

TRIBAL SUPREME COURT PROJECT

MEMORANDUM

MARCH 2, 2004

VICTORY FOR TRIBES: U.S. SUPREME COURT DENIES REVIEW IN SANTEE SIOUX AND SENECA-CAYUGA

On March 1, 2004, the U.S. Supreme Court denied the federal government's petitions for certiorari in *U.S. v. Santee Sioux Tribe*, 324 F.3d 607 (8th Cir. 2003), and *U.S. v. Seneca-Cayuga Tribe et. al*, 327 F.3d 1019 (10th Cir. 2003). These are important victories for tribes because the two cases safeguard the viability of Class II gaming as a source of governmental revenue for Indian tribes. Specifically, both cases held that tribes may use electronic pull tab readers as a "technologic aid" to Class II gaming. This is extremely important for tribes in the remaining states that have not yet negotiated Class III compacts, such as Nebraska, Oklahoma, Wyoming and Florida. Congratulations are due to the Santee Sioux Tribe, and to the Seneca-Cayuga Tribe, the Fort Sill Apache Tribe, the Northern Arapahoe Tribe, and Diamond Game Enterprises.

This is also an important decision for all tribes because it enhances the viability of Class II gaming as an option if a state refuses to negotiate a Class III gaming compact. For many years NCAI member tribes have passed resolutions supporting the Santee Sioux Tribe while the State of Nebraska has refused to negotiate any gaming compact. The Chairman of the NIGC directed the Tribe to close its gaming facility, and the government subsequently seized and garnished bank accounts held by the Tribe and its individual members. In 2001, the NIGC encouraged the Santee Sioux to operate Class II electronic pull-tab dispensers. Subsequently the DOJ sued the tribe for following the NIGC's advice, alleging that electronic pull-tab dispensers violate the Johnson Act. The Supreme Court's decision to deny certiorari is vindication of a long legal struggle by the Tribe to develop a gaming operation, provide jobs to its members and strengthen its tribal government.

The Tribal Supreme Court Project: The outcome of these cases demonstrates how strong coordination can improve the tribal advocacy on Supreme Court cases. NCAI and the Tribal Supreme Court Project worked closely with the attorneys for the Santee Sioux Tribe on the opposition to certiorari brief, and coordinated with the National Indian Gaming Association on the overall strategy for both cases. The Supreme Court Project has advocated that tribes bring special expertise to bear on the certiorari process. These cases underscore that we can have far more positive impact by focusing resources early, before the Supreme Court has accepted cert. NCAI has raised \$2,500 to help the Santee Sioux Tribe pay for Supreme Court legal expertise, and we are seeking additional donations to complete that effort.

Contributions to Supreme Court Project: As always, NCAI and NARF welcome general contributions to the Tribal Supreme Court Project to improve communications, monitoring in the lower federal courts, and build up resources so we can get a faster start on future cases. We do a lot of work behind the scenes monitoring federal Indian law cases and offering support and advice to tribes at every stage of litigation. Please send any general contributions to NCAI, attn: Sharon Ivy, 1301 Connecticut Ave., NW, Suite 200, Washington, DC 20036.

THE SUPREME COURT PROJECT IS A PART OF THE TRIBAL SOVEREIGNTY PROTECTION INITIATIVE AND IS STAFFED BY NARF AND NCAI. PLEASE CONTACT US IF YOU HAVE ANY QUESTIONS OR IF WE CAN BE OF ASSISTANCE. JOHN DOSSETT, NCAI GENERAL COUNSEL, 503-248-0783 OR TRACY LABIN, NARF STAFF ATTORNEY, 202-785-4166.