

Know Your Enemy: Local Taxation and Tax Agreements in Indian Country

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Intergovernmental disputes between tribes and their neighbors have educated states about tribal sovereignty. What many state governments have learned, through litigation, political battle, and intergovernmental dispute, is that even when states have “won” tax disputes, they have lost.² This dependably pyrrhic result has driven rational state actors—state taxing authorities acting consistently with their own best fiscal interests—to pursue negotiated agreements. Today, state-tribal tax compacts, while often controversial,³ are commonplace.

Counties and cities, on the other hand, with some admirable exceptions, have yet to learn, or heed, lessons from inter-local tax disputes. As it stands, tribes must be prepared for future battles over local taxation in Indian Country, particularly in regard to real or personal property owned by tribes. But as counties and municipal governments slowly learn the lessons already learned by the states, tribes should also be ready to negotiate intergovernmental solutions to inter-local tax disputes.

The Backdrop in Brief

Disputes between states and tribes are not a recent phenomenon. Indeed, in 1831, the seminal *Cherokee Nation v. Georgia*,⁴ which involved Georgia’s involuntary formation of “Cherokee County,” set the parameters of state-tribal relations adhered to today. By 1885, in *Utah & Northern Railway v. Fisher*,⁵ the U.S. Supreme Court had embarked on the county-tribe property tax dispute odyssey—one that has usually harmed tribes. While high profile tribal-state disputes continue to occur, a new generation of intergovernmental fights may soon outnumber them. States’ local components—counties, cities, and municipalities—do not yet understand tribal sovereignty. And as local

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² See, e.g., *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134, 162 (1980) where the Court suggested that states are limited in their recourse when operating on reservation. In *Colville*, the Court noted that “[i]t is significant that these seizures take place outside the reservation, in locations where state power over Indian affairs is considerably more expansive than it is within reservation boundaries.” *Id.*; see also STUART THRONSON, INTERGOVERNMENTAL TAX AGREEMENTS: WASHINGTON STATE’S EXPERIENCE WITH CIGARETTE TAX COMPACTS 4 (2006) (noting the “hollow victory” of *Colville*) (on file with author)..

³ See *Automotive United Trades Organization v. Washington*, No. 10-5584, 2010 WL 4365576 (W.D. Wash. Oct. 28, 2010) (Complaint available at <http://www.autowa.org/pdf/Complaint.pdf>).

⁴ 30 U.S. 1 (1831).

⁵ 116 U.S. 28 (1885).

governments, now more than ever, struggle to fund operations, county-tribe disputes will arise.⁶

The tribal-federalist system puts tribes in the awkward position of possessing a right to sovereign-to-sovereign relations with the United States and the individual states, but still needing, at times, to act as local governments.⁷ Not surprisingly, the jurisdictional overlap with other local governments drives tax disputes and can sour local relationships. Within these inter-local tax disputes, it has been clear that local governments often fail to perceive tribes as sovereigns.

Historically, counties have asserted taxing power over tribes in the property context.⁸ This is doubly problematic for tribal governments because tribal governments have a very different connection to tribal land than counties do to county land. In addition, property taxation is philosophically difficult for tribal governments because tribal land is thought of as being tax exempt; however, as the Court has noted, “[g]eneralizations on this subject have become particularly treacherous.”⁹ The exceptions to the general rule of tax-exempt tribal land have formed the U.S. Supreme Court’s treatment of local taxation in Indian Country.

For tribes, the wheels came off (or rather, the Court took them off) in the property tax context over the course of several cases. In *County of Yakima v. Confederated Tribes and Bands of Yakima Nation*¹⁰ and *City of Sherrill v. Oneida Indian Nation*,¹¹ the Court’s theory of interplay among local governments and tribes crystallized.

In *County of Yakima*, the Court reaffirmed the general rule that states may not tax reservation lands or reservation Indians unless Congress has authorized state taxation and “made its intention to do so unmistakably clear.”¹² But the Court went on to hold, nevertheless, that in the General Allotment Act,¹³ Congress made its intention to permit local taxation of fee land on the Yakima reservation unmistakably clear.¹⁴ The legal acrobatics employed to find “unmistakable clarity” in the Allotment Act illustrated exactly how far the Court will

⁶ These disputes have already arisen between local governments and the Oneida, Passamaquoddy, Cayuga, and other tribes.

