

# Village of Bacavi

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## PRESS RELEASE

### **Hopi Appellate Court rules in favor of Village of Bacavi**

Decision recognizes the power rests with the People

A recent decision by the newly constituted Hopi Court of Appeals shifts the balance of power away from the Hopi Tribal Council, and back to the independent Hopi and Tewa Villages that comprise the Hopi Tribe. The unanimous decision of the Court of Appeals on February 11, 2010, confirms the traditional sovereign power of the Villages and helps to preserve the Hopi way for generations to come.

“This Court unanimously finds that, under both the Constitution and Hopi custom and tradition, the Hopi and Tewa Villages, regardless of their form of government, have authority to remove, recall or decertify their duly certified Tribal Council Representatives during their term of office by whatever process the Village selects and that Article IV, Section 4 of the Constitution governs both selection and removal, recall, or decertification of Tribal Council Representatives,” states the final answer.

The issue was brought to the Court by the Village of Bacavi when they filed a Certified Question of Law in regards to the Village Authority to remove Tribal Council Representatives, Appellate Case No. 2008-AP-0001 on January 28, 2008. The Village of Bacavi twice removed their Tribal Council Representatives for “neglect of duty”, only to have council reseated the representatives. The village was told by council that only the Tribal Council could remove a council representative – notwithstanding the fact that the Villages had historically exercised this same power. The sitting Hopi Court of Appeals initially scheduled oral argument on this question in November 2008. During the argument, however, the Tribal Council suspended the Court of Appeals, in effect, insulating itself from any oversight of the Villages.

The Council recently appointed three new Justices to the Court of Appeals, including Chief Justice Anna Atencio, and Associate Justices Robert Clinton, an Indian Law professor at the ASU Sandra Day O’Conner College of Law, and Paul Berman, the Dean of the College of Law. These newly seated justices gave the final answer and opinion.

Unlike many federally recognized tribes in the United States, the Hopi Tribe historically consisted of independent, sovereign villages that shared a common language and culture. The Hopi Tribe itself and the Hopi Tribal Council were created in 1936 by the U.S. government, essentially, to make it easier for the federal government and other outside entities to deal with the Hopi/Tewa people. As the Court acknowledged, “prior to the initial drafting and adoption of the Hopi Constitution in 1936 there was no central Hopi government. Rather, the people comprising the Hopi Tribe lived in 12 self-governing Villages, each of which retained its own aboriginal sovereignty. Each of which was an autonomous, sovereign city-state.” The court went on to hold, in pertinent part, that “the Hopi and Tewa Villages, regardless of their form of government, retain the aboriginal sovereign power to remove, recall, or decertify their Tribal Council representatives.”

According to Karen Shupla, the Governor of the Village of Bacavi, “this decision is a great victory for all the Villages and the Hopi and Tewa people. It preserves the Village authority to act as a check and counter balance to any potential abuses of Tribal Council authority. ”

Marlene Sekaquaptewa, the Governor of Bacavi at the time the case was filed, added that, “we cannot stress the importance of this decision enough. We can now function, as a people and a tribe, in a way that is more in tune with our history and culture, and in a way that will ensure the accountability of our Tribal Council Representatives.”

Almost all of the other villages as well as the Office of the former Chairman of the Tribe filed Amicus, or friend of the court, briefs that supported Bacavi’s position. According to Howard Shanker, attorney for the Village of Bacavi, who argued the case on its behalf, “this was certainly a concerted effort on the part of the Villages and their respective attorneys.”

Shanker also made sure to give credit to “the newly appointed Justices who had the courage and conviction to rule against the Tribal Council that appointed them.” Shanker further reflected that Justice Clinton’s “wealth and breadth of experience in Native American law matters was certainly reflected in the Court’s opinion.” Justice Clinton was the primary author of the opinion. For the Village of Bacavi and the other Hopi and Tewa Villages that make up the Hopi Tribe, this decision could mark a new age of self governance and accountability.

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