ANISHINABE LEGAL SERVICES

Anishinabe Legal Services Newsletter

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ICWA Endures

By: Taylor Burdick
Staff Attorney

Going into June 2023, all of Indian Country was collectively holding its breath as the Supreme Court of the United States (SCOTUS) was set to decide a pivotal case on the future of the Indian Child Welfare Act (ICWA). This highly anticipated Opinion was poised to mark a monumental shift in Indian child welfare across the country. The consensus belief was that the current conservative-leaning SCOTUS was not going to be favorable towards ICWA. There are currently six "conservative" justices, and three "progressive" justices.

On June 15, 2023, SCOTUS released its opinion on Haaland v. Brackeen, and collectively, Indian Country breathed a sigh of relief. The Supreme Court ruled in a 7-2 decision that ICWA is constitutional. Justice Amy Coney Barrett wrote the opinion of the Court. As Justice Gorsuch writes in his concurring opinion,

"[i]n adopting the Indian Child Welfare Act, Congress exercised that lawful authority to secure the right of Indian parents to raise their families as they please; the right of Indian children to grow in their culture; and the right of Indian communities to resist fading into the twilight of history. All of that is in keeping with the Constitution's original design."

Haaland v. Brackeen, No. 21-376 (2023)

The case was actually a combination of three separate child custody cases from lower appellate courts. The three lower court cases were Cherokee Nation, et al. v. Brackeen et al.; Texas v. Haaland, Secretary of the Interior, et al.; and Brackeen et al. v. Haaland, Secretary of the Interior, et al. These consolidated petitioners brought two primary challenges to ICWA. First, the Petitioners claimed that ICWA's placement preferences hierarchy is a race-based system and therefore is unconstitutionally discriminatory against non-Indian potential adoptive parents. Second, Petitioners claimed that ICWA, as a federal statute, unconstitutionally "commandeers" an area of law that has historically been reserved exclusively for the states.

ICWA is a federal law that directs state courts to follow specific rules when its state child welfare agency takes custody of a potentially Indian child. Primarily, ICWA directs state courts and agencies to notify the child's tribe when it learns that they are potentially an Indian child. The child's tribe has a right to intervene at any point in the state proceedings, even including all the way up to adoption. The child's tribe also has a right to request jurisdiction of the matter be transferred to tribal court. Absent "good cause," such requests for transfer of jurisdiction will be granted. Additionally, ICWA requires state agencies and courts to follow a pre-set hierarchy of placement preferences for Indian children. This list of



placements begins with the child's extended family, another qualified family of the child's tribe, a qualified family of another tribe, a non-Indian family, and finally, a state group home. There is a myriad of other requirements which state courts and agencies must follow when they take custody of an Indian child. These requirements were the basis of the Petitioners' challenges.

While it is true that issues of family law – which includes child protection – are generally left to the individual states, it is also true that such autonomy is not infinite. Such is the case with Indian child welfare. Justice Barrett couches the Court's position justifying ICWA's constitutionality under Congress's "plenary" power over Indian affairs. Citing United States v. Lara, Justice Barrett states that the Court has long since characterized "Congress's power to legislate with respect to the Indian tribes as 'plenary and exclusive'." Justice Barrett cites to the Indian Commerce Clause and the Treaty Clause as sources of Congress's plenary power. She also references the federal government's trust responsibility as a source of authority for ICWA's constitutionality. As Justice Barrett puts it, "Congress's power to legislate with respect to Indians is well established and

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ICWA Endures

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broad." While Justice Barrett took a significant step in securing ICWA for generations to come, she also made a point to remind everyone that Congress' plenary power over Indian tribes is not infinite either. As she writes, "It is plenary within its sphere, but even a sizeable sphere has borders."

Justice Barrett also went into depth on Congress' ability to preempt state law when appropriate. She states that "when Congress validly legislates pursuant to its Article I powers, we 'have not hesitated' to find conflicting state family law preempted." Congress's plenary power over Indian affairs is an Article I power. And therefore, any validly enacted statute under that authority can and will preempt (or block) a conflicting state law on the same subject. This means that when Congress enacted ICWA, it was operating under its Article I plenary authority. And while generally, Congress lacks power over domestic relations, it is also true, as Justice Barrett states, that "the Constitution does not erect a firewall around family law."

It is important to note that Justice Barrett did not address the merits of the equal protection issue. She states that neither the individual Petitioners nor the state of Texas have standing to bring an equal protection claim. Standing requires that a party show that they have suffered an "injury in fact" and that the injury is "fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." Essentially, because the relief Petitioners requested here was against Secretary Haaland and the federal government, there was no remedy which a court could issue that would redress the Petitioners injury. Justice Barrett basically says that Petitioners' suit against the federal government was misplaced. She avoided any statement on whether petitioners actually suffered injury in fact by ICWA's placement preferences.

Without question, this opinion marks a definite victory for ICWA and American Indian sovereignty. There are a number of cases in other areas of Federal Indian Law that are making their way through the federal court system as we speak, and this opinion gives hope that those cases have a chance as well. For now, there are no major changes to the law, and ICWA has endured.

Social Security Disability process there is HOPE, don't give up!

By: Rita Ostman
Paralegal/certified disability representative

I have been doing Social Security Disability cases for the past 11 years. I work for a non-profit organization, Anishinabe Legal Services of Cass Lake. This organization does not charge the client for our services. I can assist the client from the initial application process all the way to a hearing before an administrative law judge. Disability cases that are accepted from our office are usually the last hope for the clients to have some sort of financial stability.

There are so many people who do not understand the process for disability, nor do they understand the *two pots of money* that are potentially available for the client. In fact, you would have to be a sc[illegible]ial Security Disability, to know all the laws and loopholes of the system. It is my responsibility to take this burden off of our clients during this process.

When a client comes to our office, they are screened with questions to include their current diagnosis and their past relevant work. These general questions will help to identify the benefit that the client would be able to apply for and to determine if they have a disability that would be considered by Social Security to be "found disabled."

Through the years, it has become more evident that the system built to assure our working American class financial stability, when they become disabled has been systematically stacked against them. According to the Washington Post, written by Lisa Rein, in Democracy Dies in Darkness, "In the last two fiscal years, federal judges considering appeals for denied benefits found fault with almost 6 in every 10 cases and sent them back to administrative law judges." The Administrative Judges are expected to have a high rate of denials, and the attorneys who write their decisions are driven by stringent monthly quotas set by Social Security officials and their growing pressure to deny more cases, according to current and former officials, audits, and attorneys who represent the



disabled.

When you initially apply for Social Security, you have approximately a 15% chance of a favorable decision. You then will have to appeal that denial at the reconsideration level to which the chance of a favorable decision at that level is about the same if not less of a chance. Then a person has to appeal the denial at reconsideration level to have a hearing before an Administrative Law Judge. The rate of approval is 50%, 39% are denied, and 11% dismissed, according to the Washington Post.

