# H.R. 1208 AND H.R. 6180

# LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

Wednesday, June 26, 2024

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HOUSE COMMITTEE ON

# NATURAL RESOURCES

CHAIRMAN BRUCE WESTERMAN

**To:** House Committee on Natural Resources Republican Members

**From:** Indian and Insular Affairs Subcommittee staff, Ken Degenfelder (Ken.Degenfelder@mail.house.gov), Jocelyn Broman (Jocelyn.Broman @mail.house.gov), and Kirstin Liddell (Kirstin.Liddell@mail.house.gov) x6-9725

**Date:** Wednesday, June 26, 2024

**Subject:** Legislative Hearing on two bills: H.R. 1208 and H.R. 6180

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The Subcommittee on Indian and Insular Affairs will hold a legislative hearing on two bills: H.R. 1208 (Rep. Cole), To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian Tribes, and for other purposes; and H.R. 6180 (Rep. Carl), "*Poarch Band of Creek Indians Lands Act*" on **Wednesday, June 26, 2024, at 10:15 a.m. in 1324 Longworth House Office Building**.

Member offices are requested to notify Haig Kadian (Haig.Kadian @mail.house.gov) by 4:30 p.m. on Tuesday, June 25, 2024, if their member intends to participate in the hearing.

## I. KEY MESSAGES

- Pursuant to the 2009 Supreme Court decision in *Carcieri v. Salazar*, the Secretary of the Interior (Secretary) is only authorized to place land into trust for federally recognized tribes that can demonstrate that they were "under federal jurisdiction" when the Indian Reorganization Act (IRA) became law in 1934.
- H.R. 1208 would amend the IRA to grant the Secretary the ability to place land into trust for the benefit of any federally recognized tribe.
- H.R. 6180 would treat the Poarch Band of Creek Indians as covered by the IRA and reaffirm any lands previously taken into trust for their benefit by the Secretary.
- The Secretary's ability to take land into trust removes land from local control, placing it under federal and tribal control. Land taken into trust within a community has implications for taxation, zoning, and other local or state laws regarding property.
- Changing the impact of *Carcieri v. Salazar* also has implications for Indian gaming development.

## II. WITNESSES

- **Ms. Kathryn Isom-Clause**, Deputy Assistant Secretary for Indian Affairs, U.S. Department of the Interior, Washington, DC. [H.R. 1208 and H.R. 6180]
- **The Hon. Marshall Pierite**, Chairman, Tunica-Biloxi Tribe of Louisiana, Marksville, LA [H.R. 1208]
- **The Hon. Stephanie Bryan**, Tribal Chair, Poarch Creek Indians, Atmore, AL [H.R. 6180]

- **The Hon. David Rabbitt**, District 2 Supervisor, Sonoma County Board of Supervisors, Sonoma, CA [H.R. 1208 and H.R. 6180]

## III. BACKGROUND

### H.R. 1208 (Rep. Cole), To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian Tribes, and for other purposes.

H.R. 1208 would amend the IRA[1] and grant the Secretary the ability to place land into trust for the benefit of any federally recognized tribe, not just those considered "under federal jurisdiction" when the IRA became law on June 18, 1934. This would reverse the 2009 Supreme Court decision *Carcieri v. Salazar*.[2] Similar legislation has been introduced in the past seven Congresses, and the past ten democratic President's budget requests have included proposed legislative language to accomplish the same goal.[3]

*Land into Trust Authority*

Section 5 of the IRA[4] authorizes the Secretary to take land into trust for the benefit of an Indian tribe "in his discretion." The IRA was enacted as a remedy to the allotment policies exemplified by the Dawes Act,[5] which resulted in a reduction of Indian land and continued poverty and poor conditions on reservations, as detailed in the 1928 Meriam Report.[6] Land held in trust for individual Indians and federally recognized tribes is generally immune from state and local jurisdiction and taxation. Depending on the location of the land and the date it was put in trust, a tribe may be able to operate a casino on land held in trust pursuant to the Indian Gaming Regulatory Act (IGRA).[7]

Currently, there are approximately 56 million surface acres and 59 million acres of subsurface minerals estates held in trust by the United States for American Indians, Alaska Natives and for federally recognized tribes.[8] Lands can be taken into trust through mandatory or discretionary acquisitions. A mandatory acquisition involves Congress, or a court order, mandating the Secretary take specific land into trust for the benefit of a tribe. Discretionary trust acquisitions involve the Secretary using the authority granted to them under the IRA to take land into trust on behalf of the tribe.[9]

The Bureau of Indian Affairs (BIA) has issued regulations outlining the Secretary's process to take land into trust for individual Indians or federally recognized tribes.[10] Applications are often seen as procedural because they are generally approved irrespective of whether taking the land into trust would have local, state, or federal tax and governmental impacts.[11] There is currently no standard for removing land from trust if a judicial decision deems the application's approval unlawful.[12]

*The Carcieri v. Salazar Decision and Effects*

The *Carcieri v. Salazar* Supreme Court decision provided a limit on the secretarial power to take land into trust. Resolving a lawsuit filed by the Governor of Rhode Island, a 2009 Supreme Court decision held that the trust land provisions of the IRA may only benefit tribes that were "under federal jurisdiction" on June 18, 1934, the date of the Act's enactment.[13] These are generally tribes with reservations whose lands were allotted under 19th-century laws. Following allotment,

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[1] 48 Stat. 984.
[2] *Carcieri v. Salazar*, 555 U.S. 379 (2009).
[3] Included in FY12-FY17 President's budget request and again in FY22-FY25.
[4] 48 Stat. 985.
[5] Act of February 8, 1887, Ch. 119, 24 Stat. 388.
[6] Meriam Report. 1928. https://www.uaf.edu/tribal/academics/112/unit-2/indianreorganization act1934.php.
[7] 25 U.S.C. 2701 et seq.
[8] "About Us" Bureau of Indian Affairs. https://www.bia.gov/about-us.
[9] CRS. Tribal Lands: An Overview. October 21, 2021. https://crsreports.congress.gov/product/pdf/IF/IF11944.
[10] 25 CFR Part 151. https://www.ecfr.gov/current/title-25/part-151.
[11] SCIA Hearing. Carcieri: Bringing Certainty to Trust Land Acquisitions. November 2013. See the Late Senator Feinstein's Statement referencing Butte County residents voting against a casino only for DOI to approve the land-into-trust application for a casino. https://www.govinfo.gov/content/pkg/CHRG-113shrg87133/html/CHRG-113shrg87133.htm.
[12] 25 CFR 151. https://www.ecfr.gov/current/title-25/part-151.
[13] 555 U.S. 379.

millions of acres of land left Indian ownership. A key goal of Congress in enacting the IRA was to remedy the land loss by Indians in tribes in existence in 1934.[14]

The actual impact on all tribes since the decision is unknown for two reasons. First, since 2009, the Department of the Interior (DOI) has not divulged a list of tribes that were or were not under federal jurisdiction in 1934. Tribes applying to have land placed into trust through the BIA's process generally have to prove that they were under federal jurisdiction in 1934, often defending their history, membership, and even the tribe's existence in their land-to-trust applications.

Second, during the Obama Administration, the DOI Solicitor issued an "M-Opinion" interpreting the definition of "under federal jurisdiction" to continue the acquisition of lands for tribes recognized after 1934. This controversial decision by the Obama Administration has allowed the Secretary to continue taking lands into trust for federally recognized tribes but it has also led to ambiguity and lawsuits.[15]

For example, one land into trust application from the Mashpee Wampanoag Tribe of Massachusetts for its "initial reservation" caused three lawsuits and three different secretarial decisions across three different presidential administrations, because the tribe was recognized in 2007. Local residents disagreed with the 2015 land into trust decision, as well as plans for a subsequent 400,000-square foot class III gaming-resort complex, and challenged the decision in federal court.[16] They argued, pursuant to *Carcieri v. Salazar*, that the Secretary did not have authority to take the land into trust since the Mashpee tribe was recognized after the IRA's enactment date.[17] A Massachusetts district court ruled for the residents; then the Secretary issued a new decision in 2018 stating that the Secretary could not take the land into trust. The Mashpee tribe then challenged the 2018 secretarial decision, and a D.C. district court ruled in favor of the tribe, resulting in another 2021 secretarial decision declaring the Mashpee tribe under federal jurisdiction in 1934.[18] The 2021 secretarial decision was challenged in court, with a Massachusetts district court this time rejecting the resident's challenge and siding with the argument based on *Carcieri v. Salazar*, citing evidence of Mashpee children attending the Carlise Indian School under the federal assimilation policy, thus proving the tribe was under federal jurisdiction before 1934.[19] This merry-go-round of litigation took years to complete and ended at the same conclusion as the original 2015 secretarial decision to take the land into trust for the Mashpee.

*Local Concerns Regarding Future Land into Trust Decisions and Effect on Indian Gaming*

Some local and state governments have concerns with a "fix" to overturn the *Carcieri v. Salazar* decision. The National Association of Counties (NACo) has routinely requested that Congress address the *Carcieri v. Salazar* decision as part of a larger "comprehensive examination" centered on reform to the fee into trust land process.[20] Land held in trust does not fall under state or local jurisdiction for law enforcement or taxation. Removing the land from state or local jurisdiction impacts counties, states, and other local stakeholders. Generally, these stakeholders are concerned they do not have enough involvement in the land-into-trust application process, even though it directly impacts their interests, and quick decision time frames make it challenging to be included in the process.[21]

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[14] 25 US 5103.

[15] U.S. Department of the Interior. "The Meaning of 'Under Federal Jurisdiction' for Purposes of the Indian Reorganization Act." March 2014. https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37029.pdf.

[16] Littlefield et al v. Department of the Interior, U.S. District Court-District of Massachusetts, Civil Action No. 16-10184-WGY, Memorandum and Order, July 28, 2016. https://massgaming.com/wp-content/uploads/Littlefield-et-al-vs-US-Department-of-Interior.pdf.

[17] *Id.*

[18] DOI fact sheet. Determination that the Secretary has Authority to Take Land in Trust for the Mashpee Wampanoag Tribe. https://www.bia.gov/sites/default/files/dup/assets/as-ia/oig/gaming_decisions/508%20Compliant%202021.12.22%20Mashpee%20Decision%20Fact%20Sheet%20and%20QA.pdf.

[19] Department of Justice. Office of Public Affairs. "Justice Department's Successful Defense of Lands in Trust Case Will Preserve Land in Massachusetts for the Mashpee Wampanoag Tribe." April 2024. https://www.justice.gov/opa/blog/justice-departments-successful-defense-lands-trust-case-will-preserve-land-massachusetts.

[20] NACo. "U.S. Bureau of Indian Affairs Unveils New Final Rule for Tribal Land-in-Trust Process." January 2024. https://www.naco.org/news/us-bureau-indian-affairs-unveils-new-final-rule-tribal-land-trust-process.

[21] NACo. "U.S. Bureau of Indian Affairs Unveils New Final Rule for Tribal Land-in-Trust Process." January 2024. https://www.naco.org/news/us-bureau-indian-affairs-unveils-new-final-rule-tribal-land-trust-process.

In December 2023, the BIA promulgated new land into trust acquisition regulations where the agency included a process to determine whether a tribe was "under federal jurisdiction" on June 18, 1934, reflecting the *Carcieri v. Salazar* decision.[22] During the rulemaking process, NACo submitted comments requesting the BIA take into consideration the opinions of state and county governments to avoid the "controversy, conflict and costly litigation between tribes and state and county governments."[23] However, the final rule published in December 2023 maintained the 30-day comment period for state and local stakeholders. Changes made in the final rule included: acknowledgment that the Secretary's policy is favorable towards taking land into trust for the benefit of tribes; a requirement that the BIA must issue a decision within 120 days of the application being submitted; and the acknowledgment of how to determine whether a tribe was "under federal jurisdiction" as ruled in *Carcieri v. Salazar*.[24]

Another change involved the acquisition of land into trust outside of a tribe's land boundaries. Previously, there was a "bungee cord" approach to land as the distance from it to a tribe's reservation grew—meaning the further from a tribe's preexisting reservation, the more scrutiny applied to the request. Under the final rule this approach is no longer taken into consideration. The Secretary now presumes that the tribe will benefit from the land being taken into trust.

Any land into trust process changes also have implications for tribal gaming projects as new gaming projects can only be developed on certain lands as laid out by IGRA.[25] Under IGRA, tribes can conduct gaming activities on "Indian lands," which are defined as reservation, trust, or restricted-fee land. While IGRA prohibits gaming-related activities on lands taken into trust after October 17, 1988, various circumstances allow a tribe to circumvent the prohibition.[26]

Tribal revenues from gaming support the overall well-being of their tribal community, as required by IGRA.[27] In 2023, over 200 tribes owned, operated, or licensed more than 500 gaming businesses in 29 states.[28] On average, tribal gaming increases employment by 2.4 percent and wages by 5.6 percent on tribal reservations.[29] However, this is not the case for every tribe, and successful gaming operations are highly attributed to the overall support seen in the surrounding areas.

H.R. 1208 aims to streamline the process of placing lands into trust for tribes that were federally recognized after 1934. This could impact areas with tribes that have gained federal recognition more recently, including but not limited to the impact of potential expansion of tribal gaming operations.

