

COA # 36329I

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STATE OF WASHINGTON  
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NO. 79359-0

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THE SUPREME COURT  
STATE OF WASHINGTON

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HOLLY M. FOXWORTHY, Appellant

vs.

PUYALLUP TRIBE OF INDIANS ASSOCIATION d/b/a  
EMERALD QUEEN CASINO, et al., Respondent

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APPELLANT'S REPLY BRIEF

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ORIGINAL

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## I. REPLY ARGUMENTS

### A. The United States Supreme Court Has Increasingly Called Into Question the Continuing Validity of the Doctrine of Tribal Sovereignty Immunity from Suit

In discussing the doctrine of tribal sovereign immunity from suit in 1998, the United States Supreme Court recognized that its rationale of promoting economic development and tribal self-sufficiency is “inapposite to modern, wide-ranging tribal enterprises extending well beyond traditional tribal customs and activities.” *Kiowa Tribe v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 757-758, 118 S. Ct. 1790, 140 L. Ed.2d 981 (1998). The Supreme Court further noted that the doctrine “developed almost by accident” and not as a result of a “reasoned statement of doctrine.” *Kiowa Tribe*, 523 U.S. at 756-757. In discussing the *Kiowa Tribe* decision, the Supreme Court of California, in 2006, noted that the United States Supreme Court “has grown increasingly critical of [the sovereign immunity doctrine’s] continued application in light of the changed status of Indian tribes as viable economic and political nations.” *Agua Caliente Band of Cahuilla Indians v. Fair Political Practices Commission*, 40 Cal. 4<sup>th</sup> 239, 148 P.3d 1126, 1129, 52 Cal. Rptr. 3d 639 (2006).

The criticism of the doctrine began long before *Kiowa Tribe*. In 1991, Justice Stevens asserted that the doctrine was “founded upon an anachronistic

fiction”. *Oklahoma Tax Comm’n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 484 U.S. 505, 514-514, 111 S. Ct. 905, 911-913, 112, L.Ed.2d 1112 (1991) (concurring opinion). In 1977, Justice Blackmun expressed his “doubts . . . about the continuing vitality in this day of the doctrine of tribal immunity as it was enunciated in *United States v. United States Fidelity & Guaranty Co.*, 309 U.S. 506, 60 S. Ct. 653, 84 L. Ed. 894 (1940). In 1962, the Supreme Court recognized that the notion “that an Indian reservation is a distinct nation within whose boundaries state law cannot penetrate, has yielded to closer analysis when confronted, in the course of subsequent developments with diverse concrete situations.” *Organized Village of Kake v. Egan*, 369 U.S. 60, 82 S. Ct. 562, 7 L. Ed.2d 573 (1962).

In *Kiowa Tribe*, the Supreme Court recognized that “[t]here are reasons to doubt the wisdom of perpetuating the doctrine” stating as follows:

At one time, the doctrine of tribal immunity from suit might have been thought necessary to protect nascent tribal governments from encroachments by States. In our interdependent and mobile society, however, tribal immunity extends beyond what is needed to safeguard tribal self-governance. This event when tribes take part in the National’s commerce. Tribal enterprises now include ski resorts, gambling, and sales of cigarettes to non-Indians. (Citations omitted). In this economic context immunity can harm those who are unaware that they are dealing with a tribe, who do not know of tribal immunity, or who have no choice in the matter *as in the case of tort victims*.

*Kiowa Tribe*, 523 U.S. at 758 (emphasis added). According to the Supreme Court, these considerations suggest the need to “abrogate tribal immunity, at least as an overarching rule.” *Kiowa Tribe*, 523 U.S. at 758. But, in *Kiowa Tribe*, the private company who sued a tribal entity to enforce a promissory note did not ask the Supreme Court to repudiate the doctrine outright, but rather asked the Court to confine it to reservations or to noncommercial activities. The Supreme Court declined to draw *this* distinction based on the facts in *Kiowa Tribe* choosing instead to defer to the role of Congress.

**B. Although the *Kiowa Tribe* Majority Decision Deferred to Congress, It Expressly Limited Its Holding to Suits “On Contracts”**

The Supreme Court’s holding in *Kiowa Tribe*, however, was confined to suits “on contracts.” More specifically, the *Kiowa Tribe* holding states:

Tribes enjoy immunity from suits *on contracts* whether those contracts involve governmental or commercial activities and whether they were made on or off a reservation. Congress has not abrogated *this* immunity, nor has petitioner waived it, so the immunity governs *this case*.