When I go to the Social Security Website, I find that the office of hearings operations in Fargo (who hears the cases from our area) has heard 1022 cases, in 2022, with 327 in denials and 508 in awards. The remaining would be dismissed, or partial favorable decisions. **The statistics show you have about a 49.9% chance of a favorable decision and 31% chance of a denial.**

It is important to remember to not give up during the disability process, the system is designed to discourage applicants from continuing the process. It is important to remember to keep going to your mental and physical health providers during the process. Your testimony is

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Statutory Power of Attorney

By: Joel Vorhes
Staff Attorney

Minnesota laws allow you to grant the authority to others to transact business on your behalf. This can be beneficial if you become incapacitated or if you are personally unavailable to transact business when required. A valid Power of Attorney can also avoid the need to appoint a conservator should you become incompetent. Broadly, there are **two types** of Power of Attorney documents recognized in Minnesota. The first type is a common law power of attorney. A common law power of attorney is a free-form document that is very flexible. However, this document is not commonly used or understood. The second type is the Statutory Power of Attorney, which this article will discuss.

As a starting point, ***you must be competent to execute a power of attorney***. That is, you must understand the nature of your assets and who you wish to manage your assets. You also should be able to express why you chose who you chose to manage your assets.

The first consideration in completing a power of attorney is to choose your Attorney-in-Fact. Your Attorney-in-Fact is the person who you will nominate to transact business on your behalf. It should be someone whom you fully trust, as this person will have the ability to transact significant business without your approval or, in some cases, even your knowledge. The person you select to be your Attorney-in-Fact should also be someone who understands your wishes regarding your assets. For example, if you own a home that you wish to pass down to your children or grandchildren, your Attorney-in-Fact should know this wish. Otherwise, he or she may sell the home. Finally, this person should be available since it does not do any good if your Attorney-in-Fact is unable to respond to the need to transact business in a timely manner.

You can name more than one Attorney-in-Fact if you wish. If you name more than one Attorney-in-Fact, you need to specify whether you want them to be able to independently perform the transaction that you give them permission to transact or if you want them to act jointly. The advantage to allowing them to act independently is that the transaction can be performed by only one Attorney-in-Fact. So, if the other Attorney-in-Fact is unavailable, the transaction can still be performed. Also, it avoids disagreements between the Attorneys-in-Fact. The advantage of having your Attorneys-in-Fact being required to act jointly is that it can reduce the risk of a dishonest Attorney-in-Fact since the second Attorney-in-Fact needs to approve of the transaction.

You can also name one or more successor Attorney(s)-in-Fact. The person(s) you nominate as your Successor Attorney(s)-in-Fact will serve as your Attorney(s)-in-Fact should your Attorney(s)-in-Fact die, resign, or otherwise be unable to serve. Until then, they have no rights or duties.

The next decision is to determine whether you want your Power of Attorney to continue to remain effective if you become incapacitated or incompetent. Generally, it is advisable to allow your Power-of-Attorney to remain effective if you become incapacitated since doing so will allow someone to transact necessary business if you are otherwise unable to personally transact business. This is called a durable power of attorney. Note, however, that your Power-of-Attorney becomes ineffective upon your death regardless.

The next decision you need to make is whether you allow your Attorney-in-Fact to make gifts to themselves and any persons that they have a duty to support. If you elect to allow the Attorney-in-Fact to make gifts, the amount of the gift allowed is limited, in aggregate, to the amount of the gift tax exclusion. The amount in 2023 is $17,000. That means that if you allow the Attorney-in-Fact to make gifts, he or she may give $17,000 to himself or herself, and $17,000 to each of his or her dependents.

You have the option to require a monthly, quarterly, or annual accounting by your Attorney-in-Fact. An accounting is a reconciliation of your beginning asset balances plus any increases (for example, deposits to a bank account) minus any reductions in asset balances (for example, checks written). It is advisable to request an accounting since that is how you can ensure that your Attorney-in-Fact is spending your money for your benefit and not for their benefit.

The next step is to determine what power(s) you want to give your Attorney-in-Fact. You may give him or her any of the following powers:

- Real property (to buy, sell, mortgage, gift, or otherwise transact business for your real estate. You can limit the powers to one or more properties).
- Tangible personal property transactions (buy, sell, gift, pledge for loans, or transact any other business on any physical property other than real estate).
- Bond, share, or commodity transactions (buy, sell, gift, or otherwise transact business relating to bonds, stocks, mutual funds, and commodities).
- Banking transactions (deposit, withdraw, write

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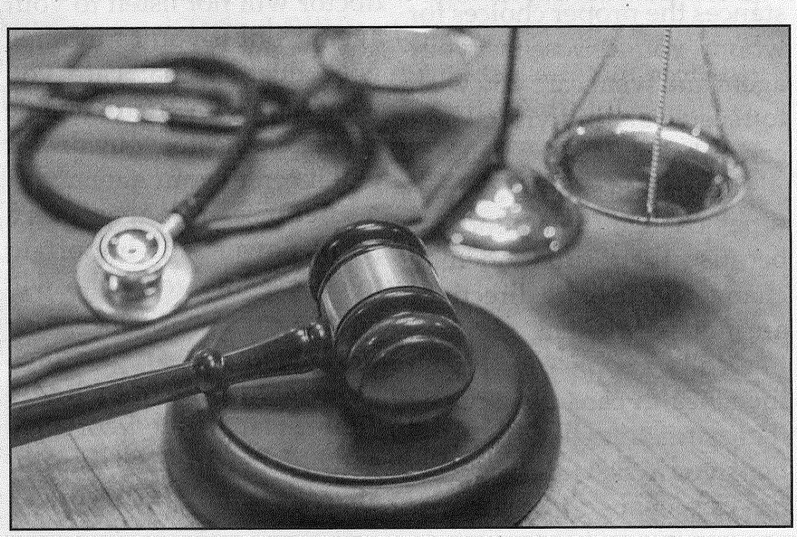

Social Security Disability

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only as good as the medical evidence that is provided for the decisions. When a client has mental and physical health issues they should not need to worry about finances or how to navigate the Social Security disability process.

Anishinabe Legal Services may be able to help you with your disability benefits case. Please call to see if you are eligible.

Statutory Power of Attorney

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checks, and arrange for loans).

- Business operating transactions (conduct any transactions necessary to operate your business).
- Insurance transactions (conduct transactions with insurance companies, including taking out new insurance policies, cancelling policies, changing coverage).
- Beneficiary transactions (change beneficiaries on insurance policies and investments.)
- Gift transactions (gifts are limited to the annual exclusion, discussed earlier)
- Fiduciary transactions (Transact business with trustees).
- Claims and litigation (sue or respond to lawsuits on your behalf).
- Family maintenance (transact the business necessary to support your family).
- Benefits from military service (arrange for VA and other military benefits).
- Records, reports, statements (request records, statements, and other reports).

