ENFORCING TRIBAL AND STATE COURT CIVIL JUDGMENTS IN CALIFORNIA

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RELATIONSHIPS SHOULD BE RECIPROCAL: ENFORCING TRIBAL AND STATE COURT CIVIL JUDGMENTS IN CALIFORNIA

“Every sovereign owes a solemn duty to its citizens not to subject them to judicial train wrecks that will happen if they do not resolve to cooperate with competing sovereigns to their mutual benefit.”¹

INTRODUCTION

In 2008, Leticia Martinez’s daughter was brutally murdered by Gary Lyons, a tribal member of the Morongo Band of Mission Indians (“Morongo Tribe”).² In 2011, Ms. Martinez received a $2.1 million jury verdict in state court for the wrongful death of her daughter.³ Ms. Martinez, however, has not been able to enforce the judgment against the man who took her daughter’s life.⁴ Mr. Lyons is serving a life sentence in state prison, and continues to receive per capita payments from the Morongo Tribe in excess of $150,000 per year.⁵ Two years after

² Ms. Martinez filed her wrongful death civil action in Superior Court for the State of California County of Riverside. Civil Case Report, Martinez v. Lyons, Case No. RIC 503496 (Riverside Super. Ct., March 9, 2011) available at http://public-access.riverside.courts.ca.gov/OpenAccess/Civil/CivilCaseReport.asp?CourtCode=A&RivInd=RIV&CaseType=RIC&CaseNumber=503496 (last visited April 21, 2013) [hereinafter Civil Case Report]. The jury verdict of $2,140,477 was subsequently affirmed and signed by the presiding Judge Gloria Trask on March 11, 2011. I have personal knowledge of this case having worked for the law firm handling it in the capacity as a paralegal, up through attempting to collect on the judgment entered by the Superior Court against Gary Bruse Lyons. “Tribal member” as used herein refers to self-identified Native Americans who are members of one of the federally recognized Indian tribes living within the State of California on or off Indian tribal land. See generally Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs, 75 Fed. Reg. 60,810 (Dep’t of the Interior October 1, 2010) (providing a list of the federally recognized Indian tribes within the United States). See also infra Part II.D.
³ See Trial Brief Filed By Leticia Martinez at 1, Martinez v. Lyons, Case No. RIC 503496 (Riverside Super. Ct., March 9, 2011) available at http://public-access.riverside.courts.ca.gov/OpenAccess/Civil/CivilCaseReport.asp?CourtCode=A&RivInd=RIV&CaseType=RIC&CaseNumber=503496 (last accessed 2/14/2013) (providing the background facts of the case, including details of Mr. Lyons current status). See also supra note 2.
⁴ See Civil Case Report, supra note 2. See also infra Part II.D.
⁵ See Trial Brief Filed by Leticia Martinez, supra note 3, at 2. “Per Capita Payments” are made by the tribe to tribal members who meet specific requirements by the tribe. See Sandra Schulman, The Morongo Band of Mission Indians: A Lot of History, Many Descendants, Many Challenges, News from Indian Country, (2009), http://www.indiancountrynews.com/index.php/casinostourism-sections-menu-75/7370-the-morongo-band-of-mission-indians-a-lot-of-history-many-descendants-many-challenges (detailing the requirement to be eligible for per capita payments from the Morongo Tribe). The financial records are not available on the court’s docket due to privacy rights, however. Mr. Lyons financial condition is summarized in Plaintiff’s trial brief after having conducted discovery on this matter. See Trial Brief Filed by Leticia Martinez, supra note 3, at 2.
judgment was entered in state court, Ms. Martinez has not recovered any portion of her judgment, despite persistent efforts. Under existing law governing enforcement of civil judgments between these entities, Ms. Martinez will continue to be unsuccessful. Like many others, Ms. Martinez’s situation illustrates the need for reciprocity. This Note examines the current methods of enforcing civil money judgments between state and tribal courts, and proposes a method for building stronger judicial relationships with Indian tribes through reciprocity.

Currently in California, common law principles of comity govern the cross-jurisdictional enforcement of civil judgments between state and tribal courts. Comity typically permits tribal courts to recognize or deny enforcement of state court judgments at its own discretion. This problem, however, is not limited to enforcing state judgments in tribal court.

Enforcement of tribal court judgments in state court operate under the Uniform Foreign-Country Money Judgments Recognition Act (“UFCMJR”). The UFCMJR’s application to

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6 See generally Civil Case Report, supra note 2 (evidencing that Plaintiff has not filed her notice of satisfaction of judgment with the court). See infra Part I.D.

7 See William C. Canby, Jr., American Indian Law in a Nut Shell 107 (5th ed. 2009) (explaining that collecting money damages from tribal members when the suit seeks payment from the tribe itself is extremely rare); Felix S. Cohen, Cohen’s Handbook of Federal Indian Law 669 (2005) (explaining that tribal per capita payments may be exempt from garnishment).

8 See infra Parts I.B-C. (discussing the application of comity to cross jurisdictional enforcement of civil judgments between state and tribal courts). Discretion in recognizing another nation’s judgment may be based on principles of cooperation, public policy, or political agenda. Hilton v. Guyot, 159 U.S. 113, 163-64 (1895).

9 Hilton, 159 U.S. at 163-64; see infra Part I.B.


tribal judgments, however, is problematic.\textsuperscript{12} Tribal courts have experienced concerns similar to those illustrated by the \textit{Martinez} case when it comes to enforcing tribal judgments under the UFCMJR. These issues include judicial inefficiency, timeliness of enforcement, and re-litigation of the controversy in state court.\textsuperscript{13} In response, Indian tribes have expressed a desire for full faith and credit recognition of tribal judgments in state court.\textsuperscript{14}

These problems continue to grow with the number of tribal courts exercising civil jurisdiction in California.\textsuperscript{15} California is home to 111 federally recognized Indian tribes (18 of which have formal Tribal courts), and over 360,000 Native Americans.\textsuperscript{16} Each Indian tribe has a

\begin{footnotesize}
\begin{enumerate}[\textsuperscript{12}]  \item See Judicial Council- Sponsored Legislation, supra note 10, at 3-4 (noting that the application of the UFCMJR in enforcement of tribal court judgments is untimely, burdensome, only covers civil money judgments, and often leads to the re-litigation of the same matter in state court).  
  \item Id. See also infra Parts I.C., II.D.3.
  \item Judicial Council- Sponsored Legislation, supra note 10, at 4. A few states have enacted reciprocity legislation; however, these statutes are based on full faith and credit rather than comity. See Okla. Stat. Ann. tit. 12 § 728 (West 1992) (granting the Supreme Court for the State of Oklahoma the power to provide full faith and credit to tribal court judgments); Wis. Stat. Ann. § 806.245 (West 1991) (providing full faith and credit to select Indian tribal courts within the state of Wisconsin); Wyo. Stat. Ann. § 5-1-111 (West 1994) (granting full faith and credit to tribal court judgments in return for reciprocity). The issue of whether full faith and credit applies or should apply to Indian tribes has consumed most of the discussion of cross-jurisdictional enforcement of civil judgments with Indian tribes in the United States. See generally Craig Smith, Full Faith and Credit in Cross-Jurisdictional Recognition of Tribal Court Decisions Revisited, 98 Calif. L. Rev. 1393 (2010) (addressing the issue of whether the term territory in the Full Faith and Credit Act includes Native American territories); Shira Keival, Discerning Discrimination in State Treatment of American Indians Going Beyond Reservation Boundaries, 109 Colum. L. Rev. 94 (2009) (discussing issues of enforcing State law on Indians living off of tribal territory); David S. Clark, State Court Recognition of Tribal Court Judgments: Securing the Blessing of Civilization, 23 Okla. City U. L. Rev. 353 (1998) (discussing the Oklahoma state statute permitting reciprocity based on full faith and credit and the procedural and res judicata effects of cross jurisdictional enforcement of judgments); Barby L. Hoggat, The Wyoming Tribal Full Faith and Credit Act: Enforcing Tribal Judgments and Protecting Tribal Sovereignty, 30 Land & Water L. Rev. 531 (1995) (discussing the effects of Wyoming’s recognition statute and how courts have interpreted the statute within the bounds of comity and full faith and credit); P.S. Deloria & Robert Lawrence, Negotiating Tribal-State Full Faith and Credit Agreements: The Topology of the Negotiation and the Merits of the Question, 28 Ga. L. Rev. 351 (1994) (arguing that a separate government agency should be created to enforce civil judgments between state and Indian tribes under principles of full faith and credit); Robert N. Clinton, Tribal Court and the Federal Union, 26 Willamette L. Rev. 841 (1990) (looking at Native American law from the colonial times through today and discussing the impact and interpretation of the Full Faith and Credit Act). See also 29 Wade Davies & Richmond L. Clow, American Indian Sovereignty and Law (2009) (annot. bibliog.) (providing a thorough annotated bibliography on the work that has been written on Native American Law).
  \item See infra Parts I.C, II.C.
\end{enumerate}
\end{footnotesize}
unique relationship with California unlike that of any other two nations. California and its Indian tribes are interdependent upon each other socially, economically, and politically. In 1953, they became judicially interdependent when Congress passed Public Law 280. Under Public Law 280, Congress conferred concurrent jurisdiction over civil and criminal matters to both state and tribal courts. Since 1953, however, Public Law 280 and the development of formal tribal courts have intensified the problems addressed in this Note. Solving these problems requires a reciprocal approach to enforcing civil judgments between state and tribal courts in California.

The Judicial Council of California through its Policy Coordination and Liaison Committee (“PCLC”) proposed legislation attempting to address these problems. After

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17 See Cherokee Nation v. Georgia, 30 U.S. 1, 2 (1831) (recognizing that the relationship between Indian tribes and the United States is marked by peculiar and cardinal distinctions unlike any other foreign nation in having to decide a dispute over whether the laws of the State should apply to Cherokee tribal land).


20 See Cohen, supra note 7, at 556-57 (detailing the creation of concurrent jurisdiction when Congress enacted Public Law 280). Concurrent jurisdiction exists when the same controversy may be or is filed in two courts of different jurisdiction. See, e.g., Consumer Advocacy Group, Inc. v. ExxonMobile, Corp., 168 Cal. App. 4th 675, 683-84 (discussing concurrent jurisdiction and how issues created by it are resolved between two state courts under California law and the rule of exclusive concurrent jurisdiction in the State of California).

21 See Cohen, supra note 7, at 556-57 (highlighting how concurrent jurisdiction under Public Law 280 has left courts with the task of coexisting under principles of comity); Vanessa J. Jiminez & Soo C. Song, Concurrent Tribal Jurisdiction and State Jurisdiction under Public Law 280, 47 Am. U. L. Rev. 1627, 1680-91 (1998) (discussing the issues created by Public Law 280 and concurrent jurisdiction between state and tribal courts).

circulating the Judicial Council sponsored legislation to the public for comment, the PCLC issued its final recommendation for the sponsored legislation on December 14, 2012 (“The Proposal”). The Proposal recommends that “Sister-State” recognition of tribal court judgments be adopted by the state through amendments to California’s Code of Civil Procedure. The Proposal, however, rejects reciprocity. The Judicial Council PCLC contends that reciprocity is better left for the legislature and therefore outside the scope of its jurisdiction.

This Note argues that reciprocity of state court judgments in tribal court should be required in California. Further, that the legislature should enact two additional Subsections provided in this Note, in addition to, the Judicial Council PCLC sponsored legislation. The first Subsection would require tribal court certification of reciprocity. The second Subsection permits a judgment debtor to object to enforcement of the tribal judgment by challenging claims of tribal reciprocity. Given the developing role tribal courts have within the judicial framework in California, public policy requires this legislation.

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23 The Judicial Council provided three comment periods. See Judicial Council- Sponsored Legislation, supra note 10, at 5-6. The third comment period was provided by the PCLC after the public requested additional time to consider the issue of requiring reciprocity with Indian tribes. See generally Judicial Council- Sponsored Legislation, supra note 10, at 6.

24 See Judicial Council- Sponsored Legislation, supra note 10, at 4 (explaining that the sponsored legislation mirrors the California SISTER STATE RECOGNITION ACT, CAL. CODE OF CIV. P. § 1710.10-1710.65). Sister-State recognition of civil judgments in California is for practical purposes identical to full faith and credit. See Manco Contracting Co. (W.W.C.) v. Bezdikian, 45 Cal. 4th 192, 195 (2008) (explaining that a Sister-State judgment is entitled to full faith and credit in discussing the statute of limitations of enforcing foreign money judgments). Although the term “Sister-State” is used throughout, it must be noted that the Judicial Council sponsored legislation does not provide complete recognition as is provided for under the California SISTER STATE RECOGNITION ACT, CAL. CODE OF CIV. P. § 1710.10-1710.65.