⁷ See, e.g., Joseph Krist, *Seminole Tribe Bets on Taxability*, in THE HANDBOOK OF MUNICIPAL BONDS (Sylvan G. Feldstein & Frank J. Fabozzi eds., 2008) (discussing the issuance of government bonds by tribal governments).

⁸ See, e.g., *United States v. Rickert*, 188 U.S. 432 (1903). Counties have also asserted sales taxes on tribes. See, e.g., *County of Seneca v. Eristoff*, No. 3172-06, 2006 WL 6312833 (N.Y. Sup. Ct. Nov. 16, 2006).

⁹ *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148 (1973).

¹⁰ 502 U.S. 251 (1992).

¹¹ 544 U.S. 197 (2005).

¹² *County of Yakama*, 502 U.S. at 258 (citing *Mescalero*, 411 U.S. at 148, and *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 765 (1985)).

¹³ 25 U.S.C. § 331 (repealed in part by the Indian Land Consolidation Act Amendments of 2000, Pub. L. 106-462, 114 Stat. 1991–2009).

¹⁴ *County of Yakama*, 502 U.S. at 258.

go to uphold state or county taxing authority. In fact, the Allotment Act was so unmistakably *unclear* in the taxation of on-reservation fee land that even the United States joined the tribe in *resisting* the local tax.¹⁵

In 2005, in *City of Sherrill*, the Court rejected the Oneida Nations' position that its reunification of interests in particular parcels made such land non-taxable. But when Madison County later sued Oneida to collect taxes, the tribe successfully enjoined collection based upon the doctrine of tribal sovereign immunity.¹⁶ What might have seemed like an appropriate assertion of tribal sovereign immunity put the tribe at a crossroads when the U.S. Supreme Court agreed to take Madison County's appeal last year.

Madison County v. Oneida: A Bullet Dodged

The Supreme Court decided to hear *Madison County v. Oneida* in 2011, in part, to determine “whether tribal sovereign immunity from suit, to the extent it should continue to be recognized, bars taxing authorities from foreclosing to collect lawfully imposed property taxes.” The case spelled disaster for the tribe.

Madison and Oneida Counties argued in their merits brief that “[t]ribal sovereign immunity does not bar *in rem* foreclosure for nonpayment of real property taxes”¹⁷ The Counties synthesized *City of Sherrill* and *County of Yakima* into a proposed rule under which (1) the Court's strongest sovereign immunity cases were inapplicable as *in personam* rather than *in rem* cases¹⁸ and (2) that the Court had already allowed something like what the Counties were asking for when it found congressional authorization for taxation in *County of Yakima*.¹⁹ In effect, the Counties were proposing a wholly novel *in rem* exception to tribal sovereign immunity in the property tax context.

Had the Court heard the case and adopted the rule proposed by the Counties, states, counties, and other enemies of tribal self-governance might have still been barred from suing tribes. But the exception would have allowed the states and their younger siblings to judicially take and sell tribes' property. In adopting the rule, the Court would have destroyed the very purpose of sovereign immunity as universally applied—that is, to protect assets of many from depredation by few.

The Oneida Nation seems to have recognized what was at risk, and wisely mooted the dispute before the Roberts Court could rule on it by waiving its

¹⁵ Brief of the California State Association of Counties as Amicus Curiae in Support of Petitioners, *Madison County v. Oneida Indian Nation of New York*, 2010 WL 5178039 (U.S., 2010).

¹⁶ *Oneida Indian Nation of New York v. Madison County*, 605 F.3d 149 (2nd Cir. 2010).

¹⁷ Brief for Petitioners, *Madison County v. Oneida Indian Nation of New York*, 2010 WL 4973153, at *13 (U.S., 2010).

¹⁸ Never mind sovereign immunity is a matter of subject matter jurisdiction.

