaken high-impact cases that will ensure equal and fair access to voting for Native American citizens. Repeatedly we have encountered voting rights abuses against Native Americans in Alaska, South Dakota, North Dakota, Montana, Arizona, New Mexico, and other states with significant Native American populations.

NARF’s legal work protecting Native voting rights is part of a long history of persistence across Indian Country to obtain and protect Native civil rights.



Participating in the Bougainville operation in December 1943 were (left to right, front row:) Pvt Earl Johnny, Pvt Kee Etsicity, Pvt John V. Goodluck, and PFC David Jordan. (left to right, rear row:) Pvt Jack C. Morgan, Pvt George H. Kirk, Pvt Tom H. Jones, Cpl Henry Bake, Jr. | From the Photograph Collection (COLL/ 3948) at the Marine Corps Archives and Special Collection

Using the Fourteenth and Fifteenth Amendments, and various sections of the Voting Rights Act, Native American voters have filed dozens of lawsuits to gain access to elections and to have an equal opportunity to elect candidates of their choice. A 2008 review of voting rights cases involving Native Americans and Alaska Natives as plaintiffs identified 74 cases, filed in 15 states. Tellingly, the Native plaintiffs won over 90% of cases- they lost only four of these cases, obtained partial success in two, and secured victories or successful settlements in the remaining 68 cases. That is an impressive record of success, often based upon dismal facts.

Why do Native people have to litigate for their right to vote? Because state governments repeatedly pass legislation to prevent Native American voter participation. State laws that directly restricted Native voter participation were on the books as recently as 1957. In more recent years, voting restrictions have expanded from direct denial of voting rights to the dilution of voting rights and indirect (but effective) impediments that capitalize on systemic inequities. Given their lack of representation, Native Americans continue to see gross disparities in services and infrastructure—things like transportation, broadband, and home addressing. These disparities can be exploited as barriers to registering to vote voting, and having votes counted.

Today, 100 years after the passage of the Indian Citizenship Act, Native people still are forced to litigate for their right to vote. Tragically, states continue passing legislation that prevents Native people from voting in federal and state elections. For example, in Montana, the state legislature passed the Montana Ballot Interference Prevention Act in 2018. The law restricted ballot collection, which is used heavily in isolated rural Native communities. The Assiniboine & Sioux Tribes of Fort Peck, Blackfeet Nation, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Crow Tribe, and Fort Belknap Indian Community, Western Native Voice, and Montana Native Vote challenged the law in court. In 2020, the court ruled in the case, *Western Native Voice v. Stapleton*, that blocking ballot collection was unconstitutional and does not serve the state due to the detrimental impacts on Native voters. Incredibly, mere months after that ruling, the Montana state legislature again restricted ballot collection. Tribes and Native get-out-the-vote organizations in Montana were forced to return to court yet again to protect the rights of Native voters from anti-Native election-related laws. The court found again that the voting restrictions were unconstitutional. However, it begs the question: how many times should Native voters have to go to court

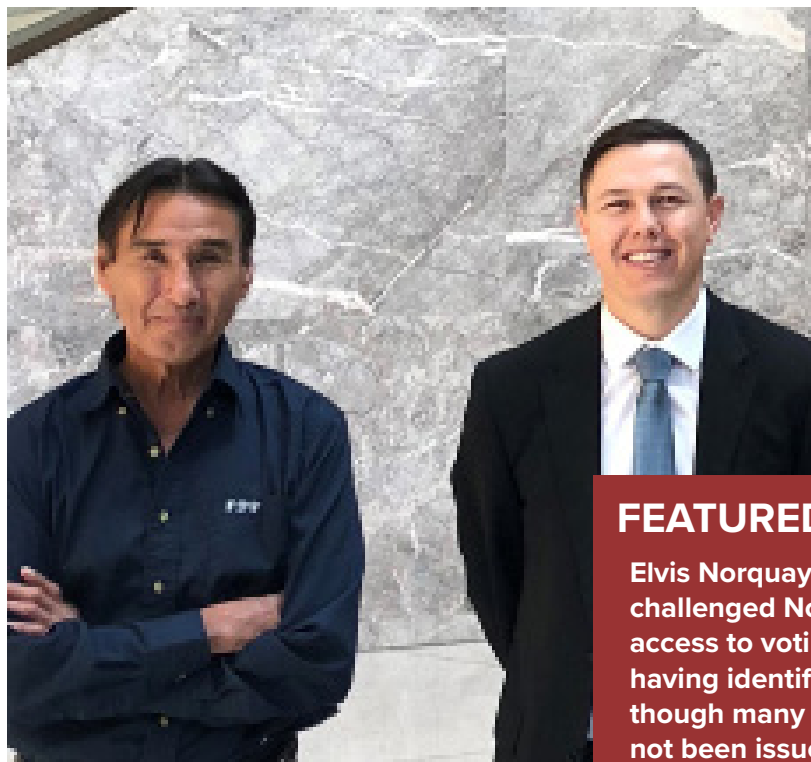
to protect their freedom to vote?