27 See infra Part II.A.

28 See infra Part II.A.

29 See infra Part II.A.

30 See infra Part II.C.
Part I of this Note details the methods of enforcing cross-jurisdictional civil judgments in California and the problems arising from Public Law 280. Part II.A proposes statutory language establishing a requirement of reciprocity with Indian tribes in California. Parts II.B-C analyzes the issues affecting cross-jurisdictional enforcement of civil judgments in a Public Law 280 state. Further, they illustrate how the proposed Subsections in this Note resolve these issues. Finally, this Note concludes that in order to realize the mutual benefits of a reciprocal relationship the legislature should require reciprocity as a matter of public policy.

I. STATE AND TRIBAL COURTS IN CALIFORNIA AND THE CHALLENGES OF COMITY AND MUTUAL ENFORCEMENT OF JUDGMENTS

Dissecting the legal relationship between California and Indian tribes is necessary to understand the issues with cross-jurisdictional enforcement of civil judgments. First, some courts have held and many scholars argue that full faith and credit applies to enforcement of tribal court judgments; however, California has yet to adopt such recognition. In California, enforcement of state and tribal court judgments operates under principles of comity. Comity, however, provides inconsistent and inefficient results. These results are further complicated by Indian tribes’ right to claim sovereign immunity.

Public Law 280 provides California with concurrent jurisdiction over civil actions affecting Indian tribes. Yet Congress failed to provide any additional means other than comity

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31 See, e.g., Jim v. CIT Fin. Servs. Corp., 87 N.M. 362, 363 (1975) (holding that full faith and credit applies to Indian tribes). See also supra note 14. But see JUDICIAL COUNCIL-SPONSORED LEGISLATION, supra note 10, at 3 (explaining that comity rather than full faith and credit applies to the enforcement of civil judgments between state and tribal courts in California).
32 JUDICIAL COUNCIL-SPONSORED LEGISLATION, supra note 10, at 3.
33 See infra Part II.B.
34 See infra Parts I.B-C.
for enforcing state court civil judgments. The problem with this approach is illustrated by Ms. Martinez’s inability to enforce her civil judgment against tribal member, Gary Lyons.

Furthermore, Indian tribes face similar limitations enforcing tribal court judgments in state court. These problems have led to the Judicial Council’s sponsored legislation.

A. Indian Tribes and the Limits of Full Faith and Credit

There is considerable judicial and scholarly debate over whether full faith and credit applies to Indian tribes under the language of the Full Faith and Credit Act. Under the Act, the judgments and orders of courts in every “Territory and Possession” of the United States should receive the same full faith and credit in every other court within the United States and its “Territories and Possessions.” The debate centers on whether federally recognized Indian tribes fall within the definition of “Territory and Possession.”

In determining whether Indian tribes fall within the statutory language “Territories and Possessions,” courts have applied several tests. Cases applying full faith and credit typically rely on the functional analysis of the relationship test set forth in United States ex rel. Mackey v. Coxe. These courts focus on the actual relationship Indian tribes have with the states within

37 See infra Parts I.D, II.D.
38 JUDICIAL COUNCIL-SPONSORED LEGISLATION, supra note 10, at 3-4.
39 Id. See also infra Part I.E.
42 See Wilson v. Marchington, 127 F.3d 805, 808 (9th Cir. 1997) (“Because Indian nations are not referenced in the statute, the question is whether tribes are ‘territories or possessions’ of the United States under the statute.”). See also Smith, supra note 14, at 1415 (arguing that tribes should be considered territories or possessions of the United States under 28 U.S.C. § 1738 pursuant to the functional analysis of the relationship test established in Mackey v. Coxe, 59 U.S. 100 (1885)).
43 United States ex rel. Mackey v. Coxe, 59 U.S. 100, 103-04 (1855) (recognizing the actual relationship Indian tribes have with the United States as opposed to a doctrinal relationship).
which they reside.\textsuperscript{44} Other jurisdictions have relied heavily on \textit{Ex Parte Morgan}.\textsuperscript{45} In \textit{Ex Parte Morgan}, the court held that Indian tribes were not “territories” under the federal extradition statute because the court did not consider them inchoate states.\textsuperscript{46} The Ninth Circuit, however, decided to apply a different test altogether.\textsuperscript{47}

In \textit{Wilson v. Marchington}, the Ninth Circuit focused on Congressional intent.\textsuperscript{48} Specifically whether subsequent federal statutes expressly extended full faith and credit to Indian tribes.\textsuperscript{49} This test operates under the theory that Congressional legislative action or inaction in “\textit{pari materia}” provides a contemporary interpretation of that statute.\textsuperscript{50} In applying the rule of in \textit{pari materia}, the Ninth Circuit looked at the language of several federal statutes that were enacted after the 1804 amendment to the Full Faith and Credit Act. These statutes addressing different legal issues expressly provided full faith and credit recognition to Indian tribes.\textsuperscript{51}

\textsuperscript{44} See, e.g., Jim v. CIT Fin. Servs. Corp., 87 N.M. 362, 363 (1975) (applying \textit{Mackey} to hold that full faith and credit applies to Indian tribal courts); \textit{In re Buehl}, 87 Wash.2d 649, 663-64 (1976); Sheppard v. Sheppard, 104 Idaho 1, 8 (1982).
\textsuperscript{46} See, e.g., \textit{Brown}, 117 Ariz. at 197 (holding that the Cherokee nation did not fall within the definition of territory under any of the law of the federal government); \textit{but see} Tracy, 168 Ariz. at 33 (disagreeing with the reasoning in \textit{Brown} that Indian tribes have never been interpreted as a territory under any federal law).
\textsuperscript{47} Wilson v. Marchington, 127 F.3d 805, 808-09 (9th Cir. 1997).
\textsuperscript{48} Id.
\textsuperscript{49} Id. at 809.
\textsuperscript{50} See id. (applying the interpretative cannon of in \textit{pari materia}); Erlenbaugh v. United States. 409 U.S. 239, 243-44 (1972) (“The rule of in \textit{pari materia}... is a reflection of practical experience in the interpretation of statutes... a ‘later act can... be regarded as a legislative interpretation of (an) earlier act... in the sense that it aids in ascertaining the meaning of the words as used in their contemporary setting,’ and ‘is therefore entitled to great weight in resolving any ambiguities and doubts.’”).
The Ninth Circuit first noted that all of the federal statutes subsequent to the Full Faith and Credit Act had added express language requiring full faith and credit between the United States and Indian tribes. However, these statutes did not address cross-jurisdictional enforcement of civil judgments. Second, that Congress had the opportunity to include Indian tribes when it amended the Full Faith and Credit Act in 1804, but failed to do so. Lastly, Congress’ legislative intent to provide a separate listing in the Indian Child Welfare Act to include territories, possessions, and Indian tribes further evidenced its intent not to include Indian tribes under the Full Faith and Credit Act. Thus, in Wilson the Ninth Circuit held that full faith and credit does not apply to Indian tribes, leaving principles of comity to dictate cross-jurisdictional enforcement of civil judgments.

In sum, full faith and credit does not exist in California. The California legislature has not enacted a full faith and credit statute and California courts have followed the Supreme Court’s ruling in McClanahan v. Arizona State Tax Comm’n. Moreover, the Ninth Circuit rejected the contention that the Full Faith and Credit Act applies to Indian tribes. The Ninth Circuit did, however, recognize that it could envision scenarios where public policy may warrant reciprocity with Indian tribes. However, the Court went on to explain that the requirement of

52 Wilson, 127 F.3d at 809.
53 See supra note 51 (listing the statutes the Ninth Circuit analyzed).
54 Wilson, 127 F.3d at 809.
55 Id.
56 Id.
57 See JUDICIAL COUNCIL-Sponsored Legislation, supra note 10, at 3 (confirming that full faith and credit does not apply to Indian tribes in California and are required to seek recognition of civil judgments under the UFCMJR).
58 McClanahan v. Arizona State Tax Comm’n, 411 U.S. 164, 168 (1973). See, e.g. Kelly v. First Astri Corp., 72 Cal. App. 4th 462 (Ct. App. 1999) (relying on McClanahan, 411 U.S. at 168 for the proposition that Indian tribes are not equivalent to sister states and as such are not afforded full faith and credit). See also CAL. CODE OF CIV. PROC. §§ 1713-24 (West 2007) repealed by CAL. CODE OF CIV. PROC. § 1716 (West 2010) (requires California state courts to enforce tribal court judgments subject to the limitations set forth in this code under principles of comity). A few select states have enacted statutes that provide full faith and credit to Indian tribes. See supra note 14.
59 Wilson v. Marchington, 127 F.3d 805, 809-10 (9th Cir. 1997).
60 Id.
reciprocity was a matter for the legislature to consider. Thus, in California, the issues surrounding the enforcement of civil judgments between state and tribal courts are governed by comity, Public Law 280, and public policy.

**B. Comity and Tribal Assertions of Sovereign Immunity**

In 1895 the Supreme Court expressed its vision of comity as being “neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other.” In contrast to full faith and credit, the principles of comity afford any nation latitude and discretion in deciding whether to enforce a civil judgment. Factors such as public policy, economics, and political relations play an important role in whether a judgment is enforced or denied under comity. Discretionary enforcement of judgments under comity has historically been perceived to be unfair. A perception produced by highly inconsistent results with the enforcement of civil judgments between state and tribal courts. In *Hilton v. Guyot*, the Supreme Court provided a test to clarify when judgments from foreign nations should be enforced under comity. This test has since come to include Indian tribes.

The Supreme Court held that courts should weigh the following factors:

1. The judgment appear to come from a competent court;
2. That court must have jurisdiction over the cause of action and the parties to the action;
3. The judgment must be made upon due allegations and proofs;
4. Upon a showing that defendant had an opportunity to defend against the allegations;
5. The judgment have been made through proceedings that are according to the course of a civilized jurisprudence;
6. The judgment was obtained through a fair and impartial process.

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61 Id.
62 Id.
64 See COHEN, supra note 7, at 662 (comparing the differences between full faith and credit and principles of comity).
65 Id.
66 See id. (explaining the drawbacks to enforcement of civil judgments under principles of comity as opposed to full faith and credit).
67 Id.
68 See Hilton v. Guyot, 159 U.S. 113, 202-03 (providing the factors courts should weigh in determining whether to enforce a judgment from a sovereign nation).
69 See, e.g., Wilson, 127 F.3d at 807 (applying factors provided in *Hilton* to a dispute involving a tribal member).
70 Hilton, 159 U.S. at 202-03.
stated in a clear and formal record; and (7) be prima facie evidence of the truth of the matter adjudged.\textsuperscript{71}

Under this test the Court did not enforce the French court judgment in \textit{Hilton}.\textsuperscript{72} Instead, the Court held that reciprocity with foreign nations should be required in order for their judgments to be enforced in the United States.\textsuperscript{73} With the exception of reciprocity, these factors were subsequently codified under the 1962 and 2005 Federal Recognition Acts and California’s UFCMJR.\textsuperscript{74} Most states have adopted the factors set forth in \textit{Hilton}, however, they have failed to require reciprocity.\textsuperscript{75}

Recently, courts applying comity have generally moved towards providing full faith and credit to tribal court judgments without requiring the same recognition of state court judgments.\textsuperscript{76} In \textit{Wilson}, the Ninth Circuit held that tribal court judgments should generally be enforced unless the defendant’s due process rights have not been protected.\textsuperscript{77} State court judgments, however, are often denied in tribal court.\textsuperscript{78} This is typically a result of tribal claims of sovereign immunity.\textsuperscript{79}