**Staff contact:** Ken Degenfelder (Ken.Degenfelder@mail.house.gov) and Jocelyn Broman (Jocelyn.Broman@mail.house.gov), (x6-9725)

**H.R. 6180 (Rep. Carl), "Poarch Band of Creek Indians Lands Act"**

H.R. 6180 would recognize the Poarch Band of Creek Indians as covered by the IRA and reaffirm any lands previously taken into trust for the tribe's benefit by the Secretary as trust land. Any pending challenges to land taken into trust would be invalid if based upon the argument that the tribe was not under federal jurisdiction in 1934.

The Poarch Band of Creek Indians (Poarch Band) is located approximately 56 miles north of Mobile, Alabama. It is a segment of the original Creek Nation that resided in Alabama and Georgia. Following the War of 1812, the Creeks who supported the United States signed the Treaty of Fort Jackson, ceding their land in Alabama.[30] In 1836, the federal government forcibly moved 15,000 Creeks to

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[22] 25 CFR Sec. 151.4. https://www.ecfr.gov/current/title-25/chapter-I/subchapter-H/part-151.

[23] NACo. Comments Letter to Assistant Secretary Newland re-Proposed Rule—25 CFR Part 151 (Land Acquisition); Docket No. BIA-2022-0004. On file with IIA Staff.

[24] NACo. "U.S. Bureau of Indian Affairs Unveils New Final Rule for Tribal Land-in-Trust Process." January 2024. https://www.naco.org/news/us-bureau-indian-affairs-unveils-new-final-rule-tribal-land-trust-process#:~:text=NACo%20also%20opposes%20administrative%20action, fee%20land%20into%20trust%20process.

[25] IGRA, P.L. 100-497, 25 U.S.C. §§ 2701-2721.

[26] Murray, Mariel. Indian Gaming Regulatory Act: Gaming on Indian Lands. CRS. https://www.crs.gov/reports/pdf/IF12527/IF12527.pdf.

[27] 25 U.S.C. § 2710.

[28] Murray, Mariel. Indian Gaming Regulatory Act: Gaming on Indian Lands. CRS. https://www.crs.gov/reports/pdf/IF12527/IF12527.pdf.

[29] Wheeler, Laurel. More than Chance: The Local Labor Market Effects of Tribal Gaming. Center for Indian Country Development. Federal Reserve Bank of Minneapolis. 2023. https://www.minneapolisfed.org/-/media/assets/papers/cicdwp/2023/cicd-wp-2023-02.pdf.

[30] House Report. Poarch Band of Creek Indians Land Reaffirmation Act. House of Representatives. H.R. 115-513. 2018. https://www.congress.gov/congressional-report/115th-congress/house-report/513/1?outputFormat=pdf.

Oklahoma.[31] The Creek Indians who remained in the vicinity of Poarch, Alabama, became known as the Poarch Band of Creek Indians, remaining a cohesive tribal group. It was not until August 11, 1984, that the BIA recognized them federally. After recognition, the Poarch Band had their lands in Alabama and Florida administratively placed into trust by the Secretary under Section 5 of the IRA.[32]

*Litigation regarding Land into Trust in Alabama*

As noted above, the *Carcieri v. Salazar* decision left some tribes in limbo regarding whether the Secretary was authorized to take land into trust for them. The Poarch Band is one of those tribes because it was recognized through the BIA's administrative process in 1984, nearly 50 years after the enactment of the IRA, and the Secretary took land in Alabama and Florida into trust for the tribe prior to 2009.

According to Poarch Band's testimony at a 2015 hearing, many of its lands were placed in trust prior to 2009 pursuant to the IRA, and these trust lands have been developed with the construction of buildings and businesses, including casinos.[33] If a court were to decide these lands are not lawfully held in trust on the grounds the Poarch Band was recognized after 1934, the lands could lose their trust status, exposing the tribe to state taxation and civil regulation, which in turn could lead to the closure of tribal businesses and the dismantling of facilities. In addition, the tribe's casinos would become subject to Alabama State law, which could lead to the modification or closure of the gambling facilities that employ large numbers of people and generate revenues for the tribe's government.[34] In 2016, the Poarch Band of Creek Indians prevailed in the U.S. 11th Circuit Court of Appeals, where a unanimous decision concluded that the tribe's reservation was protected under the IRA and could not be taxed by the state of Alabama.[35] However, this decision does not necessarily prevent further litigation on future parcels of land the Secretary could take into trust for the tribe.

The Poarch Band currently operates three Class II casinos in Alabama.[36] As noted above for H.R. 1208, local and state governments generally have concerns with "fixes" surrounding the *Carcieri v. Salazar* decision. However, H.R. 6180 has the support of multiple County Commissioners, Mayors, City Council Members, and state legislators in Alabama.[37] Local support highlights the local effect of these decisions and the ability for tribes to gain support for land into trust decisions.

The Muscogee (Creek) Nation of Oklahoma (Muscogee) has previously testified before the House Committee on Natural Resources concerning a parcel of land taken into trust for the Poarch Band and used for a gambling facility. The Muscogee have stated that the area known as "Hickory Ground" is a sacred site for the tribe containing, or previously containing, the remains of Creek ancestors.[38] The Muscogee filed a lawsuit in 2012 on this issue, most recently asking a federal appellate court to reinstate the lawsuit after being thrown out in 2021.[39]

**Staff contact:** Ken Degenfelder (Ken.Degenfelder@mail.house.gov) and Jocelyn Broman (Jocelyn.Broman@mail.house.gov), (x6-9725)

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[31] History Channel. Trail of Tears. September 26, 2023. https://www.history.com/topics/native-american-history/trail-of-tears.

[32] House Report. Poarch Band of Creek Indians Land Reaffirmation Act. House of Representatives. H.R. 115-513. 2018. https://www.congress.gov/congressional-report/115th-congress/house-report/513/1?outputFormat=pdf.

[33] Subcommittee on Indian, Insular, and Alaska Native Affairs Subcommittee. Testimony of Attorney General Lori Stinson. May 14, 2015. https://docs.house.gov/meetings/II/II24/20150514/103445/HHRG-114-II24-Wstate-StinsonL-20150514.pdf.

[34] *Id*.

[35] "Poarch Creeks Win Ruling in Dispute Over Taxation of Trust Lands." July 2016. https://indianz.com/News/2016/07/12/poarch-creeks-win-ruling-in-dispute-over.asp.

[36] The Poarch Band of Creek Indians Tribal Gaming Commission. https://pci-tgc.org/.

[37] Letter of Support from Alabama Legislators. September 2023. On File with IIA Staff.

[38] House Report. Poarch Band of Creek Indians Land Reaffirmation Act. House of Representatives. H.R. 115-513. 2018. https://www.congress.gov/congressional-report/115th-congress/house-report/513/1?outputFormat=pdf.

[39] AP." Muscogee Nation Renews Lawsuit over Alabama Casino They Say Desecrated a Sacred Site." July 2023. https://apnews.com/article/muscogee-poarch-creek-lawsuit-graves-sacred-ef741fb801a47678a423379778e6c040.

## IV. MAJOR PROVISIONS & SECTION-BY-SECTION

**H.R. 1208 (Rep. Cole), To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian Tribes, and for other purposes.**

*Section 1. Reaffirmation of Authority*

Amends the Indian Reorganization Act (25 U.S.C. 5129 et. seq.) to authorize the Secretary to take land into trust for any federally recognized tribe. This removes the need for a tribe to be "under federal jurisdiction" on June 18, 1934. The bill would further ratify any action taken by the Secretary to place land into trust for a federally recognized tribe and ensure that the decision cannot be challenged based on the *Carcieri v. Salazar* reasoning. Additionally, a provision is included to limit the impacts of this legislation to this subsection of the IRA only and that any statutory reference to the IRA is to be considered amended by this legislation.

**H.R. 6180 (Rep. Carl), "Poarch Band of Creek Indians Lands Act"**

*Section 2. Applicability of Indian Reorganization Act*

Under the Indian Reorganization Act (25 U.S.C. 5129 et. seq.), the Poarch Band of Creek Indians is deemed to be a federally recognized tribe while stating that any lands taken into trust by the Secretary for the tribe are to be ratified and confirmed. The bill has a retroactive effect, stating the effectiveness of the legislation will be as if it was in effect when the IRA was implemented on June 18, 1934.

## V. CBO COST ESTIMATE

**H.R. 1208 (Rep. Cole), To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian Tribes, and for other purposes.**

CBO has not issued an estimate for H.R. 1208. However, CBO issued a cost estimate for a similar bill from the 113th Congress, S. 2188, stating the bill would not have a significant impact on the federal budget.[40]

**H.R. 6180 (Rep. Carl), "Poarch Band of Creek Indians Lands Act"**

CBO has not issued an estimate for H.R. 6180.

## VI. ADMINISTRATION POSITION

**H.R. 1208 (Rep. Cole), To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian Tribes, and for other purposes.**

Unknown, however, the Biden Administration has supported similar legislative proposals, indicating support for overturning the *Carcieri v. Salazar* decision legislatively. Most recently, President Biden's FY 2025 Budget for the Department of the Interior included similar language.[41]

**H.R. 6180 (Rep. Carl), "Poarch Band of Creek Indians Lands Act"**

Unknown.

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[40] CBO. Cost Estimate for S. 2188. September 2014. https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/costestimate/s21880.pdf.

[41] Department of the Interior FY 2025 Budget. Appendix. P. 661. https://www.whitehouse.gov/wp-content/uploads/2024/03/int_fy2025.pdf.

## VII. EFFECT ON CURRENT LAW (RAMSEYER)

**Showing Current Law as Amended by H.R. 1208**

[new text highlighted in yellow; text to be deleted bracketed and highlighted in blue]

**Section 19 of the Act of June 18, 1934 (25 U.S.C. 5129)**

Sec. 19. [The term] Effective beginning June 18, 1934, the term "Indian" as used in this Act shall include all persons of Indian descent who are members of [any recognized Indian tribe now under Federal jurisdiction] any federally recognized Indian Tribe, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians. The term "tribe" wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation. The words "adult Indians" wherever used in this Act shall be construed to refer to Indians who have attained the age of twenty-one years.

# LEGISLATIVE HEARING ON H.R. 1208, TO AMEND THE ACT OF JUNE 18, 1934, TO REAFFIRM THE AUTHORITY OF THE SECRETARY OF THE INTERIOR TO TAKE LAND INTO TRUST FOR INDIAN TRIBES, AND FOR OTHER PURPOSES; AND H.R. 6180, TO REAFFIRM THE APPLICABILITY OF THE INDIAN REORGANIZATION ACT TO THE POARCHBAND OF CREEK INDIANS, AND FOR OTHER PURPOSES, "POARCH BAND OF CREEK INDIANS LANDS ACT"

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**Wednesday, June 26, 2024**

**U.S. House of Representatives**

**Subcommittee on Indian and Insular Affairs**

**Committee on Natural Resources**

**Washington, DC**

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The Subcommittee met, pursuant to notice, at 10:18 a.m. in Room 1324, Longworth House Office Building, Hon. Harriet M. Hageman [Chairwoman of the Subcommittee] presiding.

Present: Representatives Hageman, Radewagen, González-Colón, Carl, Westerman; and Leger Fernández.

Also present: Representative Cole.

Ms. HAGEMAN. The Subcommittee on Indian and Insular Affairs will come to order.

Without objection, the Chair is authorized to declare a recess of the Subcommittee at any time.

The Subcommittee is meeting today to hear testimony on two bills: H.R. 1208 and H.R. 6180.

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member. I, therefore, ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted in accordance with Committee Rule 3(o).

Without objection, so ordered.

I ask unanimous consent that the gentleman from Oklahoma, Mr. Cole; and the gentlewoman from Minnesota, Ms. McCollum, be allowed to sit and participate in today's hearing.

Without objection, so ordered.

I will now recognize myself for an opening statement.

**STATEMENT OF THE HON. HARRIET M. HAGEMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING**

Ms. HAGEMAN. Today, the Subcommittee is meeting to consider two bills. These two bills center on the issue raised in the 2009 Supreme Court decision *Carcieri v. Salazar*. In that decision, the Supreme Court ruled that the Secretary of the Interior, or Secretary, is only authorized to place land into trust for federally recognized tribes that can show that they were under "Federal jurisdiction" when the Indian Reorganization Act, or IRA, became law in 1934.

First, we have H.R. 1208, introduced by Congressman Cole, which would amend the Act of June 18, 1934, the Indian Reorganization Act, to grant the Secretary the ability to place lands into trust for the benefit of any federally recognized tribe. This legislation would essentially resolve the decision of *Carcieri v. Salazar*, removing the precursor of "being under Federal jurisdiction" when the IRA became law on June 18, 1934.

The second bill on the docket is H.R. 6180, introduced by Congressman Carl, which would treat the Poarch Band of Creek Indians as covered by the IRA, and reaffirm any lands previously taken into trust for their benefit by the Secretary.

The Poarch Band of Creek Indians currently reside roughly 56 miles north of Mobile, Alabama. A segment of the original Creek Nation, the Poarch Band received Federal recognition in August 1984 through the BIA's administrative process. After recognition, the Secretary placed land into trust for the benefit of the Poarch Band under the IRA. This was, of course, prior to the *Carcieri v. Salazar* decision, which has left the Poarch Band in limbo as a tribe recognized after 1934 with land in trust status.

