

# ***Stand Up For California!***

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### **“Hicks Fix or Tribal Statehood?”**

Tribal fundamentalists are in quest of an unparalleled power from Congress. The National Congress of American Indians is promoting legislation to reinforce and codify an expanded tribal sovereignty. This is an all out effort for a congressional fix to the *Nevada vs. Hicks* court case in which the United States Supreme Court established that a tribal court lacks the federal adjudicatory jurisdiction over state officials who enter an Indian reservation to investigate an off reservation crime.

The “Hicks Fix” is an attempt by tribal governments to elevate their sovereign status equal to Statehood. The Hicks Fix would give Indian tribal governments criminal and civil authority over non-Indian citizens. Tribal courts usually only deal with tribal members, not non-Indian citizens. In essence the Hicks Fix would give tribal governments all of the necessary components of Statehood.

Tribes have the ability to legislatively create their own laws, enforce their own laws and adjudicate their own laws against their own members and other Indians but tribal governments now want this authority and jurisdiction over both Indian and non-Indian citizens both on and off Indians lands. Tribal governments want authority and jurisdiction over non-Indian citizens who do not have a voice in the daily operation of tribal governments.

There are significant concerns in giving this power and authority of statehood to tribal governments. Tribal governments are immune to civil liability, this becomes critical when tribes want to exert civil and criminal jurisdiction over non-Indian citizens in the same way that states exercise civil and criminal jurisdiction over non-Indian citizens. There is no recourse, no accessible process in place for citizens for wrongful detention, arrest, or abuse of civil rights.

The “Hicks Fix” is not a Congressional action to achieve a friendly application of tribal jurisdiction over “Indian Lands” and “Indian peoples” but an all out effort to achieve “Statehood and dominance over non-Indian citizens”. Such a congressional action would aggravate further the transgression of the civil rights and property rights experienced by non-Indian citizens living or visiting on and around Indian lands. Moreover, this action places unnecessary hardships on a States regulatory authority over state lands and citizens.

Congress originally intended for tribes to be protected by federal law, not to allow tribal governments to use federal law as a weapon against States, local governments or communities of citizens. There was benevolence to tribal sovereignty. Sovereignty was created by Congress as a shield to protect Indians on Indian lands from incursions by States and non-Indian citizens.

Federal laws, the Trade and Intercourse Acts, were passed allowing only federal agents to travel onto Indian lands and trade with Indians, provided for protection of alienation of Indian lands, for remedies of theft or destruction by Indians and non Indians property, and provided for the punishment of crimes. Congress made it clear that it alone had plenary power over tribal governments.

The United States Supreme Court has ruled clearly and indisputably that tribal governments have legal authority to protect themselves, but not to abuse their authority with dominance over non-Indian citizens. So with clear and indisputable language the United States Supreme Court rulings have turned tribes to Congress for legislation to achieve their goal of expanded and codified tribal sovereignty-- an expanded tribal sovereignty, the new tribal statehood that allows dominance over non-Indian citizens both on and off of Indian lands.

### **Court Rulings:**

***Nevada vs. Hicks (2002) 121 S. Ct. 2304:*** a case decided by the United States Supreme Court on June 25, 2001. The *Nevada vs. Hicks* decision relied on two previous rulings, *Montana vs. U. S.* and *Oliphant vs. Suquamish Indian Tribe*. The Supreme Court held that the tribal court did not have jurisdiction to adjudicate state officials conduct in executing a search warrant to a tribal member for an off reservation crime. More importantly the Supreme Court in regards to the jurisdictional reach of tribal courts over nonmembers, stated

“...tribal courts, it should be clear, cannot be courts of general jurisdiction in this sense, for a tribe’s inherent adjudicative jurisdiction over non members is at most only as broad as is legislative jurisdiction.” Id. At 2314.

In other words, absent a federal law providing tribal court jurisdiction over a particular cause of action, tribal courts lack jurisdiction to adjudicate actions over non-tribal members. The Hicks case provides a clear limitation of Tribal Court jurisdiction over nonmembers.

***Montana vs. United States, 450 U. S. 544 (1981):*** A case decided by the United States Supreme Court in 1981. The case ruled over both the criminal and civil position of tribal government authority. Tribal governments do not have civil regulatory jurisdiction over non-Indian activities on fee lands or owned lands inside of tribal reservations. Tribes simply do not have full regulatory authority over non-Indians. Moreover the Supreme Court is reading this case broadly stating that tribes do not have inherent jurisdiction over non-Indians civil matters at all although tribal governments may regulate hunting and fishing on tribal lands. There are two exceptions in this ruling:

1. Citizens who enter into contracts with tribes are bound and under tribal jurisdiction.
2. Or the civil activity of non-Indian citizens threatens the political integrity of the tribal government or the health or security of the Indian government.

***Oliphant vs. Suquamish Indian Tribe, 435 U.S. 191 (1978):*** A case decided by the United States Supreme Court in 1978 simply ruled that tribes have no inherent criminal jurisdiction over non-Indians.

**Tribal strategies to expand their sovereignty and jurisdiction over Indian and non Indian citizens:**

- Support and coordinate tribal advocacy before the Supreme Court
- Promote strategies for tribal governance that protect tribal jurisdiction. (Example: Jurisdiction over non-Indian water, air quality and taxes)
- Increase tribal participation in the selection of Federal judiciary.
- Develop a media and advocacy strategy to inform Congress, the public and tribal leadership about tribal governance.
- Implement a fundraising campaign to support National Congress of American Indians (NCAI) and the Native American Rights Fund (NARF)

Congress has not codified the issue of tribal sovereignty so there is motivation and national tribal interest in moving in this direction.

**The tribes are concerned that "4 of the 5" most recent Supreme Court decisions have eroded tribal sovereignty:**

*Nevada v. Hicks,*  
*Atkinson v. Shirley*  
*C&L Enterprises v. Citizen Band of Potawatomi,*  
*Interior Dept. v. Klamath Water User,*  
*Idaho v. United States.*

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