

Adoption of Tribal Law at the State Level: Study Summary

Introduction to the League Tribal Law Study

At the April 2021 convention, LWVNM proposed a one-year study of the pros and cons of codifying federal Indian law at the state level, and where possible, codifying those laws supporting tribes at the state level. Preservation of tribal sovereignty is the highest priority. This study was adopted with unanimous approval by the convention delegates.

Objective 1: Educate ourselves about the complexities of enforcing federal Indian law, as well as the complexities of supporting tribal sovereignty.

Objective 2: Develop a position for advocacy.

Scope of the Study:

1. Review of research and current literature on areas of conflict/lack of enforcement/lack of funding in laws and policy pertaining to various institutions serving Native American populations.
 - a. Focus Area Tasks:
 - i. Review of law and policy related to tribal economic development.
 - ii. Review of law and policy related to tribal criminal justice – the focus of this review on missing and murdered tribal members.
 - iii. Review of law and policy pertaining to tribal education.
 - iv. Review of law and policy pertaining to economic development.
 - v. Draft articles explaining these reviews for submission to La Palabra.
2. Reports were prepared for each of the focus areas listed above. Full reports are available on the LWVNM website, along with numerous supplemental materials related to this study for League members interested in further study.

Rationale for the Study:

Efforts have increased to more rigorously enforce federal Indian law and tribal sovereignty in New Mexico and other states with large Indigenous populations. We believe it is time to evaluate the issues, potential effects, and pros and cons of adopting and codifying federal Indian law and laws supporting tribes at the state level.

Context - Terms

“**Federal Indian law**” is the body of United States law – treaties, statutes, executive orders, administrative decisions, and court cases – that define and exemplify the unique legal and political status of the over 550 federally recognized American Indian and Alaska Native tribes;

the relationship of tribes with the federal government; and, the role of tribes and states in our federalism.

Federal Indian law has three fundamental legal principles:

1. American Indian and Alaska Native tribes that are recognized by the federal government are independent sovereign governments, separate from the states and from the federal government.
2. Unless Congress provides otherwise, the sovereignty of federally recognized American Indian and Alaska Native tribes generally extends over their federally recognized geographic territory (e.g., reservations, allotments, trust and restricted Indian lands, and other Indian country), including over the activities and conduct of tribal members and non-tribal members within that territory.
3. The sovereignty of federally recognized American Indian and Alaska Native tribes is inherent and exists unless and until Congress takes it away.

“**State Law**” refers to the law of each separate U.S. state. The fifty states are separate sovereigns, with their own state constitutions, state governments, and state courts.

“**Tribal law**” means the body of non-Federal law that governs lands and activities under the jurisdiction of a tribe, including ordinances or other enactments by the tribe, and tribal court rulings.

Summary of Focus Area Reports

Education

While data on Native education outcomes is scarce, New Mexico’s Native students, perform below the national and state averages on all measures. The COVID-19 pandemic disproportionately impacted our Native communities – education was significantly impacted. Many Native students, especially those living on tribal lands, had/have little or no access to remote learning technology, due to lack of infrastructure and connectivity. No academic progress data is available for SY 20 as no assessments were given due to the pandemic, but the learning loss for Native students is likely to be significant.

While New Mexico recognizes that culturally and linguistically relevant programs are critical to addressing the achievement gap among Native American students, research from the Yazzie/Martinez lawsuit demonstrates that Native student do not currently have access to culturally and linguistically relevant programs. Such programming for Native students is already required by the Indian Education Act. The Yazzie/Martinez decision and subsequent court decisions upholding the decision, have helped to mobilize Native communities, including efforts to build a robust Indigenous teacher pipeline to provide culturally relevant curriculum and develop supporting materials reflecting Native student’s tribes, nations and pueblos.

The New Mexico Public Education Department (PED) has the authority and jurisdiction to provide the necessary leadership to move these programs forward, as well as provide the

infrastructure for sharing reports and evaluative tools to generate and distribute data necessary for strategic improvement of education outcomes for Native students in New Mexico. More and better communication and consultation between the PED and tribes is needed.