To be valid, your signature as principal on the Power of Attorney form must be notarized. After you complete a Power of Attorney, your Attorney-in-Fact should be given a copy of the Power of Attorney. Additionally, anyone with whom you regularly transact business should also be given a copy of the document. Your Attorney-in-Fact will also need to provide a specimen signature to anyone whom he or she wishes to transact business with on your behalf. Copies are valid as originals. Keep the original in a safe and easily accessible place to allow your Attorney-in-Fact to make additional copies.

You may revoke your Power of Attorney. To do so, first you should notify all Attorney(s)-in-Fact and successor Attorney(s)-in-Fact of the revocation. Second, and this step is critical, you need to inform anyone who may have a copy of the Power-of-Attorney that the Power-of-Attorney is no longer valid since they can rely on a Power of Attorney until informed otherwise. It is best to notify them in writing and keep a copy for your records.

The website: www.LawHelpMN.org has the necessary forms to start or revoke a Power-of-Attorney.

Health Care Directives

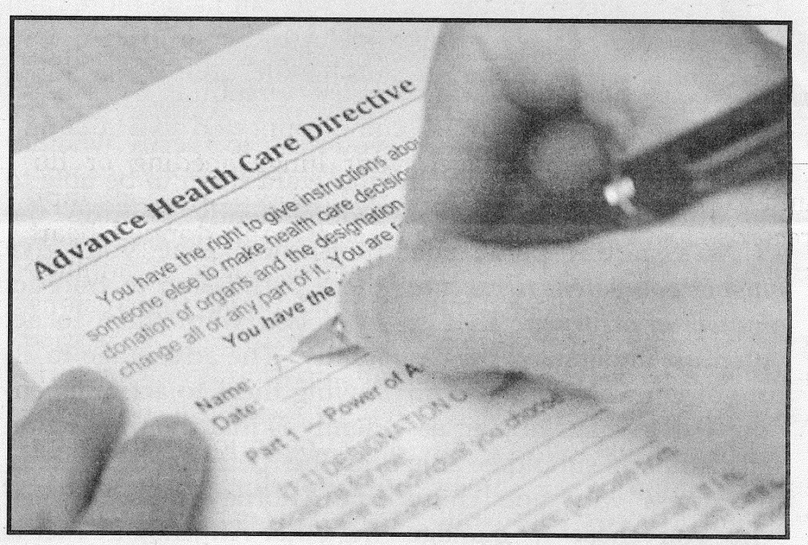
By: Joel Vorhes
Staff Attorney

For many of us, contemplating our death is somewhat unpleasant. However, one of the best ways to help those you love is to complete a health care directive. With a health care directive, you can specify your wishes regarding your end-of-life care if you are unable to communicate with your health care providers. This helps to eliminate the need for them to make difficult decisions and to try to convince your health care providers of your wishes absent a document that specifies what care you wish to receive. This article discusses how health care directives work and provides some guidance on making decisions regarding your options. However, in many instances the proper choices for whom you choose as your agent and what care you wish to receive are individual and can only be made by you.

Because people sometimes change their minds or because their situation may change, health care directives are not permanent. Rather, like wills, people can change their health care directive as their situation changes. Perhaps your wishes for end-of-life care change or the agent you named is no longer appropriate. Fortunately, the law allows you to revoke all former health care directives and replace them with a new heath care directive that reflects your current wishes.

The first consideration is whom you wish to name as your agent in the event you are unable to communicate your wishes to your health care providers. The person you name as your agent will communicate your wishes regarding your care with your healthcare provider in the event you are unable to do so yourself. If you can communicate with your healthcare provider, your agent will have no role. For example, if you have a terminal illness but can tell your doctor what care you want and/or what care you do not want, your doctor will not listen to your agent. But if you cannot tell your doctor what care you want because you are unable to communicate, your doctor will listen to your agent.

Because your agent has a lot of power, it is important to choose an agent who will respect your wishes regardless of their own personal wishes. For example, if you do not want to be kept alive with of by artificial breathing (respirator) or artificial



nutrition (tube feeding) you should chose someone who either agrees with your views or who is strong enough to respect your wishes despite that they may personally feel different.

Also, you should choose a successor agent who will serve as your agent if the person who you nominated becomes unwilling or unable to serve as your agent. Some people wonder about whether to choose two or more agents who will serve at the same time. This typically is not advisable if you do not allow the agents to act independently since it can be confusing if the agents communicate different things to your health care provider. If you do allow the agents to act independently, but they have different views, it can cause a rift between the agents. So, instead of appointing two or more agents, your efforts are better spent on explaining your wishes to those whom will be affected if you contract a serious illness or injury.

Also, your agent can be named as your guardian and/or conservator if you need either. Because the court must use the least restrictive means to accomplish the goal of ensuring your safety and well-being, they must consider your wishes as to whom is appointed as your guardian and/or conservator. By specifying this information in you health care directive, it is more likely that the person you chose will be appointed as your guardian and/or conservator.

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Health Care Directives

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Authority and Limitations on Power of Agents

Many people who complete heath care directives give their agents the following powers:

- Power to make all healthcare decisions for them, which includes the power to give, refuse, withdraw consent for any care, treatment, services, or procedures; including deciding whether to stop not start health care that is keeping or might keep them alive, and deciding about invasive mental health treatment.
- Choosing their health care providers.
- Choosing where they live and where they receive care and support when those choices relate to their healthcare needs.
- Reviewing their medical records and having the same access to the records as they, the patient would have; and to provide their medical records to other treatment providers.

However, you can limit your agent's authority to exercise any of the above powers if you choose.

You can also give your agent authority to donate your organs after your death and to decide what will happen to their body following their death (burial or cremation). Finally, you can add additional comments about your agent's powers or restrictions on their powers to help ensure your wishes are respected by your agent.

Your Beliefs and Values Regarding Health Care

If you appoint an agent, expressing your beliefs and values regarding health care is not necessary for a valid health care directive. However, doing so is very helpful for your agent. Also, if you choose not to appoint an agent, you **must** express your beliefs and values regarding health care. Some of the things you should consider when expressing your beliefs are:

- Your goals regarding health care.
- Your fears about health care.
- Your spiritual and religious beliefs and traditions.

Your beliefs about when life will no longer be worth living.

- Your thoughts about how your medical condition might affect those close to you.

What You Want and What You Do Not Want for Your Health Care

This section provides more specific information your health care provider will need to make decisions about your treatment. Many medical treatments can be used to improve your medical condition or to prolong your life. Examples include artificial breathing by a machine connected to a tube in your lungs, feeding or fluids through tubes, attempts to start your stopped heart, surgeries, dialysis, antibiotics, and blood transfusions. Many treatments can be tried and discontinued if they do not help. Some of the following information that is helpful for your heath care provider and/or agent include:

What care that you want to receive if you have a reasonable chance of recovery but are temporarily unable to decide or speak for yourself.