\textit{1. The Effects of Sovereign Immunity on Enforcing Civil Judgments}

\begin{itemize}
\item \textsuperscript{71} Id.
\item \textsuperscript{72} Id. at 228.
\item \textsuperscript{73} See id. at 233-34 (recognizing that France did not provide reciprocity to the United States with respect to enforcement of civil judgments in denying enforcement of the French court judgment).
\item \textsuperscript{75} See COHEN, supra note 7, at 664 (explaining that courts have distinguished the facts in those cases from \textit{Hilton} in failing to require reciprocity).
\item \textsuperscript{76} COHEN, supra note 7, at 663.
\item \textsuperscript{77} See COHEN, supra note 7, at 663. \textit{See also Wilson v. Marchington}, 127 F.3d 805, 807 (9th Cir. 1997) (stating that as a general principle, courts should recognize and enforce tribal judgments).
\item \textsuperscript{78} See COHEN, supra note 7, at 669 (discussing the issues with attempting to enforce a state court judgment in tribal court).
\item \textsuperscript{79} See id. at 662 (listing the reasons why foreign nations choose not to enforce a civil judgment which are synonymous to the factors set forth in \textit{Hilton} v. Guyot, 159 U.S. 113, 202-03 (1985) including sovereign immunity, the receiving courts view that the judgment is fundamentally unfair, the court rendering judgment lacked jurisdiction, or that the judgment violates public policy).
\end{itemize}
Sovereign immunity protects federally recognized tribes from suit or judgment.80

Sovereign immunity may be used to protect against the discovery of information involving the tribe.81 Moreover, it generally preempts state law even when non-tribal members are involved.82 This includes state procedures such as subpoenas, garnishments, bank account levies and other state statutes relating to the enforcement of civil judgments.83 The right to sovereign immunity, however, is not universal.84 Indian tribes are not immune from suit by the United States, but are immune from lawsuits filed by the state.85 Additionally, sovereign immunity, may be waived by the tribe, but only if there is sufficient evidence that the tribe intended to waive it.86 Despite the few exceptions, sovereign immunity effectively protects against enforcement of state court judgments.87

Sovereign immunity affects enforcement of state court judgments in many different ways. First, Indian tribes may raise a defense of sovereign immunity to prevent a suit altogether against the tribe.88 Second, if a civil judgment is entered against a tribal member who receives wages or per capita payments from the tribe, a tribe may invoke sovereign immunity to prevent

80 See CANBY, JR., supra note 7, at 102-11 (explaining that sovereign immunity extends to, among other thing, tribal government, tribal agencies, intertribal council, and incorporated tribes under the Indian Reorganization Action Act). COHEN, supra note 7, at 1327.
81 See LARRY LONG, AMERICAN INDIAN LAW DESKBOOK 295 (Clay Smith et al. eds., 4th ed. 2008) (explaining how sovereign immunity can prevent adjudication of legal disputes in substantially different ways); CANBY, JR., supra note 7, at 102-11.
82 See McClanahan v. Arizona State Tax Comm’n, 411 U.S. 164, 170-71 (1973) (holding that state law general does not apply to Indian tribes unless there was no interference with tribal self-government, and where non-tribal members were involved).
83 Id. See also COHEN, supra note 8, at 639 (listing state procedure which sovereign immunity protects Indian tribes, including subpoenas).
85 COHEN, supra note 8, at 637. See also E.E.O.C. v. Karuk Tribe Housing Authority, 260 F.3d 1071, 1075 (stating that Indian tribes do not enjoy sovereign immunity from lawsuits brought by the United State or federal government); Kiowa Tribe v. Mfg. Techs., Inc., 523 U.S. 751, 752 (stating that sovereign immunity is not subject to diminution nor can it be eliminated by the states).
88 COHEN, supra note 7, at 638-39.
garnishment of those wages. Third, sovereign immunity may be invoked in order to prevent the discovery of information, such as bank accounts, personal property, or other assets needed to enforce a judgment. Finally, sovereign immunity prevents state courts from enforcing contracts entered into with Indian tribes or tribal corporations. Importantly, claims of sovereign immunity have grown proportionally with increased economic activity with Indian tribes over the past decade.

In response to economic pressure against claims of sovereign immunity, tribes have established corporations designed specifically to waive all rights to sovereign immunity. Even under this structure, however, if a business receives judgment against a tribal corporation its monetary recovery would be limited to the assets held by the tribal corporation. Indian tribes are able to limit their exposure by reducing the amount of tribal assets held by the corporation. Thus, courts have noted that even when exercised democratically, sovereign immunity is territorial in nature, and leads to unreliable enforcement of civil judgments.

2. Reciprocal Effect of Two Nations Under Principles of Comity

See id. at 638-40.
90 See United States v. James, 980 F.2d 1314, 1320 (9th Cir. 1992) (barring discovery due to Indian tribes’ claim to sovereign immunity); Bishop Paiute Tribe v. County of Inyo, 291 F.3d 549, 558-9 (9th Cir. 2002) (quashing subpoena ducès tecum on grounds of sovereign immunity). See also COHEN, supra note 7, at 638-39 (listing several situations in which tribal sovereign immunity to avoid litigation, judgment or discovery); Canby, Jr., supra note 7, at 101-02 (detailing cases which provide when sovereign immunity has been held to be appropriate).
91 COHEN, supra note 7, at 1328.
92 See CANBY, JR., supra note 7, at 103 (explaining how claims of sovereign immunity are a controversial subject and have increased over the recent years due to increased economic activity of the tribes).
93 Id.
94 Id.
95 Id.
96 See Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134, 166 (1980) (noting that sovereign immunity is territorial); Plains Commerce Bank v. Long Family Land & Cattle Co., 554 U.S. 316, 334-35 (2008) (resolving a territorial dispute over the sale of non-Indian fee land on Indian reservation); Montana v. United States., 450 U.S. 544, 549 (1981) (deciding a territorial dispute over the Big Horn River and fishing rights); LONG, supra note 81, at 295 (noting there is an intricate balance of sensitive policy, social and economic interests with claims of sovereign immunity); CANBY, JR., supra note 7, at 91.
The Columbia extradition case illustrates how the political institutionalization of reciprocity between two nations can affect judicial relationships. Based on Columbia’s right to sovereignty, President Barco declined to extradite major drug smugglers to the United States. Initially, United States citizens believed Columbia lacked respect for the United States and its judicial system. Additionally, that Columbia was not willing to provide the level of mutual cooperation required to resolve this international dispute. However, judicial cooperation rose dramatically when the President of Columbia changed its nation's extradition policy.

The institutionalization of extradition by President Barco led to judicial cooperation. Following President Barco’s lead the Columbia courts were more willing to respect the demands of the United States government. Thus, cooperation between Columbia’s judicial system and the United States mirrored Columbia’s political relations with the United States.

C. Public Law 280 and Civil Jurisdiction in California

The relationship between California and Indian tribes has a tumultuous history. One that is characterized by a general lack of understanding for one another that has undermined the

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97 This example is also used in *Tribal Court and the Federal Union* by Robert Clinton. See Clinton, *supra* note 14, at 865.
100 *Mourning Latest Victims, Columbia Will Seek to Extradite Drug Figures, supra* note 99, at 14, col. 1.; *Columbia Presidential Candidate is Slain at Rally, supra* note 99, at 3, col. 1.
101 *See Columbia Presidential Candidate is Slain at Rally, supra* note 99, at 3, col. 1 (describing the events leading to and after the attack of Columbian President Barco, and his renewal of extradition with the United States after the attack).
102 Clinton, *supra* note 14, at 865.
103 *See JOHNSON, supra* note 18, at 7-8 (analyzing the different levels of mutual understanding and respect that are needed for effective judicial and political cooperation between the State and Indian tribes); Clinton, *supra* note 14, at 865 (explaining the effect President Barco’s change in extradition policy had on judicial cooperation).
104 *See DAVID E. WILKINS & HEIDI K. STARK, AMERICAN INDIAN POLITICS AND THE AMERICAN POLITICAL SYSTEM* 113 (3d ed. 2011) (explaining that tensions between states and Indian tribes can be traced back to 1787 when Congress determined that it would have exclusive control over the trade relations with Indian tribes, which has been further exacerbated by the states desire to tax Indian tribes and Indian tribes resenting states for want to tax them).
relations between them. Further straining the relationship has been the Indian tribes’ direct relationship with the federal government, and the state’s desire to tax Indian tribes. Notwithstanding tense relations, Congress forced the State and California tribes closer together after almost 200 years of plenary power with the enactment of Public Law 280.

Public Law 280 confers civil and criminal jurisdiction to California over matters affecting Indian tribes. Over the past 50 years, however, state and federal courts have struggled to interpret the power Public Law 280 actually conferred over civil matters. Most of Public Law 280’s legislative history deals with criminal rather than civil jurisdiction. Under the language of 28 U.S.C. § 1360, Public Law 280 seems to mandate that state laws have the same force and effect on tribal members and on tribal lands. The interpretive issue here is whether Public Law 280 grants the state the power to regulate and impose state law on tribal members under 28

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105 Id.
106 See JOHNSON, supra note 18, at 1. For an in depth analysis of case law and the controversies surrounding Native America sovereignty and treaty rights see BRYAN H. WILDENTHAL, NATIVE AMERICAN SOVEREIGNTY ON TRIAL: A HANDBOOK WITH CASES, LAWS, AND DOCUMENTS (2003).
107 LONG, supra note 81, at 273. Plenary power with regard to Native American law is generally defined as the federal government’s exclusive control over relations with sovereign Indian tribes. WILKINS & STARK, supra note 104, at 311. Under the doctrine of plenary power, tribes are components of the United States, subject to federal enforcement of federal law. See WILDENTHAL, supra note 106, at 97 (discussing the plenary power doctrine).
108 PUB. L. 83-280 (1953) (codified as 18 U.S.C. § 1162 (1953), 28 U.S.C. § 1360 (1953), and 25 U.S.C. §§ 1321–26 (1968)). See also Bryan v. Itasca, 426 U.S. 373, 383-84 (1976) (discussing the powers conferred by the Congressional enactment of Public Law 280 to include civil jurisdiction over Indian tribal members). In 1968, Congress passed the INDIAN CIVIL RIGHTS ACT, 25 U.S.C. §§1321-26 (“ICRA”), which modified the process in which states could opt-in to the grant of jurisdiction provided under Public Law 280, which also required Tribal permission for the state to do so under 25 U.S.C. § 1323. LONG, supra note 81, at 278-79. Since then, there have been no additional states to adopt Public Law 280. LONG, supra note 81, at 278-79.
109 See Vanessa J. Jiminez & Soo C. Song, supra note 21, at 1680-91 (1998) (discussing the various interpretations courts have given Public Law 280 through different cannons of dealing with Indian tribes within the United States).
110 See Carole Goldberg, Public Law 280: The Limits of State Jurisdiction Over Reservation Indians, 22 U.C.L.A. L. REV. 535, 542-43 (1975) (explaining that the grant of civil jurisdiction under Public Law 280 was an afterthought and as such little legislative history deals with it).
111 See 28 U.S.C. § 1360 (1953) (“[T]hose civil laws of such state that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere in the state . . . .”).
U.S.C. § 1360. The Supreme Court has not addressed this, but it has expressed doubt that Public Law 280 authorizes the application of local state laws on the reservation.

Whether state law can be applied to Indian tribes under Public Law 280 affects enforcing civil judgments under California’s Code of Civil Procedure. A majority of courts have held that the language in 28 U.S.C. § 1360 only relates to “generally applicable” laws of the state. This would exclude California’s Code of Civil Procedure or other laws relating to enforcement of state court judgments. In reaching this conclusion, courts point out that Congress did not intend to interfere with Indian tribes’ right to self-govern by forcing such laws on Indian tribes or tribal members. Thus a judgment may be rendered in either court, but enforcement of such judgment still continues to operate under principles of comity.