*Kiowa Tribe*, 523 U.S. at 760 (emphasis added). Importantly, the promissory note at issue in *Kiowa Tribe* contained a paragraph providing in part that “*Nothing in this Note* subjects or limited the sovereign rights of the Kiowa Tribe of Oklahoma.” *Kiowa Tribe*, 523 U.S. at 754, 118 S. Ct. 1700.

The Supreme Court in *Kiowa Tribe*, however, did not indicate whether it would abrogate tribal immunity in a tort case where a tribal entity's negligence caused injury to a non-Indian. The above-quoted language in the decision suggests that the Supreme Court today would view a tort case such as Ms. Foxworthy's much differently than a breach of contract case. More importantly, the Supreme Court in *Kiowa Tribe* did not analyze a federal statute that expressly authorized state regulation over an area in which states have a *very strong* interest and in which tribes have no tradition of self-determination whatsoever.

C. **A State's Interests Can Outweigh Tribal Sovereign Immunity from Suit Even in the Absence of Explicit Congressional Abrogation**

The observations of the Supreme Court in *Kiowa Tribe* about the doctrine of sovereign immunity from suit provided the foundation for the Supreme Court of California, to *depart* from the doctrine in a context where the State of California had an interest that went beyond pure commercial interests and outweighed the Tribe's claim to sovereign immunity. *See Agua Caliente Band of Cahuilla Indians v. Fair Political Practices Commission*, 40 Cal. 4<sup>th</sup> 239, 148 P.3d 1126, 1129, 52 Cal. Rptr. 3d 639 (2006). In the *Agua Caliente* case, the California Supreme Court held that the Fair Political Practices Commission could file a lawsuit in superior court against the Agua

Caliente Band of Cahuilla Indians for the Tribe's failure to comply with the reporting requirements for campaign contributions under California's Political Reform Act. 148 P.3d at 1128. The *Agua Caliente* court based its decision upon the state's rights under the Tenth Amendment and the guarantee clause of the constitution.

In so holding, the California Supreme Court *rejected* the Tribe's argument that, although the state has the power to regulate political campaigns under the PRA, and although the Tribe is generally *subject* to those regulations, the state cannot sue the Tribe in state court to *enforce* those regulations.<sup>1</sup> *See Agua Caliente*, 148 P.2d at 1136. The *Agua Caliente* court *rejected* the Tribe's argument that depriving the state of one of its "tools" to enforce the PRA does not seriously compromise the state's right to regulate its electoral process. *Agua Caliente*, 148 P.2d at 1139. The *Agua Caliente* court also *rejected* the Tribe's argument that other viable remedies exist for the state to accomplish its goals under the PRA.<sup>2</sup> *Agua Caliente*, 148 P.3d at 1139.

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<sup>1</sup> Notably, the Casino essentially makes the same argument here. While it acknowledges that it is subject to RCW 66.44.200(1), it claims that a state court lacks jurisdiction over a civil lawsuit brought by an individual to *enforce* the statute. Respondent's Brief at 22-23.

<sup>2</sup> Again, the Casino makes similar arguments here. *See* Respondent's Brief at p. 22-23. The Casino asserts that the State of Washington has a "myriad of ways to enforce its alcohol laws" that are "a sufficient means of enforcement" and, therefore, tribal sovereign immunity from suit does not deprive the state of Washington of its interest in protecting its citizens from drunk drivers.

In departing from the doctrine of tribal sovereign immunity from suit, the California State Supreme Court recognized that there is no constitutional basis for the doctrine, and that it derives solely from the common law. *Agua Caliente*, 148 P.3d at 1132-1133 (rejecting the Indian commerce clause, the treaty clause and the supremacy clauses as constitutional bases for the doctrine of tribal sovereign immunity from suit). The *Agua Caliente* court stated: “Allowing tribal members to participate in our state electoral process while leaving the state powerless to effectively guard against political corruption puts the state in an untenable and indefensible position without recourse.” The court found that the alternative remedies suggested by the Tribe were “uncertain” and that “preserving the integrity of our democratic system of governance [was] too important to compromise with weak alternative measures that the state may not be able to enforce.” *Agua Caliente*, 148 P.3d at 1139-1140.