- What care that you want to receive if you are dying and unable to decide or speak for yourself.
- What care that you want to receive if you are permanently unconscious and unable to decide or speak for yourself.
- What you want if you are dependent on others for your care and are unable to speak or decide for yourself.
- How you feel about pain relief if it would affect your alertness or could shorten your life.
- Who you want to be your doctor.
- Where you wish to receive your healthcare.
- Where you would like to die or other wishes about dying.
- Your wishes about donating your body or parts of your body after death.
- Your wishes about what happens to your body after your death (cremation or burial).
- Any other things regarding what you want or do not want regarding your health care.

Requirements for Validity of Health Care Directive

For your Health Care Directive to be valid, you must be at least 18 years old, of sound mind, and willingly execute the document. In addition, your Health Care Directive must either be signed by you in front of a Notary Public or witnessed by two individuals who are not your agent, co-agent, or alternative (successor) agent.

You should keep the document with your important personal papers in a safe place, but not in a safe deposit box. You should also give copies to your doctors, family members, close friends, health care agent, and alternate health care agent. Make sure your doctor is willing to follow your wishes. Also, make sure that the document is part of your medical record at your doctor's office, at the hospital, home health care agency, hospice, and nursing facility where you receive your care, as appropriate. Before admission to the hospital, make sure the hospital has a copy of your heath care directive, if possible.

Authorization for Use and Disclosure of Protected Health Information

Because the Health Insurance Portability and Accountability Act (HIPAA) restricts the unauthorized release of your health information, you should consider completing an authorization for all heath care providers you use to release your health information to your agent. This will allow your agent to receive the information about your condition and prognosis necessary to make decisions that agree with your wishes. But, because the authorization is valid the day you sign the form and expires at the earlier of five years from the date signed or when revoked, it is important to be sure you provide this form only to someone you completely trust.



Summer 2023 staff and student interns: Staff got together to enjoy the beautiful Minnesota summer weather at Lake Winnibigoshish as part of its annual team building activity. ALS will be fully staffed soon with 7 attorneys, 2 paralegals, and 3 support staff and an additional handful of private attorney volunteers. We look forward to increasing the types of services available for clients very soon!

Red Lake Nation and Energy Sovereignty

By: Maria Biasin, JD
Volunteer Staff

Tribes are sovereign nations with the inherent right to self-governance. They can assume control and decision-making authority over issues that impact their communities, including energy issues. In March 2022, The Red Lake Band of Chippewa became the first ever tribe to receive government approval for the creation of a Tribal Energy Development Organization (TEDO). Through its application, Red Lake requested that Twenty-First Century Tribal Energy, Inc. be approved and certified as a TEDO. Title 25 U.S.C. 37 § 3501 (12)(A) states, in part, that a "tribal energy development organization means any enterprise, partnership, consortium, corporation, or other type of business organization that is engaged in the development of energy resources and is wholly owned by an Indian tribe." The Bureau of Indian Affairs' (BIA) approval will allow Red Lake to forgo Secretary of the Interior review when it enters into a lease, business agreement, or right-of-way with the TEDO.

Tribes have been looking for ways to increase sovereignty for decades, and Red Lake's appointment as a TEDO eliminates bureaucratic barriers that often hinder economic development in Indian County. The Tribal Energy Development and Self-Determination Act of 2005 was intended to help speed up the process of reviewing economic development projects in Indian County. The Act explicitly confirms the federal government's role in assisting tribes with the development of their energy resources to further the goals of self-determination and tribal economic growth. But since the Act's enactment in 2005, no tribe has ever sought approval under the Tribal Energy Resource Agreement (TERA) provision. There were doubts about the process that prevented TERAs from becoming viable, like how they were "too costly and too risky" to be useful, so Congress took action to address the concerns. The Indian Tribal Energy Development and Self-Determination Act Amendments of 2017 allowed the Department of the Interior (the federal agency with the most trust and treaty responsibilities in Indian County), to address both TEDOs and TERAs. Under the federal regulations finalized in December 2019, tribes then had a viable alternative to TERAs in the form of TEDOs.

As an alternative to TERAs, a tribe may be certified as a TEDO that may "enter into a lease or business agreement with an Indian Tribe without Secretarial review under 25 U.S.C. § 3504(a)(2), or right-of-way with an Indian Tribe without Secretarial review under 25 U.S.C. § 3504 (b)(2)(B), and without a TERA." An application for certification as a TEDO must include specific documentation, including that the "TEDO is organized under the tribe's laws and that the majority of the interest in the TEDO is owned and controlled by the tribe." Once the documentation requirements are satisfied, a tribe then submits its application, and the Secretary must approve or disapprove the application within 90 days of receiving it. Upon receiving certification, a TEDO may "enter into a lease, business agreement, or right-of-way with a tribe without Secretarial approval as long as: (1) the scope of the lease or business agreement does not exceed that of a TERA as established in 25 U.S.C. § 224.85, (2) the scope of a right-of-way does not exceed that of a TERA as established in 25 U.S.C. § 224.74, and (3) the term of a lease, business agreement, or right-of-way does not exceed that of a TERA as established in 25 U.S.C. § 224.86."

Tribes are in a unique position to take advantage of their jurisdictional authority, and Congress has a unique role of trustee for tribal nations that requires encouraging tribal development through legislation designed to foster self-determination and self-sufficiency. With Red Lake certified as a TEDO, the tribe will be able to continue to develop its renewable energy resources. Since 2016, the tribe has been focusing on solar energy on the reservation. Red Lake has installed solar panels on the largest buildings on the reservation, and the tribe also has plans to "build a solar energy farm to bring power to the community, and to build a plant that will manufacture products for the renewable energy industry." The Red Lake Solar Project has several benefits, including (1) "protecting the water of Red Lake, (2) long-term energy sovereignty, and