The Poarch Band has overcome time-consuming and costly litigation. In 2016, the U.S. 11th Circuit Court of Appeals ruled that the Tribe's reservation was protected under the IRA. However, this decision does not protect the Poarch Band from further litigation on any future parcels of land taken into trust by the Secretary for their benefit.

As this Subcommittee has seen, the ability to have land placed into trust is a top priority for many tribes and garners wide support across the board. Yet, there are impacts to local towns, cities, counties, and states that should be weighed by the Department of the Interior when placing land into trust.

When the Secretary places land into trust, it is removed from local control and falls under Federal and tribal control. This change often has implications for taxation, zoning, and other local or state laws regarding property. As seen with the Poarch Band, these implications can lead to litigation, which is often time-consuming and costly for all of the parties involved.

I am hopeful that conversations such as the one we will have today will be a catalyst for a long-term solution across the board. I want to take the time to thank our witnesses for being here today, and I look forward to a robust conversation.

The Chair now recognizes the Ranking Minority Member for her statement.

**STATEMENT OF THE HON. TERESA LEGER FERNÁNDEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO**

Ms. LEGER FERNÁNDEZ. Thank you, Madam Chairwoman, and thank you for holding this hearing. And you can see the interest. We have standing room only. And it is because it is such an important issue.

On December 2, 2021, I went to the Floor with this very same bill as Chair of the Subcommittee on Indigenous Peoples. And it was important to raise then, as it has been important to raise every time we re-introduce this bill since that fateful Supreme Court decision. That bill passed overwhelmingly, and I look forward to us moving this bill, as well, through this Congress, because it is such a bipartisan effort to address this 2009 Supreme Court ruling in *Carcieri*.

In *Carcieri*, as we have heard, the Supreme Court decided, the end of the IRA, the Secretary could take land into trust only for those tribes that were under Federal jurisdiction in 1934. That decision was harmful. It was disrespectful to tribes. It essentially said that if you are not federally recognized, it didn't matter how long you existed, but if we hadn't done our homework and made all the mistakes that we made over the years, then you didn't get to re-establish your homelands.

The ability to take land into trust is essential for tribes to provide housing, economic development opportunities, governmental services, and to protect tribal lands and cultural resources.

The *Carcieri* ruling upended 75 years of Federal Indian policy and administrative practices. It created uncertainty. Because of *Carcieri*, tribes have had to defend themselves in court, as we have just heard the Poarch Creek Band has had to do. DOI has to provide time-consuming and often unnecessary reviews of a tribe's jurisdictional status, and these are exactly the kinds of unnecessary and costly steps we should address, and that is what H.R. 1208 does.

I want to thank both Representatives Cole and McCollum for their leadership on H.R. 1208 and for their years of leadership on this. I am an original co-sponsor of the bill. Their bipartisan work to correct the misguided *Carcieri* ruling demonstrates how Democrats and Republicans can work together on this Subcommittee for Indian Country.

Mr. Cole's bill would simply restore the Secretary of the Interior's authority to take land into trust for all tribes, regardless of their date of Federal recognition.

Let's be clear. H.R. 1208 is separate from Indian gaming law, and does not alter the process for placing land into trust for gaming. It does not take away state and local governments' input under existing Department of the Interior's land-into-trust policies. H.R. 1208 just makes sure there is parity and equality for all tribes so they can fully realize the benefits of sovereignty, including through acquisition of trust land. That means we would not have to enact individual bills to return land that the U.S. Government systemically removed from tribes, bills like Representative Carl's H.R. 6180, which reaffirms the trust status of the lands of the

Poarch Band of Creek Indians in Alabama, Poarch Band of Creek Indians. I apologize for the inversion earlier.

I believe that we need a clean *Carcieri* fix. In the 117th Congress, we had a hearing like this. We passed it out of the Floor, 302 to 127, just like we did in the 116th Congress. Congress has introduced legislation for *Carcieri* in every Congress since 2009. And I want to thank once again the Chairwoman and the Chair for allowing this hearing to go forward so that we can continue that tradition and finally get it over the finish line.

H.R. 1208 isn't a quick fix, as some have said. Tribes, Congress, and the Department of the Interior have worked on it for over a decade. It is past time to do the right thing for Indian Country. It is our role in Congress to pass legislation to uphold our treaty obligations and trust responsibility to tribes. That is how we promote tribal self-determination and self-governance.

Chairwoman Bryan, I truly appreciated your written testimony, where you said we receive blessings and blessings we give back. And I think that is so essential to how we look at what we are doing here today. I hope we can put politics aside and move this bill through the Committee swiftly and to the Floor so we do not need individual bills.

With that, Madam Chair, I yield back.

Ms. HAGEMAN. Thank you. The Chair now recognizes Chairman Westerman for an opening statement.

**STATEMENT OF THE HON. BRUCE WESTERMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS**

Mr. WESTERMAN. Thank you, Madam Chair, and thank you to the witnesses for being here today.

And as the Subcommittee Chair and the Ranking Member stated, we are here to look at two different bills, really two different approaches that would amend the Indian Reorganization Act to address the 2009 Supreme Court decision *Carcieri v. Salazar*. And there is tremendous interest in this, and I think it is appropriate that we have a hearing.

And if you look at the way this hearing is structured, there are two pathways: one bill that would do a broad *Carcieri* fix, and another bill that would do kind of a more singled-out approach. And going forward, one way would kind of relieve Congress from having to deal with it in the future; the other way would be individual fixes going forward. So, I think it is good that we have this hearing to bring out differences in the way to address *Carcieri*, to hear the concerns, and to figure out what is best for our country going forward and for all the tribes involved.

H.R. 1208, sponsored by Representative Cole, would amend the Indian Reorganization Act to clarify that the Secretary of the Interior has discretionary authority to place land into trust for any federally recognized tribe. Currently, a tribe must be determined to have been under Federal jurisdiction on June 18, 1934 for the Secretary to take land into trust through the agency's administrative process.

H.R. 6180, sponsored by Representative Carl, would also amend the Indian Reorganization Act to confirm the Secretary's

discretionary authority to place land into trust for the Poarch Band of Creek Indians, both for land already in trust and future parcels that the Tribe could request the Secretary to take into trust.

Tribes place land into trust for many purposes, including for tribal housing, economic development projects, and cultural and ecological conservation. The trust status gives tribes confidence that lands will not be transferred without Federal action. This means tribal homelands that anchor tribal histories and stories remain a part of their future, as well as their past.

This Committee has worked to pass various land-into-trust legislation on a consistent, bipartisan basis, recognizing that tribes know what benefits their tribal members best. However, tribal trust land can have implications for local and state taxation, zoning, and other laws regarding property. Broad consensus between tribal, state, and local stakeholders on those issues and on those actions are crucial. It not only preserves support for placing land into trust, but also benefits any further development or use of the land.

We have seen many examples of local communities benefiting from tribal development of trust lands, diversifying economies and often providing jobs. We have also seen instances where tribes and local stakeholders are not on the same page, resulting in costly and lengthy litigation. While consensus cannot always be reached, it is vitally important that we attempt to find the best way forward for everyone. This includes hearing from multiple perspectives on this issue and how all stakeholders would be affected if either of these bills became law.

Congress has both plenary power over Federal Indian policy, as well as the innate authority to define how we delegate power to administrative agencies. Ultimately, Congress can change policies and procedures if we think it is in the nation's best interest.

Again, I want to thank the witnesses for being here to provide your expertise and testimony on these bills and on this important topic.

I yield back.

Ms. HAGEMAN. Thank you, Chairman Westerman.

The votes have just been called. I am going to go ahead and introduce our witnesses, and then we will adjourn for a short period of time to allow us to go vote, and then we will come back and continue with the hearing. I am sorry for the disruption, but we have two different vote series today, so we have to have one of them this morning.

Very quickly, I now want to introduce the witnesses for our panel.

Ms. Kathryn Isom-Clause, the Deputy Assistant Secretary for Indian Affairs, U.S. Department of the Interior in Washington, DC; the Honorable Marshall Pierite, Chairman, Tunica-Biloxi Tribe of Louisiana, Marksville, Louisiana; and the Chair now recognizes Mr. Carl for 1 minute to introduce the witness from his district.

Mr. CARL. Thank you, Madam Chairwoman. It is going to be a confusing day, I can tell already.

[Laughter.]

Mr. CARL. I am so pleased to introduce Chairwoman Bryan.

It is truly an honor to have you here today. I haven't had a chance to speak to you yet. Hopefully, you will hang around a little while.

Your leadership both on the Tribal Council and as a Tribe CEO demonstrates your dedication to improving the lives of the tribal citizens and their families. Your efforts benefit not only your community, but also contribute significantly to the well-being and the prosperity of the state of Alabama. And we appreciate that, we truly do.

We have worked on so many things together, I feel like we are brother and sister.

Your leadership ensures that the voices of Indian Country are heard, and that necessary means are taken to safeguard Native-owned lands and uphold tribal rights. Your presence here to support this important bill highlights the Tribe's commitment to economic growth and prosperity for both the Poarch Nation and for all the Nations.

Thank you for the Tribe's tireless effort and dedication to make a positive impact on our state economy and lives of the residents.

I think that is it. Thank you for being here.

Ms. HAGEMAN. Thank you, Mr. Carl.

Our final witness of the day is the Honorable David Rabbitt, District 2 Supervisor, Sonoma County Board of Supervisors, Sonoma, California.

We are going to go ahead and take our recess now, and when we come back we will have Mr. Carl introduce his bill, and then we will go directly to the witness statements. Thank you.

The Committee is in recess until we finish our voting, which will probably be in a half an hour, I believe. Thank you.

[Recess.]

Ms. HAGEMAN. The hearing of the Subcommittee on Indian and Insular Affairs will come back into session, and the Chair now recognizes Mr. Carl from Alabama for 5 minutes to speak on his legislation.

## STATEMENT OF THE HON. JERRY CARL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. CARL. Thank you, Madam Chairwoman.

My bill is pretty simple. The Poarch Band of Creek Indians Land Act is a bipartisan, bicameral effort aimed to supporting the Poarch Creek Band of Creek Indians, allowing them to exercise their sovereignty for the benefit of future generations.

This Act is not just about legitimizing, it is about enabling the Tribe to provide essential government services effective to the citizens. By clarifying and reaffirming the Tribe's rights under the Indian Reorganization Act, IRA, this bill will provide stability and a clear path forward for their community development.

The Tribe, a federally recognized entity based in Atmore, Alabama, with over 2,700 citizens, has limited trust lands, hindering the communities growth. This legislation ensures that the IRA applies to the Tribe, enhances their ability to improve essential government services, and treating them on par with other federally recognized tribes.

This bill is not only about supporting the Tribe, but it is also about the potential to boost Alabama economy by generating new revenue and creating thousands of jobs. The Poarch Band Creek Indian Land Act aims at reaffirming the Tribe's long-standing trust land and brings parties under the IRA.

Since 2009, the Tribe has faced constant litigation over the trust land, stalled critical developments in housing, health care, and essential services. This legislation will ensure that the Tribe is treated equal and with other federally recognized tribes, allowing them to better provide for their community.

The widespread support for this bill at both the local and Federal level underscores its importance. Local governments, including Elmore County Commission, Escambia County Commission, Montgomery County Commission, and others have rallied behind this bill, highlighting the collaboration and spirit that has unified backing, driving it forwards. This month the Senate received a hearing on this revision of this bill, sponsored by Senator Katie Britt, which was a positive response, further demonstrating the bill's broad appeal and significance.

With that, Madam Chair, I return my time.

Ms. HAGEMAN. Thank you, Mr. Carl. We will now turn towards witness testimony.

Let me remind the witnesses that under Committee Rules, they must limit their oral statements to 5 minutes. But your entire statements will appear in the hearing record.

To begin your testimony, please press the "talk" button on the microphone.

And we use timing lights. When you begin, the light will turn green. When you have 1 minute left, the light will turn yellow. And at the end of 5 minutes, the light will turn red, and I will ask you to please complete your statement.

I will allow all witnesses on the panel to testify before Member questioning.

The Chair now recognizes Ms. Kathryn Isom-Clause for 5 minutes.

**STATEMENT OF KATHRYN ISOM-CLAUSE, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, DC**

Ms. ISOM-CLAUSE. Thank you. Good morning Chair Hageman, Ranking Member Leger Fernández, and members of the Subcommittee. My name is Kathryn Isom-Clause, and I am Taos Pueblo. I serve as the Deputy Assistant Secretary for Policy and Economic Development at Indian Affairs at the Department of the Interior. Thank you for the opportunity to present testimony on two bills before the Subcommittee today.

Restoring tribal homelands is one of the Administration's highest priorities. This Administration has repeatedly stressed the importance of and need for a *Carcieri* fix. Since the Fiscal Year 2022 budget request, the President has proposed a sensible fix to treat all tribes equally in exercising the fundamental responsibility of placing land into trust for tribes.

The *Carcieri v. Salazar* decision upset the settled expectations of both the Department and Indian Country, and led to confusion

about the scope of the Secretary's authority to acquire land in trust for all federally recognized tribes. As many tribal leaders have noted, the *Carcieri* decision is contrary to existing congressional policy and subjects federally recognized tribes to unequal treatment under Federal law.