Meanwhile, in 2022, the Spirit Lake Tribe, Turtle Mountain Band of Chippewa, and several voters filed a lawsuit challenging North Dakota’s state legislative map as unlawfully diluting the voting rights of Native Americans. The U.S. District Court for North Dakota determined that the districts in question were not legal under the Voting Rights Act and ordered a legal and fair map to be adopted. Rather than working to adopt a legal map and ensuring that all voters in North Dakota could be heard, the state’s Attorney General poured more resources into appealing the decision and is advancing legal theories challenging the right of Native litigants to be able to bring cases under the Voting Rights Act at all. That case’s appeal, and the radical attempt to block private plaintiffs from accessing the Voting Rights Act’s protections, is still under consideration in the higher courts.

Obviously, these voting restrictions reflect persistent racism and bigotry, but there also is a pragmatic reason for disenfranchisement. A fully enfranchised Native electorate is powerful. In many parts of the United States, Native voters could change the outcome of elections. Native Americans are poised to sway local, state, and federal elections. They make up key voting blocks in states like Arizona, Alaska, Nevada, Montana, Michigan, and Wisconsin, to name a few. Voting restrictions that target these communities can greatly influence electoral outcomes.

Democracy is Native

Ironically, despite not having full access to enfranchisement and the privileges of citizenship, Native Americans have contributed greatly to this nation’s democratic fabric. In fact, Native American cultures heavily influenced the



FEATURED:

Elvis Norquay (Turtle Mountain Band of Chippewa) challenged North Dakota’s voter ID laws that restricted access to voting based on a person’s housing status and having identification that included a postal address even though many homes on reservations in North Dakota had not been issued postal addresses. Pictured: Elvis Norquay (L), NARF Deputy Director Matthew Campbell (R)

development of early American democracy. Well before the founding of the United States, even before the arrival of the earliest European explorers and colonists, some of the region's Indigenous Peoples had federalist systems of government. When the delegates of the United States' 1787 Constitutional Convention met, many of them were well-familiar with federalism-in-action through their contacts with Indigenous governments. Famously, Benjamin Franklin cited the structure and strength of the Iroquois Confederacy as an organization the colonies could emulate as they formed their new union.

Democracy is Native and NARF is committed to protecting it. The obstacles faced by Native voters are unreasonable and unfair and rob them of their collective political power. The fundamental promise of American democracy, of Native American democracy, is that everyone can participate and effectuate change. One hundred years ago, Native American were promised citizenship and all the benefits thereof. We fight every day in courts and congress across the United States to hold governments accountable and honor that promise. Learn more about ongoing efforts to assert and protect the Native vote at vote.narf.org.

FEATURED:

Elizabeth Peratrovich (Tlingit) advocated for the nation's first anti-discriminatory laws, which passed in Alaska in 1945. Alaskans celebrate her activism on April 21, Elizabeth Peratrovich Day.



“In a country where Tribal Nations are credited with establishing the oldest participatory democracies in the world and where the Founding Fathers replicated Tribes fundamental democratic principles into our Constitution, it’s long past time that we secure voting rights for people, regardless of what community they are from.”

