



NATIONAL NATIVE AMERICAN BAR ASSOCIATION



President Barack Obama
1600 Pennsylvania Ave NW
Washington, DC 20500

RE: APPOINTMENT OF A NATIVE AMERICAN TO THE UNITED STATES SUPREME COURT

April 14, 2010

Dear President Obama:

As you weigh the various candidates for the upcoming Supreme Court vacancy, the National Native American Bar Association strongly asks you to consider a Native American candidate. While much of America is underrepresented on the Supreme Court, the U.S. has never appointed a Native American to its Supreme Court.

President Obama, the Native American community turns to you humbled. For over two hundred years the United States Supreme Court has sat in judgment over us, over our lands, over our treaties, and over our families. Not one single day have we ever had a voice in those decisions.

NO NATIVE AMERICAN SUPREME COURT JUSTICE, FEDERAL JUDGE, NOR SUPREME COURT CLERK. Not only has a Native American never served on the Supreme Court, there is not a single Native¹ on the federal bench in the entire country² and to the best of our knowledge there has never been a Native American Supreme Court clerk. There are 866 federal judgeships (9 on the Supreme Court, 179 on the Courts of Appeals and 678 in the District Courts), and not one Native American federal judge.

DOZENS OF QUALIFIED NATIVE AMERICAN CANDIDATES. While the Native bar is small, where we lack in quantity, we excel in quality. Because there are so few Native attorneys, each must be excellent not only in their own field, but in Tribal, state, and federal law as well. Additionally, by the nature of the Tribal-Federal relationship essentially every Indian law practitioner is well versed in constitutional law. There are dozens of Native attorneys qualified for the Supreme Court such as John Echohawk (whom many consider the Thurgood Marshall of Indian Country), Kevin Gover (Director of the Smithsonian's National Museum of the American Indian, former Assistant Secretary for Indian Affairs and law professor), Larry Echohawk (Current Assistant Secretary for Indian Affairs, former state attorney general and law professor), and Arlinda Locklear (the first Native woman to argue before the Supreme Court).

¹ Enrolled Tribal members (American Indian/Alaska Native) or Native Hawaiians.

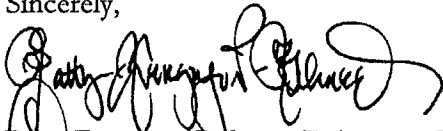
² This fact is confirmed by the Biographical Directory of Federal Judges constructed by the Federal Judicial Center which includes data on race or ethnicity for all federal judges. The link for the directory is available at http://www.fjc.gov/history/home.nsf/judges_frm. In the past 30 years, only two Native Americans have served on the federal bench: (1) Judge Frank Howell Seay, nominated by President Carter and confirmed in 1979 to the U.S. District Court, Eastern District of Oklahoma, assumed senior status in 2003; and (2) Judge Billy Michael Burrage, nominated by President Clinton and confirmed in 1994 to the U.S. District Court, Northern District of Oklahoma, resigned in 2001.

DISPROPORTIONATE EFFECT OF FEDERAL COURTS ON NATIVE AMERICANS. In addition, the Supreme Court and federal court decisions often disproportionately affect Natives. As outlined in the U.S. Constitution, Tribal governments are Nations which pre-date the formation of the United States. Most Indian reservation lands continue to be under "federal trust" and federal criminal law applies on most Indian communities. Federal courts and the Supreme Court oversee this relationship with Tribes and the Federal treaty and trust responsibility to tribal citizens. Tribal citizens are the only group in the country that have an entire code of federal law (25 USC) devoted to them.

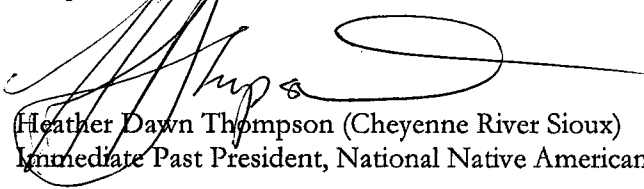
VALUE OF TRIBAL COURT EXPERIENCE. Two additional hurdles continue to hinder on-going efforts of Natives nominations to the federal bench: the state nominating structure, and the lack of understanding of Tribal court experience. Unfortunately many states and state legal infrastructures continue to have an acrimonious relationship with Tribes and Native Americans. It is in these states where Natives are most needed on the federal bench to bring forth an additional perspective. But it is often here, where Natives are the most unlikely to be successful due to federal deference to the local state nominating process. In addition, there is a misunderstanding of Tribal courts that has often led to an incomplete valuation of the experience of our esteemed tribal court judges and tribal appellate court justices. In order to serve as a Tribal court judge one must have an understanding of oral tribal customs, all written tribal constitutions and laws, all state laws, all federal laws, and the U.S. Constitution.

President Obama, we recognize and respect the difficult decision before you, and the many interests you must weigh. We ask that our lack of voice since the formation of the United States be a consideration in your decision; and that you ensure that anyone nominated has an appreciation for and experience in the constitutional federal-tribal relationship and the unique area of federal Indian law.

Sincerely,



Ratty Ferguson-Behnee (Pointe-au-Chien)
President Elect, National Native American Bar Association



Heather Dawn Thompson (Cheyenne River Sioux)
Immediate Past President, National Native American Bar Association