Absent the threat of a lawsuit, the *Agua Caliente* court saw “no incentive for the Tribe to agree to comply with the FPPC reporting requirements.” *Agua Caliente*, 148 P.3d at 1139. The *Agua Caliente* court departed from the doctrine of tribal sovereign immunity despite the fact that, in 2000, Congress declined to implement the sweeping changes recommended by the Supreme Court in *Kiowa Tribe* and instead enacted

legislation that “in the end, had little substantive impact on the scope of tribal immunity.” *Agua Caliente*, 148 P.3d at 1139.

Ms. Foxworthy acknowledges that there are clear distinctions that can be made between the State of California’s interests in protecting its electoral process in the *Agua Caliente* case and the State of Washington’s interests in protecting its citizens from drunk drivers overserved in tribal commercial establishments such as occurred here. Nonetheless, the interests of California in the *Agua Caliente* case and the interests of Washington in this case are both vitally important public interests, and therefore, the analysis in *Agua Caliente* should be applied here as well. The State of Washington’s interest in preventing drunk driving and other societal ills associated with overservice of alcohol outweighs the Puyallup Tribe’s interest in sovereign immunity from suit. Sovereign immunity from lawsuits brought to enforce RCW 66.44.200 is not needed to safeguard tribal self-governance or economic self-sufficiency. Thus, like in *Agua Caliente*, the rationale for tribal sovereign immunity from suit is not applicable to the narrow area of liquor licensing and distribution.

Allowing tribal casinos to overserve liquor while leaving the individuals who are subsequently injured by drunk drivers with no recourse through a private lawsuit renders the state of Washington unable to guard against the serious dangers of drunk driving. Like in *Agua Caliente*, the State

of Washington's alternative means of enforcement are "weak" and "unreliable." They depend upon state investigators actually observing violations of the statute. They depend upon an administrative process that results in warnings, suspensions, and administrative hearings before a liquor license is actually revoked. Most importantly, the persons injured by the Casino's violation of the statute are not compensated by any of the alternative remedies. - Absent the threat of civil lawsuits, the Tribes will have inadequate incentive to comply with Washington's dram shop liability law.

Like the California State Supreme Court's decision in *Agua Caliente*, the Washington State Supreme Court should reject the following arguments in support of the Casino's immunity from this lawsuit: (1) RCW 66.44.200(1) cannot be enforced by means of a private lawsuit against the Casino, even though the Casino is unquestionably subject to the statute; (2) the denial of one "tool" for enforcing RCW 66.44.200(1) does not compromise the State of Washington's interest in protecting its citizens from the dangers of drunk driving caused by overservice in tribal commercial establishments such as occurred here; and (3) other viable remedies exist for the State of Washington to accomplish its objectives under RCW 66.44.200(1).

**D. The Rice Decision Did Not Require an Explicit Abrogation of Sovereign Immunity When It Concluded that States Have Authority to Regulate Liquor Licensing and Distribution**

The Casino asserts that Congressional abrogation of sovereign immunity must be explicit rather than implied; undeniably, this is a proposition found in the case law. Nonetheless, the United State Supreme Court does not uniformly apply this principle, which derived from the *Santa Clara Pueblo* case. Most notably, the Supreme Court in the *Rice* case recognized a distinction between areas where tradition has recognized sovereign immunity in favor of the Indians, and areas where there is not such a tradition. In areas where sovereign immunity has been recognized, the Supreme court is “reluctant to *infer* that Congress has authorized the assertion of state authority in that respect ‘except where Congress has expressly authorized that State laws shall apply.’” *Rice v. Rehner*, 436 U.S. 713, 103 S. Ct. 3291, 77 L. Ed.2d 961 (1983). ***On the other hand***, when the Court does ***not*** find a tradition of sovereign immunity, the court affords “less weight to the ‘backdrop’ of tribal sovereignty.” *Rice*, 463 U.S. at 719. By drawing this distinction, the Supreme Court has indicated that it will consider whether Congress has *impliedly* abrogated sovereign immunity when the legislation at issue concerns an area over which the tribes have never asserted any tribal independence. The *Rice* court found that there was no tradition of tribal sovereign immunity in the area of liquor licensing and distribution, and thus

no *express or unequivocal* abrogation of immunity was required. *Rice*, 463 U.S. at 720-722.

In *Rice*, the issue was whether a federal statute impliedly waived tribal sovereign immunity from state *regulation* of the area of liquor licensing and distribution. The Supreme Court, however, also considers whether a federal statute *implies* that Congress abrogated a tribe's immunity *from suit* for violation of a statute. *See, e.g. Santa Clara Pueblo et al., v. Martinez*, 436 U.S. 49, 98 S. Ct. 1670, 1675, 56 L. Ed.2d 106 (1978).

