CERF/CERA REPORT

MEMBER UPDATE OCTOBER 2023 Vol. 19, No. 2

An Educational Publication of Citizens Equal Rights Foundation and Citizens Equal Rights Alliance

We Did It! The 14th Amendment Equal Protection Clause now applies to Indian law!!

By Attorney Lana Marcussen, AZ

This term of the Supreme Court that has just ended, had three Indian law cases. CERA/CERF wrote amicus briefs to the Supreme Court in all three cases because the issues in the cases affected each other. Cases before the Supreme Court usually don't overlap the way these cases did. *Lac du Flambeau v. Collins* was the most direct of the three Indian cases and raised the issue of whether the bankruptcy code generally applies to Indian tribes. The tribe was asking the Supreme Court to rule that the bankruptcy code did not apply because Indian tribes have a special status guaranteed by the Indian trust relationship with the federal government. In other words, the Tribe was again asking the Supreme Court to expand the definition of the Indian trust relationship to exempt the Indian tribes from the very broad language of Congress attempting to encompass all government entities. This type of request is not new and has often been granted by the Supreme Court. This time CERF in its amicus brief called out the Court for saying it had authority to expand the Indian trust that they have said repeatedly belongs exclusively to Congress. The Supreme Court refused to expand the Indian trust and let the bankruptcy code apply to the Lac du Flambeau tribe.

Right after Lac du Flambeau was decided the Court issued its decision in the consolidated cases of *Brackeen v. Haaland.* This was the case over the constitutionality of the Indian Child Welfare Act (ICWA). Non-Indian parents trying to adopt children considered "Indians" brought the case. The Supreme Court did not strike down any part of ICWA as raised by the parties making it look like a tribal victory. CERF in its amicus brief argued that ICWA was not a spending clause mandated law as the non-Indian parties argued. The Court agreed with CERF and treated ICWA as being issued under the general common trust authority of Congress over the Indians and Indian tribes. Because the parties did not argue it this way the case was remanded back to state court for the Brackeens to raise their argument correctly. But the Court gave CERF and the Brackeens a direct ruling that they had raised a legitimate 14th Amendment equal protection injury in fact claim to challenge ICWA. This was what we all hoped Brackeen would give us – a breakthrough that the 14th Amendment equal protection clause applies to federal Indian law. Remanding the case to state court ends the ability of the States to ignore the constitutionality question of a federal statute raised by parties in the state courts directly affected by that statute. Brackeen was a bit confusing because it did not actually define the federal/Indian trust relationship. That ruling issued the following week.

The last Indian case was combined from *Arizona v. Navajo Nation* and *Navajo Nation v. Haaland.* Both cases were challenges at the Indian trust relationship. The Arizona case challenged that the Indian trust relationship is a fiduciary trust relationship like a normal trust under state law and therefore could not support the federal reserved water rights doctrine also know as the Winters Doctrine. The CERF amicus argued that the United States Department of Justice (USDOJ) has played the Indian trust relationship as both a fiduciary trust and as a common government trust depending on which position was more advantageous to them and expanding the power of the United States over all of us, not just the Indians. In this case, the United States argued that the Indian trust relationship was merely a common government trust that did not require it to perform any specific duty under its terms other than to try to keep a fair position towards all. In all other reserved water rights cases following *Arizona v. California* (1963) the USDOJ has argued that the federal/Indian trust relationship is a true fiduciary trust relationship requiring water to be assigned to the federal Indian reservation no matter how all non-Indians would be affected. The only difference this time was the number of non-Indians that would have been adversely affected by such a ruling. Because this was the lower

Colorado River, a fiduciary claim by the USDOJ would have affected 28 million non-Indians in Arizona, Southern California and Nevada to benefit at most 50,000 Navajos. The briefing in this case proved that the USDOJ has been defining the federal/Indian trust relationship to its benefit and that the relationship had never actually been defined by the Supreme Court. Finally, in *Arizona v. Navajo Nation* the Supreme Court has defined the federal/Indian trust relationship as being a general common government trust exclusively under the authority of Congress.