**– Secretary Debra Haaland on July 27, 2021,
at the White House Meeting on Native American Voting Rights**

FEATURED EXCERPT

TREATY JUSTICE: THE NORTHWEST TRIBES, THE BOLDT DECISION, AND THE RECOGNITION OF FISHING RIGHTS

The late 1960s and early '70s marked the beginnings of the upswelling of jobs in several areas of public interest law. I had gone to law school to practice civil rights law but when I graduated in 1966, there were almost no public interest jobs. When that changed, just a few years later, I was in private practice and began to think about the new civil rights, environmental, and other public law programs.

Several people suggested that I might look at the new firm, the Native American Rights Fund, which was practicing Indian and environmental law. I applied and on October 11, 1971, joined NARF as a staff attorney. Early on, I thanked my lucky stars. I was thrilled that my professional life would now involve working on issues that I cared about personally. Now, more than half a century later, I realize that walking through the front door that long-ago day as a NARF attorney was the moment that law became technicolor for me.

NARF was still in its first year. Youth and idealism spread throughout the offices. All of the dozen attorneys were less than thirty years old. They were an impressive lot; the new public interest work attracted some of the best young lawyers. NARF attorneys had already filed a number of truly major cases (most of them, ambitious though they were, proved to be successful in whole or in part).

One was a lawsuit on behalf of the tribes of Western Washington against the state of Washington charging that the state had long violated tribal fishing rights for salmon under treaties with the United States. This is the litigation that became known as the Boldt Decision, which, along with its broad and lasting impact on law, environment, and society, is the subject of this book. The state argued that tribal fishing rights were minimal and cracked down on Indian fishermen through often violent raids, arrests, and jail time. The tribes believed that they had



extensive rights under their treaties with the United States and that, among other things, Indians were entitled to as many Pacific salmon as necessary to meet their needs.

I never worked on the case, but it caught my attention from the beginning. At that point, I had a rudimentary knowledge of Indian law and knew only that this was a difficult legal case, highly controversial in Washington and Oregon, where these state tribal-fishing disputes were commonly referred to as “fish wars.” Also, I couldn’t help but notice that the case revolved around fish, Pacific salmon no less. I made up my mind to follow it. 🏛️

Excerpted from *Treaty Justice: The Northwest Tribes, the Boldt Decision, and the Recognition of Fishing Rights* by Charles Wilkinson with permission by the University of Washington Press. Copyright © 2024 Charles Wilkinson.

THE TRIBAL WATER INSTITUTE at the Native American Rights Fund

The Native American Rights Fund is a long-time defender of tribal water rights and has stood at the center of seminal water victories such as the Boldt Decision (stemming from the *U.S. v Washington* litigation) and representing tribes in 9 of the 35 tribal water rights settlements approved by Congress since 1978. As a dogged defender of tribal water interests, NARF stands strong on behalf of Tribes in legal fights that can last decades. However, with the impacts of climate change stressing water supplies—and the legal frameworks used to manage them—tribal needs are growing and require the commitment of more and diverse resources.

That challenging reality is coupled with ongoing policy concerns. Tribal Nations are underrepresented in management discussions, and federal and state policy proposals consistently ignore tribal needs and limitations. However, many Tribal Nations do not have the capacity to develop and bring forward water proposals. Instead, they are placed in a reactionary position, which is to the disadvantage of their sovereign interests.

To meet this moment, NARF is excited to announce that it is creating the Tribal Water Institute (TWI). The Tribal Water Institute will be a first-of-its kind project that builds on NARF's expertise, expansive network of allies, and emphasis on coalition building. With strategic actions based on years of experience, it will help address the shortage of Water Law expertise across Indian Country, bolster educational efforts, and provide thoughtful leadership in advocating for tribal water rights.



If you are interested in supporting the Tribal Water Institute and its work, please contact **NARF Staff Attorney Daniel Cordalis** at cordalis@narf.org or **NARF Staff Attorney David Gover** at dgover@narf.org.

PROGRAM SPECIFICS:

Led by NARF attorneys, the Institute will undertake several high-impact programs to support Tribal Nations seeking to assert and protect their right to water. Including:

1. A Legal Fellow Program to Build Water Law Capacity for Indian Country

Training young attorneys to represent and advocate for Tribal Water Law solutions is critical to developing Tribal Nations' legal capacity. The Institute, through partnerships with other water-oriented programs and law schools, will hire water-specific legal fellows. They will support water initiatives while gaining the unique skills needed to serve Indian Country in the future. Developing these fellowships will counter multiple issues—it will immediately provide additional capacity and seed the next generation of tribal Water Law attorneys.