**E. The *Santa Clara Pueblo* Decision<sup>3</sup> Concluded that the Indian Civil Rights Act (ICRA) Did Not *Impliedly* Authorize a Private Cause of Action Because Such Action Would Not Comport with Congressional Goal of Tribal Self-Government; the ICRA, However, Is *Easily* Distinguished From 18 U.S.C. §§ 1154 and 1161**

The federal statute at issue in the *Santa Clara Pueblo* case was the Indian Civil Rights Act (ICRA). The ICRA provides in relevant part that “[n]o Indian tribe in exercising powers of self-government shall . . . deny to any person within its jurisdiction, the equal protection of its laws.” 25 U.S.C. § 1302(8). The ICRA’s only express remedial provision extends the writ of

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<sup>3</sup> Ironically, the Casino relies heavily upon the *Santa Clara Pueblo* case for the proposition that Congressional abrogation of tribal sovereign immunity must be unequivocal and cannot be implied. *See* Respondent’s Brief at pp. 1, 5. Yet, the *Santa Clara Pueblo* decision includes an extensive discussion of whether or not abrogation of tribal sovereign immunity can be *implied* under the Indian Civil Rights Acts. Such discussion would not have been necessary if the Court had only considered whether abrogation was express and unequivocal.

habeas corpus to any person, in a federal court, “to test the legality of his detention by order of an Indian tribe.” 25 U.S.C. § 1303. A female member of the Tribe brought an action against the Tribe alleging that the Tribe’s ordinance denying tribal membership to children of female members who marry outside the tribe violated the ICRA. *Santa Clara Pueblo*, 436 U.S. at 51.

Nothing on the face of the ICRA purported to subject tribes to the jurisdiction of federal courts in private civil actions for declaratory or injunctive relief. *Santa Clara Pueblo*, 436 U.S. at 51-52, 59. Nonetheless, the Supreme Court considered as a threshold issue whether the ICRA “may be interpreted to *impliedly* authorize such actions against a tribe or its officers in the federal courts.” *Santa Clara Pueblo*, 436 U.S. at 52, 60-62 (emphasis added).

The Supreme Court concluded that the ICRA could not be so interpreted for the following reasons:

(1) Congress’s failure to provide remedies other than habeas corpus for enforcement of the ICRA was deliberate as is manifested by the structure of the statutory scheme and the legislative history of the ICRA; *Santa Clara Pueblo*, 436 U.S. at 61,

(2) Congress in enacting the ICRA was committed to the dual goals of preventing injustices perpetrated by tribal governments on one hand and promoting the goal of tribal self-determination and the protection of

tribal sovereignty from undue interference on the other hand;<sup>4</sup> *Santa Clara Pueblo*, 436 U.S. at 62-63, 66-67,

(3) Creation of a federal cause of action for the enforcement of the ICRA would not comport with the congressional goal of protecting tribal self-government. Not only would it undermine the authority of tribal forums, but it would also impose serious financial burdens on “financially disadvantaged” tribes; *Santa Clara Pueblo*, 436 U.S. at 64,

(4) Tribal forums are available to vindicate rights created by the ICRA; *Santa Clara Pueblo*, 43 U.S. at 65,

(5) Perhaps most importantly, Congress considered *and rejected* proposals for more expansive judicial review of alleged violations of the Act, including judicial review of alleged violations arising in a civil context. *Santa Clara Pueblo*, 43 U.S. at 67-69.

Here, the relevant factors for determining whether a federal statute impliedly waives a tribe’s sovereign immunity from suit strongly support the conclusion that, by enacting 18 U.S.C. § 1161, Congress intended to abrogate a tribe’s immunity from suit for actions brought to enforce a state’s liquor licensing and distribution laws. Section 1161 of Title 18 makes it a criminal offense for a tribal entity to sell liquor on Indian land without complying with the laws of the state in which the transaction occurs.