Since the *Carcieri* decision, the Department must examine whether each tribe seeking to have land acquired in trust under the Indian Reorganization Act, or IRA, was under Federal jurisdiction in 1934. This analysis is done on a tribe-by-tribe basis, even for those tribes whose jurisdictional status is unquestioned. This analysis is time-consuming and costly for tribes and the Department. The *Carcieri* decision makes it likely that the Department will face costly and complex litigation over whether applicant tribes were under Federal jurisdiction in 1934. Overall, it has made the Department's consideration of fee-to-trust applications more complex, and created additional burdens.

H.R. 6180 would address the impacts that the *Carcieri* decision has had on the Poarch Band of Creek Indians by ensuring that the Tribe has the ability to restore and protect their tribal homelands under the IRA.

H.R. 1208 would be a universal legislative solution to the *Carcieri* decision for all tribes. The language is identical to the proposal contained in the President's budget request for several years. This language would clarify Congress' intention in enacting the IRA: the acquisition of land into trust for all tribes.

The Department supports H.R. 6180 and H.R. 1208. Tribal homelands are at the heart of tribal sovereignty, self-determination, and self-governance. The ability to restore and protect tribal homelands is an important part of our trust responsibility, and has been the policy of the United States for nearly a full century.

The Department urges Congress to enact a legislative fix to the *Carcieri* decision for all tribes to eliminate the need for each tribe to seek separate legislation.

Chair Hageman, Ranking Member Leger Fernández, and members of the Subcommittee, thank you for the opportunity to provide the Department's views on these important bills, and I look forward to answering any questions you may have.

[The prepared statement of Ms. Isom-Clause follows:]

PREPARED STATEMENT OF KATHRYN ISOM-CLAUSE, DEPUTY ASSISTANT SECRETARY FOR POLICY AND ECONOMIC DEVELOPMENT FOR INDIAN AFFAIRS, UNITED STATES DEPARTMENT OF THE INTERIOR

ON H.R. 1208 AND H.R. 6180

Good morning, Chair Hageman, Ranking Member Leger Fernández, and members of the Subcommittee. My name is Kathryn Isom-Clause, and I am Taos Pueblo and the Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present testimony on H.R. 1208, "To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian Tribes, and for other purposes," and H.R. 6180, "To reaffirm the applicability of the Indian Reorganization Act to the Poarch Band of Creek Indians, and for other purposes."

Restoring Tribal homelands is one of this Administration's highest priorities. This Administration has repeatedly stressed the importance of and need for a *Carcieri* fix. Since the FY 2022 Budget Request, the President has proposed a sensible fix to treat all Tribes equally in exercising the fundamental responsibility of placing land into trust for Tribes.

In *Carcieri v. Salazar*, the U.S. Supreme Court was faced with the question of whether the Department could acquire land in trust under section 5 of the Indian Reorganization Act (IRA) on behalf of the Narragansett Tribe of Rhode Island for a housing project. The Court's majority noted that section 5 permits the Secretary to acquire land in trust for federally recognized Tribes that were "under Federal jurisdiction" in 1934. It then determined that the Secretary was precluded from taking land into trust for the Narragansett Tribe, who had stipulated that it was not "under Federal jurisdiction" in 1934.

The *Carcieri* decision upset the settled expectations of both the Department and Indian Country and led to confusion about the scope of the Secretary's authority to acquire land in trust for all federally recognized Tribes—including those Tribes that were federally recognized or restored after the enactment of the Indian Reorganization Act. As many Tribal leaders have noted, the *Carcieri* decision is contrary to existing congressional policy, and has the potential to subject federally recognized Tribes to unequal treatment under Federal law.

Since the *Carcieri* decision, the Department must examine whether each Tribe seeking to have land acquired in trust under the Indian Reorganization Act was "under Federal jurisdiction" in 1934. This analysis is done on a Tribe-by-Tribe basis, even for those Tribes whose jurisdictional status is unquestioned. This analysis may be time-consuming and costly for Tribes and for the Department. Although the Department conducts extensive research into this analysis, if the Department decides to take land into trust and provides notice of its intent, the *Carcieri* decision makes it likely that the Department will face costly and complex litigation over whether applicant Tribes were under Federal jurisdiction in 1934. Overall, it has made the Department's consideration of fee-to-trust applications more complex and created an additional administrative burden for the Federal government and Tribes related to decisions taking land into trust.

H.R. 6180 would address the impact that the *Carcieri* decision has had on the Poarch Band of Creek Indians by deeming that the Band shall be considered as having been under Federal jurisdiction as of June 18, 1934, for the purposes of the IRA. The bill would also congressionally reaffirm previous decisions by the Secretary to take land into trust for the Poarch Band of Creek Indians under IRA authorities.

H.R. 1208 would be a universal legislative solution to the *Carcieri* decision for all Tribes. The language is identical to the proposal contained in the President's Budget Request for fiscal year 2025. This language would clarify Congress's intention in enacting the IRA—the acquisition of land into trust for Tribes to secure a land base on which to live and, through self-determination, to develop in their best interest.

The Department supports H.R. 6180 and H.R. 1208. Tribal homelands are at the heart of Tribal sovereignty, self-determination, and self-governance. The power to acquire lands in trust is an important tool for the United States to effectuate its long-standing policy of fostering Tribal self-determination. Congress has worked to foster self-determination for all Tribes and did not intend to limit this essential tool to only one class of Tribes. The Department has consistently expressed strong support for a universal legislative solution to the *Carcieri* decision for all Tribes. The President's budgets for fiscal years 2022 through 2025 have proposed a simple and clean fix to the IRA to ensure the Secretary has the authority to take land into trust for all Tribes without the need for a complex review of whether a Tribe was "under Federal jurisdiction" in 1934. The Department urges Congress to enact a legislative fix to the *Carcieri* decision for all Tribes to eliminate the need for each Tribe to seek separate legislation.

**Conclusion**

Chair Hageman, Ranking Member Leger Fernández, and members of the Subcommittee, thank you for the opportunity to provide the Department's views on these important bills. I look forward to answering any questions that you may have.

QUESTIONS SUBMITTED FOR THE RECORD TO MS. KATHRYN ISOM-CLAUSE, DEPUTY ASSISTANT SECRETARY FOR POLICY AND ECONOMIC DEVELOPMENT FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

**Ms. Isom-Clause did not submit responses to the Committee by the appropriate deadline for inclusion in the printed record.**

**Questions Submitted by Representative Westerman**

*Question 1. Has the Department of the Interior denied a land into trust application in the past 5 years?*

*1a) If so, which tribe(s) were denied?*

*1b) If so, for what reason?*

*Question 2. Has the Department not issued a positive Carcieri determination in response to any fee to trust application or any other requests submitted by a tribe?*

*2a) If so, for which tribe(s)?*

*2b) Has the Secretary ever waived the 25 CFR Part 151 regulations pursuant to 25 CFR 1.2?*

*2c) If so, for which tribe(s) and when has the Secretary waived the 25 CFR Part 151 regulations for a fee to trust application?*

*Question 3. Has the Department been able to act more quickly on land-into-trust applications since the Department finalized 25 CFR Part 151 regulations in December 2023?*

*3a) If yes, please provide the average number of days it takes the Department to review land-to-trust applications pre- and post-rulemaking.*

*3b) Additionally, please provide the longest length of time it took for a single application to go through the process pre- and post-rulemaking.*

*Question 4. Prior to the Department finalizing the new 25 CFR Part 151 regulations, several tribes requested a requirement that the Department consult with nearby tribes when an applicant tribe is seeking the acquisition of trust lands in another tribe's ancestral territory. This request was not implemented.*

*4a) Considering the importance this Administration has placed on consultation with tribes, why did the Department not include this level of consultation?*

*Question 5. The new 25 CFR Part 151.11 in the regulations governing trust acquisitions located outside and non-contiguous to an existing reservation eliminates the previous requirement that the Secretary increase scrutiny of a trust application as the distance from a tribe's reservation increases. The reasoning for the elimination explained in the preamble of the regulations was that the Department no longer needed to give greater weight to the concerns of State and local governments now that the Department is going to presume that any land acquisition benefits an applicant tribe.*

*5a) Can you explain whether any tribes specifically asked for the Department to eliminate this increased or heightened scrutiny for applications as the distance from an existing reservation increases?*

*5b) If so, can you tell which tribe(s) asked for this requirement to be eliminated?*

*Question 6. The new 25 CFR Part 151 regulations governing trust acquisitions located outside and non-contiguous to an existing reservation do not require that the applicant tribe show any ancestral ties to the proposed trust land.*

*6a) Can you confirm that the new regulations do not require an applicant tribe have any ancestral ties to the proposed trust land?*

*6b) Why does the Department believe that tribes should be able to acquire trust lands that are outside of their ancestral territories?*

*6c) Can you also confirm whether the new regulations allow a tribe to acquire lands outside of the state boundaries in which the tribe is currently located?*

*If this is allowed, why does the Department believe that a tribe located in one state should be able to acquire trust lands in another state?*

*Question 7. Some tribes have reached contacted the committee expressing concern that the new 25 CFR Part 151 regulations fail to include a requirement that the Department consult with nearby tribes when an applicant tribe is seeking to acquire trust lands in another tribe's ancestral territory. The preamble to the new regulations acknowledges that several tribes made this request to include a consultation requirement with potentially impacted tribes, but the preamble does not give a clear reason as to why the Department failed to include this consultation requirement requested by several tribes.*

*7a) Given that this Administration seems to constantly talk about how it consults with tribes more than any other Administration, why did the Department not include a consultation requirement with nearby tribes who may be impacted by another tribe's application to acquire trust lands?*

*7b) Under these new regulations, would tribes in Oklahoma be able to obtain trust lands in states like North Carolina, South Carolina, Georgia and Florida, where some of those tribes were originally removed?*

*7c) If so, would the Department be required to notify and consult with federally recognized tribes in those states?*

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Ms. HAGEMAN. Thank you very much. I am going to go a little bit out of order, and I am going to recognize Mr. Cole from Oklahoma for 5 minutes to speak on his legislation.

**STATEMENT OF THE HON. TOM COLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA**

Mr. COLE. Thank you very much, Madam Chairwoman and Ranking Member Leger Fernández. It is a great pleasure for me to be back in this hearing room, where I spent a lot of years earlier in my career. I want to thank the Subcommittee for all its hard work on behalf of Indian Country, and particularly today for holding this hearing on my legislation, H.R. 1208, which would amend the Indian Reorganization Act of 1934 and affirm the authority of the Secretary of the Interior to take land into trust for Indian tribes.

As many of you know, I have been a champion on this issue for the past 15 years, since the Supreme Court's 2009 *Carcieri v. Salazar* decision. As an enrolled member of the Chickasaw Nation of Oklahoma, I cannot overstate the importance of tribal sovereignty and the relationships that members of tribes have with their land, their identity, and their culture.

Unfortunately, many were forcibly removed to unknown areas after the Indian Removal Act, which often resulted in residing in lands that provided no opportunity to prosper. However, Trust Land does offer tribes the ability to expand economic development and provide for their people.

Tribes use land in trust to build schools, housing, and health centers in their communities. In fact, in some rural areas, Tribal Nations are often the largest employers and health service providers in the community. That is certainly true in vast stretches of my district. Tribes also rely on their trust land to produce both renewable and conventional energy, as well as use the land for agriculture and production of various types. In addition, trust land allows tribes to provide essential government services like tribal police and courts.

However, in 2009 the Supreme Court uprooted 70 years of precedent, and turned the entire notion of tribal sovereignty on its head

when it ruled that the Indian Reorganization Act questioned the authority for the Secretary of the Interior to take land into trust because the Court interpreted the statute as only applying to the tribes under Federal recognition when the law was enacted in 1934.

This decision created two different classes of Indian tribes: those that can have land into trust and those who cannot. This two-class system is detrimental to so many Native communities, as it excludes so many of them from exercising their legal right to act as a sovereign nation and deal directly with the United States on a government-to-government basis.

This decision by the Court makes it harder for tribes to manage and expand their territory, as well as putting millions of dollars' worth of trust land in legal limbo. This is simply unacceptable.

Congress is long overdue to correct the law as the Supreme Court interpreted it when the Court made the *Carcieri* decision. Without a legislative fix, tribes' financial resources will be drained and spent on litigation and disputes between tribes and state and local governments.

However, those arguing against the legislative fix claim that this is all about gaming. Let me be clear: this is false. In fact, out of the 961 total pending fee-to-trust applications, only 26 are gaming applications; and out of the 4,349 approved applications from 2009 to 2023, only 48 of them were for gaming purposes. That is 1.1 percent.

Others claim that trust land is undermining states' tax base. Again, this is false. Trust land is like all other Federal pieces of land, like military bases or national parks that are not subject to state taxation. Impact aid and Payments in Lieu of Taxes address these shortfalls. In reality, trust land is only 8.75 percent of the total Federal land base.

At the end of the day, there is no reason to oppose the *Carcieri* fix legislation. In fact, Chairman Westerman and Chairwoman Hageman, if Congress fails to act, the standard set forth in *Carcieri v. Salazar* will continue to undermine tribal sovereignty and devastate economic development in Native and non-Native communities. Resolving any ambiguity in the tribe's ability to put land into trust, no matter when they were federally recognized, is vital to protecting tribal interests and avoiding costly and protracted litigation.

