



NATIONAL CONGRESS OF AMERICAN INDIANS

20160436

FILED

September 26, 2017

IN THE OFFICE OF THE
CLERK OF THE SUPREME COURT
SEPTEMBER 26, 2017
STATE OF NORTH DAKOTA

Attention: Penny Miller
Clerk of the Supreme Court
North Dakota Supreme Court
600 E. Boulevard Ave.,
Bismarck, ND 58505-0530

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Re: Supreme Court No. 20160436 – In the Matter of a Petition to Terminate the Special Provision of Legal Services by Qualified Attorneys from Outside North Dakota

Dear Honorable Justices of the North Dakota Supreme Court:

On behalf of the National Congress of American Indians (NCAI), the oldest, largest, and most representative organization of American Indian and Alaska Native tribal governments, I write to oppose the petition to terminate the Special Provision of Legal Services by Qualified Attorneys from Outside North Dakota (Provision).

NCAI believes the Provision is crucial, and was created to protect the constitutional rights of criminal defendants, to supplement capacity of the local bar in addressing this overwhelming need, and to save state taxpayer money. As of today, the need for the Provision remains immense.

As of early September 2017, there were still over 150 cases where defendants lacked representation or appointed counsel—meaning there is still significant unmet need. The Provision helps fill gaps and unmet needs. It is also important to understand that Pro Hac attorneys do not replace local attorneys but help supplement existing local defense counsel.

The Provision saves North Dakota taxpayer dollars because the State does not incur a duty to provide indigent defense counsel for those who have out of state attorneys. These cases are extremely fact based, and – as a result – time consuming, further compounding the amount of tax payer dollars saved as each matter works its way through the North Dakota legal system.

The Supreme Court of North Dakota originally granted this Provision to ensure access to counsel and ensure fundamental fairness in criminal cases involving Water Protectors. In doing so, the Court said, “[w]e nevertheless recognize the potential for delay or inconvenience for litigants due to the relatively large number of arrests and finite resources to handle the judicial proceedings related to those arrests.” The Court’s concerns then remain true today.

Moreover, the nature of these mass arrests is unlike anything local counsel has dealt with in court, while many Pro Hac attorneys have decades of experience with similar cases from other regions within the United States. These attorneys have provided invaluable logistical, legal, and research resources to local attorneys by skill sharing and co-counseling on cases.

Finally, we note that Water Protectors have repeatedly expressed that local counsel has been difficult to contact and data from mass arrests on October 22 and October 27 indicate that criminal defendants represented by local attorneys were more likely to enter into plea agreements even where co-defendants' cases were getting dismissed on the exact same facts. For these reasons, we strongly urge you to deny the pending Petition to Terminate the Special Provision of Legal Services by Qualified Attorneys from Outside North Dakota. Thank you for your time and consideration.

Respectfully,

A handwritten signature in cursive script that reads "Brian Cladoosby".

Brian Cladoosby
President
National Congress of American Indians