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3-3-2022

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Cardozo Journal of Equal Rights and Social Justice

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Recommended Citation

Brocki, Lindsay, "Hamptons Aesthetics vs. Shinnecock Rights: How the Federal Government Is Failing to Protect Indigenous Sovereignty" (2022). *ERSJ Blog*. 21.

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Lindsay Brocki ✍ Mar 3 4 min read

Hamptons Aesthetics vs. Shinnecock Rights: How the Federal Government is Failing to Protect Indigenous Sovereignty

Within the opulent Hamptons community located on the east end of Long Island, New York, there exists a power imbalance that has been perpetuated for generations – the violent inequality between the original dwellers of the land, the Shinnecock Indian Nation, and the affluent summer community that has come to surround it. This inequality manifests itself in numerous ways, including state and local government infringement on the Shinnecock Nation’s rightful use of its own sovereign land.

This friction erupted in 2019 when the Shinnecock Indian Nation began the construction of two 61-foot electronic billboards to be placed on two pieces of their land located on the east and westbound sides of Route 27, Sunrise Highway.[1] The plans sparked outrage amongst the wealthy summer residents and local government alike, who complained that the billboards were “clearly out of character” with the town’s atmosphere.[2] The Commissioner of the New York State Department of Transportation, along with New York State, filed suit against members of the Shinnecock tribe, seeking to enjoin the construction of the billboards in *Comm’r of New York State Dep’t of Transportation v. Polite*. [3] While the court dismissed New York’s motion for a preliminary injunction, the state has made it clear that it intends to continue to pursue legal action against the Shinnecock Indian Nation in order to remove the billboards.[4]

The issue faced by the Shinnecock Nation regarding their billboards demonstrates a continuous problem between the United States and indigenous tribes. Federally-recognized tribes have the right to self-determination and self-government, yet they often face interference from neighboring governments when they use their land in a way that offends the local, state, or federal interests.[5] This problem is amplified due to consistent state infringement with tribes’ use of their sovereign land, often through the judicial system. With limited federal protection, indigenous tribes frequently find themselves in court defending various uses of their land that are contested by state or local governments. It is the responsibility of the federal government to ensure the protection and proliferation of tribal sovereignty and based on examples such as the Shinnecock Nation’s legal battle, it is evident that the government is failing in its duties.[6]

The United State Constitution gives Congress the power “to regulate commerce with foreign nations, and among the several states, and with the Indian tribes,”[7] and articulates that treaties made with sovereign nations shall be the supreme law of the land.[8] Therefore, through the Constitution, the federal government recognizes

and has power over Indian affairs.[9] The federal authority over Indian affairs results in “little room for state involvement,” though Congress has granted states some power over indigenous tribes in some instances.[10]

The federal government’s trust relationship with Indian tribes is derived from the original understanding of the “government-to-government relationship of preexisting sovereigns.”[11] This trust relationship authorizes the federal government to preserve the property rights of Indian tribes.[12] Therefore, efforts by the federal government to regulate property belonging to Indian tribes is subject to the highest fiduciary duty.[13]

The legal struggle of the Shinnecock Nation to use their own sovereign land is a microcosm of the much larger issue that the federal government is not fulfilling its responsibility in ensuring the protection of tribal sovereignty. As evidenced by the Shinnecock Nation’s fight to utilize their own sovereign land, it is clear that the federal government must do more to protect the sovereignty of indigenous tribes. One potential remedy to this problem is the reorganization of the federal administrative agency, the Bureau of Indian Affairs (“BIA”).[14] The BIA was created in 1824 in order to “oversee and carry out the Federal government’s trade and treaty relations with the tribes.”[15] However, this agency does not have a proper remedy for state infringement of sovereignty, despite the fact that it oversees and manages the relationships between the federal and tribal governments.[16] Therefore, a potential solution would be to reorganize the BIA such that it incorporates a remedy for Indian Nations facing infringement by the states, whether in the judicial system or otherwise.

[1] Lisa Finn, *State Threatens To Remove Shinnecock Nation's 2 Large Billboards*, Patch (Feb. 3, 2021, 8:31 AM), <https://patch.com/new-york/southampton/state-threatens-remove-shinnecock-nations-2-large-billboards>.

[2] Corey Kilgannon, *Tribal Billboards Collide With Hamptons Sensibilities*, N.Y. Times, May 28, 2019, at A22.

[3] *Comm'r of New York State Dep't of Transportation* 67 Misc. 3d 1222(A) (N.Y. Sup. Ct. 2020).

[4] Finn, *supra* note 1.

[5] Geoffrey D. Strommer & Stephen D. Osborne, *The History, Status, and Future of Tribal Self-Governance Under the Indian Self-Determination and Education Assistance Act*, 39 Am. Indian L. Rev. 1, 17 (2015); *Comm'r of New York State Dep't of Transportation* 67 Misc. 3d 1222(A) (N.Y. Sup. Ct. 2020).

[6] Restatement of the Law of American Indians § 9 DD No 2 (2014).

[7] U.S. Const. art. I, § 8, cl.3.

[8] See U.S. Const. art. VI (...all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby...)

[9] 1 Cohen's Handbook of Federal Indian Law (2019).

[10] *Id.*

[11] Restatement of the Law of American Indians § 9 DD No 2 (2014).

[12] *Id.*

[13] *Id.*

[14] *Bureau of Indian Affairs (BIA)*, (visited Dec. 29, 2021, at 2:13 PM), <https://www.bia.gov/bia>.

[15] *Id.*

[16] *Id.*