

During the 2018 Annual Meeting of the Walloon Lake Association, guest speaker George Ash shared information on the LTBB Litigation.

Slide 1: *The below three cases were addressed by the US Supreme Court in 2018. George referenced these cases and recommended that the membership research these cases, in particular reading local newspaper comments for each that describe the case's impact on the community. Collectively, they help reinforce the potential consequences of the LTBB litigation.*

SIGNIFICANT INDIAN LAW CASES IN 2018

Royal v. Murphy

Oklahoma Reservation Case

Wampanoag Tribe of Gay Head (Aquinnah) v. Mass

Martha's Vineyard Casino Case

Washington v. US

Washington Culvert Replacement Case

In the Oklahoma reservation case, a federal court determined that a reservation created in an 1866 treaty was still in effect, resulting in roughly ½ of the state of Oklahoma being Indian country. A March New Republic article explains the startling impact this case may have on the state and its residents. The US Supreme Court has agreed to hear this case next fall.

The Martha's Vineyard casino case concerns a local Indian tribe's decision to build an electronic bingo casino with 300 machines on the Island, despite the fact the Tribe has previously agreed not to do so. Both the State and the local government objected, citing the prior agreement and the inability to support the proposed casino (traffic, police

and fire protection as well as emergency response). The Tribe won in the 1st circuit and the US Supreme Court declined to hear the appeal. The casino will be built.

Litigation between Washington State and the US has continued for almost 50 years regarding an 1854 Indian treaty that gave the Tribe's fishing rights both on and off the reservation. In a nutshell, the issue was whether that provision provided only the opportunity to fish, or was it a commitment to insure fish would be present and available. The Tribe contended that state owned culverts under state highways prevented the migration of fish, notably salmon. The state disputed this fact, and also pointed out that there were federal, local and privately owned culverts as well, and that state culverts were built largely with federal funds to federal specification, and the state had no choice but to build them as the federal government dictated. Since 2013, the State had spent roughly \$250 million replacing 300 culverts, and estimated the replacement cost of the remaining 800 culverts would cost State taxpayers \$2.4 billion. The US Supreme court heard the case and in June 2018 announced it was deadlocked 4-4 so the 9th circuit court decision would stand and Washington State would have to complete the work. Justice Kennedy did not participate in the decision since he heard a prior aspect of the case decades earlier.

Slide 2: *This is feedback that George has received in response to his updates on the litigation.*

FREQUENT REASONS GIVEN TO NOT SUPPORT THE ALLIANCE

General Sympathy for the Tribe

Fighting Only Delays Settlement

How can this be – 150 years too late

If Tribe wins, I will Contribute on Appeal

George elaborated that Indians in general have not been treated fairly in the past and it is recognized as a shameful part of our history. However, our government has addressed these both financially and legally in preferences and in financial grants. That said, it is not a reason to give the LTBB this reservation.

In this case, the tribe is requesting jurisdiction not only over Tribal members but all activities and individuals on the claimed reservation. . There does not appear to be any middle ground for a settlement, and while the concept of a settlement is nice, it doesn't seem to present itself in this case. The Oklahoma case is a clear example of how a reservation can be "found" even though most thought it had long ago ceased to exist.

George clarified with the group that an appeal is not a do-over. The case cannot be tried again. Largely, facts are determined by the trial. In a case like this, winning at the trial level is significant. Whoever loses this case will likely appeal. It is important to preclude finding a reservation at the trial level. If we lose, there will be an immediate

impact and great uncertainty, affecting both property values and economic development in the area.

Questions for George/Answers from George.

Is Indian authority the same as governance?

No, it's more jurisdictions, but it is unclear as to what that means specifically. There are some circumstances where the Tribe could have authority/jurisdiction over non-tribal members, but the general rule is that they would not have authority. We may see Tribal Police patrolling roads in addition to our local and state police officers. Tribe members are exempt from certain local requirements, easements and zoning. If there is a reservation, that could also have an impact on taxes, schools and economic activities. The Tribe is treated as a sovereign nation similar to a different country.

Some attendees expressed that we should open our hearts to each other, come to a responsible conclusion during a discussion. With hateful rhetoric, it will be more difficult to sort out.

What is the Alliance fundraising goal?

The budget for Phase 1 is over 3 million; they are within ½ a million of that goal, but still a little short overall. Once again, an appeal is likely.

What is the tribal population number in our area?

There are 697 members identified on the record.

Is the Mt. Pleasant case similar to this case?

It is a similar case where a Tribe sued Governor Granholm, and she decided not to pursue the suit, granting a sister tribe a default victory. However, Mt. Pleasant is a different area economically, and not the same size or demographic. They are still working out the impact of having a reservation and what that means to the community.

George shared that under prior US Supreme court decisions, Indian treaties are interpreted in the way that is consistent with what the Indians understood the treaty to mean at that time

Can you tell us more about the Alliance?

The Protection of Rights Alliance was formed by the Emmet County Lakeshore Association as a response to the Tribe's suit in order to represent the interests of individual landowners and businesses in the area. The Alliance has hired the Dykema

law firm that has the State's preeminent Indian lawyer and a nationally recognized litigator assigned to the case. The Attorney General's office has also been very active in the case, but keep in mind that by the time the case is heard, we will have a new General Attorney and Governor, and they may want to take a different approach. That it is why it is important to have independent representation through the Alliance.

The initial decision from the trial will be only in regards to phase 1 A, which determines if there is a Reservation and if so, 1 B would then determine whether the reservation has since been dis-established or diminished. Phase 1 is now scheduled for summer / fall 2019 and the hearing is expected to last 25 non-consecutive trial days. A written decision would then come several months after that.

All Wallooners should be concerned. Consistent with the law that recognized the LTBB Tribe in 1994, the Tribe could acquire and ask the US government to take into trust any land within 70 miles of the claimed reservation. In addition, the Tribe's implementation of the Clean Water Act calls for their regulation of all waters on or bordering the reservation, including the watersheds. Thus, the Tribe would have the authority to address the whole lake.

Given the evidence that reservations have high incidents rates of alcoholism, abusive, drug use, why are there even reservations? It seems unreasonable.

.From roughly 1780 to 1870 it was the policy of Congress to address the settlement of Indian lands with treaties that sometimes included the creation of a reservation. They were a reality then and in some cases, continue today. Congress has the power to address them today, but Indian Tribes and significant political clout and strong supporters in Congress. Unwinding a reservation that truly exists would be just as complicated as "finding" one that no one knew existed.

Who started the Protection of Right Alliance?

The Emmet County Lakeshore Association. You can join the association if you would like for \$25. They have annual meetings, the next one is August 17th and the Attorney representing the Alliance is giving a presentation. ECLA and other volunteers have agreed to help manage the Alliance. No one at the Alliance is paid, it's all volunteer based.

Are these names public?

Yes.

There seems to be a lack of awareness, how are we getting the message out?

That has been a struggle., The Petoskey News Review and other local news providers do not want to address this issue. Any articles that we come across with an update will be available on the Walloon Lake Association website, www.walloon.org. It is interesting to read the local news comments on the cases I mentioned earlier – all of which are available on the internet. You will see a significant contrast in the news coverage the LTBB case is receiving even though the consequences are just as significant.

How can we contribute to the Alliance?

*Tax deductible contributions (cash or stocks) can be sent to”
The Protection of Rights Alliance Foundation
C/O Sara Smith
PO Box 28
Harbor Springs, MI 49740*