2. Advocacy to Promote Federal and State Water Policy and Litigation

Tribal Nations need forward-thinking, proactive policy proposals developed through well-supported research and legal argument to effectively advocate for their water rights. Yet, to our knowledge, there is no national tribal organization or academic institution that focuses on tribal water rights or policy development. The Institute will help fill this gap and provide much-needed recommendations and other legal resources to guide tribal water policy.

3. Tribal Water Report

TWI will publish a semi-annual publication detailing water-related legal information and opportunities to better inform tribal water managers and tribal leadership. It will include water rights information like case summaries, pending legislation, rule makings, public comment opportunities, successful settlements, and related commentary.

4. Ad Hoc Water Group Participation

Since 1981, the Western States Water Council (WSWC) and NARF, working with tribal representatives and other public and private experts, have participated in an "Ad Hoc Group on Indian Water Rights Settlements." The group supports the negotiated settlement of Indian water rights disputes, including Congressional education and advocacy for funding mechanisms. The Institute would participate in these Ad Hoc efforts, provide technical expertise, help organize and consolidate interest, and tackle needed research to advance policy objectives.

5. Indian Water Settlement Symposium

Since 1991, NARF and WSWC have sponsored a biennial symposium to discuss the settlement of Indian water rights claims. The symposium is held for experts and tribal advocates—both public and private—to exchange information and advice regarding the creation and implementation of Indian water rights settlements. Going forward, the symposium will be housed in the Tribal Water Institute.

The impact of the water symposium is immeasurable. It is the only current effort to consolidate and share information on federal reserved Indian water rights issues and ongoing cases. By disseminating information on past and current settlements, NARF provides practitioners the best and most recent information necessary for successful water rights settlements in Indian Country. As the body of Water Law grows, so too does the need for the ongoing growth and evolution of our ability to advocate for tribal rights and water sovereignty. The Tribal Water Institute is made possible in part by the generous support of the Walton Family Foundation. 🙏

Tribal Supreme Court Project

The Tribal Supreme Court Project is part of the Tribal Sovereignty Protection Initiative and is staffed by the National Congress of American Indians Fund (NCAI Fund) and NARF. The Project was formed in 2001 in response to a series of policy decisions by the U.S. Supreme Court 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 Indian law cases that we track on the NARF website (<http://sct.narf.org>). The cases granted to-date for the Court's October 2023 Term are discussed next.

BECERRA V. SAN CARLOS APACHE TRIBE (22-250) (CONSOLIDATED WITH 23-253)

The Indian Self-Determination and Education Assistance Act permits eligible Tribes to contract with the federal government to operate certain federal health care programs to eligible individuals. The contracts entitle Tribes to the amount of appropriated funds that the U.S. Indian Health Service (IHS) otherwise would have allocated for federal operation of the programs. And IHS must pay “contract support costs,” which are funds added to the operational amounts to cover administrative costs that Tribes incur with the contracted programs. When they provide health care services to covered individuals, contracting Tribes are permitted to collect payment from third-party payors, like private insurers, Medicare, and Medicaid. The U.S. Court of Appeals for the Ninth Circuit held that “contract support costs” includes the cost to Tribes of administering and collecting these thirdparty payments, and IHS also must reimburse Tribes for these costs.

BECERRA V. NORTHERN ARAPAHO TRIBE (22-253) (CONSOLIDATED WITH 23-250)

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CONTRIBUTIONS TO THE TRIBAL SUPREME COURT PROJECT

NCAI and NARF welcome contributions to the Tribal Supreme Court Project. Please send any general contributions to:

NCAI, attn: Accounting
1516 P Street, NW
Washington, DC 20005

NARF, attn: Accounting
250 Arapahoe Ave
Boulder, CO 80302-5821

Please contact us if you have any questions or if we can be of assistance:

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303-447-8780 or mmccoy@narf.org

Geoffrey Blackwell | NCAI General Counsel & Chief of Staff
202-253-4846 or gblackwell@ncai.org