Under principles of comity, concurrent jurisdiction creates problems with cross-jurisdictional enforcement of civil judgments. First, concurrent jurisdiction permits inefficient forum shopping. As illustrated in Martinez, inefficient forum shopping occurs when plaintiffs

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112 See Canby, Jr., supra note 7, 266-7 (detailing the controversy over whether the language in Public Law 280 conferred the power to apply state law on Indian tribes).
113 See California v. Cabazon Band of Mission Indians, 480 U.S. 202, 212 n.11 (1987) (explaining that the issue of whether Public Law 280 authorizes the application of any local laws to Indian reservations is doubtful, and because that issue was not before the court and not relevant to its determination it failed to hold that way).
114 See Segundo v. City of Rancho Mirage, 813 F.2d 1387, 1390 (9th Cir. 1987) (confirming that state laws of general applicability have been held to apply on Indian tribes, but that state law as a general rule does not).
115 See id.
116 See Santa Rosa Band of Indian v. Kings County, 532 F.2d 655, 661 (9th Cir. 1975) (holding that the intent of Congress in enacting Public Law 280 was to provide tribal governments equal footing to self-regulate local affairs, and that state laws only affected civil jurisdiction).
117 Cohen, supra note 7, at 585.
118 See Aaron F. Arnold, Et. Al., State and Tribal Courts: Strategies for Bridging the Divide, 47 Gonz. L. Rev. 801, 809 (2011-12) (arguing that concurrent jurisdiction under Public Law 280 created jurisdictional issues which congress dealt with by enacting the Full Faith and Credit Act, which does not apply to Indian tribes). See also 28 U.S.C. § 1360 (1953) (failing to deprive tribal courts concurrent jurisdiction); Native Village of Venetie I.R.A. Council v. Alaska, 944 F.2d 548, 559-62 (9th Cir. 1991) (rejecting the State of Alaska’s argument that it has exclusive jurisdiction over child custody disputes); Teague v. Bad River Band of the Lake Superior Chippewa Indians, 236 Wis. 2d 384, 401 (2000) (discussing the issues that arise from concurrent jurisdiction and the application of state procedural rules).
119 Cohen, supra note 7, at 558. Forum shopping, generally, is a plaintiff’s attempt to have their case heard in the court, state or tribal, which will produce the most advantageous judgment. See Note, Forum Shopping Reconsidered, 103 Harv. L. Rev. 1677, 1677 (1990) (defining forum shopping and arguing that the reduction in certain types of forum shopping may reduce judicial costs). See also Mary Garvey Algero, In Defense of Forum
file their suit in the preferred jurisdiction and then must re-litigate the case in the opposing court in order to enforce their judgment.\textsuperscript{120} Second, a plaintiff may file the same action in multiple courts in order to see which forum will be most advantageous to them in obtaining and enforcing a judgment.\textsuperscript{121} Third, conflicting judgments between courts may arise, leaving the question of whose judgment should prevail.\textsuperscript{122} Finally, the judgment of one court could be abrogated by the opposing party filing in the other forum as illustrated in \textit{Teague v. Bad River Band of the Lake Superior Chippewa Indians}.\textsuperscript{123}

The Supreme Court of Wisconsin, a Public Law 280 state, was forced to address all of these issues.\textsuperscript{124} In \textit{Teague}, the plaintiff raced to file his suit for breach of an employment contract in state court.\textsuperscript{125} The state court determined the employment contract being sued on to be valid.\textsuperscript{126} The Bad River Band of the Lake Superior Chippewa Indians (“Bad River Band”), however, filed suit in tribal court for declaratory relief.\textsuperscript{127} The Bad River Band sought declaratory relief invalidating the employment contract they were being sued on in state court.\textsuperscript{128} The Bad River Band tribal court quickly found for the tribe and entered judgment first prior to

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state court case. Initially, the Supreme Court of Wisconsin refused to enforce the tribal judgment for lack of coordination with the state superior court. The Court remanded the case so that the two judicial branches could confer on the issue. This conference established protocols to prevent conflicting judgments from occurring in the future. Unfortunately, the parties still could not reach an agreement on whose judgment would control. Frustrated at the two courts inability to cooperate, the Supreme Court of Wisconsin deferred to the tribal judgment under principles of comity.

D. Misfortunes in Attempting to Enforce State Court Judgments

Martinez v. Lyons is also illustrative of the aforementioned issues. Plaintiff Leticia Martinez’s daughter Sylvia Olmos was brutally murdered after her daughter agreed to testify against a member of the Sapo gang in Riverside County. Mr. Lyons is a member of the Morongo Tribe, as well as, the Banning Sapo gang. Mr. Lyons was ordered to murder Ms. Olmos to prevent her from testifying at trial. On August 4, 2004, eighteen-year-old Sylvia Olmos entered Gary Lyons vehicle. Mr. Lyons then drove her to a desert located on the

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129 Id.
130 See id. (refusing to enforce tribal court judgment for lack of coordination and cooperation with the state court over allocation of jurisdiction regarding the two related suits).
132 Id.
133 Id.; Teague v. Bad River Band of the Lake Superior Chippewa Indians, 265 Wis.2d 64, 71-72 (2003) [hereinafter Teague II].
134 See Trial Brief Filed By Leticia Martinez, supra note 3, at 2. Sylvia Olmos is the deceased daughter to the named Plaintiff, Leticia Martinez. See Complaint filed Fast Track- Summons Issued at 3, Martinez v. Lyons, Case No. RIC 503496 (Riverside Super. Ct., March 9, 2011) available at http://public-access.riverside.courts.ca.gov/OpenAccess/Civil/CivilCaseReport.asp?CourtCode=A&RivInd=RIV&CaseType=RIC&CaseNumber=503496 (last visited April 21, 2103) (providing the background facts of the case, including details of Mr. Lyons current status). See also supra note 2.
135 See Trial Brief Filed By Leticia Martinez, supra note 3, at 2.
136 Id.
137 Id. Ms. Olmos voluntarily got into Mr. Lyons’ car. See Trial Brief Filed By Leticia Martinez, supra note 3, at 2. Although Ms. Olmos and Mr. Lyons were not close, she trusted him and was not aware of any danger. See Trial Brief Filed By Leticia Martinez, supra note 3, at 2.
Morongo Tribe reservation and shot her three times in the head at close range.\textsuperscript{139} Prior to his incarceration, Mr. Lyons resided on the Morongo reservation.\textsuperscript{140} Currently, Mr. Lyons is in prison receiving over $150,000 per year in per capita payments from the Morongo Tribe.\textsuperscript{141}

After the criminal conviction of Mr. Lyons, Ms. Martinez filed a civil suit for the wrongful death of her daughter against Mr. Lyons on July 9, 2008.\textsuperscript{142} Ms. Martinez went to trial on January 31, 2011, and after a twelve day trial, the jury awarded Ms. Martinez $2,140,477.00.\textsuperscript{143}

The issue then became how to enforce Ms. Martinez’s judgment. First, the per capita payments made to Mr. Lyons were not subject to garnishment without the Morongo Tribes consent and pursuant to their tribal court procedures.\textsuperscript{144} Second, attempts to collect on Ms. Martinez’s judgment, including executing writs of execution on accounts and assets held within the United States jurisdiction.\textsuperscript{145} These attempts failed to locate any assets because the bank accounts had been closed. The next option was to garnish Mr. Lyons prison trust account, on the

\textsuperscript{139} See Trial Brief Filed By Leticia Martinez, supra note 3, at 2.

\textsuperscript{140} Id.

\textsuperscript{141} Mr. Lyons’ criminal conviction was ultimately upheld on appeal and is serving a life sentence at the High Desert State Prison. Trial Brief Filed By Leticia Martinez, supra note 3, at 2-3.

\textsuperscript{142} See Complaint filed Fast Track- Summons Issued, supra note 135, at 1.


\textsuperscript{144} The per capita payment received by Mr. Lyons are not subject to garnishment under state procedure. See COHEN, supra note 7, at 638-40 (explaining that tribal governments, entities, and extension thereof are not subject to processes to which they have not willingly consented). Similar issues, not addressed in this note, would arise with liens or encumbrances on Indian land or interests in Indian trust land Mr. Lyons may have acquired a right to. See 18 U.S.C. § 1162(b) (prohibiting the alienation, encumbrance, or taxation of any real or personal property held in trust by the United States); 28 U.S.C. 1360(b).

\textsuperscript{145} Writ of Execution Issued- Riverside County at 1-2, Martinez v. Lyons, Case No. RIC 503496 (Riverside Super. Ct., March 9, 2011) available at http://public-access.riverside.counts.ca.gov/OpenAccess/Civil/CivilCaseReport.asp?CourtCode=A&RivInd=RIV&CaseType=RIC&CaseNumber=503496 (last accessed 2/14/2013) (providing the background facts of the case, including details of Mr. Lyons current status). See also supra note 2. Wages and assets received off-reservation may be garnished. COHEN, supra note 7, at 669. Under the “debt-follows-the-debtor” rule Plaintiff would normally be able to garnish such wages. COHEN, supra note 7, at 669. However, wages for on-reservation tribal member citizens may be exempt, under sovereign immunity. Id.
assumption that money from his per capita payments was being deposited into his account.\textsuperscript{146} Executing this writ, however, was economically unfeasible.\textsuperscript{147} Despite Ms. Martinez’s attempts to enforce her judgment, only one option remains.\textsuperscript{148}

Like tribal members seeking enforcement in state court under the UFCMJR, Ms. Martinez is now left with re-litigating her judgment in the tribal court for the Morongo Tribe. With little knowledge or access to Morongo tribal law, rules of procedure, attempting to have the Morongo tribal court enforce her judgment may prove to be as ineffective as the other options.\textsuperscript{149}

This raises similar concerns that tribal members face with utilizing the procedure under the UFCMJR.\textsuperscript{150}

\textbf{E. The Recent Proposal to Streamline Enforcement of Tribal Judgments in State Court}

The Judicial Council of California has recognized the need for a more efficient method of enforcing tribal judgments.\textsuperscript{151} Tribal court judges have found that the current procedure under the UFCMJR is inefficient, untimely, and often results in needless re-litigation of cases.\textsuperscript{152} As

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\item[\textsuperscript{146}] Writ of Execution Issued- Lassen County at 1-2, Martinez v. Lyons, Case No. RIC 503496 (Riverside Super. Ct., March 9, 2011) available at http://public-access.riverside.courts.ca.gov/OpenAccess/Civil/CivilCaseReport.asp?CourtCode=A&RivInd=RIV&CaseType=RIC&C&CaseNumber=503496 (last accessed 2/14/2013) (providing the background facts of the case, including details of Mr. Lyons current status).
\item[\textsuperscript{147}] Under the prison trust exemption the first $1,225 in the prison account is exempt from garnishment. CAL. CODE. OF CIV. PROC. § 704.090. A writ of execution from the Riverside Superior Court costs $25.00. See County of Riverside Fee Schedule, http://www.riverside.courts.ca.gov/feeschedule.pdf (last visited April 21, 2013). The cost to have the Riverside County Sherriff’s Department serve the writ of execution would have cost an additional $35.00 per service. See County of Riverside Fee Schedule, http://www.riversidesheriff.org/pdf/ScheduleOfFees.pdf (last visited April 21, 2013). This does not take attorney or paralegal time into account as part of the cost. Lastly, Mr. Lyons would need to have more than $1,225 deposited into his account.
\item[\textsuperscript{148}] Ms. Martinez sought assistance from legal counsel for the Morongo Tribe and the assistance of attorneys specializing in California Indian tribal law, but these efforts were also unsuccessful. Again, there is the possibility that the Morongo Tribe might be willing to negotiate terms of enforcement without further litigation; however, this is outside the scope of this Note.
\item[\textsuperscript{149}] See COHEN, supra note 7, at 662 (explaining that under comity the reviewing court has greater discretion to determine whether to enforce the foreign judgment, which could include refusing to enforce based on public policy, that the procedural rules utilized to obtain the judgment were fundamentally unfair, or for lack of jurisdiction).
\item[\textsuperscript{150}] See JUDICIAL COUNCIL- SPONSORED LEGISLATION, supra note 10, at 3-4 (reporting that tribal court judges find the procedures under the UFCMJR inadequate, burdensome, timely, costly, and in many cases require re-litigation of the case upon which the tribal court judgment rests).
\item[\textsuperscript{151}] Id.
\item[\textsuperscript{152}] Id.
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the Martinez and case illustrate, state courts face the same problems with enforcing state judgments.153  Responding to tribal court complaints, the Judicial Council’s sponsored legislation would streamline the enforcement of tribal court judgments in state court.154

In discussing the problems raised with cross-jurisdictional enforcement of civil judgments, the Proposal fails to assess the viability of reciprocity. First, the Proposal expressly recommends that reciprocity not be required as part of the legislation.155  The Judicial Council does not provide justification for this position.156  Then, relying on dicta in Wilson v. Marchington, the Proposal ultimately concludes that reciprocity is better left for the legislature.157

The Judicial Council’s sponsored legislation provides several major changes to the enforcement of tribal judgments.158  First, the sponsored legislation goes beyond enforcement of civil money judgments.159  Although the UFCMJR currently only applies to civil money judgments, the Judicial Council’s sponsored legislation would include equitable relief, such as injunctions.160  Second, the Judicial Council’s sponsored legislation only requires that the tribal “clerk, party or attorney” certify under oath that the case resulting in the judgment was