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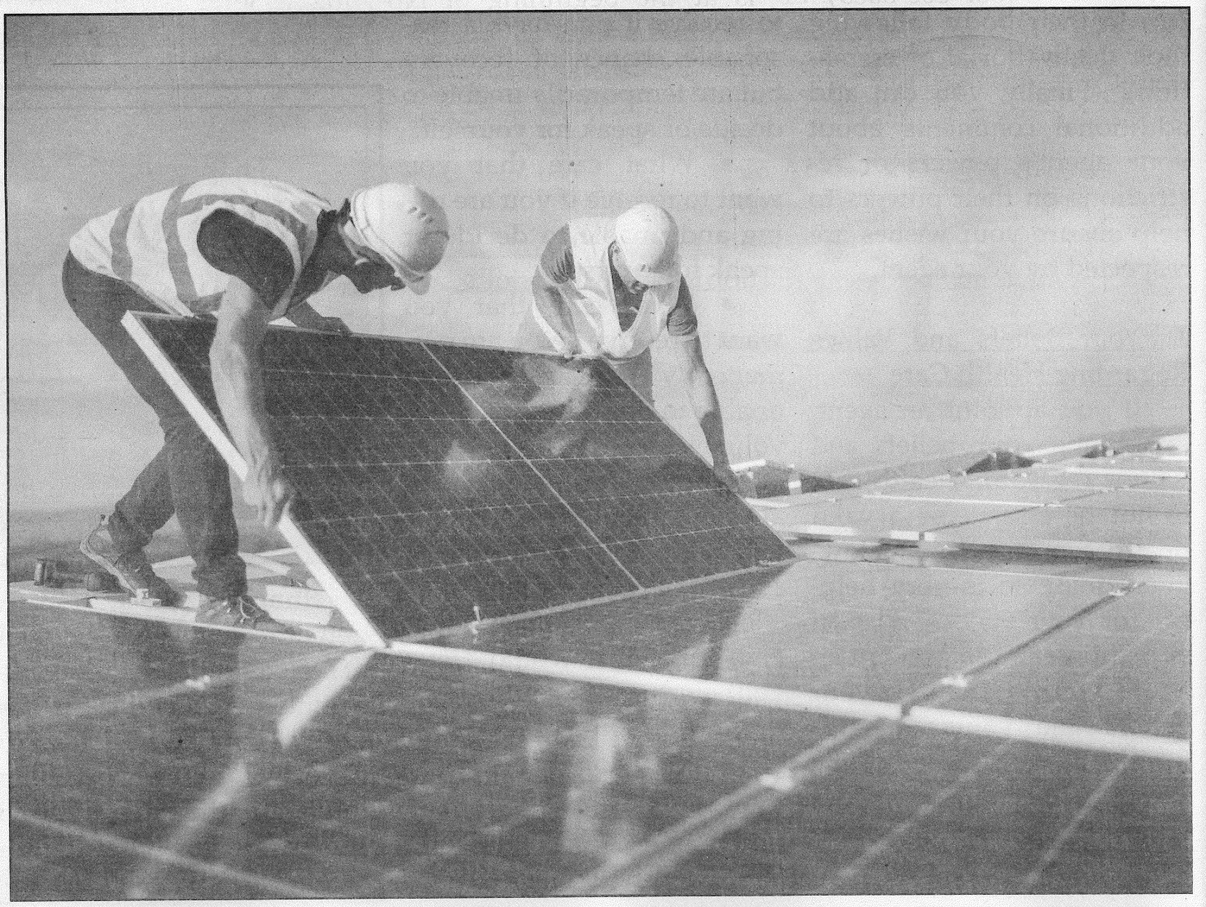

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Red Lake Nation and Energy Sovereignty

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(3) job training for tribal members who could then be employed in solar power installation both on the reservation and elsewhere." Certified as a TEDO, Red Lake can get creative and resourceful with energy issues in ways that will benefit the tribe itself and the U.S. as a whole.

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Sources

Johnson v. M'Intosh, 21 U.S. 543 (1823).

Cherokee Nation v. Georgia, 30 U.S. 1 (1831).

Worcester v. Georgia, 31 U.S. 515 (1832).

Indian Affairs Approves First Ever Tribal Energy Development Organization, U.S. Dept. of the Interior: Indian Affairs, Mar. 16, 2022, https://www.bia.gov/news/indian-affairs-approves-first-ever-tribal-energy-development-organization.

Harvard Project on Am. Indian Econ. Dev., The State of the Native Nations: Conditions Under U.S. Policies of Self-Determination 162 (2008).

Judith V. Royster, Tribal Energy Development: Renewables and the Problem of the Current Statutory Structures, 31 Stan. Envtl. L.J. 91 (2012).

42 U.S.C. §§ 16001, 7144(e)

25 U.S.C. §§ 3501-3506 (2006).

Michael Maruca, *From Exploitation to Equity: Building Native-Owned Renewable Energy Generation in Indian Country*, 43 Wm. & Mary Envtl. L. & Pol'y Rev. 391, 481 (2019).

25 C.F.R. 224.

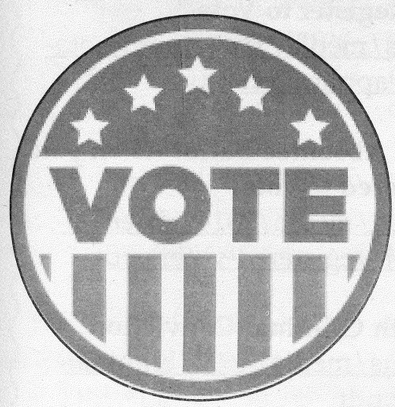
25 U.S.C. § 224.206.

Red Lake Solar Project, CLEAN ENERGY ECONOMY MN, 2022, https://www.cleanenergyeconomymn.org/success-stories/red-lake-solar-project.

Expanding Voting Rights for People with Felony Conviction in Minnesota

By: Gabrielle Healy
Volunteer Student Staff

Voting is more accessible than ever in Minnesota. Starting July 1, 2023 anyone who is being released from prison is eligible to vote. If you are not currently incarcerated for a felony, a US citizen over the age of 18, and have lived in Minnesota for 20 days, you are eligible to vote. If you have questions on voting with felony status, call 877-600-VOTE (887-600-8683) for assistance. In addition, anyone over 16 may pre-register to vote, ensuring automatic registration once they turn 18. While 16-year olds cannot vote, they can have the form submitted so they will be automatically registered to vote when they turn 18. Although not yet signed into law, Governor Waltz will likely approve another bill for automatic voter registration. If signed, any individual who applies for a Minnesota ID, or registers or renews an application with MinnesotaCare or Medical Assistance, will automatically be registered to vote. Although not guaranteed, other state agencies may also provide automatic registration.



Minnesota consistently boasts some of the highest voter turnout in the Nation. While this year's election is at the beginning of November, for many people it may be much more convenient to vote early and register to vote as soon as possible. Early voting saves time waiting in line and also makes things easier for election officials. Working a job can make it difficult to find time to vote, but according to Minnesota Statutes 204C.04 and 204C.08, you are legally allowed to take as much time as you need off work to go vote if you will not otherwise have time. Your employer is obligated to allow you paid time to go vote, without loosing sick or vacation time, and it is a misdemeanor for any employer that does not comply. If you need a simple way to request time off work, you can always give your employer a copy of the letter at the end of the article.

Another way to make voting easier and work best for you is to request an absentee ballot. Anyone within the state is eligible to request an absentee ballot, just contact your county clerk (see info at the bottom) and they will mail a form to set up mail-in voting. Some townships exclusively allow voting by mail. If you live somewhere that only allows mail-in voting, as long as you are registered to vote, you should automatically get sent a ballot, as long as your registration is up to date. When in doubt, it does not hurt to request an absentee ballot as well, some counties still want voters who can only vote by mail to request an absentee ballot. To check if you live in a mail-ballot only district, or find your polling place, use the web address at the bottom of the article, all you need to do is type in your address. Once you receive the ballot, postage is prepaid, so there is no need to pay for postage. It is recommended to mail it back at least two weeks before the election to make sure it counts. Alternatively, you can drop off absentee ballots in person, one person can bring in up to three absentee ballots.

