

## FOREWORD

For more than 50 years, the Native American Rights Fund has undertaken its work based on the premise that the best hope for the survival of Native Americans is the maintenance and development of tribal governments. The inherent sovereign powers to hold land, regulate activities on those lands, and command the respect of other governments are essential to the concept of nationhood. Much of the Native American Rights Fund's work has been about ensuring that this concept endures as a reality for Tribal Nations.

*Labor and Employment Law in Indian Country* represents a natural outgrowth of the work of the Tribal Supreme Court Project, a joint project of the Native American Rights Fund and the National Congress of American Indians. In recent decades, Indian tribes have faced a series of challenges to their sovereign authority and have suffered a number of critical losses in the United States Supreme Court. Recognizing that the interests of tribes generally rise and fall together, tribal leaders established the Tribal Supreme Court Project in 2001 to foster greater coordination among tribes in their legal advocacy. This included combining and coordinating the resources of NARF, NCAI, Indian law professors, Indian law attorneys, and Supreme Court practitioners to monitor cases that could affect the future of tribal sovereignty and undertaking a strategic effort to protect tribal interests in those cases.

In 2007, despite the best efforts of the Project, Indian tribes experienced a significant setback in *San Manuel v. NLRB*, when the U.S. Court of Appeals for the D.C. Circuit affirmed a decision by the National Labor Relations Board (NLRB) that reversed thirty years of solid precedent. Until *San Manuel*, the NLRB had treated Indian tribes like the states and the federal government, which are exempt from the National Labor Relations Act (NLRA). The D.C. Circuit held that a gaming enterprise, owned and operated by the San Manuel Band, was an "employer" within the scope of the National Labor Relations Act and therefore subject to union organizing and related coercive authority of the NLRB in accord with that Act.

*San Manuel* was a wake-up call. For the first time, the NLRB could apply the provisions of the NLRA — the federal law governing

labor organizations and collective bargaining *in the private sector* — to a *tribal government's* on-reservation enterprise. Previously, the NLRB had treated Indian tribes and their enterprises in the same way that it treated other governments and their enterprises: as *public sector* entities, which were excluded from the Act. As a result of the *San Manuel* decision, we recognized that tribal governments were not exercising — or did not know they could fully exercise — their sovereign authority to enact tribal laws regulating labor and employment relations. And the law, like nature, abhors a vacuum. It was in this context that the seeds for *Labor and Employment Law in Indian Country* were sown and grew into a collaborative effort between NARF, the oldest and largest non-profit Indian law firm in the country, and Drummond Woodsum, a firm with a respected national Indian law practice.

As Executive Director of NARF, I am honored to bear witness to the publication of the second edition of Kaighn Smith, Jr.'s *Labor and Employment Law in Indian Country*. We at NARF have worked hard to develop tribal law, to provide legal references, and to supply information for tribes who are developing their own laws. One of the most important components of this book has been its comprehensive look at existing tribal labor and employment laws and its reference to tribal case law. The book provides important examples of how tribes are expanding their own labor and employment laws and adjudicating these issues in tribal courts. Additionally, an up-to-date Appendix offers a collection of tribal labor and employment laws and is an unparalleled resource for anyone practicing in this field.

Much of the practice of the law involves the balancing of precedent with the modern needs of the people — and, in Indian law, doing so while keeping tribal sovereignty intact. The importance of *Labor and Employment Law in Indian Country* is that it discusses labor and employment law from its historical perspective, explains the complex web of laws guiding the field, and leaves the reader with a fuller understanding of labor and employment in the tribal context. By setting the topic in this structure, the book truly is able to convey the depth of challenges tribal governments currently face in the labor and employment arena while keeping a keen eye on its future development.

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