I truly believe this legislation, as well as H.R. 6180, introduced with my good friend from Alabama and fellow appropriator, Mr. Carl, are vital to preserving many Native American communities, and I appreciate the opportunity to testify in favor of both these bills.

Thank you, Madam Chairwoman. I yield back.

Ms. HAGEMAN. Chairman Cole, thank you for being here today, and we appreciate your input and your insight into these important issues.

The Chair will now recognize the Honorable Marshall Pierite for 5 minutes.

**STATEMENT OF THE HON. MARSHALL PIERITE, CHAIRMAN, TUNICA-BILOXI TRIBE OF LOUISIANA, MARKSVILLE, LOUISIANA**

Mr. PIERITE. Thank you, everyone. Good morning, Chair Hageman, Ranking Member Leger Fernández, and members of the Subcommittee. Thank you for the privilege and honor for me to testify today in support of H.R. 1208. I am Marshall Pierite, Chairman of the Tunica-Biloxi Tribe of Louisiana.

The Supreme Court's ruling in *Carcieri v. Salazar* casts doubt on the sovereign control of tribal lands, and slowed the Federal Government's ability to place land into trust for the benefit of tribal governments. This not only harms the ability of tribes to provide for the welfare of their tribal citizens, but it also limits the ability of tribes to bring the benefits of their economic development activities to their non-tribal neighbors. Until Congress amends the Indian Reorganization Act in such a way as to correct the problems created by the *Carcieri* decision, the successes and benefits brought on by strong tribal governments will continue to be significantly diminished.

After a long history of injustice, the Tunica-Biloxi Tribe and hundreds of other tribes across the country are utilizing their own resources to purchase land that has been stolen from them. But we don't seek to continue the cycle of mistrust, envy, and hard feelings. Instead, we have forged new, positive relationships with the local non-tribal communities that have grown up around us.

The Tunica-Biloxi Tribe has created several economic development enterprises on our trust land. Because we do not have a tax base to supply the revenue necessary to provide governmental services to our people, we operate these businesses to generate revenue for our tribal government. Using this revenue, we protect and enhance the welfare and culture of our tribal citizens and their families. These tribal businesses also provide major benefits for our non-tribal neighbors, and revenues for our state and local governments in the region.

Our modest tribal enterprises purchased over $10 million per year from local, non-tribal vendors, and supply wages in excess of $26 million per year to our mostly non-tribal employees. This payroll generates state and Federal employment taxes and increases the local sales and property tax base.

In addition, we have donated over $7 million to local charities, and have contributed over $30 million to help the local parish government cover the costs associated with the additional demands placed on the community from the increased economic activity.

When the Tribe began looking at gaming as a means for economic advancement in the early 1990s, unemployment rates in Avoyelles Parish were as high as 17 percent, almost twice the national average at the time. Overnight, we went from a surviving community to a thriving community. After our gaming facility opened in 1994, the unemployment rate in Avoyelles Parish has dropped to about the national average. Home prices increased, new roads were paved, schools improved, parish government services expanded, and hundreds of new businesses sprung up in central Louisiana.

We in Indian Country are working hard to diversify our economies away from gaming and finding new enterprises that can provide the revenues we need to support our communities. We hope to create new manufacturing facilities, enter the software and service industries, and build new, clean energy projects. However, we first must repurchase the land that was stolen from us in order to have a place to build these new economic development projects.

After 30 years of operation of our gaming facility, our neighbors and state and local government partners have come to realize that our success is a big contributor to their success. For the record, I would like to submit letters and proclamations from the state of Louisiana and several local area governments recognizing the benefit of our economic development activities to their own success and prosperity.

The Supreme Court decision in *Carcieri* was a major step backward in the walk towards justice, as well as healing. The ruling confused both tribal governments and non-Indians alike, slowed economic growth and job creation, and continued to spawn legal challenges to the recovery of our ancestral homelands for the good of the Tribe, for the good of Indian children and generations yet to come, and for the good of our non-Indian neighbors and the entire nation.

Congress should act to pass H.R. 1208 to amend the Indian Reorganization Act to conform to this original intended purpose. Thank you for your time and consideration and attention to this matter. Thank you.

[The prepared statement of Mr. Pierite follows:]

PREPARED STATEMENT OF MARSHALL PIERITE, CHAIRMAN, TUNICA-BILOXI TRIBE OF LOUISIANA

ON H.R. 6180

Chairman Hageman, Ranking Member Leger Fernandez, and distinguished members of this Subcommittee, thank you for the privilege and honor of inviting me to testify today. I am Marshall Pierite, Chairman of the Tunica-Biloxi Tribe of Louisiana.

The U.S. Supreme Court's 2009 ruling in *Carcieri v. Salazar* has cast doubt on the sovereign control of tribal lands and slowed the federal government's ability to place land into trust for the benefit of tribal governments. This not only harms the ability of tribes to provide for the welfare of their citizens but it also hampers the ability of tribes to bring the benefits of their economic development activities to their non-Indian neighbors. Until Congress amends the Indian Reorganization Act in such a way as to correct the problems created by the Carcieri decision, the successes and benefits brought on by strong tribal governments will continue to be significantly diminished.

Although the Senate failed to take up the measure, I was very pleased that the 117th Congress passed a "Carcieri Fix" bill authored by Rep McCollum and Rep. Cole by a vote of 302–127. I urge this Committee to move expeditiously to pass this bill and have the House of Representative send it once again to the Senate for their consideration.

While I do not want to dwell on the sad history of injustice against tribes and Native Americans, it is important to recall this history to illuminate the justice and healing that tribal land reacquisition can engender. Every tribe has stories of loss, and every federally recognized tribe once held title to large amounts of land that has been stolen from them. Ours is merely one example.

At the time of the Louisiana Purchase Treaty in 1803, the Tunica-Biloxi Tribe held title to well over 50 square miles of land. By 1980, however, the tribe controlled less than 200 acres. These lands were stolen in hundreds of small ways, but one example stands out.

In 1841, Tunica Chief Melacon confronted a local landowner whose work crew was working to systematically move his fence posts onto Tunica land. As the Chief protested and began removing the fence posts the landowner shot Chief Melacon in the head in view of several other tribal citizens and non-Indians. The common view held at the time by non-Indians was that Native Americans were savages who did not farm their land "properly" and therefore had no right to keep it. As a result, the killer was thought to be within his rights and never stood trial.

Against this history of injustice, the Tunica-Biloxi Tribe and hundreds of other tribes across the country are utilizing their own resources to purchase land that has been stolen from them. But, we do not wish to continue the cycle of mistrust, envy and hard feelings. Instead, we have forged new positive relationships with the local non-Indian communities that have grown up around us.

Utilizing our status as a sovereign nation, the Tunica-Biloxi Tribe has created several economic development enterprises. Because we do not have a suitable tax base to supply the revenue necessary to provide governmental services to our people, we need these businesses to generate revenue for the tribal government so that we may protect and enhance the welfare and culture of our tribal citizens. These businesses also provide major benefits for our non-Indian neighbors and revenues for state and local governments in the region. For example, our tribal enterprises purchase over $10 million per year from local non-Indian vendors, and supply wages in excess of $26 million dollars per year to mostly non-Indian employees, resulting in state and federal employment taxes of over $2 million per year. In addition, we have donated over $7 million to local charities and have paid the local Parish government over $30 million to help cover the costs associated with the additional demands placed on the community from the increased economic activity.

When the Tribe began looking at gaming as a means for economic advancement in the early 1990s, unemployment rates in Avoyelles Parish were as high as 17 percent—almost twice the national average at the time. Local governments struggled to provide even the most basic services, and it looked as if there was nothing on the horizon that might change the dismal forecast for the area.

Today, I am proud to say that the Tunica-Biloxi Tribe employs over 1,000 people—the vast majority of them non-Indian. After our gaming facility opened in 1994, the direct and indirect jobs created by the Tribe caused the unemployment rate in Avoyelles Parish to drop to about 6 percent. Home prices increased, new roads were paved, schools improved, Parish government services expanded, and hundreds of new businesses sprung up in Central Louisiana. Of course, our tribal citizens who had previously suffered greatly from economic hardship were helped as well, but the full story is one of renewal for the entire region and all of our citizens and neighbors.

30 years ago, prior to the opening of our gaming operation, the largest private employer in our area was a textile manufacturing facility. That facility, along with hundreds of others like it, closed when U.S. manufacturers found less expensive options overseas, leaving hundreds of people in Central Louisiana without work. The community was in great distress and there were no prospects on the horizon with potential to renew the local economy. Today, I am happy to say that the Tribe is working with local economic development organizations to reopen that facility to supply American-made textiles to tribal hotels and others who have a mandate to buy American-made goods. We will re-create those lost jobs and use this facility to launch new businesses and innovations.

My tribe, and hundreds of other tribal governments across the country, are working hard to diversify our economies away from gaming and find new enterprises that can provide the revenues we need to support our communities. We hope to create new manufacturing facilities, enter the software and services industries, and build new clean energy projects. However, we must first repurchase the land that was stolen from us in order to have a place to build these new economic development projects.

Further, in order to take advantage of the benefits of our sovereignty, this land must be added back under the federal trust status from which it was originally removed. Often, purchasing the tribe's original land is not an option. In some cases, this is because the tribe was forced to move a long way from their traditional homelands. In other cases, the current owners are simply not willing to sell, or the land is no longer suitable for the intended purpose due to other development, environmental damage, or any number of other reasons. Regardless of the location of the repurchased land, the inability of tribes to swiftly have these lands placed into trust by the U.S. Department of the Interior has dramatically decreased the ability of tribal governments to create new jobs for our own tribal citizens and our neighbors. We realize that we cannot fully recreate what was lost. We can strive, however, to create a better world and better lives for our children.

In light of the complicated and often brutal history of relationships between tribes and their neighbors, the level of acrimony we often hear from non-Indians who are opposed to tribal economic development projects is not entirely surprising. What I hope all of us will come to recognize, however, is that tribes and their neighbors are in this together. I am hopeful that the lessons we are learning today will yield a new spirit of cooperation, and that non-Indians who are fearful of tribal economic development will come to realize that what is good for our tribal communities is good for them as well.

After 30 years of operation of our gaming facility in Central Louisiana, our neighbors and state and local governmental partners have come to realize that our success is a big contributor to their success. To demonstrate this support, I would like to submit for the record letters and proclamations from the State of Louisiana, and several local area governments who recognize the benefit of our economic development activities to their own success and prosperity.

The Supreme Court decision in *Carcieri v. Salazar* was a major step backward in the process of justice and healing. The ruling confused both tribal governments and non-Indians alike, slowed economic growth and job creation, and continues to spawn legal impediments to the repatriation of Indian homelands. For the good of tribes, for the good of Indian children and generations yet to come, and for the good of our non-Indian neighbors and the nation as a whole, Congress should act to pass H.R. 1208 to amend the Indian Reorganization Act to conform to its original intended purpose.

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The following documents were submitted as supplements to Mr. Pierite's testimony.

**AVOYELLES PARISH POLICE JURY**
**Marksville, LA**

To: The House Natural Resources Subcommittee on Indigenous People:

On behalf of the Avoyelles Parish Police Jury, I am writing to share the profound, positive impact that tribal economic development has on our community. As a lifelong resident of Avoyelles, I have observed first-hand how the initiatives by the Tunica-Biloxi Tribe of Louisiana have significantly contributed to the economic, social, and cultural vitality of our region.

Economic development projects led by the Tribe, such as the Paragon Casino Resort, have become pillars of our local economy. Not only did it generate substantial revenue, but also create employment opportunities for hundreds of community members. Currently, the Paragon Casino Resort employs over 700 individuals, offering stable, well-paying jobs that support families and stimulate local economic activity. These jobs are crucial for many, providing a pathway to financial security and professional growth.

The Tunica-Biloxi Tribe also exemplifies a strong commitment to social responsibility. Through generous monetary donations, the Tribe has significantly contributed to our critical infrastructure that benefits the entire parish.

The Tribe's economic ventures serve as a driving force for broader regional development. The Paragon Casino Resort, for example, attracts visitors from across the state and beyond, boosting tourism and supporting local businesses. Hotels, restaurants, and retail establishments in the area benefit from the influx of visitors, creating a ripple effect that stimulates further economic growth and diversification.

The long-term vision and strategic planning demonstrated by the Tunica-Biloxi Tribe will ensure that their economic development initiatives are sustainable and beneficial for future generations. Their approach not only addresses immediate needs but also lays the foundation for continued prosperity and community resilience.

In summary, tribal economic development has a multifaceted and profoundly positive impact on our community. It drives economic growth, provides vital employment opportunities, supports public services, enriches our cultural landscape, and creates a spirit of collaboration and mutual benefit. The Tunica-Biloxi Tribe's dedication to economic and social progress serves as a model of how strategic development can uplift and transform a community.

I am confident that the continued success of the Tribe's economic initiatives will lead to even greater benefits for our community, and I look forward to supporting and celebrating their efforts in the years to come.