National Indian Law Library

NEW TITLES AT THE INDIAN LAW LIBRARY



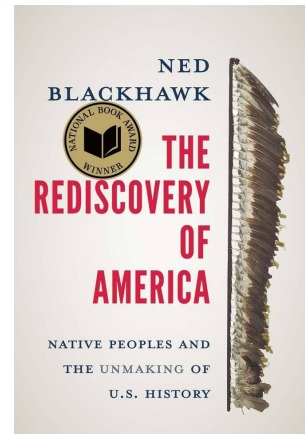
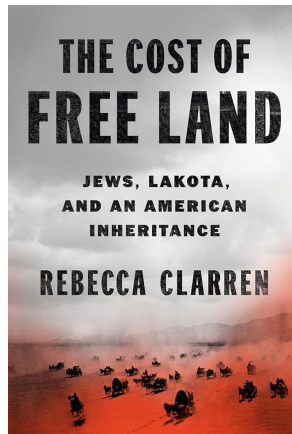
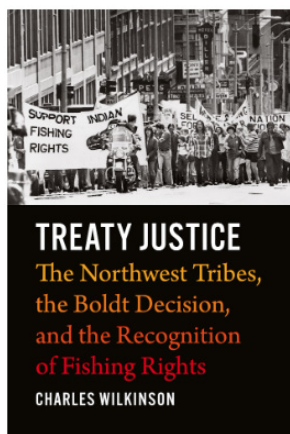
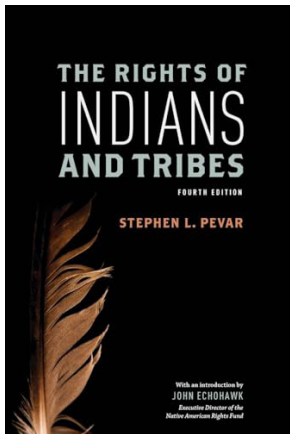
Recognition of Indian Law’s reach is ever-growing and expanding, and the National Indian Law Library’s (NILL) collection acquires new writings and perspectives relevant to the field every week. Here are just a few of the recently published Indian Law books on NILL’s shelves.

The Rights of Indians and Tribes, fifth edition by Stephen L. Pevar (2024, Oxford University Press) describes the significant legal issues facing Indian Country in an approachable yet exhaustive format. First published in 1983, this newest edition includes the most recent court decisions and legislation related to Indian Law. Pevar’s text is widely regarded as a valuable resource for anyone interested in Federal Indian Law, from the general public to those who work in the field.

Treaty Justice: The Northwest Tribes, the Boldt Decision, and the Recognition of Fishing Rights by Charles Wilkinson (2024, University of Washington Press) details the history of 1974’s United States v. Washington, commonly known as the Boldt Decision, which recognized the fishing rights of Tribes located in the state of Washington. One of NARF’s early cases, the Boldt Decision was an important legal win, reaffirming treaty rights. Wilkinson dives into the case’s 50-year history and its impact in this recently released title.

The Cost of Free Land: Jews, Lakota, and an American Inheritance by Rebecca Clarren (2023, Viking) wrestles with a family history and the price paid for what was considered it’s success. Clarren’s great-great-grandparents arrived in the United States in the early 1900s after fleeing antisemitism in Russia. Benefitting from the Homestead Act, her relatives settled in South Dakota on a 160-acre homestead. Forgotten in the retelling of this story is the fact that this land, which was the foundation for much of Clarren’s family’s wealth, was stolen from the Lakota. Clarren investigates the broken treaties, cruel treatment, and dispossession that surrounds her family’s inheritance.

The Rediscovery of America: Native Peoples and the Unmaking of U.S. History by Ned Blackhawk (2023, Yale University Press) retells American history from a more well-rounded perspective than the majority of its predecessors, taking into account the Indigenous history that has been overlooked and ignored for far too long. Winner of the 2023 National Book Award in Nonfiction, named a New York Times Notable Book of 2023, and a national bestseller, Blackhawk covers five centuries of history in this one volume.





CALL TO ACTION

It has been made abundantly clear that non-Indian philanthropy can no longer sustain NARF's work. Federal funds for specific projects have also been reduced. 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, voting rights, tribal water rights, Indian Child Welfare Act, and tribal sovereignty issues, NARF looks to the tribes to provide the 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.