153 See supra Part I.D.
154 See JUDICIAL COUNCIL- INVITATION TO COMMENT, LEG11-03, supra note 23, at 1. The proposal was circulated three times for informal comment prior to the proposal being circulated for formal comment by the PCLC. See JUDICIAL COUNCIL- SPONSORED LEGISLATION, supra note 10, at 5. The first formal period for comment by the public from the general public extended from July 1, 2011 to August 31, 2011. JUDICIAL COUNCIL- SPONSORED LEGISLATION, supra note 10, at 7. A second comment period was provided after two commenters objected to the length of the comment period, which extended from October 5, 2011 to January 2, 2012. JUDICIAL COUNCIL- SPONSORED LEGISLATION, supra note 10, at 7.
155 See JUDICIAL COUNCIL- SPONSORED LEGISLATION, supra note 10, at 9.
156 See JUDICIAL COUNCIL- SPONSORED LEGISLATION, supra note 10, at 86 (providing comments from public citizens expressing the desire for reciprocity in order for the proposed legislation to be enacted).
157 Id. at 9. In a Public Law 280 state, comity also invokes questions of jurisdiction, procedural law, and judicial economy. Accordingly, the Ninth Circuit went on to state that as a matter of public policy, the court could imagine scenarios where even a district court could require reciprocity. Id.
158 Only sections relevant to this Note are discussed. See JUDICIAL COUNCIL- SPONSORED LEGISLATION, supra note 10, at 15-21 (providing the proposed sections in their entirety to the Judicial Council sponsored legislation).
159 CAL. CODE OF CIV. PROC. § 1733.1(b)(7) (proposed TRIBAL COURT CIVIL JUDGMENT ACT). JUDICIAL COUNCIL- SPONSORED LEGISLATION, supra note 10, at 18.
completed according to tribal laws and procedures. Finally, the Judicial Council’s sponsored legislation removes requirements to ensure that fair and impartial judgments are enforced as originally established in Hilton. For example, it no longer requires proof that the tribal judgment was entered based on sufficient evidence to support the underlying claim. Given the relaxed requirements for enforcement of tribal court judgments, feedback from the community by the Judicial Council PCLC was sought. This process evidenced a desire for further discussion of whether to require reciprocity.

II. RECIPROCITY: MOVING FORWARD TOGETHER AS INTERDEPENDENT SOVEREIGNS IS A MATTER OF PUBLIC POLICY

California needs a reciprocal approach to cross-jurisdictional enforcement of civil judgments between state and tribal courts. First, Public Law 280 causes inefficiencies by permitting concurrent jurisdiction without indicating which jurisdiction should control. Second, the interdependence of both state and Indian tribes generated by the economic, political and judicial growth magnifies the problems created by Public Law 280. Finally, public policy

161 CAL. CODE OF CIV. PROC. § 1733.1(c)(3) (proposed TRIBAL COURT CIVIL JUDGMENT ACT). JUDICIAL COUNCIL-SPONSORED LEGISLATION, supra note 10, at 18.
162 See Hilton v. Guyot, 159 U.S. 113, 202-03 (1895). See also supra Part I.B.
163 Id. See also supra Part I.B.
164 See JUDICIAL COUNCIL-SPONSORED LEGISLATION, supra note 10, at 5-6 (describing the comment process and summarizing the feedback from the community).
165 See id. at 49-101 (evidencing that agencies, advocacy groups, individuals, and judges who approved or disapproved of the legislation also felt that it had some limitations and that reciprocity deserves further discussion).
166 See infra Part II.B. It is recognized that the Judicial Council’s sponsored legislation may seek to address this issue under Subsection 1733.1(b)(8). JUDICIAL COUNCIL-SPONSORED LEGISLATION, supra note 10, at 18. However, without further clarification the language in this subsection seems to only pertain to actions on the judgment and not dealing with the issue of conflicting judgments. See JUDICIAL COUNCIL-SPONSORED LEGISLATION, supra note 10, at 18 (requiring that there is no action or judgment pending in state court regarding the tribal court judgment).
167 See infra Part II.C.
necessitates reciprocity. To be effective, California and Indian tribes must be willing to work together and institutionalize their cooperative efforts through reciprocity.

A. A Reciprocal Proposal to Modify Enforcement of Civil Judgments in California

Efficient and equitable enforcement of civil judgments between state and tribal courts requires new legislation. Congress enacted the Full Faith and Credit Act to eliminate jurisdictional issues created by concurrent jurisdiction between the states. Congress, however, failed to apply this solution to Indian tribes. This was likely because Congress was unaware of the issues Public Law 280 would create at the time it passed the Full Faith and Credit Act. Without full faith and credit, reciprocity provides a balanced solution for state and tribal citizens. Therefore, the following Subsections should be added to the Judicial Council’s sponsored legislation or corresponding section of the UFCMJR to require reciprocity for the enforcement of civil money judgments entered in state court.

1. A Proposed Model for Reciprocity:

In order for the Judicial Council’s sponsored legislation to provide reciprocity, Subsections 1733.1(b)(4) and 1735(c)(5) should be added to the proposed legislation (Tribal Court Civil Judgment Act). First, this Note proposes that under 1733.1(b)(4):

That the tribal court whose judgment is sought to be enforced certify that it grants reciprocity to civil money orders, judgments and state procedures on the

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168 See infra Parts II.D.1-3.
169 “Institutionalization” as used in the context of Indian relations is the creation of a permanent relationship method. See JOHNSON, supra note 18, at 10.
170 Arnold, supra note 118, at 809
171 Id.
173 See JOHNSON, supra note 18, at 6-7 (arguing that reciprocal solutions balance the interest of two competing nations, and either party must be willing to go more than half-way to accomplish that goal).
174 In the event the Judicial Council’s sponsored legislation is not adopted by the California legislature, the proposed Subsections in this Note providing for reciprocity could be incorporated in the current UFCMJR as Subsections CAL. CODE OF CIV. PROC. § 1716(a)(1) and CAL. CODE OF CIV. PROC. § 1716(b)(10).
discovery of information reasonably necessary and calculated to lead to the
enforcement of the order or judgment entered by a court of this state including
claims that would otherwise be protected by sovereign immunity, except for those
claims that:
(i) are directly against the tribe or tribal entity;
(ii) are against the tribal government;
(iii) are against tribal officials acting in a capacity authorized by the tribe;
(iv) affect the interest of the tribal treasury; and
(v) affect the ownership or title of federally protected tribal land.¹⁷⁵

This subsection shall apply to the enforcement of any application for enforcement of a tribal
judgment pursuant to Sections 1731 and 1733.1.

Second, that the following Subsection which lists the factors to which a respondent may
object to an application for enforcement in state court under section 1733.1 be added as
1735(c)(5):

The tribal court whose judgment is sought to be enforced does not provide
reciprocity for civil money orders or judgments entered by the courts of this State
or discovery of information reasonably calculated to lead to the enforcement of
such order and judgments in accordance with section 1733.1(b)(4).¹⁷⁶

The intent of this subsection is to create a rebuttable presumption that any Indian tribe
certifying that it provides reciprocity under subsection 1733(b)(4) does in fact do so.

¹⁷⁵ This Subsection is designed to amend Section 1733.1 of the Judicial Council sponsored legislation. See JUDICIAL
COUNCIL- SPONSORED LEGISLATION, supra note 10, at 17-8 (providing the proposed language for Section 1733.1).
It is based on case law, the public policy issues addressed in this Note, and select sections of the full faith and credit
recognition statutes in Wisconsin, Oklahoma, and Wyoming. See supra note 14 (detailing the state recognition
statutes which are based on full faith and credit). The portion of the proposed Subsection which addresses the
limited waiver of sovereign immunity is designed to protect the true interest if Indian tribe, while providing some
extend the doctrine of sovereign immunity to off reservation activity that has no meaningful nexus to tribal land or
its right to self-govern). Further, this Subsection should not be interpreted to require Indian tribes to consent to suit
in all civil cases in order to have access to the Judicial Council’s proposed “Sister-State” legislation or the UFCMJR.
a state requirement that an Indian tribe consent to all civil suits and waive sovereign immunity was unconstitutional,
but that not all limitations placed upon such immunity are objectionable); Hagen v. Sisseton-Wahpeton Community
College, 205 F.3d 1040 (8th Cir. 2000) (holding sovereign immunity applies to tribal agencies).

¹⁷⁶ This subsection is designed to amend Section 1735 of the Judicial Council sponsored legislation. See JUDICIAL
COUNCIL- SPONSORED LEGISLATION, supra note 10, at 19-20 (providing the language for Section 1535 of the
proposed legislation). This subsection is modeled after the American Law Institutes proposed Foreign Money
AL., FEDERAL JUDICIAL CENTER INTERNATIONAL LITIGATION GUIDE, RECOGNITION AND ENFORCEMENT OF FOREIGN
JUDGMENTS, 11 (April 2012) (proposing that the burden of proof should be placed on the party seeking to avoid
enforcement regarding whether reciprocity is provided in international cases).
Further, it provides that the standard of proof favor the presumption that Indian tribes provide reciprocity under subsection 1733.1(b)(4).

a. Application of the Proposed Reciprocity Requirement:

Adding these Subsections to the Judicial Council sponsored legislation provides a reciprocal approach to the enforcement of civil money judgments while also respecting Indian tribes’ right to sovereignty. First, providing reciprocity under Subsection 1733.1(b)(4) is voluntary. In order for tribal court judgments to be enforced under the sponsored legislation, the rendering tribal court must certify that they provide reciprocity. In the event that the Indian tribe decides reciprocity is not in the best interest of their tribe, current principles of comity or the UFCMJR may remain available for enforcement in state court.¹⁷⁷ By affording tribal court judgments Sister-State recognition in California an incentive exists for the tribal courts to provide reciprocity under Subsection 1733.1(b)(4).¹⁷⁸ The Judicial Council’s sponsored legislation is designed to reduce time, money, and effort in enforcing tribal court judgments in state court.¹⁷⁹ The sponsored legislation also encompasses injunctions and actions on real property which are not enforceable under the UFCMJR.¹⁸⁰ Furthermore, requiring tribal courts to provide reciprocity in return for access to the proposed Sister-State legislation is in line with government-to-government principles of cooperation necessary for two nations to beneficially coexist.¹⁸¹ Finally, by providing an opt-in method to reciprocity, the right to self-govern and

¹⁷⁷ This provides a fair balance in that courts generally enforce tribal judgments under principles of comity. See Wilson v. Marchington, 127 F.3d 805, 810 (9th Cir. 1997) (concluding that federal courts as a general matter should enforce tribal judgments). The trade-off then for tribes choosing to provide reciprocity, in most instances, will be a streamlined enforcement of civil judgment against reserving their right to deny state court civil judgments at their discretion. See JUDICIAL COUNCIL-SPONSORED LEGISLATION, supra note 10, at 4 (explaining that the proposed legislation is aimed at streamlining the process for enforcing tribal judgments in state court). See also supra Part I.E. (discussing the relevant changes to the UFCMJR by the Judicial and the importance of such changes).

¹⁷⁸ JUDICIAL COUNCIL-SPONSORED LEGISLATION, supra note 10, at 4.

¹⁷⁹ Id.

¹⁸⁰ Id.