When Congress enacted § 1161, unlike when it enacted the ICRA, Congress did not provide an exclusive remedy for a Tribe’s violation of § 1161 and did not specifically *consider and reject* alternative remedies that

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<sup>4</sup> Section 1302 of the ICRA, rather than providing in wholesale fashion for the extension of constitutional requirements to tribal governments, . . . selectively incorporated and in some

would have included judicial review of alleged violations. *See Santa Clara*, 436 U.S. at 68. In contrast, Congress was very clear that in order to sell liquor in Indian country, a tribe must comply with the laws of the state in which the transactions occurs. It can be readily inferred that Congress intended for states to have full authority to *enforce* compliance with their liquor licensing and distribution laws. Otherwise, a state's *authority* to regulate liquor distribution in Indian country without a means to *enforce* its laws would be rendered meaningless. One very important "tool" that states have to enforce their overservice laws is for state courts to exercise jurisdiction over civil lawsuits brought by individuals who are injured when liquor licensees violate the law.

Unlike when Congress enacted the ICRA, when it enacted § 1161, it was not concerned about promoting the dual goals of tribal independence and preventing tribal injustices. Rather, it was seeking to repeal statutory provisions that set Indians apart from other citizens, and to abolish restrictions deemed discriminatory. *See* S. Rep. 83-699, 83<sup>rd</sup> Cong., 1<sup>st</sup> Sess. 1953. Section 1161 was enacted at the same time as Public Law 280. The legislative history of Public Law 280 demonstrates that Public Law 280 had two aims: (1) the withdrawal of Federal responsibility for Indian affairs

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instances modified the safeguards of the Bill of Rights to fit the unique political, cultural, and economic needs of tribal governments. *Santa Clara Pueblo*, 436 U.S. at 62.

wherever practicable; and (2) termination of the subjection of Indians to Federal laws applicable to Indians as such. Section 1161 served the latter purpose by repealing statutory “restrictions applicable to Indians having to do with the sale, possession and use of intoxicants.” *See* S. Rep. 83-699, 83<sup>rd</sup> Cong., 1<sup>st</sup> Sess. 1953. With these goals in mind, it can be readily inferred that Congress did not intend for tribal members or tribal entities to receive special privileges and immunities with respect to enforcement of a state’s liquor licensing and distribution laws. This would be inconsistent with the goal of not setting Indians apart from other citizens.

Finally, imposing civil liabilities on tribal entities who violate a state’s liquor licensing and distribution laws and, as a result, cause injury to other persons, creates much less of a financial burden upon tribal entities than a state’s revocation of a tribal entity’s liquor license. Further, it is much more efficient and effective in deterring violations of state law. Neither party disputes that the State of Washington has the authority to revoke the Casino’s license, which would completely deprive the Casino of the revenue it generates for the Tribe. This means of enforcement would create a much greater threat to a Tribe’s “economic development” and “self-sufficiency” than civil lawsuits such as that brought by Ms. Foxworthy. In short, there is no rationale that justifies a tribal casino’s immunity from lawsuit in state

court when it violates a state's dram shop liability law and, as a result, persons such as Ms. Foxworthy are seriously injured.

**F. No Washington Decision Has Interpreted 18 U.S.C. § 1161**

The Casino attacks Ms. Foxworthy for failing to discuss Washington decisions in her opening brief. There is no Washington precedent, however, that discusses whether Congress intended to abrogate sovereign immunity from suit when it enacted 18 U.S.C. § 1161. The most recent decision of the Washington State Supreme Court on the issue of tribal sovereign immunity dealt with the issue of whether certain tribal corporations had the same tribal sovereign immunity from suit for racial discrimination as a tribe itself. *See Wright v. Colville Tribal Enterprise Corporation*, 147 P.3d 1275 (2006). The *Wright* decision did not discuss whether the state's interests outweighed the interests of tribal sovereign immunity. It did not discuss whether Congress impliedly abrogated sovereign immunity in a federal statute.

The *Wright* decision does not apply here because Ms. Foxworthy is not claiming that the Emerald Queen Casino lacks tribal immunity that the Puyallup Tribe is afforded. Rather, Ms. Wright is claiming that Congress abrogated tribal immunity from lawsuits brought to enforce Washington's liquor licensing and distribution laws. The only other Washington decisions cited by the Casino also does not address the issues raised by Ms. Foxworthy.

*See North Sea Prods. Ltd. v. Clipper Seafoods Co.*, 92 Wn.2d 236, 237, 595 P.2d 938 (1979) (Lummi Indian Tribe held immune from writ of garnishment of employee's wages issued by Whatcom County superior court).