Best regards,

DARRELL G. WILEY,
*President*

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**MARKSVILLE CHAMBER OF COMMERCE**

June 11, 2024

House Natural Resources Subcommittee on Indigenous Peoples
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman and Members of the Subcommittee:

As President of the Marksville Chamber of Commerce, I am writing to express our strong support for the Carcieri Fix bill (H.R. 1208). This legislation is crucial for the sustained economic development and growth of tribal communities, and it holds significant positive implications for our broader community in Marksville and the surrounding regions.

Chairman Pierite's upcoming testimony on June 26th is a pivotal moment for highlighting the far-reaching benefits that tribal economic initiatives, such as our local casino, bring to our community. The economic contributions of the tribal enterprises extend beyond the boundaries of tribal lands, creating jobs, fostering local business growth, and enhancing the quality of life for residents.

The Marksville Chamber of Commerce has witnessed firsthand the transformative impact of tribal economic development. The casino has become a cornerstone of our local economy, providing employment opportunities for hundreds of individuals, including many non-tribal members. These jobs offer stable incomes, benefits, and professional growth opportunities, which are vital for the economic stability of our community.

Additionally, the casino and other tribal enterprises contribute significantly to the local tax base. These contributions support public services such as education, healthcare, and infrastructure improvements, benefiting all residents of our region. The presence of the casino has also spurred the growth of ancillary businesses, including hotels, restaurants, and retail establishments, further diversifying and strengthening our local economy.

In conclusion, the Marksville Chamber of Commerce fully supports Chairman Pierite's testimony and the passage of H.R. 1208. We urge the Subcommittee and Congress to recognize the substantial and positive impact that tribal economic development has on our community and to support the Carcieri Fix bill.

Thank you for your attention to this critical matter.

Sincerely,

MELISSA GOUDEAU,
*President*

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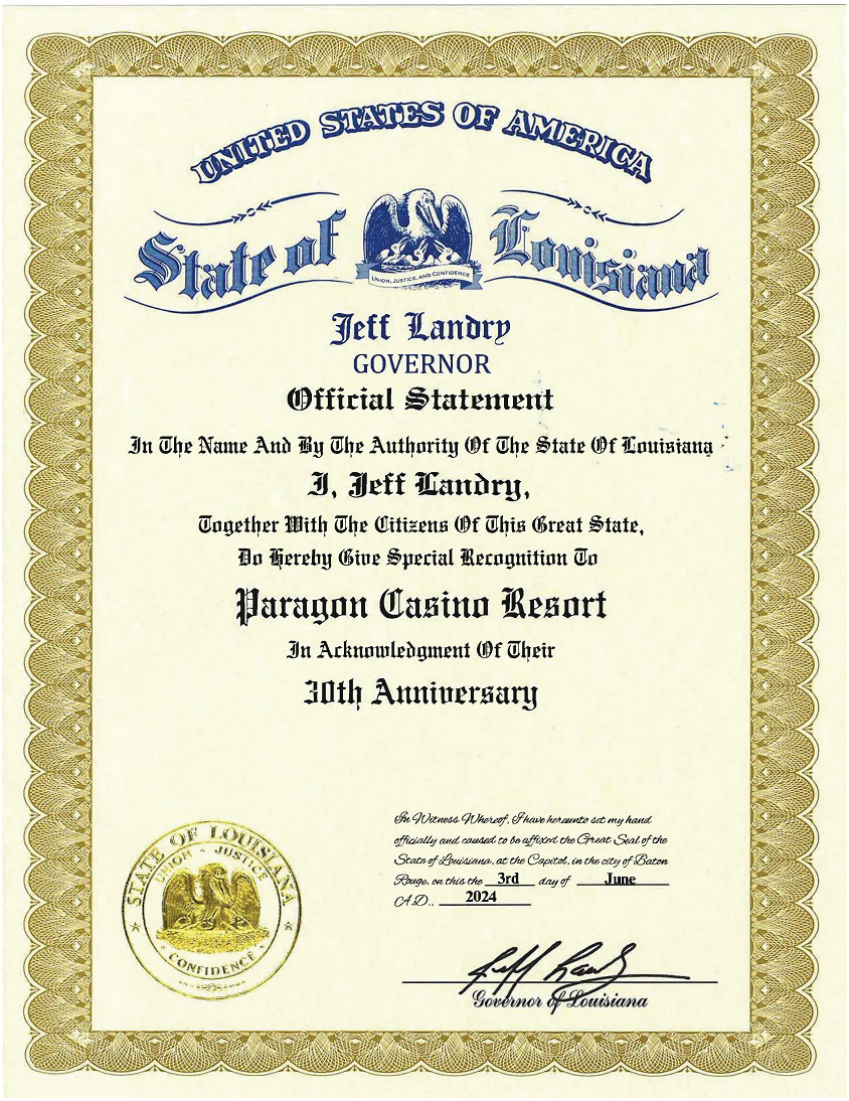

UNITED STATES OF AMERICA

State of Louisiana

Jeff Landry
GOVERNOR

Official Statement

In The Name And By The Authority Of The State Of Louisiana

I, Jeff Landry,

Together With The Citizens Of This Great State,
Do Hereby Give Special Recognition To

Paragon Casino Resort

In Acknowledgment Of Their

30th Anniversary

STATE OF LOUISIANA
UNION · JUSTICE · CONFIDENCE

In Witness Whereof, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the city of Baton Rouge, on this the 3rd day of June A.D., 2024

Governor of Louisiana

# State of Louisiana
## House of Representatives

2024 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 62

BY REPRESENTATIVE DESHOTEL AND SENATOR CLOUD

A CONCURRENT RESOLUTION

To commend Paragon Casino Resort on the occasion of its thirtieth anniversary.

**WHEREAS**, since its establishment in 1994, Paragon Casino Resort has stood as a cornerstone in the local community of Marksville, Louisiana, contributing to economic development and fostering a spirit of entertainment and hospitality in the region; and

**WHEREAS**, since its humble beginnings as Grand Casino Avoyelles, Paragon has grown into Central Louisiana's premier gaming resort, and its dedication to the Avoyelles Parish community has stood strong over three decades; and

**WHEREAS**, on June 3, 2024, Paragon Casino Resort will host its thirtieth-anniversary celebration; the resort and its outstanding team of more than seven-hundred associates are most deserving of the highest recognition for their continued dedication to the city of Marksville, Avoyelles Parish, and the state of Louisiana.

**THEREFORE, BE IT RESOLVED** that the Legislature of Louisiana does hereby commend Paragon Casino Resort on the occasion of its thirtieth anniversary and does hereby extend sincerest wishes that Paragon continue to prosper in all of its endeavors for many years to come.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

**AVOYELLES PARISH SCHOOLS**
**Marksville, LA**

June 13, 2024

To Whom It May Concern:

I'm writing this letter in support of The Tunica-Biloxi Tribe of Louisiana. As a lifelong resident and active member of Avoyelles Parish, I have observed and benefited from the impact that the tribal economic development has on our community. They have significantly contributed to the economic, social, and cultural development of our region.

Through the combination of both Tribal and Paragon Casino Resort, they have become the pillars of our local economy. This initiative generates a substantial amount of revenue and employment opportunities for hundreds of community members. Currently, the Paragon Casino Resort employs over 700 employees, offering stable, well-paying jobs that support families and stimulate the local economy.

The Tunica-Biloxi Tribe also exemplifies a strong commitment to philanthropy and social responsibility. Beyond providing job opportunities, the Tribe and Paragon Casino have helped to fund many of our schools' activities such as providing a space for teachers to meet, offering recognition and prizes for teachers during Teachers' Appreciation Week, providing scholarships, funds for needed programs in the schools and assisting to purchase pieces of equipment for our athletic department. We are so grateful for all that the Tribe and Paragon Casino have supported the school system with.

In summary, tribal economic development has a multifaceted and profoundly positive impact on our community. It drives economic growth, provides vital employment opportunities, and supports public services. I am confident that the continued success of the Tribe's economic initiatives will lead to even greater benefits for our community, and I look forward to supporting and celebrating their efforts in the years to come.

Sincerely,

THELMA J. PRATER,
*Assistant Superintendent of Schools*

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QUESTIONS SUBMITTED FOR THE RECORD TO THE HON. MARSHALL PIERITE,
CHAIRMAN & CEO, TUNICA-BILOXI TRIBE OF LOUISIANA

**Questions Submitted by Representative Westerman**

*Question 1. Your written testimony discussed the complicated history tribal nations can have with their neighboring localities. You also mentioned how your tribe has received support from the state of Louisiana and several local governments recognizing the benefit of the economic development the tribe has brought to the area.*

*1a) Can you expand on how your tribe was able to build and maintain these relationships?*

Answer. The Tunica-Biloxi Tribe has built strong working relationships with the state and local governments through many years of hard work to establish trust and an understanding of mutual respect. At every opportunity, we discuss and demonstrate how benefits to the Tribe result in benefits to our non-tribal neighbors. This has been a long journey which required tribal and non-tribal leaders to put aside the long history of injustice, forgive past wrongdoings and recognize the power of hope and healing.

*1b) How can Congress help to promote congenial relationships?*

Answer. Congress can do its part by protecting tribal governments from encroachment from state and local governments and recognizing the history of how tribes lost their land, while also extolling the virtues of tribal economic development for the benefits it brings to both tribal and non-tribal communities. The balance of power between tribes and their non-tribal neighbors has always been overwhelmingly skewed toward the non-tribal communities. Congress can provide the

necessary backstop to appropriately balance these rights. Through this renewed justice, and the power of economic development, tribes can demonstrate mutual benefits which can then spawn a renewed and positive relationship. The good news is that we have seen this play out over the last 30+ years of tribal gaming. The old doubts and fears from the non-tribal community have proven to be largely unfounded and the benefits of tribal landownership overwhelmingly positive for everyone. Passing H.R. 1208 would help in providing a pathway to these more positive relationships.

*Question 2. Are there lands your tribe is currently seeking to have taken into trust?*

Answer. Yes. The Tunica-Biloxi Tribe is continually working to regain the land that was illegally taken from us. We do so primarily by buying land from willing sellers and then working to have that land placed into trust by the federal government.

*2a) If so, how long has this process taken and have you seen any opposition to these applications?*

Answer. The timeline for the land to trust process has varied over the years for numerous reasons—mostly due to backlogs at the Department that occur when political decisions are made by various administrations to change the process, increase scrutiny, or reduce or delay funding for the offices within the department charged with advising the Secretary on specific land to trust determinations. We are pleased that the backlog has been considerably decreased and applications are now being processed in a more timely manner. At points in our recent history, it has taken many years in the process to gain trust approval. The Department's new regulations are certain to further streamline the process.

*Question 3. Is there anything else you would like to add to your testimony on how the Department of the Interior's fee-to-trust process could be reformed to benefit tribes and state and local governments?*

Answer. It is important to note that when a tribe seeks to have the federal government take land into trust, the tribal government might or might not have immediate plans for the use of that land. Moreover, in much the same way that local governments operate, elected tribal governments might change their land use plans over time. Therefore, it should be recognized that the request from Mr. Rabbitt in his testimony to the Subcommittee on this point is largely unworkable. While it might be possible for tribal and non-tribal area governments to agree on a path forward for immediate land use planning, such agreements might not survive local or tribal elections and resulting changes in governing decisions. Land use negotiations between tribes and non-tribal governments, therefore, should not be used as a gateway for the federal government to make land to trust decisions that last in perpetuity. It is also important to note that when land was stolen from tribes (sometimes at the end of a gun barrel) tribes were not offered the same level of comment options as the current DOI regulations provide to local governments. That said, once justice is restored through tribal land re-acquisition, local and tribal governments can and do work together for their and mutual benefit.

*Question 4. The new 25 CFR Part 151 regulations governing lands into trust provide no geographic boundaries within which tribes can acquire trust lands, fails to include any requirement that a tribe have ancestral ties to the proposed trust land, eliminates the previous requirement that the Secretary use heightened scrutiny the further a tribe goes from its existing reservation to seek new trust lands, and failed to include a consultation requirement with nearby tribes for any new trust land acquisitions.*

*4a) Given this and that Louisiana has 4 federally recognized tribes, does the Tunica-Biloxi Tribe support the portions of the new regulations that eliminate the heightened scrutiny for applications that seek to acquire lands far from a tribe's existing reservation?*

Answer. It is important to note that the land that was illegally taken from tribes is, in most cases, no longer accessible by tribes to be taken back into possession nor to be taken into trust. Much of what can be considered "tribal homelands" is now developed and might only be available for purchase in very small parcels if at all. So, in order for tribes to reestablish a meaningful land base, they must often look to areas that might not align to what was lost, say, in the 1800s or earlier. Moreover, federal policy has, over the last 200 years, made a complete mess of tribal lands. Tribes have not only had their land stolen, but they have also been moved by force in groups, and their citizens have been incentivized under false pretense

to move individually, often hundreds of miles away from their traditional homelands. The use of the term "ancestral homelands" is also problematic as it does not provide a specific time frame for ancestry. Given that many tribal citizens were forced or coerced to leave their homes, do these "new" areas where they currently reside constitute "ancestral homelands" if they have now been there for 50 years, or 100 years? What happens in another 50 years once these families have been in those locations for 150 years or more. When is an area considered "ancestral?"