¹⁸¹ Id. See also JOHNSON, supra note 18, at 7 (explaining that reciprocal approaches to solutions with Indian tribes are based on cooperation and that this is an integral part to strengthening relations); infra Part II.D.2.
other constitutionally protected rights of Indian tribes remain unaffected.\textsuperscript{182} Thus, the decision for Indian tribes to opt-in is a matter of public policy for the Indian tribe to consider as an interdependent sovereign nation.\textsuperscript{183}

b. Limited Waiver of Sovereign Immunity:

In order for reciprocity to be effective, however, a limited waiver of Indian tribes’ right to claim sovereign immunity is required.\textsuperscript{184} Under the proposed subsection 1733.1(b)(4) the purpose of the limited waiver is to protect against claims of sovereign immunity once the tribe, tribal entity, government, or its financial condition is no longer implicated by the enforcement of a state court civil money judgment. This requirement ensures that reciprocity is not abrogated by claims of sovereign immunity where the judgment does not infringe on legitimate tribal interests.\textsuperscript{185} Under Subsection 1733.1(b)(4), the limited waiver of sovereign immunity would not be required for a judgment against the tribal government or entity. It would be required, however, only after the tribal government’s interest has been at least once removed.\textsuperscript{186} This would mean that money held by the tribe or tribal government may be protected under sovereign immunity without being challenged under subsection 1735(c)(5). However, claims of sovereign immunity for tribal money or personal property relinquished to a tribal member or entity would be subject to the limited waiver and challenge under Subsection 1735(c)(5).\textsuperscript{187}

\textsuperscript{182} See supra Parts I.B–C.
\textsuperscript{183} See supra Part I.C.
\textsuperscript{184} See JOHNSON, supra note 18, at 7 (explaining that a balance between tribal and state interests must be met because they share the same citizens and thus what is good for the tribe is also good for the state); COHEN, supra note 7, at 558; supra Part II.A.2.b.
\textsuperscript{185} See Kiowa Tribe v. Mfg. Techs., Inc., 523 U.S. 751, 764 (1998) (explaining that tribal immunity has not been extended where there is no meaningful nexus to tribal land or its right to self-govern). See supra Part II.A.2.a.
\textsuperscript{186} Id. See also supra Part II.A.2.a.
\textsuperscript{187} Kiowa Tribe, 523 U.S. at 764
The determination of legitimate tribal interests can be illustrated through the facts of *Martinez v. Lyons*. Mr. Lyons receives per capita payments directly from the Morongo Tribe to which there is a legitimate tribal interest in protecting against garnishment and disclosure of the tribes financial information. The tribes’ interests, however, are greatly reduced once the per capita payment has been paid to Mr. Lyons. Furthermore, the disclosure of Mr. Lyons personal assets, bank accounts, and personal information does not directly infringe upon the interests of the Morongo Tribe. Permitting the limited waiver under added subsection 1733.1(b)(4) would provide Ms. Martinez the ability to locate Mr. Lyons assets which he has already received, and garnish or levy only those accounts. It would not, however, permit Ms. Martinez to infringe upon any right that may be asserted by the Morongo Tribe itself. Thus, the limited waiver of sovereign immunity under Subsection 1733.1(b)(4) balances the need for reciprocity and discovery of information needed to enforce such judgments against legitimate tribal interests.

c. Challenges to Claims of Reciprocity:

Lastly, Subsection 1735(c)(5) would provide the adverse party to the judgment (“objector”) the ability to challenge whether the tribal court whose judgment is sought to be enforced complies with section 1733.1(b)(4). Some critics may argue that this Subsection

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188 See supra Part I.D (providing the facts of the *Martinez* case).
189 See supra Part I.D.
190 *Kiowa Tribe*, 523 U.S. at 764.
192 Id.
193 Provisions that permit objection to claims of reciprocity have been proposed in federal statutes that provide reciprocity with foreign nations. See BRAND, supra note 176, 11-12 (proposing that the burden of proof with regards to requiring reciprocity in international cases should be placed on the party seeking to avoid enforcement).
would provide objectors with a method to circumvent enforcement of tribal judgments.\textsuperscript{194} Moreover, such critics may argue that it will provide objectors the opportunity to delay and frustrate the enforcement of tribal court judgments through meritless objections.\textsuperscript{195} These arguments can be addressed by requiring a higher evidentiary standard or burden of proof on the issue of whether the Indian tribes do in fact provide reciprocity.\textsuperscript{196} By requiring such a higher burden, subsection 1735(c)(5) will not become a method for improper delay. Nor will it create further judicial inefficiency without reasonable justification. Therefore, this subsection balances the state interest in having a method to challenge claims under 1733.1(b)(4), against the tribes’ right to have their judgments enforced under the statute.

\textit{B. Public Law 280- Requires a Reciprocal Approach to Enforcing Civil Judgments}

Public Law 280 creates several distinct issues involving concurrent jurisdiction which require state and tribal courts take a reciprocal approach to enforcement of civil judgments as illustrated in \textit{Martinez v. Lyons}.\textsuperscript{197} First, Public Law 280 creates the opportunity for forum shopping between state and tribal courts.\textsuperscript{198} Second, like the \textit{Martinez} case, it creates situations where a civil plaintiff files a lawsuit and judgment is entered in the forum most favorable to them.\textsuperscript{199} Then discovers that the other forum will not enforce the judgment under comity and

\textsuperscript{194} See \textit{JUDICIAL COUNCIL- SPONSORED LEGISLATION, supra} note 10, at 72 (providing comments from Indian tribes expressing the concern that the subsections in the sponsored legislation permitting objection to the enforcement of a tribal court judgment is subjective and lacks clear guidance on how this standard should be applied).

\textsuperscript{195} \textit{Id.}

\textsuperscript{196} Subsection 1735 should be interpreted to require enforcement of the tribal judgment except in those circumstance when it is clearly evident that 1733.1(b)(4) has not been complied with. Even in those situations, the evidentiary standard should rise to the level of clear and convincing evidence. In this way, the weight of the burden of proof is placed on the objector, thereby preserving the leniency afforded tribal courts under section 1733.1(b)(4), which would only require tribal court certification of reciprocity. See \textit{BRAND, supra} note 176, 11-12; \textit{supra} Part II.A.

\textsuperscript{197} See \textit{COHEN, supra} note 7, at 558-61 (discussing the problems that arise out of concurrent jurisdiction under Public Law 280 between state and tribal courts).

\textsuperscript{198} See \textit{id.} at 558 (explaining that in Public Law 280 states, plaintiffs may file in either state court, tribal court, or both). Although forum shopping is permissible under current principles of comity, it is judicially inefficient. See \textit{Forum Shopping Reconsidered, supra} note 119, at 692 (differentiating between forum shopping that is beneficial and that which creates judicial inefficiencies).

\textsuperscript{199} See \textit{supra} Part I.D.
must re-litigate the case in the forum where the plaintiff seeks to enforce the judgment. 

Lastly, Public Law 280 permits the same civil suit to be filed in both state and tribal court. Prior to judgment being entered the plaintiff can then choose which court will provide the most favorable outcome and where a judgment would be most likely enforced. Reciprocity solves these issues by providing a reliable method of enforcing civil judgments. For example, if a plaintiff is able to file a lawsuit in either court knowing that their judgment would be enforced, the need to forum shop or file the same matter in both courts would be eliminated. Moreover, the need to re-litigate a lawsuit after receiving a judgment in either court would also be eliminated under reciprocity and the Judicial Council’s sponsored legislation.

The *Martinez v. Lyons* case illustrates these issues and the need to establish a better system of cooperation between state and tribal courts in Public Law 280 states. Ms. Martinez could have originally brought her wrongful death case in tribal court. However, familiar with state laws and lack of knowledge or access to Morongo Tribal law, she decided to file in state court. With judgment entered in state court, Ms. Martinez has been unable to enforce her judgment. Yet, if the Morongo Tribe offered Ms. Martinez reciprocity the cost, delay, and duplication of judicial resources of re-litigating her case in tribal court in order to enforce her judgment would be greatly reduced.

This is not to suggest that Ms. Martinez’s civil judgment would absolutely be enforceable if reciprocity were afforded her. Enforceability of garnishing tribal per capita payments would still be subject to claims of sovereign immunity under Subsection 1733.1(b)(4). However,

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200 COHEN, supra note 7, at 558.
201 Id.
202 Id.
203 Id.
204 See supra Part I.D.
205 See supra Part I.D.
206 COHEN, supra note 7, at 558. See also supra Part II.A.2.b.
Subsection 1733.1(b)(4) would permit Ms. Martinez to more readily discover personal assets held by Mr. Lyons and make enforcement more likely. 207 This could include garnishment or levy of personal property located on tribal lands, including vehicles or bank accounts. This, however, would not require the disclosure of information directly associated with the Morongo Tribe. 208 For example, discovery of Mr. Lyon’s bank accounts held on or off tribal land would be permitted, while seeking information from the Morongo Tribe on where it sends Mr. Lyons per capita payments would not. 209 In this way, the proposed Subsection 1733.1(b)(4) balances the interest of the state in Indian tribes under Public Law 280. Thus, reciprocity will reduce judicial duplication, and provide plaintiffs, like Ms. Martinez, with additional avenues to enforce her judgment while respecting the Indian tribes’ sovereign status. 210

C. The Growth of Tribal Nations in California Requires a Reciprocal Approach

The rapid growth of tribal courts exerting jurisdiction within California over the past twenty years also necessitates reciprocity. 211 Currently, there are 18 formal tribal courts in California which are becoming more advanced since Congress passed Public Law 280 in 1953. 212 Moreover, there are still over 90 tribes with memberships ranging from 5 to roughly 4,000, which may ultimately develop their own formal judicial systems as well. 213 With the

207 Generally, Indian tribes are not subject to California’s Code of Civil Procedure based on claims of sovereign immunity. See Auga Caliente Band of Cahuilla Indians v. Super. Ct., 40 Cal. 4th 239, 247-8 (2006) (stating that as a general matter Indian tribes are not subject to state laws); COHEN, supra note 7, at 636. See also supra Part I.C.

208 See United States v. James, 980 F.2d 1314, 1320 (9th Cir. 1992) (holding tribal sovereign immunity barred the discovery of tribal documents); Bishop Paiute Tribe v. County of Inyo, 291 F.3d 549, 558-9 (9th Cir. 2002) (holding tribal sovereign immunity barred the production of tribal documents pursuant to a subpoena ducès tecum); COHEN, supra note 7, at 638-9 (detailing the use of tribal sovereign immunity to avoid litigation, judgment or discovery). See also supra Part I.A.2.b.

209 See James, 980 F.2d at 1320; Bishop Paiute Tribe, 291 F.3d at 558-9.

210 See supra Parts I.C, II.A.2.b.

211 See Arnold, supra note 118, at 47 (explaining that jurisdictional issues and confusion have grown with the rapid expansion of tribal courts over the past twenty years). See also supra Parts I.C, II.A.2.b.

212 See JUDICIAL COUNCIL-Sponsored Legislation, supra note 10, at 2.

213 See UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, 2005 AMERICAN INDIAN POPULATION AND LABOR FORCE REPORT, 12-14 (2005) (providing statistical membership and employment data for each Indian tribe nationwide). See also JUDICIAL COUNCIL-Sponsored Legislation, supra note 10, at 76 (arguing
federal funds offered under the Tribal Law and Order Act of 2010, the jurisdiction of tribal courts rendering judgment and seeking enforcement in state court will continue grow. 214 As these tribal courts develop and expand so will conflicts over enforcement of civil judgments and jurisdiction. 215 Reciprocity is necessary to provide a reliable method of enforcing judgments under a system of concurrent jurisdiction which permits this conflict. 216

The need for reciprocity is further supported by Indian tribes’ desire for full faith and credit. Indian tribes have stated in response to growing issues involving concurrent jurisdiction and enforcement under the UFCMJR that the Judicial Council sponsored legislation is not enough. 217 Rather than being afforded a limited “Sister-State” status through the sponsored legislation, they would rather be afforded full faith and credit. 218 Indian tribes’ desire for full faith and credit implies that they are willing to enforce state court judgments under the same standard as provided for in the Full Faith and Credit Act. 219

Full faith and credit, however, does not apply in California. With tribal courts still developing, the Judicial Council’s sponsored legislation with the proposed Subsections provides

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215 See Arnold, supra note 118, at 809-10 (explaining that the growth of tribal courts has not been with challenge or controversy).
216 See id. at 813 (arguing that concurrent jurisdiction, such as Public Law 280, created jurisdiction issues which congress dealt with by enacting the Full Faith and Credit Act, however, it does not apply to Indian tribes).
217 See JUDICIAL COUNCIL- SPONSORED LEGISLATION, supra note 10, at 6 (summarizing comments from California Indian tribes stating that the proposed legislation should go farther and provide full faith and credit).
218 Rincon Band of Luiseno Indians. See id. at 55-56 (requesting full faith and credit). Elk Valley Rancheria. See id. at 34 (requesting full faith and credit). Colorado River Indian Tribes. See id. at 31 (requesting full faith and credit).
219 See FULL FAITH AND CREDIT ACT, 28 U.S.C. 1738 (1948) (requiring that each court recognize the judgment of another court without limitation). It might be argued that only tribal courts should be afforded full faith and credit. However, this argument fails to recognize that reciprocal relationships are based on equal treatment of the other nation. See JOHNSON, supra note 18, at 7 (arguing that effective relationships are those based on equality where either nation is willing to go more than half way to make it work). Providing full faith and credit to one nation and not the other is in opposite of what is needed to develop effective relationships with Indian tribes. Id. Additionally, it must be noted that some of the Indian tribes’ desire for full faith and credit stems from wanting to enforce taxes, fines, and penalties against non-tribal members in state court and not entirely for purposes of civil judgment enforcement. See JUDICIAL COUNCIL- SPONSORED LEGISLATION, supra note 10, at 31 (evidencing the Colorado River Indian Tribes’ desire for full faith and credit in order to impose taxes, fines, and penalties).
a balanced solution until full faith and credit is practical. However, the California legislature could enact its own enforcement statute based on full faith and credit as other states have done. This argument fails to consider that there are a greater number of tribes with informal judicial systems whose laws and procedures are not easily accessible. For example, Wyoming’s full faith and credit recognition statute only applies to two Indian tribes within the state. Full faith and credit may provide a better solution for select tribes with formal judicial systems and whose laws are easily accessible to the public. In California, however, there are only 18 formal tribal courts currently operating. Most of these tribal courts have been in existence for less than a decade, and whose laws are still not widely known or easily accessible to practicing attorneys. Moreover, providing full faith and credit to these select tribes would fail to address the needs of over 90 federally recognized Indian tribes in California. Reciprocity, on the other hand, would provide a familiar and reliable alternative forum while these Indian tribes’ develop tribal courts, and their laws become easily accessible to everyone.