The complete education report, drafted by Meredith Machen, is available on the LWVNM website.

Health Care Services

Health care for Native Americans is primarily a responsibility of the federal government. The Indian Health Service (IHS) in the Department of Health and Human Services is responsible for funding and providing health care for Native Americans. This includes health care services for urban Native health programs.

The IHS has been underfunded for decades and does not provide a complete range of health care services. Most hospitals provide only basic services. Any needed surgery or specialty care requires Native patients to look for care outside of IHS. The ACA does require that Native Americans obtain health insurance - Medicare is also available to Native populations.

Lack of funding, ongoing marginalization of the Native population, lack of employment opportunities and inadequate education continue to result in significant health disparities among Native populations. Differences in certain health conditions and outcomes are worse for Native populations, as a result of systemic economic, social and environmental disadvantages. Alcoholism, diabetes and cancer are conditions that occur in the Native population more than in the general population.

Tribes can make their own laws about public health emergencies, preparedness and occupational health and safety. This is a right and responsibility belonging to any sovereign nation. A recent amendment to the ACA designates tribal epidemiology centers as public health authorities. New Mexico has two of these centers: The Navajo Nation and ABQ Area Southwest.

The complete Health Care report, drafted by Judy Williams, is available on the LWVNM website.

Economics

The most common sources of funding for tribal economic development flows from grants and bonds. Tribal sovereignty allows Nations to make their own decision about how to best serve their unique populations using internal decision making. Economic development generally includes employment and job training opportunities, housing, technology and infrastructure.

While the CARES Act of 2020 and the American Rescue Plan of 2021 appropriated significant funds to tribal government for infrastructure projects, the timelines for project completion were very short. Due to the short timeline for project completion, many of the projects were unable to be completed. Also, of significant concern to tribal economic development is the expansion of broadband access. Significant attention has been paid to this concern recently, at both the State and Federal level; however, the lack of broadband access on tribal lands remains a barrier to economic development for most Native communities in New Mexico.

Tribal gaming has been shown to have had a positive economic impact on the gaming pueblos and tribes in NM. Pueblos and tribes involved in gaming enjoy higher incomes, lower levels of poverty, and improved standards of living. In more recent years; however, tribes are trying to diversify their revenue streams to go beyond gaming, notably leveraging tribal sovereignty in creative economic ways. Overall, data on Native economic development is scarce. Research and data are key to policy development and evaluation to support strategic plans for economic development for all tribal communities.

The complete Economics report, drafted by Donna Sandoval, is available on the LWVNM website.

Criminal Justice

The U.S. recognizes three types of domestic sovereign governments: federal, tribal and state. On tribal land, criminal justice for serious crimes is left to Federal law enforcement. Criminal cases outside of federal and tribal jurisdiction, fall to State law enforcement.

Missing and murdered Native people on tribal land is an epidemic. These cases highlight the budgetary and jurisdictional issues specific to law enforcement on tribal lands. A 2016 report from the National Institute of Justice found that almost 85% of Native women had experienced violence in their lifetimes. In 2017, Albuquerque and Gallup ranked in the top 10 U.S. cities for missing and murdered Native women and girls. Cases of missing and murdered Native people are complicated by overlapping jurisdictional authority, the length of time it takes to identify jurisdiction, systemic and historical devaluation of the lives of Native people, and increased risk for sexual violence and sex trafficking on and around Native communities. These factors create incentives for predators to target Native women and girls and they are much more likely to get away with these crimes.

The Biden administration has proposed significant increases in funding for tribal criminal justice and support services in the 2022 budget. Included in this request is funding for Violence Against Women Act training on strategies to protect Native women. The jurisdictional issues; however, must be addressed to allow the appropriate law enforcement agency, with proper training and resources, to strategically address crime – especially crime against Native women and girls – on tribal lands.

The complete Criminal Justice report, drafted by Rebecca Álvarez, is available on the LWVNM website.