¹⁹ Never mind that *County of Yakima* did not deal directly with sovereign immunity, let alone an *in rem* exception.

sovereign immunity for enforcement of real property taxation through foreclosure. As a result, in early January 2011, the Court remanded the case to the United States Court of Appeals for the Second Circuit.²⁰

Taxation v. Collection

As illustrated by *Madison County*, tribes have employed a second layer of defense in tax disputes: even when a federal court incorrectly upholds taxation in principle, taxing authorities may lack the ability to collect. This approach does not require a tribe to ignore a court's judgment, or disrespect federal court authority. Rather, independent barriers to collection prevent county taxmen from realizing their putative victories. Indeed, it is an approach that federal courts have implicitly endorsed, if not created.²¹

In *Oklahoma Tax Commission v. Citizen Band of Potawatomi Indian Tribe of Oklahoma*,²² the Court recognized that, notwithstanding the challenges posed to state taxing bodies by the tribal sovereign immunity doctrine, state and local governments possess many "adequate alternatives" to collect taxes from tribal governments.²³ In particular, the Court encouraged states to "enter into agreements with the tribes to adopt a mutually satisfactory regime for the collection" of taxes.²⁴ Therefore the only practical route for local governments seeking to collect taxes from tribes is one that has received the U.S. Supreme Court's imprimatur.

Adequate Alternatives

Heeding the Court's direction, states have entered into compacts regarding taxation of tribal lands and businesses. The Indian Gaming Regulatory Act of 1988 has also made compacts part of the intergovernmental vernacular.²⁵ In this era of intergovernmental cooperation, the Washington State Department of

²⁰ *Madison County v. Oneida Indian Nation of New York*, 131 S.Ct. 704 (2011).

²¹ See *Colville* 447 U.S. at 162 ; see also *supra* note 2 and accompanying text.

²² 498 U.S. 505 (1991).

²³ *Id.* at 514. The Court's four exclusive options for the collection of state tobacco taxes on reservation lands is equally, if not more, forceful in the county property taxation context: (1) collect taxes from wholesalers off reservation; (2) collect taxes from wholesalers who supply to tribal stores; (3) enter into agreements with tribes to collect the tax in a mutually agreeable way; or (4) seek appropriate legislation from Congress. *Id.* at 514. Importantly, physical entrance on the reservation was not an option offered by the Court. See *id.*

²⁴ *Id.*; see also Anne Zimmermann, *Taxation of Indians: An Analysis and Comparison of New Mexico and Oklahoma State Tax Laws*, 41 TULSA L. REV. 91, 103, 112-14 (2005) (discussing the solution offered by *Potawatomi*, its adoption in the State of Oklahoma's tax code, and suggesting that other states adopt similar compacting policies).

²⁵ While IGRA requires states to negotiate compacts with tribes, Kenosha County and the Menominee Indian Tribe of Wisconsin at least contemplated a comprehensive agreement, taking tax disputes into account, which would have included gaming revenue sharing between the tribe and county. See INTERGOVERNMENTAL AGREEMENT BETWEEN THE MENOMINEE INDIAN TRIBE OF WISCONSIN AND THE CITY OF KENOSHA, WISCONSIN, available at <http://www.kenosha.org/casino/FIGA.pdf>.

Revenue, for instance, has recognized that while states have leverage over non-Indians for taxation purposes, “[t]ribal economic development involves doing business with non-Indians.”²⁶ For Washington State, the *Colville* case, which upheld taxes on nonmember tobacco buyers, was a “huge win on its face” but because it was “[s]ilent on methods to enforce collection of state taxes,” the state has recognized it was a “hollow victory.”²⁷ According to the Department of Revenue, the *Colville* case did not end conflict, did not increase collections, increased intergovernmental tensions, and generally worsened relationships with the tribes.²⁸ As a result, Washington began entering into cigarette compacts with tribes in 2001.

As opposed to the zero-sum *Colville* era,²⁹ a new and more dynamic state/tribal relationship exists today. As noted by Professor Matthew Fletcher,

States and tribes are beginning to smooth over the rough edges of federal Indian law—jurisdictional confusion, historical animosity between states and Indian tribes, competition between sovereigns for tax revenue, economic development opportunities, and regulatory authority—through cooperative agreements. In effect, a new political relationship is springing up all over the nation between states, local units of government, and Indian tribes.³⁰

Once local governments begin to see tribes as partners and governments, and the benefits of cooperative agreements become clear, the spring of this new political relationship will arrive. Unfortunately, it will fall to tribes to change this interpolitical paradigm and teach local governments that compacts can be mutually beneficial.

Successful Compacts between Tribes and Local Governments

Many tribes and states understand that the future of tribal-state relations involves government-to-government negotiation, accord, and agreement.³¹ In fact, “[n]early every state that has Indian lands within its borders has reached some type of tax agreement with the tribes.”³² Despite the examples that have winded

²⁶ THRONSON, *supra* note 2, at 4.