To register to vote now, you can go online to the link at the bottom of the article or go to your county clerk's office in person. To register in person, either at a polling place or at the county clerk's office, bring an ID. If it is a current tribal ID card or Minnesota ID with your current address, that is all that you need to register. If your ID is expired, or you only have a school ID, you can still use it to register, just bring a bill or lease agreement for your current address. You can even pull a document up on your phone. If you don't have any of the documents, find someone you know who is a registered voter in your precinct, they can vouch for you and sign an affidavit that you live at the location you say you live. More information and details about what you can bring to register to vote can be found online using the link at the bottom of the article. When in doubt, bring whatever photo IDs you have, mail, and a friend.

Minnesota offers same-day voter registration at all early voting locations between September 22 and November 6. Depending on the

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Expanded Voting Rights for People with Felony Convictions in Minnesota

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size of your district and how many people choose to run for office, there may also be a primary election June 23 to August 8th. To find more info on your polling place, and to see if there is a primary election, all you need to do is type in your address to the first link listed below. November 2023 elections center around local municipal races, so your ballot includes school board and city council positions. These officials can make changes on a local level, overseeing local budgets and helping to shape school curriculum. Municipal elections often have the lowest voter turnout, and thereby are decided by the smallest number of votes. Paying attention to local elections is important because, in some cases, one or a small number of votes can make a difference in terms of who wins.

The next presidential general election is November 5, 2024, and there will be more information on primaries and elections to come. Make sure to have your voice heard in local elections and check your voter registration today!

To look up your polling place, see if you live in a mail-ballot only district, or check if there is a primary election in your district.
https://pollfinder.sos.state.mn.us/Default.aspx

Register to Vote Online
https://mnvotes.sos.mn.gov/VoterRegistration/index

Documentation Needed to Register to Vote In Person
https://www.sos.state.mn.us/elections-voting/register-to-vote/register-on-election-day/

Letter Informing Employers of Your Right to Take Time Off Work to Vote, from the Secretary of State
https://sos.state.mn.us/media/3111/letter-to-employers-from-secretary-simon.pdf

General Questions and Concerns About Voting
877-600-VOTE

Talk to your local County Clerk to request an absentee ballot, or for any other questions on voting.

Here is some contact information for local counties:

Cass County
Pamela Smith
Elections Administrator
Email: Pamela Smith
Phone: 218-547-729
303 Minnesota Ave W
Walker, MN 56484

Beltrami County
Request an Absentee Ballot:
In person at the Beltrami County Auditor-Treasurer's Office, 701 Minnesota Ave NW, Bemidji
Through email at: kellie.primus@co.beltrami.mn.us
By phone: 218-333-8448
Online with the: Office of the MN Secretary of State

Itasca County
Itasca County Courthouse
123 NE 4th St
Grand Rapids, MN 55744
Phone: 218-327-2849
Fax: 218-327-7426



Mahnomen County
Complete an Online Absentee Ballot Application or print an Absentee Ballot Application and mail, fax or e-mail the completed form to our office.
Mail to: Mahnomen County
Elections Department
P.O. Box 379
Mahnomen, MN 56557
Fax to: 218-936-5656
E-mail: elections@co.mahnomen.mn.us
Absentee Voting is located at the Mahnomen County Courthouse from the hours of 8:00 a.m.-4:30 p.m. Monday-Friday.

Clearwater County
213 Main Ave North
Bagley, MN 56621
Phone: (218) 694-6520

Becker County
Phone: 218-846-7311
Fax: 218-846-7257
Hours: Mon-Fri
8:00 am - 4:30 pm
913 Lake Ave, Detroit Lakes, MN 56501
Courthouse - 2nd Floor

Other Useful Links

Print a Form to Register to Vote
https://www.sos.state.mn.us/media/1587/minnesota-voter-registration-application.pdf

More Info. on Requesting an Absentee Ballot when you haven't registered to vote.
https://www.sos.state.mn.us/media/2314/absentee-ballot-instructions-for-non-registered-voters.pdf

More Info. on Voting with Criminal Conviction
https://www.sos.state.mn.us/media/4692/criminal-record.pdf

More Info. on Voting While Experiencing Homelessness
https://www.sos.state.mn.us/media/5157/voters-experiencing-homelessness.pdf

Know Your Rights Voting Info
https://www.sos.state.mn.us/media/3111/letter-to-employers-from-secretary-simon.pdf

Watch Lt. Governor Peggy Flanagan and others talk about expanding voter rights for people with Felony conviction
https://www.youtube.com/watch?v=pOtBN8WWIAQ

ANISHINABE LEGAL SERVICES

Missing and Murdered Indigenous Women

By: Ellen Weinberg
Staff Attorney

In 2021, the disappearance in Wyoming of a young white woman, Gabby Petito, grabbed headlines across the country. She was murdered by her fiancé. Unfortunately, no prosecution was possible, as he killed himself soon afterward.

The 2003 kidnapping of Dru Sjodin, another young white woman, in Grand Forks, North Dakota also generated nationwide publicity and prompted hundreds of people to search for her. The murderer's death sentence was overturned, but he will spend the rest of his life in prison.

Tragically and unfairly, the disappearance and murder of Native American women does not generate this sort of public concern even though Native Americans are at far greater risk.

In this article, the term Native American is used when the author is speaking in her own voice. The term Indian is used only when it is part of a title or a direct quote.

According to Indian Affairs in the United States Department of the Interior, 5,712 Native American women were reported missing or murdered in 2016. That appears to be the most recent year for which statistics are available.

May 5 has been designated as National Awareness Day for Missing or Murdered Indigenous Women and Girls in both the United States and Canada. The choice of date honors the birthday of Hanna Harris, a member of the Northern Cheyenne tribe in Montana who in 2013, at the age of 21, disappeared and later was found murdered. Each year since 2021, President Biden has proclaimed May 5 Missing or Murdered Indigenous Persons Awareness Day.

The color associated with this commemorative day is red, and the emblem is a woman's face with a red handprint across her lower face.

The Violence against Women Reauthorization Act of 2022 contains provisions expanding tribal courts' criminal jurisdiction (the court's power to hear cases) over non-Native-Americans charged with child abuse, sexual assault, stalking, sex trafficking, and assault on tribal law enforcement officers when those crimes are committed on tribal land.

The Bureau of Indian Affairs Office of Justice Services (BIA-OJS) and the FBI are both responsible for federal law enforcement on non-Public Law 280 reservations.

The BIA-OJS has a Missing and Murdered Unit which, when asked, will provide help in investigating cases of missing or murdered Native Americans. The FBI gets involved if asked by the BIA-OJS or tribal law enforcement.