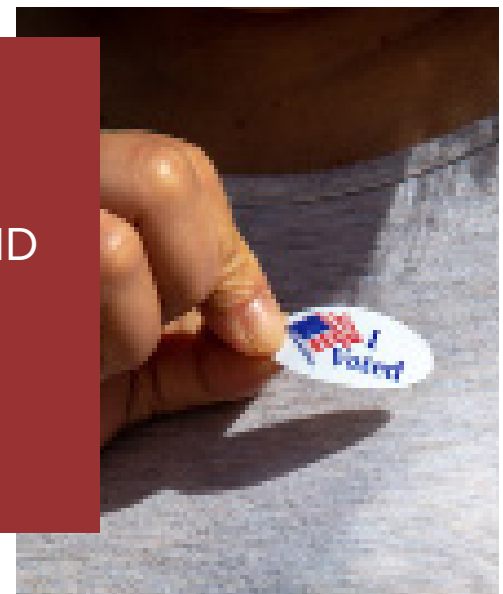
We encourage other tribes and organizations to become contributors and partners with NARF in fighting for justice for our people and in keeping the vision of our ancestors alive. We thank the following tribes and Native organizations for their generous support of NARF in the 2023 fiscal year (October 1, 2023 to March 31, 2024):

AMERIND
Cowlitz Indian Tribe
Ho-Chunk
Jamestown S'klallam Tribe
Sac and Fox Nation of Oklahoma
San Manuel
Tulalip Tribes of Washington
Wilton Rancheria

To join these tribes and organizations and support the fight for Native rights and tribal sovereignty, contact Don Ragona at ragona@narf.org

ARE YOU REGISTERED TO VOTE?

FIND RESOURCES, IMPORTANT DATES, AND ALL THINGS VOTING AT **VOTE.NARF.ORG** TO MAKE SURE YOU'RE READY FOR THE 2024 ELECTION SEASON.



The Native American Rights Fund

The Native American Rights Fund (NARF) is a Native-led, nonprofit legal organization defending and promoting the legal rights of Native American people on issues essential to our tribal sovereignty, natural resource protections, and human rights.

Since 1970, we have provided legal advice and representation to Native American tribes, individuals, and organizations on high impact issues. Our early work was instrumental in establishing the field of Indian law. NARF—when very few would—steadfastly stood for religious freedoms and sacred places, subsistence hunting and fishing rights, as well as basic human and civil rights. We continue to take on complex, time-consuming cases that others avoid, such as government accountability, climate change, voting rights, and the education of our children. We have assisted more than 300 tribal nations with critical issues that go to the heart of who we are as sovereign nations.

NARF's first Board of Directors developed five priorities to guide the organization. Those priorities that continue to lead NARF today:

- Preserve tribal existence
- Protect tribal natural resources
- Promote Native American human rights
- Hold governments accountable to Native Americans
- Develop Indian law and educate the public about Indian rights, laws, and issues

Under the priority to preserve tribal existence, NARF constructs the foundations to empower tribes to live according to their traditions, enforce their treaty

rights, ensure their independence on reservations, and protect their sovereignty.

An adequate land base and control over natural resources are central to economic self-sufficiency and self-determination. They are vital to the very existence of tribes. Thus, much of NARF's work aims to protect tribal natural resources.

In order to promote human rights, NARF strives to enforce and strengthen laws that protect the rights of Native Americans to exercise their civil rights, practice their traditional religion, use their languages, and enjoy their culture.

Contained within the unique trust relationship between the United States and tribal nations is the inherent duty for all levels of government to recognize and responsibly enforce the laws and regulations applicable to Native people. NARF will hold governments accountable to Native Americans.

For the continued protection of Indian rights, we must develop Indian law and educate the public about Indian rights, laws, and issues. This priority includes establishing favorable court precedents, distributing information and law materials, fostering relevant legal education, and forming alliances with Indian Law practitioners and other organizations.

Requests for legal assistance should be addressed to NARF's main office at 250 Arapahoe Ave, Boulder, CO, 80302. NARF's clients are expected to pay what they can toward the costs of legal representation.

NARF Legal Review is published biannually by the Native American Rights Fund. There is no charge for subscriptions, however, contributions are appreciated.

www.narf.org

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