**G. Filer<sup>5</sup> and Holguin Are Not Binding Upon This Court**

As this Court well knows, the decisions of state courts of appeals in other states are not binding on this Court. Thus, if this Court concludes that *Filer* and *Holguin* were wrongly decided, this Court should do its own reasoned analysis of the issue. The fact that there might then be conflicting state court decisions on this issue until the issue is resolved by a higher authority should be of no consequence.

The analysis of the *Filer* and *Holguin* courts, although correct on the issue of Congressional abrogation of tribal sovereign immunity as to state *regulation* of liquor licensing and distribution, is flawed on the issue of Congressional abrogation of tribal sovereign immunity from private suits to enforce state liquor licensing and distribution laws. The rationale of the *Holguin* court on this issue was twofold: (1) “federal courts have not resolved whether actions for money damages brought to enforce alcohol-related laws fall within the waiver of immunity described by the United States Supreme Court in *Rice v. Rehner*,” and (2) “the police power of the

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<sup>5</sup> *Filer v. Tohono O’Odam Nation Gaming Enterprise*, 212 Ariz. 167, 129 P.3d 78 (2006).

state cannot be delegated to private persons.” The *Filer* court essentially relied upon this same rationale, as well as the result reached in *Kiowa Tribe*.

Quite simply, the fact that federal courts have not decided the issue is not support for the *Holguin* court’s conclusion. And, as to the second part of the *Holguin* court’s rationale, the Texas Court of Appeals provides no analysis for its decision that a private cause of action pursuant to the Texas Dram Shop Act “does not constitute ‘enforcement’ of an alcohol related law that falls within the waiver of tribal immunity.” See *Holguin v. Ysleta Del Sur Pueblo*, 954 S.W.2d 843, 854 (1997).

As for the *Filer* decision, Ms. Foxworthy has already discussed that the decision in the *Kiowa Tribe* case was limited to suits “on contracts.” Rather than adopting the flawed rationale of the *Filer* and *Holguin* decisions, this Court should analyze whether the states interest here outweigh any interest of the Puyallup Tribe in self-government and economic self-sufficiency. This Court should further consider whether 18 U.S.C. §§ 1154 and 1161 imply that states have full authority to enforce their liquor licensing and distribution laws. In so doing, this Court should consider the analysis of the California State Supreme Court in the recent *Agua Caliente* case.

## II. CONCLUSION

Based upon the foregoing discussion and upon Ms. Foxworthy’s

opening brief, she respectfully requests that this Court reverse the trial court's decision granting the Casino's motion to dismissed based upon lack of subject matter jurisdiction. This Court should conclude that Congress abrogated tribal sovereign immunity from suit in the context of lawsuits brought to enforce Washington's dram shop law, RCW 66.44.200(1). It is wholly illogical to conclude that Congress gave states the authority to *regulate* liquor licensing and distribution on Indian lands, while severely restricting states' ability to enforce their regulations without expressly including any such restrictions in the statute.

Pursuant to the *Rice* and the *Santa Clara Pueblo* decisions of the United States Supreme Court, Congressional abrogation of tribal sovereign immunity does not need to be express, but in fact *may* be implied, when (1) the federal statute at issue pertains to an area of law for which there is no tradition of tribal self-government (*Rice*); and (2) the state or federal government's interests outweighs the interests of a Tribe in self-government and economic self-sufficiency (*Santa Clara Pueblo*).

Here, both of these factors are met. The federal statute at issue, 18 U.S.C. § 1161, pertains to an area of law for which there is no tradition of tribal self-government. This was clearly established in the *Rice* decision. And, the State of Washington's interest in preventing drunk driving resulting from overservice of alcohol by tribal commercial establishments outweighs

the interests of the Tribe in self-government and economic self-sufficiency. Allowing a state court to exercise jurisdiction over a tort lawsuit brought by an individual against a tribal casino has no impact whatsoever on a tribe's interest in self-government. Nor is tribal sovereign immunity from suit justified to protect the Tribe's interest in economic self-sufficiency. Like the California Supreme Court in *Agua Caliente*, this Court should conclude that the State of Washington's interest in enforcing its liquor licensing and distribution laws outweighs any legitimate interest of the Puyallup Tribe in sovereign immunity.

DATED this 22<sup>nd</sup> day of February, 2007.

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CERTIFICATE OF SERVICE

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I hereby certify that on the 23<sup>rd</sup> day of February, 2007, I caused a

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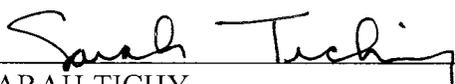
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