This lack of knowledge or access to tribal law causes such problems as forum shopping and judicial duplication, as experienced in Martinez. When a non-tribal member plaintiff does not have experience with the tribal court or easy access to their laws they will seek out the forum

220 See JUDICIAL COUNCIL- SPONSORED LEGISLATION, supra note 10, at 3 (noting full faith and credit does not apply in California, which is in line with the general consensus nationwide); JOHNSON, supra note 18, 6-7 (explaining that a method which balances two competing interests in finding a solution to a reciprocal problem leads to cooperation). See also supra Part I.A.
221 See JUDICIAL COUNCIL- SPONSORED LEGISLATION, supra note 10, at 31-76 (summarizing comments from Indian tribes requesting full faith and credit). In Wisconsin, a Public Law 280 state, full faith and credit is provided to select Indian tribes with formal judicial systems. WIS. STAT. ANN. § 806.245 (West 1991). Wyoming also provides full faith and credit to the two federally recognized Indian tribes in the state. WYO. STAT. ANN. § 5-1-111 (West 1994).
222 See JUDICIAL COUNCIL- SPONSORED LEGISLATION, supra note 10, at 76 (noting that the discrepancy in tribal membership results in a wide range of tribal government bodies whose law are note easily accessible).
223 WYO. STAT. ANN. § 5-1-111 (West 1994).
224 See Arnold, supra note 118, at 809 (arguing that full faith and credit was Congress’ solution to concurrent jurisdiction).
225 See JUDICIAL COUNCIL- SPONSORED LEGISLATION, supra note 10, at 2 (explaining that there are 18 formal tribal courts in California).
226 See Morongo Tribal Court, http://www.courts.ca.gov/14905.htm (last visited April 21, 2013) (stating that the Morongo Tribes formal court was established in 2007).
most advantageous to them.\textsuperscript{227} This results in civil plaintiffs filing in their preferred jurisdiction without fully appreciating the difficulty of enforcing the judgment in the opposing jurisdiction.\textsuperscript{228} Moreover, principles of comity permit the opposing forum discretion in enforcing a judgment.\textsuperscript{229} This creates additional uncertainty for the non-tribal member plaintiff in deciding whether to file in state or tribal court.\textsuperscript{230} For example, in the \textit{Martinez} case, state court was the most favorable forum. With little access to the Morongo Tribal laws or procedures, filing Ms. Martinez’s lawsuit in state court was logical. However, had Ms. Martinez known of the issues she would face with enforcing her judgment she may have originally filed in tribal court. Yet, if Ms. Martinez had filed in tribal court, she may not have received a similar judgment.

Two problems arise in these situations. First, it could force non-tribal member plaintiffs to litigate in tribal court. With little knowledge or access to tribal laws this would put the plaintiff at a disadvantage in prosecuting their case against a tribal defendant. Second, the plaintiff files their lawsuit in state court, as Ms. Martinez did, and is unable to enforce their judgment in either court.\textsuperscript{231} Under Subsection 1733.1(b)(4), however, a plaintiff could file in either court, reassured that their judgment would be enforceable. Thus, the need to file the same matter in both courts would be eliminated.

Public Law 280 creates the opportunity for unequal and inefficient enforcement of civil judgments between state and tribal courts.\textsuperscript{232} The sheer number of growing Indian tribes and developing tribal courts in California intensify the issues create by Public Law 280. Without

\textsuperscript{227} COHEN, \textit{supra} note 7, at 1323.
\textsuperscript{228} \textit{Id.} at 558.
\textsuperscript{229} \textit{Id.} at 662.
\textsuperscript{230} See \textit{id.} (providing the drawbacks to enforcing judgments under comity).
\textsuperscript{231} See, e.g., Teague v. Bad River Band of the Lake Superior Chippewa Indians, 236 Wis.2d 384, 407-408 (2000) (demonstrating judicial inefficiencies created by plaintiffs racing to file suit in state court under concurrent jurisdiction in a Public Law 280 state); \textit{supra} Part I.C.
\textsuperscript{232} See \textit{supra} Part II.B.
legislation that addresses both state and tribal court concerns these issues will increasingly strain the limited judicial resources of both state and tribal courts.

\[D. \textit{Public Policy Requires a Reciprocity Approach}\]

California Indian tribes interact economically, politically, and socially with the State. These interactions are affected by their legal relationship with one another.\(^{233}\) First, economic development can be enhanced by requiring reciprocity with a limited waiver of sovereign immunity.\(^{234}\) Second, reciprocity will further enhance these relationships by reducing judicial inefficiencies created by concurrent jurisdiction under Public Law 280.\(^{235}\) Third, working cooperatively to improve judicial processes by enacting reciprocal solutions is an important step in institutionalizing the relationship California has with its Indian tribes.\(^{236}\) The benefits of which will be recognized by state and tribal member citizens.\(^{237}\) Providing a reciprocal method for both to enforce civil judgments will strengthen the relationships between state and tribal member citizens.\(^{238}\) In turn, this will strengthen relations between state and tribal courts, making the enforcement of judgments more equitable. Therefore, public policy mandates that the legislature require reciprocity in order for both nations to further develop a mutually beneficial relationship.\(^{239}\)

\[1. \textit{Efficient Economic Development}\]

\(^{233}\) See JOHNSON, supra note 18, at 2.


\(^{235}\) See infra Part II.D.3; LONG, supra note 81, at 275 (summarizing numerous cases that illustrate the issues concurrent jurisdiction under Public Law 280 have caused and the ways in which courts have struggled with resolving those issues).

\(^{236}\) See JOHNSON, supra note 18, at 10 (“[S]tate-tribal relationships are influenced by mechanisms that institutionalize or preserve the relationship.”). See Barro, supra note 234; infra Part II.D.2.

\(^{237}\) See JOHNSON, supra note 18, at 3 (noting that effective state-tribal relationships help their respective governments better serve both state and tribal member citizens).

\(^{238}\) See Clinton, supra note 14, at 868-9 (arguing that the perception of political cooperation can affect societies including their judicial system); JOHNSON, supra note 18, at 3.

\(^{239}\) See JOHNSON, supra note 18, at 7 (arguing that Indian tribes and states must work together for the mutual benefit of their citizens because they share the same citizens).
With over 110 Indian tribes in the State of California, the opportunities for the economic development between the state and tribes are numerous.\textsuperscript{240} These opportunities, however, are undermined by uncertainty in entering into contracts and doing business with Indian tribes. Specifically, Indian tribes’ right to claim sovereign immunity creates uncertainty and additional costs in business transactions which thwart economic activity and development.\textsuperscript{241} In response to this issue, state governments and businesses have required Indian tribes and tribal entities to expressly waive sovereign immunity.\textsuperscript{242} The result of which has led to a private form of reciprocity when conducting business with an Indian tribe or tribe owned entity.\textsuperscript{243}

This economically beneficial form of reciprocity between state and tribal businesses illustrates the effectiveness of requiring reciprocity with a limited waiver of reciprocity in enforcement of civil judgments. Many Indian tribes have developed separate corporations specifically designed to be used as a shield to waiving sovereign immunity.\textsuperscript{244} Under this structure, the Indian corporation waives its right to sovereign immunity and would be subject to liability, but only for the value of assets held by the corporation.\textsuperscript{245}

This market based form of reciprocity provides a balanced solution for both state and tribal corporations. For non-tribal corporations it reduces transactional costs of entering into contracts with Indian tribes by reducing the need to negotiate a waiver of sovereign immunity.\textsuperscript{246} Similar to proposed Subsection 1733.1(b)(4), this market form of limited waiver of sovereign immunity provides a reliable form of judgment enforcement and encourages businesses to enter

\textsuperscript{240} See Wilkins & Stark, supra note 104, at 163-4 (detailing the opportunities for economic development and partnership between tribes and states).
\textsuperscript{241} See Barro, supra note 234, at 432.
\textsuperscript{242} Cohen, supra note 7, at 1328; Canby, Jr., supra note 7, at 111.
\textsuperscript{243} Cohen, supra note 7, at 1328.
\textsuperscript{244} Cohen, supra note 7, at 1328; Canby, Jr., supra note 7, at 111. See also supra Part I. B.1.
\textsuperscript{245} Cohen, supra note 7, at 1328. See also supra Part I.B.1.
\textsuperscript{246} See Canby, Jr., supra note 7, at 110 (explaining that the intent of the tribe to waive its immunity must be clear and concisely evident in the contract although it does not need to specifically state “sovereign immunity”).
into contracts with the tribe. For Indian tribes, it limits the overall exposure of liability to the
assets held by the tribal corporation.\textsuperscript{247} Thus, reciprocal solutions advance economic
development and cooperation between state and Indian tribal businesses.

This market-based system of reciprocity, however, does not address situations that arise
affecting small businesses. For example, it does not assist small businesses when an Indian
tribes’ right to claim sovereign immunity is unknown due to lack of knowledge or an inability to
afford legal counsel.\textsuperscript{248} One of the fastest growing economic sectors within tribal economies is
the small business sector.\textsuperscript{249} Important to that growth are the small businesses that surrounding
the Indian reservation border.\textsuperscript{250} However, many of these businesses either do not know of
sovereign immunity or are not able to afford legal counsel to negotiate waivers of sovereign
immunity.\textsuperscript{251}

Under subsection 1733.1(b)(4) proposed in this Note, a limited waiver of sovereign
immunity would accomplish three goals. First, businesses could enter into contracts with tribal
entities or corporations with confidence knowing that the enforcement of contracts would not be
superseded by claims of sovereign immunity.\textsuperscript{252} By easing the process by which business
contract, reciprocity increases economic development.\textsuperscript{253} Second, reducing the anxiety of not
being able to adequately enforce their contract against Indian tribes, small businesses would be

\textsuperscript{247} Id. (pointing out that more businesses are requiring Indian tribes to waive their right to sovereign immunity).
\textsuperscript{248} See JUDICIAL COUNCIL- SPONSORED LEGISLATION, supra note 10, at 94 (explaining that many small businesses
are not aware of the possibility that claims of sovereign immunity could prevent enforcement of a contract with and
Indian tribe or tribal member because they are unable to afford legal counsel); CANBY JR., supra note 7, at 101-07
(detailing claims of sovereign immunity and the harsh effects that can have in barring suit against tribes and
enforcement of judgments against tribal interests).
\textsuperscript{249} COHEN, supra note 7, at 1323.
\textsuperscript{250} Id.
\textsuperscript{251} JUDICIAL COUNCIL- SPONSORED LEGISLATION, supra note 10, at 94. Additional situations also arise that are
outside the scope of this note where businesses or people may not be aware of claims to sovereign immunity. One
such area is online businesses owned by Indian tribes, which are not subject to state laws. Id. at 49.
\textsuperscript{252} See supra Part II.A.2.b.
\textsuperscript{253} Barro, supra note 234, at 432.
more willing to engage in business with Indian tribes and its members.\textsuperscript{254} Reciprocity furthers economic development by making it easier and more reliable to contract with Indian tribes and tribal corporations. Therefore, enacting the sponsored legislation and proposed Subsections will foster economic development and strengthen state and tribal relationships through economic cooperation.\textsuperscript{255}