*4b) Would you want the Interior Secretary to be mandated to consult with you if any other tribe applies for trust lands within your ancestral territory in the State?*

Answer. Of course, the Department should and does take into account the concerns of other tribes and state and local governments—especially when taking land into trust apart from an existing reservation. Tribes and local governments are provided an opportunity to raise concerns in the trust process. Moreover, as taking land into trust is a "major federal action" other laws apply including the National Historic Preservation Act which provides rights in the process for tribes to protect their sacred places on and off current reservation land.

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Ms. HAGEMAN. Thank you for your testimony. The Chair now recognizes the Honorable Stephanie Bryan for 5 minutes.

**STATEMENT OF THE HON. STEPHANIE BRYAN, TRIBAL CHAIR, POARCH CREEK INDIANS, ATMORE, ALABAMA**

Ms. BRYAN. Good morning Chair Hageman, Ranking Member Leger Fernández, Chairman Cole, and members of the Subcommittee. My name is Stephanie Bryan, and I am honored to serve as the Chair and CEO for the Poarch Band of Creek Indians located in lower Alabama.

We appreciate this opportunity to testify, but most importantly we thank Congressman Jerry Carl for introducing this bill. We also thank the counties and cities that border our trust lands for their partnership and support.

The Poarch Band of Creek Indians has been a leading advocate to clarify that the Indian Reorganization Act applies to all federally recognized tribes. We offer our full support of Chairman Cole's bill, H.R. 1208, which would accomplish this goal. We will continue to work to pass a national fix, but our Tribe is taking a parallel approach by working with our Congressional Delegation to clarify that the IRA applies to our Tribe.

For decades, Poarch leaders have balanced the desire to preserve our Tribe's history and culture with the need to rebuild our community and provide basic services to our citizens. Today, we are blessed to be able to provide our tribal citizens and neighbors with essential services that include police, fire protection, health care, elder care, education, and infrastructure.

We have made careful decisions about how best to use our resources and property, but we have limited trust lands, and we can't meet the growing needs for housing and other basic services for our citizens. For example, in 2018 it became clear that we needed to expand our Boys and Girls Club. There was no more buildable trust land, and we were forced to fill ponds around the community center on existing trust lands, which added $1 million to our construction cost.

We are not alone. Tribal governments nationwide have a shortage of usable trust land, and seek to acquire trust lands to serve their citizens.

The Supreme Court's 2009 *Carcieri* decision upended the Interior Department's land-into-trust process. That decision placed a cloud of uncertainty over tribal trust lands, impeding investment and economic development in Indian Country. These lawsuits have cost American taxpayers a significant amount of money.

The Interior Department and DOJ have had to defend not only our trust lands, but also the lands of other tribes. The Tribe alone has spent more than $10 million to defend ourselves from legal challenges attacking the status of our trust lands. Thankfully, every court reviewing these frivolous cases against us has upheld the status of our lands, which the Interior Department placed in trust decades ago. However, these lawsuits have taken a real toll, and that is why our Tribe is seeking a legislative solution that will provide us with much-needed certainty.

The bill affirms that the IRA applies to our Tribe, and brings us into parity with other federally recognized tribes. This bill has strong support from the Alabama Congressional Delegation and the cities and counties that surround us. I respectfully ask the Full Committee to mark up H.R. 6180, and please pass this bill this year.

On behalf of our Tribe, I am honored to speak to you today, and I am happy to answer any questions you may have.

[The prepared statement of Ms. Bryan follows:]

PREPARED STATEMENT OF STEPHANIE BRYAN, CHAIRWOMAN, POARCH BAND OF CREEK INDIANS

ON H.R. 6180

Good afternoon, Chair Hageman, Ranking Member Leger Fernandez, and Members of the Subcommittee. My name is Stephanie Bryan, and I am honored to serve as the Chair and CEO of the Poarch Band of Creek Indians. Thank you for this opportunity to testify today about H.R. 6180, the Poarch Band of Creek Indians Lands Act. On behalf of the Tribal Council, I extend our great thanks to Rep. Carl for introducing this bill.

**History of the Poarch Band of Creek Indians**

I want to begin by sharing some history about the Poarch Band of Creek Indians. "The Poarch Band of Creeks of today originated in the aboriginal and historical Creek Nation."[1] At the time of our Nation's founding, the Creek Confederacy governed an expansive territory. Creek lands—guaranteed in the Treaty of New York in 1790—covered most of modern-day Georgia and Alabama, as well as parts of Florida. That territory was reduced twice via treaty over the ensuing two decades, and then again as a result of the War of 1812, when the Creek Confederacy was divided between those who joined with the British and those who remained friendly to the United States. After the war, however, the United States continued to recognize land rights of Creeks who had allied with it. In 1814, the United States granted those Creeks the right to occupy individual reservations in Southern Alabama under the Treaty of Fort Jackson.[2]

Little time passed before the United States' policy toward the Creeks began to change. In 1817, Congress provided that fee simple patents to Creek reservation lands should be issued upon the death of the original reservation grantees. Moreover, in what came to be known as the Trail of Tears, the United States decided to pursue a policy of forced removal of the Creeks and other tribal nations in the South and Eastern United States. Thousands of Native children, women, and men died on these forced marches to the Indian Territory—which is now the state of

[1] Memorandum from Deputy Assistant Secretary—Indian Affairs (Operations), U.S. Dep't of Interior, to Assistant Secretary—Indian Affairs, on Recommendation and Summary of Evidence for Proposed Finding for Federal Acknowledgement of the Poarch Band of Creeks of Alabama pursuant to 25 C.F.R. § 83, at 3 (Dec. 29, 1983).

[2] 7 Stat. 120 (Aug. 9, 1814).

Oklahoma. Our Tribe avoided this fate. Like other Indian nations located in the South and East today, we were able to do so only by fleeing into remote homelands.

Specifically, our tribe found refuge and settled on the McGhee reserve, located now in the Community of Poarch, Alabama. A Creek leader, Lynn McGhee, had been granted a reserve pursuant to the 1814 Treaty. Under the terms of the Treaty, McGhee and his descendants retained the right to the reserve as long as they occupied it and were to be "protected by and subject to the laws of the United States."[3] This land was "technically individually owned."[4] "[I]n practice," however, "[the McGhee lands] were usable by the entire community" that "settled there" during the removal era.[5]

Unlike other Creek reservations established in the wake of the War of 1812, the McGhee reserve was held in trust and never fee patented. As noted, in 1817 Congress passed a statute that generally removed Creek reservations from trust status. McGhee, however, had been unable to enter his claim for a reservation before the deadline set by the 1814 Treaty of Fort Jackson because of a war injury. For this reason, Congress subsequently acted specifically on behalf of McGhee, granting him the right to select a reservation under the terms of the 1814 Treaty after the deadline. In so doing, Congress opted not to subject the McGhee reserve to the 1817 Act.

In the early 1900s, the Department of Justice confirmed the McGhee reserve's trust status. Specifically, in 1912, the federal government, acting in its role as trustee, sued a timber company for trespass on the McGhee reserve. This action was accompanied by a series of internal memoranda within the Department of Justice, which analyzed whether the land remained in trust and concluded that it did.[6]

Despite this confirmation of trust status, the Government Land Office improperly issued a fee patent to the McGhee heirs in 1924. However, because these fee grants were unlawful, they did not erode the protections owed to our Tribe. Later analysis by the Commissioner of Indian Affairs concluded that the descendants of McGhee "who to this day occupy his reserve continue to be 'protected by and subject to the laws of the United States.'"[7]

In 1984, after years of living in obscurity and abject poverty, the Reagan Administration reaffirmed the status of the Poarch Band of Creek Indians as a federally recognized Tribe. The United States acknowledged that Poarch has been an autonomous, distinct tribal community for centuries, that we have maintained governing authority over our tribal citizens, and that our citizens descend from a historical Indian Tribe. We remain based on the McGhee reserve, which was never disestablished.[8]

Our Tribe is also a successor to the pre-Removal Creek treaties and as such we have at all times since then enjoyed a treaty relationship with the United States. Our ancestors were part of the Creek Nation before the removal era. We were recognized by the United States as autonomous, and our ancestors signed the pre-removal Creek treaties as a subset of the Creek Confederacy.[9] The Department of the Interior has accordingly recognized that we are a "successor of the Creek Nation of Alabama prior to its removal."[10]

Acknowledgement as a federally recognized Indian Tribe was a turning point for our government. In 1984, we began working with the Interior Department to establish a small land base for our community. Using authority provided in the Indian Reorganization Act of 1934, the Tribe worked with Interior to place approximately 389 acres of fee lands into trust from 1985 to 1995. The majority of these trust lands (229.5 acres) were approved by Interior on April 18, 1985.[11]

Over the past four decades, Poarch Creek leaders have balanced the preservation of our Tribe's history and culture with the need to rebuild our community. Today,

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[3] *Id.*

[4] U.S. Dep't of Interior, Office of Federal Acknowledgment, Technical Reports regarding the Poarch Band of Creeks of Atmore, Alabama, at 28-29 (1983).

[5] *Id.*

[6] Letter from Attorney General McReynolds to Senator Joseph Johnson, at 6-7 (Apr. 23, 1913).

[7] Memorandum from Morris Thompson, Commissioner of Indian Affairs, to Mr. Keep, Associate Solicitor, Indian Affairs on the Eligibility of the Poarch Creek Band Under the Indian Reorganization Act (Mar. 23, 1976).

[8] History, Poarch Band of Creek Indians, https://pci-nsn.gov/our-story/history/ (last visited June 7, 2024).

[9] *Id.*

[10] Final Determination for Federal Acknowledgment of the Poarch Band of Creeks, 49 Fed. Reg. 24083, 24083 (June 11, 1984).

[11] See Establishment of Poarch Band of Creek Indians Reservation (50 Fed. Reg. 15502 (April 18, 1985)), and Poarch Band of Creeks-Establishment of Reservation: Correction (50 Fed. Reg. 19813 (May 10, 1985)).

we are blessed to be able to provide our tribal citizens and neighbors with essential services, including functioning infrastructure, police and fire protection, healthcare, and eldercare.

The Tribe has developed positive working relationships with our neighboring counties of Elmore, Escambia, and Montgomery. We have engaged in dozens of MOUs and intergovernmental agreements with these and other local governments that have helped upgrade fire and rescue stations, conduct miles of road repairs and upgrades including lighting installations, provide resources to improve health care and education, and much more. We are also the first responders for 15 miles north and south of the Reservation on Interstate 65. These agreements and services far exceed revenue from any potential tax receipts these neighboring governments would receive if our lands remained in fee. As Alabama Natives and Alabama Neighbors, we are driven to give back to these communities by our belief that working together and giving back makes us all stronger, together. We are proud that our neighboring Counties, mayors, and state representatives have pledged their support for H.R. 6180, the Poarch Band of Creek Indians Parity Act. Attached to my written testimony is a letter of support from our neighboring local governments.

We have been able to improve the economic condition of not only Poarch, Alabama, where we are headquartered, but also in other parts of the State. Our Tribe operates more than 40 companies that do work worldwide and generate 9,000 jobs. I am proud to say that we generate more than 4,000 jobs for families in Alabama. Beyond these enterprises, we also welcome people to visit our lands, especially the Magnolia Branch Wildlife Reserve, which welcomes 30,000 visitors annually. It is one of the prettiest places you can imagine to go fishing, tubing, horseback riding, and camping.

We honor our blessings by giving back to local non-profits and community organizations. We donate nearly $8 million annually to local governments, educational institutions, health care systems, and other philanthropic causes. During the COVID-19 pandemic, we were able to give back to the State of Alabama with a $500,000 donation to the Alabama Department of Health for COVID-19 vaccine storage and administration. In fact, knowing how important protecting rural Alabama is to us, the State asked us to run clinics to vaccinate rural Alabamians.

We have made careful decisions about how to best use our resources and property. However, we have a limited land base, and at this point, we are no longer able to meet the growing housing and many other needs of our nearly 2,900 citizens. For example, when it became clear we needed to expand our Boys and Girls club in 2018, we were forced to fill in the ponds around our community center at a cost of more than $1 million because there was no more buildable trust land.

As our population ages, the Tribal Council has prioritized providing the best healthcare and eldercare available. We have an Assisted Living Facility (ALF) but will soon need a nursing home. We do not have the current land available to provide this service, and the passage of H.R. 6180 will allow us to make this dream of a nursing home a reality. As our community grows, enhancing our governing land base is a not only a need, it is a must.

We are not alone. Tribal governments nationwide have a shortage of usable land, and many—like us—have made land restoration a priority.

**The Indian Reorganization Act: Restoration of the Tribal Government Land Base**

Congress has repeatedly examined the history of tribal government land tenure, documenting impacts of the federal policies of Removal, Allotment and forced Assimilation, and Termination, all of which displaced many tribal governments, leaving some tribes completely landless. Former Senate Committee on Indian Affairs Chairman Byron Dorgan acknowledged that "Tribes ceded close to 200 million acres of land during the treaty-making and removal periods prior to 1881. Tribes lost an additional 90 million acres through the Allotment period between 1881 and 1934."[12]

The late Professor William Rice testified that:

> By 1934, Indian landownership had been reduced . . . to 48,000,000 acres. But this did not tell the whole story. Even these shocking figures were misleading. Of the 48,000,000 remaining acres, some 20,000,000 acres were in unallotted reservations, another 20,000,000 acres were desert or semi-

[12] Examining Executive Branch Authority to Acquire Trust Lands for Indian Tribes, S. Hrg. 111-136 at 2 (May 21, 2009) (opening statement of Chairman Byron Dorgan) (online at https://www.indian.senate.gov/wp-content/uploads/documents/CHRG-111shrg52879.pdf).

