



October 5, 2010

Clerk of Supreme Court  
Attention: Carrie Janto, Deputy Clerk  
P.O. Box 1688  
Madison, WI 53701-1688

RECEIVED  
OCT 06 2010  
CLERK OF SUPREME COURT  
OF WISCONSIN

RE: Supreme Court Rule Petition 07-11  
Comment for the Record

Dear Ms. Janto:

These comments are submitted on behalf of the Village of Hobart. As stated in our comment on June 24, 2008, Article I, section 5 of the Wisconsin Constitution preserves the right to trial by jury in all cases at law. While trial by jury is not customary in civil matters proceeding in tribal courts, there should be weighted consideration given to the fact that trial by jury is a constitutional guarantee and not mere statute. Administrative efficiencies and tribal government requests must never trump the basic rights of Wisconsin residents.

We are grateful for the very well written dissent of Justice Patience Drake Roggensack that placed priority upon the rights of Wisconsin citizens over federal proposals to encourage court efficiency. The Wisconsin Constitution establishes its judicial system to serve all Wisconsin citizens and must adhere to all constitutional rights guaranteed in the Wisconsin and national constitutions. Tribal courts are not Article III courts under the United States Constitution and are not required to give any constitutional rights. Like all Article I territorial courts, they are only required to give those rights required by specific Congressional designation. Because of the United States Supreme Court opinion in *Santa Clara Pueblo v. Martinez*, 436 U.S. 39 (1978) that held that the Indian Civil Rights Act cannot be applied except through a *habeas corpus* petition, no constitutional rights of any kind are required to be given in any proceeding in a tribal court. This Court should keep this fact in mind while considering revisions to its current rule.

We also agree with Justice Roggensack that the Court is exceeding its authority granted in Wis. Stat. § 751.12. The blending of state and tribal courts is inherently contradictory to the structure of the United States Constitution that deliberately requires the Congress to make states out of territories. See Article IV, Sec. 3, Cl. 2. In effect, allowing a blending of state and tribal territorial courts threatens to take the rights of Wisconsin citizens back to before Wisconsin became a state. This becomes particularly problematic when the state laws are federally mandated as they are for child support. Allowing child custody proceedings to be included within such discretionary transfers could lead to changing custody of children while denying parents civil rights in the process. This will lead to civil rights litigation that subjects the state but not necessarily any Tribe or the federal government to liability.

On July 24, 2007 John Voelker, then Director of State Courts, filed Petition 07-11 for discretionary transfer of civil cases to tribal courts. We agree, as the petition notes, that "cooperation among state and tribal courts in Wisconsin is critical" in accordance with resolving issues of concurrent jurisdiction. Such entities as the State Tribal Justice Forum, or events such as the 2005 conference entitled "*Walking On Common Ground*," have at their core, the development of productive state-tribal relationships. We fully understand and support the need for strong inter-relationships and protocols between state and tribal governments. Such outcomes should never, however, be at the direct, if not deliberate expense of the loss or restraint of rights of Wisconsin residents, whether tribal or non-tribal. It should not follow that "walking on common ground" tramples the individual civil and constitutional rights of Wisconsin citizens.

Aggressive actions of the Oneida Tribe challenging the jurisdiction of the Village of Hobart to traditionally state functions have caused this community to give close scrutiny to federal Indian policy via legislation or judicial rulings, perhaps more so than other local entities. Hobart officials have learned to maintain clear separations of government functions while trying to respect all cultures and governments. Hobart's responsibility to enrolled tribal members is as important to its municipal leaders as its responsibility to all other residents of the municipality. We believe our views reflect the concerns of other so-situated communities in Wisconsin, even as those communities may be less informed.

We urge the Court to proceed no further down the trail of intentionally blurring state and tribal courts at the direct potential cost of the rights of Wisconsin residents. In fact, we believe that unless a clear process is created that allows a parent litigant to object to a "discretionary transfer" from state to tribal court that §801.54(1) (2) should be repealed.

We appreciate your consideration of these comments in anticipation of a public administrative conference scheduled on Monday, October 18, 2010.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard R. Heidel". The signature is written in a cursive, flowing style with some loops and flourishes.

Richard R. Heidel, President  
Village Board of Trustees