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AILR 46-1 Update

Murphy, Ashley D. <amurph01@ou.edu>
To: Timothy Sandefur <tmsandefur@gmail.com>
Cc: "Chubb, Taryn E." <tarynchubb@ou.edu>, "Smith, Libby A." <libbysmith@ou.edu>

Mon, Nov 29, 2021 at 3:45 PM

Mr. Sandefur,

The article contains unforeseen research deficiencies. Among the deficiencies is the fact that the primary argument of the article is inconsistent with long-standing case law. ICWA does not address questions of race, and the article ignores Supreme Court precedent on the Indian Commerce Clause. The Court has explicitly stated that "Indian" is not a racial category, but instead a political classification. And although biological classifications may be a proxy for race, the Court has clarified that that principle does not apply in the Indian law context. The biological references therefore ignore several landmark decisions by the Court in Indian law jurisprudence.

Additionally, the Plenary Power Doctrine is clear that the plenary power of Congress is generally held exclusive of the states. This power is interpreted incredibly broadly and covers the authority to protect tribal children in communities. The article also mentions the 1924 Citizenship Act; however, since the passing of that Act, Title 25 has repeatedly been amended and expanded, and has been deemed not to deprive the federal government of its plenary power over Indian affairs. The Court has repeatedly held that the Act did not take away the Federal Government's ability to regulate Indian Affairs.

Your arguments to the contrary disregard the common law tools that the Court has used for two centuries to find that the Federal Government has exclusive authority over Native American persons and property. Due to the magnitude of these unforeseen research deficiencies, we will not be able to make the modifications necessary to publish this article in our academic journal.

Best,

Ashley Murphy

Editor-in-Chief | *American Indian Law Review*

Juris Doctor Candidate, May 2022

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From: Timothy Sandefur <tmsandefur@gmail.com>
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Subject: Re: AILR 46-1 Update

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