2. \textit{Judicial efficiency Under a System of Concurrent Jurisdiction}

In light of overcrowded state courts, judicial economy requires a reciprocal approach to cross-jurisdictional enforcement of civil judgments. State courts are overcrowded.\textsuperscript{256} Over the past several years California courts have experienced a drastic congestion of cases.\textsuperscript{257} This is a result of state court layoffs, hour cutbacks and furloughs.\textsuperscript{258} In 2011 alone, over 9 million new cases were filed in California state courts.\textsuperscript{259} In 2012, California experienced $350 million dollars in budget cuts.\textsuperscript{260} Thus, California courts are in a state of crisis.\textsuperscript{261} In response to this crisis, California needs to implement more efficient policies and procedures. Reciprocity is one such policy. Reciprocity reduces judicial duplication and other inefficiencies that continue to overburden our courts.\textsuperscript{262} This is illustrated through \textit{Teague} and \textit{Martinez}.\textsuperscript{263}

\textsuperscript{254} \textit{See Canby, Jr., supra} note 7, at 110.
\textsuperscript{255} \textit{See Johnson, supra} note 18, at 10 (explaining that State relations with tribes are influenced by judicial and legislative devices that institutionalize and preserve the relationship); \textit{Clinton, supra} note 14, at 868-69 (arguing that the sovereignty of nations seeks cooperation of matters of mutual interest).
\textsuperscript{256} \textit{See Institute for Civil Justice, Michael D. Greenberg & Geoffrey McGovern, An Early Assessment of the Civil Justice System After the Financial Crisis: Something Wicked This Way Comes? 5 (Rand Corp. 2012) (describing the judicial crisis that affected California courts in 2012 leading to the layoffs, furloughs, and cutbacks).}
\textsuperscript{257} \textit{Id.}
\textsuperscript{258} \textit{Id.}
\textsuperscript{260} \textit{Id.}
\textsuperscript{261} \textit{Id.}
\textsuperscript{262} \textit{See supra} Parts II.B-C.
\textsuperscript{263} \textit{Teague v. Bad River Band of the Lake Superior Chippewa Indians,} 236 Wis.2d 384, 407-408 (2000); \textit{In re Montclair, No. CC-C-2008-037,} 2008 WL 7903915, at *8 (Stand. R. Sioux Trib. Ct. June 9, 2008) (warning of the judicial train wrecks that will occur if state and tribal courts do not work together cooperatively). \textit{See supra} Parts II.B-C.
The *Teague* case utilized 8 years of judicial resources before the Supreme Court of Wisconsin finally deferred to the tribal court judgment.\textsuperscript{264} Had the state court initially afforded the tribal judgment reciprocity, the exhaustive duplication of state and tribal court resources in *Teague* could have been avoided. Similarly, had the state court entered judgment first, under Subsection 1733.1(4)(b) reciprocity would eliminate the need to re-file in tribal court.\textsuperscript{265}

As illustrated in *Martinez*, three years of state court resources were utilized in obtaining judgment that has yet to be enforced.\textsuperscript{266} Again, had the Morongo Tribe afforded Ms. Martinez reciprocity, she could enforce her state court judgment and achieve her ultimate goal of being compensated. In this scenario, state court resources would have been utilized for a beneficial purpose. Alternatively, Ms. Martinez could have originally filed in tribal court. In this scenario, state court resources would not be utilized towards obtaining an enforceable judgment. Without legislation that deals with these issues, judicial inefficiencies will continue to strain California’s judicial system. Both of these cases illustrate how reciprocal solutions can eliminate judicial inefficiencies created by Public Law 280 and principles of comity. To effectively manage state court case loads, California needs to adopt reciprocal solutions aimed at reducing the opportunity for judicial duplication and inefficiency. Reciprocity achieves these goals by providing a reliable method of enforcing state court judgments.

3. Political and Judicial Cooperation

Comity with reciprocity would benefit both state and tribe by increasing trust, mutual understanding, and cooperation between their citizens and the courts.\textsuperscript{267} Reciprocal

\begin{footnotes}
\textsuperscript{264} Teague v. Bad River Band of the Lake Superior Chippewa Indians, 236 Wis.2d 384, 407-408 (2000);
\textsuperscript{265} See supra Part.II.B.
\textsuperscript{266} See supra Part I.D.
\textsuperscript{267} See id. at 10 (arguing that reciprocal solutions builds stronger relationships with Indian tribes); Clinton, supra note 14, 865 (arguing that perceptions of political cooperation can affect cooperation between to two judicial systems). See also Robert N. Clinton, *Comity & Colonialism: The Federal Courts’ Frustration of Tribal-Federal Cooperation*, 36 ARIZ. ST. L.J. 1, 3 (2004) (proposing that comity has led to distrust, resentment, and
\end{footnotes}
relationships are built on a commitment to cooperate with one another. Institutionalization of that commitment to cooperate through legislation strengthens the perception that state and tribal courts are working together and equitably. When this occurs, judicial economies are achieved by reducing inefficient forum shopping and the number of cases filed in both courts.

Additionally, reciprocal relationships require mutual respect and trust which can be achieved through reciprocity and commitment to cooperation. This requires a commitment to communication and accountability for addressing issues that arise between state and tribal courts. In order to achieve these goals, this commitment must be institutionalized by legislative enactment of reciprocity for civil judgments with Indian tribes. Together, the Judicial Council sponsored legislation and the proposed Subsections in this Note accomplish these goals. The Judicial Council sponsored legislation requires communication between state and tribal court judges to resolve enforcement issues that arise. The proposed Subsections require a commitment to fair and equitable accountability in cross-jurisdictional enforcement of civil judgments. Without a commitment to working together and institutionalizing reciprocity in the sponsored legislation, the benefits of a reciprocal relationship will not be achieved.

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noncooperation among tribes in opposite of the intended goal of comity); JUDICIAL COUNCIL-SPONSORED LEGISLATION, supra note 10, at 31-7 (evidencing several California tribes’ desire for full faith and credit, and that although the proposed legislation is appreciated it is still based on the voluntary action of the State court to enforce a tribal judgment and does not fully recognize their sovereign status).

268 See JOHNSON, supra note 18, at 7.
269 See id. at 10 (institutionalizing reciprocal solutions builds stronger relationships); Clinton, supra note 14, 865 (arguing that perceptions of political cooperation can affect the cooperation between to judicial systems).
270 See supra Parts I.C, II.B.
271 JOHNSON, supra note 18, at 7.
272 Id.
273 Id.
275 See JOHNSON, supra note 18, at 9. (arguing that a reciprocal state-tribal relationship is based on communication, and accountability for addressing issues).
276 See Clinton, supra note 14, at 865-73 (explaining three models that show how political and judicial relationships between two sovereigns affect one another).
The Columbia extradition case illustrates how institutionalizing reciprocity under Subsection 1733.1 would provide the foundation for judicial cooperation.\textsuperscript{277} First, by institutionalizing reciprocity through the proposed legislation, the process by which civil judgments are enforced would be perceived as equitable by both sides.\textsuperscript{278} Otherwise, plaintiffs will continue to run into issues such as the Martinez case where the outcome appears inequitable.\textsuperscript{279} A perception of equality created by reciprocity, as in the Columbian extradition example, would lead to greater judicial cooperation between the state and tribal courts and increased communication.\textsuperscript{280} Increased communication would further provide a method to find reciprocal solutions to other issues that arise from concurrent jurisdiction under Public Law 280 not addressed in this Note.\textsuperscript{281} As state and tribal courts work together and tribal law become more accessible, attorneys handling civil plaintiff’s cases will become more confident in their ability to enforce a judgment for their client in tribal court.\textsuperscript{282}

Furthermore, if the Judicial Council sponsored legislation is passed without reciprocity, attempting to require reciprocity subsequently might be perceived as a sign that state and tribal governments do not cooperate.\textsuperscript{283} This perception could cause both state and tribal courts to be less willing to enforce the judgment of the other or make enforcement more difficult through greater scrutiny.\textsuperscript{284} A different perception, however, would be created by enacting reciprocity at the same time as the Judicial Council’s sponsored legislation. First, the Judicial Council

\begin{enumerate}
\item \textsuperscript{277} See supra Part I.B.2.
\item \textsuperscript{278} Clinton, supra note 14, at 865-73. See also supra Part I.B.2.
\item \textsuperscript{279} See Clinton, supra note 14, at 865 (showing how negative results affecting one party are perceived as a lack of cooperation, disrespectful, and unequal between the two nations).
\item \textsuperscript{280} See Clinton, supra note 14, at 865.
\item \textsuperscript{281} See Clinton, supra note 14, at 865; JOHNSON, supra note 18, at 9 (discussing the benefits of effective communication in finding reciprocal solutions to problems that arise between the state and Indian tribes). See also supra Part II.B.
\item \textsuperscript{282} See Clinton, supra note 14, at 865.
\item \textsuperscript{283} See infra Part II.D.2.
\item \textsuperscript{284} See Clinton, supra note 14, at 868-9 (illustrating through the extradition crisis with Columbia that perceptions of political cooperation can affect societies including their judicial system and make them less willing to cooperate). See also infra Part II.D.2.
\end{enumerate}
sponsored legislation recognizes the needs of the tribal courts, while the proposed Subsections recognize that state courts suffer from the same problems. As in the Columbia extradition case, enacting Sister-State legislation with reciprocity for state court judgments provides evidence of two governments and judicial branches working together. When this happens, both tribal member and non-member citizens benefit, as they are all citizens of California.

Thus the institutionalization of reciprocity provides mutually beneficial results. Reciprocity increases the reliability of enforcement of state and tribal judgments equitably. This in turn leads to increased cooperation, which builds stronger relationships based on trust and communication. In order to realize these benefits, California needs to enact the Judicial Council’s sponsored legislation with the Subsections proposed in this Note as matter of public policy.

CONCLUSION

California should enact legislation requiring reciprocity of civil judgments with Indian tribal court. Reciprocity benefits both state and tribal member citizens by treating the enforcement of judgments equally. Moreover, reciprocity solves the issues created by concurrent jurisdiction under Public Law 280. These issues include judicial inefficiency, increased claims of sovereign immunity impacting economic development, and ineffective relationships with Indian tribes. The legislature has the opportunity to institutionalize legislation sponsored by the Judicial Council that would provide a streamlined method of

285 See infra Part II.D.2.
286 See JOHNSON, supra note 18, at 3 (explaining that both state and tribal societies benefit from political and judicial cooperation because tribal members are also state citizens).
287 See infra Part II.D.3.
288 See Wilson v. Marchington, 127 F.3d 805, 807-08 (9th Cir. 1997) (explaining the requirement for reciprocity is a matter of public policy).
289 See Hilton v. Guyot, 159 U.S. 113, 228 (1895) (“In holding such a judgment, for want of reciprocity . . . we do not proceed upon any theory of retaliation upon one person by reason of injustice done to another, but upon the broad ground that international law is founded upon mutuality and reciprocity . . . .”).
290 See supra Parts II.D.1-3.
enforcing tribal judgments in state court.\textsuperscript{291} Without reciprocity, however, the legislation would bolster a sense of inequality in treatment among state and tribal member citizens.

The proposed Subsections in this Note provide an equitable approach to reciprocity. First, Subsection 1733.1 only requires tribal court certification of reciprocity and that they will enforce state court judgments with a limited waiver of sovereign immunity.\textsuperscript{292} This eliminates the need for state court judgments to be re-litigated in tribal court.\textsuperscript{293} It further provides tribal courts access to the Judicial Council’s sponsored legislation which seeks to streamline the enforcement of tribal judgments in state court.\textsuperscript{294} Subsection 1733.1 also reduces the risk of claims of sovereign immunity where a legitimate tribal interest is not affected making enforcement more likely.\textsuperscript{295} Lastly, Subsection 1735(c)(5) permits an objector the right to challenge enforcement of a tribal court judgment on the grounds that the tribe fails to provide reciprocity for state court judgments.\textsuperscript{296} Together, these Subsections balance the need for a solution to problems affecting the enforcement of both state and tribal court judgments against the interests of both California and Indian tribes. Moreover, it would eliminate similar situations to those in \textit{Teague} and \textit{Martinez} from occurring in the future.\textsuperscript{297} Therefore, Subsections 1733.1(b)(4) and 1735(c)(5) in addition to the Judicial Council’s sponsored legislation should be enacted in order to address the growing problems affecting the administration of justice in California.

\textsuperscript{291} See \textsc{judicial council-sponsored legislation}, supra note 10, at 15-21. \textit{See also supra} Part I.E.
\textsuperscript{292} See supra Parts II.A.2.a.
\textsuperscript{293} See supra Part II.B.
\textsuperscript{294} See supra Part II.A.2.a.
\textsuperscript{295} See supra Part II.A.2.a.
\textsuperscript{296} See supra Part II.A.2.b.
\textsuperscript{297} See supra Part II.A.2.c.
\textsuperscript{297} See supra Part II.D.2.