In October 2017, President Trump signed Savanna's Act into law. This act was passed by a large bipartisan majority in Congress including all 100 Senators. It has a large number of provisions. These include consultation and listening sessions with tribal leaders; trainings on entering tribal enrollment data of victims in federal databases (this ensures that records of missing/murdered Native Americans stand out among the general records of missing/murdered people); trainings for Native American tribal leaders and organizations on the National Missing and Unidentified Persons Act; trainings for law enforcement at all levels on how to respond to disappearances, when a Native American person disappears; provision of training, technical assistance, and grants; and collection and sharing of data.

The Not Invisible Act of 2019 establishes a commission to "prevention efforts, grants, and programs" addressing murder, trafficking, and disappearance of Native Americans across a number of federal agencies. The commission is also responsible for working with other organizations to provide culturally appropriate training to tribal members, departments, and organizations on how to deal with these issues.

In November 2021, President Biden signed



Executive Order No. 14053. An executive order has the force of law, but there is an important difference. A law is passed by both houses of Congress and then is signed by the president, and it remains a law until Congress and the president change it or the Supreme Court rules that it is unconstitutional. An executive order comes directly from the president, without the involvement of Congress. So it is much faster and easier to make an executive order than a law. But an executive order can also be repealed much faster than a law. If a future president does not like an executive order, he/she can repeal it, again without involving Congress.

Executive Order No. 14053 acknowledges the long history of neglect of this crisis, and announces a policy of working directly with the Native American community to address it. It acknowledges that the people who know what is best for Native Americans are Native Americans themselves. It calls on the U.S. Attorney General and Secretary of the Interior to work with

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Missing and Murdered Indigenous Women

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other government officials to develop strategies for addressing the crisis, and to provide assistance to tribal law enforcement and courts. It also calls for improved data collection and for assessment of the use of DNA information, and for early intervention to try to prevent violence. That includes mental and chemical health services, early childhood education, and child advocacy.

On a personal note, every day this writer sees at least one notice of a missing Native American teenager on her Facebook feed. While this is in itself tragic, it is also an indication that the issue is receiving attention and being taken seriously, and that, combined with the recent government activity summarized in this article, is reason for hope.

Elder Abuse

By: Joni Tapio
Paralegal

Boozhoo! My name is Joni Tapio. I currently am a Paralegal, and I get the opportunity to work directly with clients as a case manager. I have various types of clientele, but mostly the elderly. My main workload consists of Wills, Healthcare Directives, Powers of Attorney and other various end-of-life planning. As I assist our elders in the surrounding communities, I have come to realize Elder Abuse is prevalent in many communities.

Elder Abuse is described as an intentional act or failure to act by a caregiver or another person in a relationship involving an expectation of trust that causes or creates a risk of harm to an older adult. Elder abuse includes physical abuse, emotional abuse, sexual abuse, exploitation, neglect, and abandonment. Perpetrators include children, other family members, and spouses—as well as staff at nursing homes, assisted living, and other facilities.

The number of American Indian and Alaska Native elders 65 and over is expected to increase from 13% in 2012 to 20% by 2030, according to the U.S. Census Bureau. As the population of elders grows, so does the abuse of those who require care.

Tribal social service providers estimate that nearly 80% of those abusing American Indian elders are immediate family members and 10% are extended family members. Adult children are the most likely perpetrators. Spouses, other relatives, grandchildren and caregivers are also likely. Rates of abuse of American Indian and Alaska Native elders are highest in families where income levels are extremely low for the elder and for the abuser/caregiver. Caregiver unemployment also appears to be a risk factor for abuse in American Indian and Alaska Native communities. Abuse rates are also higher when the elder lives in the same home as the primary caregiver. American Indian elders also have one of the lowest life expectancies in the United States. Disproportionate disease burden, socioeconomic disparities, and higher rates of violence across the lifespan are thought to contribute to higher rates of elder abuse. Elder abuse and higher rates of trauma exposure are linked with adverse outcomes.

Traditionally, American Indian elders have held a place of honor for their wisdom, experience and cultural knowledge. Unfortunately, this is changing in many tribal communities and the abuse and neglect of American Indian elders occurs with alarming frequency. Tribal leaders from across the country have identified **three major challenges in addressing elder abuse** and neglect issues on reservations:

1. There is a lack of codes addressing elder abuse issues,
2. There is a need to increase training about elder abuse and neglect, and
3. There are a lack of policies and procedures for tribal agencies handling elder abuse and neglect issues as well.



Every year an estimated 5 million (or 1 in 10) older Americans are victims of elder abuse, neglect or exploitation. And that's only part of the picture: experts believe that for every case of elder abuse or neglect reported, more than 79% of cases go unreported. Many tribes don't have their own specialized elder protective service, so there may not be anyone to report abuse to, or insufficient resources for a response even if a report was made. Additionally, many elders have experienced the impacts of past U.S. federal government policies and may fear further institutional abuse through contact with government agencies and authorities.

Elder abuse can take many different forms. Some signs of abuse are:

Physical Abuse - Slap marks, unexplained bruises, most pressure marks, and certain types of burns or blisters, such as cigarette burns.

Neglect - Pressure ulcers, filth, lack of medical care, malnutrition or dehydration.

Emotional Abuse - Withdrawal from normal activities, unexplained changes in alertness, or other unusual behavioral changes.

Financial Abuse/Exploitation - Sudden change in finances and accounts, altered wills and trusts, unusual bank withdrawals, checks written as "loans" or "gifts," and loss of property.

Spiritual Abuse – denied access to ceremonies or traditional healing.

These are only some examples of Elder Abuse. If you see signs of abuse, try talking with the older adult to find out what's going on. Most importantly, get help or report what you see to adult protective services. You do not need to prove that abuse is occurring. Professionals will investigate. Elder abuse will not stop on its own. Someone else needs to step in and help. Many older adults are too ashamed to report mistreatment. Or, they're afraid if they make a report, it will get back to the abuser and make the situation worse.

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ANISHINABE LEGAL SERVICES

Elder Abuse

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If you think someone you know is being abused — physically, emotionally, or financially — talk with him or her when the two of you are alone. You could say you think something is wrong and you're worried. Offer to take him or her to get help, for instance, at a local adult protective services agency. Many local, state, and national social service agencies can help with physical, emotional, legal, and financial abuse.

The Bald and Golden Eagle Protection Act and Tribal Religious Freedom

By: Scott Gollwitzer
Staff Attorney

As a lifelong defender of the planet's biodiversity, I've often admired the beliefs and teachings of many indigenous cultures because of their deeply-held reverence for our non-human brothers and sisters. In this issue, I begin a series of articles exploring Environmental Protection in Indian Country. Following is the briefest overview of the legal landscape governing how the Bald and Golden Eagle Protection Act ("BGEPA" or "the Act") affects the constitutional rights of Indians to freely exercise their religious beliefs and to practice their sacred rites.