In combination with *Brakeen v. Haaland* activating the 14th Amendment, this ruling requires the federal government to change its federal Indian policy – the Nixon Indian policy of promoting tribal sovereignty against the rights of all non-Indians. This means that as long as inherent tribal sovereignty over its own members is not expanded to try to encompass non-Indians it will generally be constitutional. Federally delegated tribal sovereignty in ICWA, the Indian Civil Rights Act and Violence Against Women Act will soon face legal challenges unless repealed by Congress. If the USDOJ and Department of Interior insist on continuing the Nixon policy we will use the Civil Rights Act to defend non-Indian rights claiming damages against the United States. This position was confirmed by the affirmative action decision by the Supreme Court at the very end of their term. The affirmative action cases against Harvard and North Carolina University were straightforward rulings that the equal protection clause of the 14th Amendment is complete and means exactly what it says – equal protection means race cannot be used as a factor to benefit or harm any person or group. Diversity is an admirable goal but does not allow racial discrimination. The decisions in the three Indian cases this term conform to this ruling.

We have a firm 14th Amendment equal protection standard that now applies to Indian law!!!

This has been CERA and CERF's stated goal for over twenty years. We could not have done this without your support. Please give yourselves a huge congratulations for this victory! Please continue to support CERA/CERF as we now transition to applying the 14th Amendment for the benefit of all Americans.

14th Amendment, Section 1
The Constitution of the United States

All persons born, or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

We Need Your Help

This past session of the U.S. Supreme Court has yielded amazing and encouraging results for dealing with Federal Indian Policy. But it has seriously depleted the funds available for legal action by CERA and CERF. Will you help by sending a tax-deductible donation to CERF, PO Box 0379, Gresham, WI 54128? Thank You!

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Then you can easily share it with others.

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We need your support!

Visit us at
http://citizensalliance.org

I am an American Citizen

By Elaine D. Willman, MPA – MT

I am an American citizen. I share equal status with each of my fellow Americans. I am neither superior nor inferior to any other American citizen. Nor should I be. All other words preceding "American" are irrelevant or secondary to my citizenship and yours. My choice of faith, political persuasion, race, culture or lifestyle is secondary to my citizenship. So is yours.

I am a patriotic, conservative citizen who cherishes the privilege of being born in this country that serves and preserves freedom around the world and in my homeland. My speech is protected by the First Amendment, and my right to disagree is equally protected. And I do disagree, and some things I loathe:

1. I detest communism.
2. I hate racism.
3. I am extremely disappointed in an Executive Branch and Democrat party that continuously holds my country in disdain and seems to be determined to destroy it.
4. I detest the classism of the "Woke" that demean and demand that citizens capitulate to their demands or be silenced forever.
5. I hate pedophiles.

I have the right to redress my elected officials, legislation, administrative regulations and judicial rulings that diminish the values set forth by our Founders in the United States Constitution.

I cherish the right to life, the gift of aging, the shelter from harm and the rescue from trauma always available to me as an American citizen.

I freely share my love of this country with everyone within my voice. If silence is the submittal to evils tearing our country apart, I will raise my voice daily in print and in person.

Will you?

Federal Indian Policy is unaccountable, destructive, racist and unconstitutional. It is, therefore CERF and CERA's mission to ensure the equal protection of the law as guaranteed to all citizens by the Constitution of the United States.

CERA/CERF Loses a Friend

By Judy Bachman - NY

CERA/CERF lost a great friend and supporter earlier this summer. James J. Devine Jr., 88, passed away on Sunday June 11, 2023 at the Oneida Healthcare Center. Jim gave many hours of his time and donations of his money to support CERA/CERF endeavors. As an attorney, Jim was instrumental in helping our legal advisor with pro-bono cooperation including signing complaints and paying for their filing in Federal court cases. Jim was an active member of Fair Business and served in many office capacities. Jim was always present at the CERA/CERF regional conferences held in Oneida County, New York. Jim leaves his wife Ann, daughters Margaret and Arlene along with his many friends. CERA/CERF did not just lose an attorney, or a member, we lost a friend.

Time to Hear it Again?

Four score and seven years ago our fathers brought forth on this continent, a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal. Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure. We are met on a great battlefield of that war. We have come to dedicate a portion of that field, as a final resting place for those who gave their lives that that nation might live. It is altogether fitting and proper that we should do this. But, in a larger sense, we can not dedicate – we can not consecrate – we can not hallow – this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note, nor long remember what we say here, but it can never forget what they did here. It is for us the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us – that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion – that we here highly resolve that these dead shall not have died in vain – that this nation, under God, shall have a new birth of freedom – and that government of the people, by the people, for the people, shall not perish from the earth.

ABRAHAM LINCOLN
November 19, 1863

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