²⁷ *Id.* at 8.

²⁸ *Id.*

²⁹ Often, states would invoke their tax powers to purposefully exploit Indians and Indian tribes. See, e.g., JAMES M. MCCLURKEN, A VISUAL CULTURE HISTORY OF THE LITTLE TRAVERSE BAY BANDS OF ODAWA GAH-BAEH-JHAGWAH-BUK: THE WAY IT HAPPENED 79 (1991) (noting that it was the policy of Emmett County, Michigan, to purposely tax Odawa Indians until they lost their lands).

³⁰ Matthew L.M. Fletcher, *Retiring the “Deadliest Enemies” Model of Tribal-State Relations*, 43 TULSA L. REV. 73, 74 (2007).

³¹ *Id.* at 83. This was made clear by the U.S. Commission on Tribal-State Relations as early as 1981. See generally EARL S. MACKEY & PHILIP S. DELORIA, STATE-TRIBAL AGREEMENTS: A COMPREHENSIVE STUDY (U.S. Comm’n. on Tribal-State Relations, 1981).

³² Judy Zelio, *Piecing Together the State-Tribal Tax Puzzle* (2005), <http://www.ncsl.org/default.aspx?tabid=12662> (last visited Jan. 29, 2012) (citing SUSAN JOHNSON,

their way up into the Court, many local governments are coming to recognize that intergovernmental accord offers an alternative to realizing nothing from tax disputes. Moreover, these agreements allow tribes to protect their interests against enemies of tribal self-governance by achieving certainty regarding inter-local relations. Ideally, this certainty will keep tribes out of the federal courts.

The Southern Ute Indian Tribe and the County of La Plata, Colorado, for example, have compacted to resolve property tax disputes. Under the terms of their 1996 compact,³³ the state and county agreed not to seek any tax on tribal non-trust property. “Property” under the terms of the compact refers to both real property and mineral lease interests, and applies to both ad valorem and severance taxes.³⁴ In recognition of the state and county relinquishment of taxing efforts, the tribe agreed to make annual voluntary payments of approximately one-third of the value of taxes that would have been collected if the property were not tribally owned. If a dispute arises under the compact, both parties have agreed to effectively waive their sovereign immunity by submitting to binding arbitration.³⁵

In addition, the Snoqualmie Tribe and the City of Snoqualmie in Washington State have entered into a successful inter-local agreement.³⁶ Under this agreement, the tribe pays the city for police, fire, and emergency medical services.³⁷ The tribe pays for any additional amenities required by these services, including the use of a jail cell or officer assistance.³⁸ The compact also provides for sewer lines to and from the tribe’s property.³⁹

Moreover, in Louisiana, the Chitimacha Tribe and the Parish⁴⁰ of St. Mary have entered into a compact that exempts the tribe from parish tax.⁴¹ Essentially, this

JEANNE KAUFMAN, JOHN DOSSETT & SARAH HICKS, *GOVERNMENT TO GOVERNMENT: MODELS OF COOPERATION BETWEEN STATES AND TRIBES* (2002)).

³³ Colo. Rev. Stat. § 24-61-102 (1996).

³⁴ *Id.* at § 24-61-102.3.

³⁵ *Id.* at § 24-61-102.12.01.

³⁶ Agreement Between the City of Snoqualmie and the Snoqualmie Tribe for the Provision of Police, Fire, and Emergency Medical Services to the Snoqualmie Hills Project and Sewer Utility Service to the Tribe’s Initial Reservation, *available at* www.awcnet.org/apps/ma/projects/2004SnoqualmieTribe.doc.

³⁷ *Id.* at §§ 2.2-2.3. Under the agreement, the city provides the tribe with police services in exchange for \$140,000 per year, plus \$50,000 for a new police cruiser. In addition, the city provides the tribe with fire and emergency medical services in exchange for \$150,000 per year. This amount covers the cost of two firefighters and 40% of the leasing expense for new ladder truck.

³⁸ *Id.* at § 2.2.

³⁹ *Id.* at § 2.6; *see also* Joe Kimball, *Mdewakanton Sioux Helping Pay for Road Construction in Scott County*, MINNPOST, Apr. 12, 2011, *available at* http://www.minnpost.com/politicalagenda/2011/04/12/27404/mdewakanton_sioux_helping_pay_for_road_construction_in_scott_county. The Shakopee Mdewakanton Sioux Community voluntarily contributing \$1.65 million for reconstruction of a busy intersection near its Mystic Lake Casino.