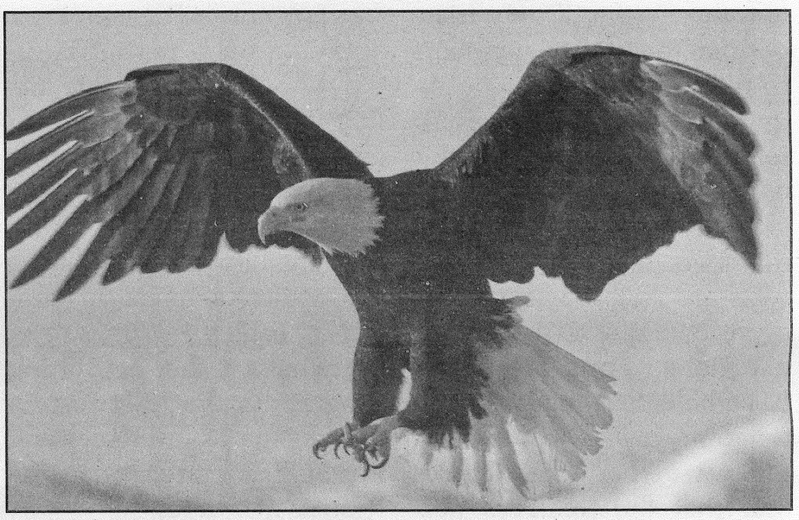
In 1782, the Continental Congress adopted the Bald Eagle as the nation's symbol. Unlike America's indigenous peoples, this decision does not appear to be based on any specific, deeply-held "American" religious reverence for the eagle. In fact, founding father, Benjamin Franklin, advocated for a turkey to be the emblem. In 1940, Congress passed the Bald Eagle Protection Act to save the national icon from extinction — more than three decades before the Endangered Species Act was enacted!

The Bald Eagle Protection Act prohibited anyone to "take, possess, transport, or otherwise engage in commerce with dead or living eagles or their parts, including their nests and eggs" (hereafter, "take or possess"). Congress did provide some exemptions to these illegal activities by authorizing the Secretary of the Interior to develop a permitting system to take and possess eagle specimens for scientific or exhibition purposes or to protect wildlife and agriculture.

In 1962, Congress added the golden eagle to the BGEPA. The 1962 amendments also provided that the Secretary of Interior could approve permits for taking or possessing "[eagle] specimens . . . for the religious purposes of Indian tribes," so long as such activities are "compatible with [the species'] preservation." Under regulations adopted and enforced by the U.S. Fish and Wildlife Service ("FWS"), the issuance of permits is limited to those Indians who: (1) are enrolled members of federally recognized tribes; **and** (2) require the carcasses or any parts of eagles for religious purposes.

During the 1970's, the FWS created the National Eagle Repository which is the central location for collecting and distributing eagle carcasses and their parts. Permit applications must be submitted to the FWS' Wildlife Permit Office in the state where they reside. If approved, the application is then sent to the Repository in Denver, CO. Orders are based on a "first come, first served" basis. Given the current backlog, waiting times are estimated to be more than two years. Notably, some tribes and their members may obtain eagle parts from private rookeries for religious purposes.

Congress amended the BGEPA in 1972 in several important respects. Most relevant for this article, Congress fortified the Act's protections by adding additional "talons" to its penalty provisions. To wit: (1) for the first time ever, Congress added civil sanctions; and (2) increased the Act's criminal penalties. Individuals who "knowingly, or with wanton disregard for the consequences of their actions take, possess, sell, purchase, barters or offers to sell, purchase or barter, transport, export or import bald or golden eagles, or their parts, nests, or eggs," can be fined up to $100,000 and imprisoned for no more than one year for the first offense. Criminal convictions for any offense thereafter can include a maximum fine of $250,000 and imprisonment for no more than two years. The Act also provides steeper criminal penalties for organizations who violate it. Although tribal members are generally not permitted to acquire eagle parts from other sources, the Department of Justice has eased this prohibition in several critical ways.



In 2012 the Department of Justice ("DOJ") — working with tribal leaders — formalized a longstanding policy which provides that DOJ will **generally** not prosecute tribal members who: (1) possess or use feathers or parts of eagles or other migratory birds; (2) give or lend feathers or parts of eagles or other migratory birds to other enrolled members of tribes; (3) exchange, with other members of recognized tribes, feathers or parts of eagles or other migratory birds, without payment of any kind, for other such items; (4) give feathers or parts of eagles or other migratory birds to craftspeople who are also members of federally recognized tribes; and (5) pick up naturally fallen or molted feathers found in the wild, **without disturbing birds or their nests.** However, DOJ will continue to prosecute tribal members who: (1) buy or sell feathers or other parts of eagles or other migratory birds or trade them for goods or services; or (2) kill, take or otherwise disturb protected birds without a permit.

The Religious Freedom Restoration Act ("RFRA") prevents the government from enforcing any federal law that "substantially burden[s] a person's exercise

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The Bald Eagle and Golden Eagle Protection Act and Tribal Freedom

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of religion" unless the government can demonstrate that the law: (1) furthers "a compelling government interest; **and** (2) is the least restrictive means" of furthering that compelling interest. As such, criminal defendants may invoke the RFRA as a defense for violating the BGEPA provided that the violation was not for "purely commercial purposes." As noted earlier, the FWS will only issue permits to enrolled members of recognized tribes who require eagles or their parts for religious purposes. Thus, it is critically important to distinguish those cases involving members of tribes and those who are not. For members of recognized tribes, several federal courts of appeals have held that the U.S. government has a compelling interest in protecting eagles and that the BGEPA's permitting system is the least restrictive means of conserving eagles while — at the same time — securing the free exercise of religion. Although proving tribal membership can be straight forward, federal courts take a deeper look at the distinctions between actual religious beliefs and those that are philosophical or personal because the U.S. Supreme Court has held that the latter do "not rise to the demands of the Religion Clauses."

For non-tribal members, applying for a permit is futile. Should you violate the BGEPA, the waters are murkier because the federal courts who have addressed the issue — all of whom have found that the government has a compelling interest in protecting eagles — don't agree on whether the permitting program is the least restrictive means of implementing the BGEPA pursuant to the RFRA's mandates.

In passing the RFRA, Congress attempted — among other things — to balance the government's compelling interest in protecting the nation's bald and golden eagles with the constitutional rights of Indians to freely exercise their religious beliefs and rituals. At the same time, DOJ — working closely with tribal leaders — has done the same. However, interpreting congressional intent has fallen squarely on the the federal judiciary. While some courts have found that Congress and the FWS have struck the appropriate balance between these competing interests, others have not.

Facing stiff criminal penalties, the takeaway messages are clear: (1) if you're an enrolled member of a recognized tribe, apply for a permit to take, kill or otherwise disturb eagles for religious purposes. If you proceed without a permit, understand the criminal perils that may lie ahead; or (2) if you're not an enrolled member, good luck in your particular jurisdiction and consult with an attorney before taking or possessing parts of these magnificent creatures!

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