Id.

⁴⁰ Louisiana’s equivalent to a county.

compact grants the tribe a status akin to that of a 501(c)(3) non-profit organization.

As illustrated by the three examples above, despite what local governments might claim, tax agreements are possible. While county lawyers will often cite (1) a general lack of authority to enter into such agreements and (2) a general lack of centralized taxing authority to execute such agreements, those agreements that exist suggest counties can find authority *when they want to*. Moreover, counties themselves receive millions in Payments in Lieu of Taxes (PILTS) every year from the federal government.⁴² Clearly, solutions are possible.

And they are desirable. Tax agreements provide, at minimum, “some level of predictable revenue” for both county and tribal governments.⁴³ Agreements also answer regulatory questions created by ambiguities in inter-local jurisdictional authority, reduce the need for costly and contentious intergovernmental litigation, and offer greater flexibility to accommodate the needs of state and tribal governments.⁴⁴ Further, intergovernmental tax compacts neatly fit on-the-ground realities of taxation involving Indian tribal communities. The purpose of local taxes is to “finance the activities of government in providing goods and services to the public. Only those who benefit from the goods and services should pay for them.”⁴⁵

In many, if not most regions, state and local governments are already aptly compensated for the services that they provide to tribal members.⁴⁶ Under the economics of “tax exporting,” it is frequently *tribal governments*—not state or

⁴¹ Sales Tax Exemption Certificate for Purchases of Motor Vehicles by the Chitimacha Indian Tribe or Its Tribal Government Agencies Compact Between the State and the Chitimacha Tribe, Form No. 1044(9/07), *available at* http://revenue.louisiana.gov/forms/taxforms/1044%289_07%29F.pdf.

⁴² *See generally* U.S. Dep’t of the Interior, Payments in Lieu of Taxes, <http://www.doi.gov/pilt> (last visited Jan. 29, 2012).

⁴³ Mark J. Cowan, *Double Taxation in Indian Country: Unpacking the Problem and Analyzing the Role of the Federal Government in Protecting Tribal Governmental Revenues*, 2 *PITT. TAX REV.* 93, 134 (2005).

⁴⁴ Note, *Intergovernmental Compacts in Native American Law: Models for Expanded Usage*, 112 *HARV. L. REV.* 922, 929 (1999) [hereinafter *Intergovernmental Compacts*].

⁴⁵ *But see* Richard D. Pomp, *The Unfulfilled Promise of the Indian Commerce Clause and State Taxation*, 63 *TAX LAW.* 897, 1016 (2010) (noting “[t]he inherent weakness with this type of argument is the amorphous nature of government-provided benefits, opportunities, and protections.”); Robert William Alexander, *The Collision of Tribal Natural Resource Development and State Taxation: An Economic Analysis*, 27 *N.M. L. REV.* 387, 389 (1997) (noting that “little actual economic analysis has been done to determine the probable effects and burdens of the taxation doctrine that has developed” between tribes and states).

⁴⁶ *See* VERONICA E. TILLER & ROBERT A. CHASE, *ECONOMIC CONTRIBUTIONS OF INDIAN TRIBES TO THE ECONOMY OF WASHINGTON STATE* (1998); Economic Development; S. Hrg. 105-572 Before the Sen. Comm. on Indian Affairs, 105th Cong. 129 (1998) (Prepared Statement of Robert F. Robinson, President, Center for Applied Research, Inc.). In addition to tribal compensation to state and local government, the federal government provides financial assistance to local educational agencies that educate children residing on Indian lands to offset any impact to local government caused by the a state’s inability to tax tribal lands. 20 U.S.C. §§ 7701, 7704(a).

local governments—who bear a disproportionate financial burden associated with taxation vis-à-vis local services rendered.⁴⁷ One study, for example, found that “[o]n most reservations, there are few retail stores and tribal members must go off reservation and pay state taxes on everything they buy. Nationwide, this amounts to \$246 million annually in tax revenues to state governments, while states expend only \$226 million annually on behalf of reservation residents.”⁴⁸ Intergovernmental tax compacting allows for taxation to be commensurate with services rendered, taking into account the unique relationships between tribes and their neighboring jurisdictions.⁴⁹

Conclusion

In the era of federal Indian self-determination, government-to-government tax compacts provide tribal governments with a “proactive assertion of their right to self government” that is necessary for economic and political independence.⁵⁰ By reorganizing their taxing and other relationships with local governments, as they have with states, and in turn exercising and strengthening tribal self-determination at the local level, tribal governments reduce their historic dependence on the federal government.⁵¹ And “[e]ach time a state or local government agrees to negotiate with an Indian tribe and . . . execute a binding agreement . . . that non-Indian government is recognizing the legitimacy of the tribal government,” and vice versa.⁵²

⁴⁷ See generally Alexander, *supra* note 45.

⁴⁸ Tax Fairness and Tax Base Protection: Hearing on H.R. 1168 Before the House Comm. on Resources, 105th Cong. (testimony of W. Ron Allen, President, National Congress of American Indians). Generally, tribes bring in much economic stability for the surrounding local government. One example is the Impact Aid Laws of 1950, which provides funding to local school districts who educate Indian Children. See Pub. L. No. 81-874, 64 Stat. 1100, *as amended by* Pub. L. No. 95-561, 92 Stat. 2315, 20 U.S.C. § 7704; see also STEPHEN CORNELL, JOSEPH KALT, MATTHEW KREPPS, & JONATHAN TAYLOR, AMERICAN INDIAN GAMING POLICY AND ITS SOCIO-ECONOMIC EFFECTS: A REPORT TO THE NATIONAL GAMBLING IMPACT STUDY COMMISSION 40–50 (1998) (noting that tribal gaming enterprises contribute significantly to the economic conditions of their surrounding non-tribal communities). States also gain large incomes from possessory interest taxes on Indian lands. See, e.g., *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 175 (1989).

⁴⁹ In some situations, states even give up their claims to tax in favor of a tribal tax “in order to support tribal economic development, similar to tax exemptions given to private businesses.” Zelio, *supra* note 32; see also Intergovernmental Compacts, *supra* note 44 at 929 (noting that “negotiated compacts offer greater flexibility to accommodate local needs and changed circumstances over time”). What is more, the phenomenon of intergovernmental agreements is also being carried out across the United States, between state, county and municipal jurisdictions. One study, for example, estimates that as of 1999, 45 states were using inter-local service and/or fee-for-service agreements as the mechanism by which to provide their citizens with public services. Anne F. Peterson, *The Utilization of Interlocal Service Agreements* (Aug. 7, 2008) (unpublished paper, William Mitchell College of Law) (on file with author). It is further estimated that over 50% of all cities and counties use such inter-local agreements. *Id.*

⁵⁰ Marren Sanders, *Ecosystem Co-Management Agreements: A Study of Nation Building or a Lesson or Erosion of Tribal Sovereignty?*, 15 BUFF. ENVTL. L.J. 97, 100 (2008).

⁵¹ See generally Stephen Cornell & Joseph Kalt, *Sovereignty and Nation-Building: The Development Challenge in Indian Country Today*, 22 AM. INDIAN CULTURE & RES. J. 193 (1998).

⁵² Fletcher, *supra* note 30, at 87.

Tribes can and will fight inappropriate local government taxation in federal courts. But litigation should be the last resort. Not only are federal courts unfriendly to tribal interests, but, as compared to cities and counties, tribes have far more to lose on their own behalf and on that of their sister tribes. Government-to-government arrangements at the local level allow tribes to secure some measure of certainty by binding counties, cities, and their future leaders. The intergovernmental agreement may be commonplace with states, but it is difficult for their younger siblings to grasp.

Local governments may, at times, be the “deadliest enemies” of tribal self-governance.⁵³ But times are changing. As tribes become more politically active at the local and state government levels, there is a strong opportunity for them to support state political candidates who are savvy about the contours of Indian law, if not supportive of tribal sovereignty and self-governance.⁵⁴ As difficult as it may seem for tribes to stoop to the local governmental level, counties and cities will not educate themselves. It is up to tribes to teach local government actors how to behave like good neighbors, and secure the kind of jurisdictional and legal certainty necessary for sustainable economic growth in Indian Country.

⁵³ United States v. Kagama, 118 U.S. 375, 384 (1886).

⁵⁴ Ryan Dreveskracht, *In the Courts of Your Deadliest Enemy*, 19 INDIAN L. NEWSL. 4, 11 (2012).