> desert lands, and some 7,000,000 were in fractionated heirship status awaiting sale to non-Indians.[13]

The policy of forced Allotment and Assimilation (1881–1934) sought to destroy tribal governments by mandating the division of communally held tribal government homelands to individual tribal members. After allotments were made, remaining Indian lands were deemed "surplus" and opened to settlement. As noted above, the Allotment policy resulted in the taking of more than 90 million acres of Indian lands, and led to the checkerboard landownership of many tribal communities and the land fractionation problems that continue to this day. Allotment and Assimilation also devastated tribal government economies, tribal culture, and Indigenous social systems.[14]

Since the Supreme Court's 2009 decision in *Carcieri v. Salazar*, this Subcommittee and your Senate counterpart have also frequently examined the history, purposes, and impacts of the Indian Reorganization Act of 1934 ("IRA"). The primary purposes of the IRA were to put a stop to the unilateral allotment of Indian lands and to authorize the Interior Department to rebuild the tribal government land base.[15] Section 5 of the IRA provides:

> The Secretary of the Interior is hereby authorized, in his discretion, to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians.[16]

The IRA also sought to limit the often-unchecked authority of the Interior Department over local tribal government decision-making. To reverse the Allotment policy's efforts to undermine Tribal governments, Section 16 of the IRA sought to empower Tribes to organize their own governing structures by establishing Tribal constitutions and bylaws that fostered the enactment and enforcement of Tribal laws to govern their lands.[17]

For 75 years, from 1934 to 2009, the Department of the Interior restored approximately 8 million acres of tribal government fee lands into trust status. Interior Departments of presidents of both political parties used the IRA to place land into trust for federally recognized Indian tribes regardless of whether they were formally acknowledged as a tribe before or after 1934. Tribes have used their trust lands to build schools, health centers and housing to serve their communities. These lands are also used for tribal enterprises to promote economic development in mostly rural communities that are all too often underserved and overlooked.[18]

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[13] *See* The IRA—75 Years Later: Renewing our Commitment to Restore Tribal Homelands and Promote Self-Determination, S. Hrg. 112-113 at 14 and fn.12 (June 23, 2011) (statement of Prof. William Rice, citing Indian Affairs Committee hearings on the "Wheeler-Howard Indian Reorganization Act") (online at https://www.govinfo.gov/content/pkg/CHRG-112shrg68389/pdf/CHRG-112shrg68389.pdf).

[14] Allotment and its authorized takings of "surplus" Indian lands stripped tribal governments of untold natural resources. In addition, the policy of Assimilation authorized the government to take Indian children from their homes, forcing them into federal boarding schools where they were forbidden from speaking their language or practicing their religion. We commend the Committee for advancing S. 1723, which would establish a Truth and Healing Commission on Indian Boarding School Policies, and strongly support its final passage.

[15] 25 U.S.C. §§ 5101 et seq.

[16] 25 U.S.C. § 5108.

[17] *See* The IRA—75 Years Later: Renewing our Commitment to Restore Tribal Homelands and Promote Self-Determination, S. Hrg. 112-113 at 15-16 (June 23, 2011) (statement of Prof. William Rice, quoting Indian Affairs Commissioner and architect of the IRA, John Collier, in his testimony before the Senate Committee on Indian Affairs in the run-up to passage of the IRA: "Paralleling this basic purpose [of reversing the allotment system] is another purpose just as basic. The bill stands on two legs. At present the Indian Bureau is a czar. It is an autocrat. It is an autocrat checked here and there by enactments of Congress; but, in the main, Congress has delegated to the Indian Office plenary control over Indian matters. It is a highly centralized autocratic absolutism. Furthermore, it is a bureaucratic absolutism.") (online at https://www.govinfo.gov/content/pkg/CHRG-112shrg68389/pdf/CHRG-112shrg68389.pdf).

[18] There is a common misperception that the Interior Department's fee to trust process serves to expand Indian gaming. The IRA authorizes Interior to place tribal government-owned fee land into trust and nothing more. Nothing in the IRA authorizes or regulates Indian gaming. The question of whether Indian trust lands are eligible to be used for gaming is governed solely by the Indian Gaming Regulatory Act and the National Indian Gaming Commission and Interior Department regulations developed to implement that separate law. Admittedly, some Tribes do submit land into trust applications for gaming purposes. However, those relatively few applications must not only meet the requirements of the IRA's Part 151 regulations to have land placed into trust, but they must also separately meet the requirements of the Interior Department's

**The 2009 *Carcieri v. Salazar* Decision and its Impacts**

The Supreme Court, in *Carcieri v. Salazar*, reversed these 75 years of practice and precedent. The Court tied the Interior Secretary's IRA Section 5 authority to place land into trust for Indian tribes to the Act's definition of "Indian", which provides that:

> The term 'Indian' as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe *now under Federal jurisdiction*, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood.[19]

The Court held "that the term 'now under Federal jurisdiction' in [the IRA] unambiguously refers to those tribes that were under the federal jurisdiction of the United States when the IRA was enacted in 1934." However, Court's decision provided no guidance to determine the meaning of the phrase "under federal jurisdiction", and nothing in the text of the IRA or its legislative history defines that phrase.

In the first *Carcieri*-related hearing before Congress, former Senate Indian Affairs Committee Chairman Dorgan acknowledged—"I just want to say that I am concerned about the court's decision in *Carcieri* and the impact it may have on those tribes that were recognized after 1934. I believe that Congress will likely need to act to clarify this issue for tribes and to ensure that the land in trust process is available to all tribes regardless of when they were recognized."[20] He predicted that the decision could impact hundreds of tribes by: slowing the land-into-trust process; leading to costly litigation over the status of Indian lands; complicating criminal jurisdiction in Indian Country; hindering economic development; and creating two classes of Indian tribes.[21] Sadly, each of these predictions have come true.

*Costly and Time-Consuming Litigation*

We know the effects of the *Carcieri* decision all too well. Our Tribe has been forced to defend the status of our trust lands in several federal court cases. In 2013, the State of Alabama relied on a *Carcieri*-based argument in seeking to enjoin federally approved gaming on Poarch Creek trust lands. The United States, while not named as a defendant in the proceedings, filed *amicus curiae* briefs in support of the Tribe's successful motion to dismiss the case and again when the State unsuccessfully appealed dismissal of its claims to the Eleventh Circuit Court of Appeals.[22] While both the trial and appellate courts rejected the State of Alabama's *Carcieri* challenge, the Tribe was forced to spend hundreds of thousands of dollars and the federal government was forced to devote limited funding an attorney resources to secure that result.

Similarly, the Tribe was forced to file its own federal lawsuit in 2015 in response to the Escambia County, Alabama, tax assessor's attempt to assess state taxes on Poarch Creek trust lands in erroneous reliance on the *Carcieri* decision. The Tribe again prevailed before the federal district court and the Eleventh Circuit Court of Appeals, with the United States filing an appellate *amicus curiae* brief in support of the Tribe's position.[23] And once again, Poarch Creek and the United States were forced to devote limited, valuable time and financial resources to litigating spurious claims that resulted directly from the uncertainty generated by the *Carcieri* decision.

These are but two examples. We have seen specious *Carcieri* arguments raised in numerous other cases filed in state and federal courts, many of which have nothing whatsoever to do with the trust status of Poarch Creek lands, but where the *Carcieri* argument is nonetheless raised either out of lack of understanding or in an attempt to extort an unwarranted settlement from the Tribe.

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Part 292 IGRA regulations in order to use the lands for gaming purposes. As former Assistant Secretary Kevin Washburn noted, of the 1,300 trust acquisitions submitted to Interior from 2008–2013, fewer than 15 were for gaming purposes. *See* testimony of Kevin Washburn before the House Resources Committee's Subcommittee on Indian and Alaska Native Affairs, at 2 (Sept. 19, 2013) (online at https://naturalresources.house.gov/uploadedfiles/washburn testimony09-19-13.pdf).

[19] 25 U.S.C. § 5129 (emphasis added).

[20] Examining Executive Branch Authority to Acquire Trust Lands, S. Hrg. 111-136 at 1 (May 21, 2009) (opening statement of Chairman Byron Dorgan) (online at https://www.indian.senate.gov/wp-content/uploads/documents/CHRG-111shrg52879.pdf).

[21] *Id.* at 2-3.

[22] *Alabama v. PCI Gaming Auth.*, 801 F.3d 1278 (11th Cir. 2015).

[23] *Poarch Band of Creek Indians v. Hildreth*, 656 F. App'x 934 (11th Cir. 2016).

The impacts of *Carcieri* of course go far beyond our Tribe. Many dozens of cases making *Carcieri*-based arguments have been filed in federal and state courts by state and local governments and individuals throughout the United States. In addition, the Interior Board of Indian Appeals has been bogged down for more than 15 years now with *Carcieri*-related challenges to the BIA's IRA fee to trust decisions.[24] It is difficult to fathom the hours and legal fees related to these cases, not only to the tribal governments forced to defend the attacks on their land, but also to the teams of attorneys at the U.S. Department of the Interior's Solicitor's Office and the U.S. Department of Justice's Environment and Natural Resources Division.

Thankfully, every court reviewing the issue has upheld the Interior Department's decisions to place our land in trust. However, these lawsuits have taken a toll, and that is why our Tribe is seeking a legislative solution that will provide us with long needed legal certainty.

*Two Classes of Tribes*

In addition, as Senator Dorgan anticipated, the *Carcieri* decision has created two classes of tribes: those able to prove that they were "under federal jurisdiction" in 1934, and those that cannot. This result directly conflicts with Congress' 1994 amendments to the IRA, which mandated that all federally recognized Indian tribes be treated the same for all purposes under the Act.

The 1994 amendments were passed in direct reaction to efforts at the Bureau of Indian Affairs to use Section 16 of the IRA to classify Indian tribes as being either "created" or "historic". Senator John McCain, then Vice Chairman of the Senate Indian Affairs Committee, offered the amendment, in part, in response to the BIA's treatment of the Pascua Yaqui Tribe of Arizona. In his floor statement that led to passage of the amendment, Senator McCain shared the following:

> According to the Department, created tribes are only authorized to exercise such powers of self-governance as the Secretary may confer on them . . .. I can find no basis in law or policy for the manner in which section 16 has been interpreted by the Department of the Interior . . ..
>
> The recognition of an Indian tribe by the Federal Government is just that—the recognition that there is a sovereign entity with governmental authority which predates the U.S. Constitution and with which the Federal Government has established formal relations. Over the years, the Federal Government has extended recognition to Indian tribes through treaties, executive orders, a course of dealing, decisions of the Federal courts, acts of Congress and administrative action. Regardless of the method by which recognition was extended, all Indian tribes enjoy the same relationship with the United States and exercise the same inherent authority. All that section 16 was intended to do was to provide a mechanism for the tribes to interact with other governments in our Federal system in a form familiar to those governments through tribal adoption and Secretarial approval of tribal constitutions for those Indian tribes that choose to employ its provisions.
>
> Clearly the interpretation of section 16 which has been developed by the Department is inconsistent with the [principal] policies underlying the IRA, which were to stabilize Indian [tribal] governments and to encourage self-government. These policies have taken on additional vitality in the last 20 years as the Congress has repudiated and repealed the policy of termination and enacted the Indian Self-Determination and Education Assistance Act and the Tribal Self-Governance Demonstration Project. The effect of the Department's interpretation of section 16 has been to destabilize Indian tribal governments and to hinder self-governance of the Department's unilateral and often arbitrary decisions about which powers of self-governance a tribal government can exercise.[25]

Senator Inouye, then-Chair of the Committee, who also co-sponsored the amendment, made the following statement to clarify its purpose:

> [O]ur amendment will correct any instance where any federally recognized Indian tribe has been classified as 'created' and that it will prohibit such classifications from being imposed or used in the future. Our amendment

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[24] *See e.g.*, Legislative Hearing on H.R. 312, Mashpee Reaffirmation Act; H.R. 375, National *Carcieri* Fix; and Discussion Draft of the RESPECT Act, at 28-29 (April 3, 2019) (Testimony of Professor Colette Routel) (online at https://www.congress.gov/116/chrg/CHRG-116hhrg35971/CHRG-116hhrg35971.pdf).

[25] 140 Cong. Rec. 11234 (May 19, 1994).

> makes it clear that it is and has always been Federal law and policy that Indian tribes recognized by the Federal Government stand on an equal footing to each other and to the Federal Government . . .. Each federally recognized Indian tribe is entitled to the same privileges and immunities as other federally recognized tribes and has the right to exercise the same inherent and delegated authorities. This is true without regard to the manner in which the Indian tribe became recognized by the United States or whether it has chosen to organize under the IRA. By enacting this amendment to section 16 of the IRA, we will provide the stability for Indian tribal governments that the Congress thought it was providing 60 years ago when the IRA was enacted.[26]

The amendment, enacted on May 31, 1994, added subsections (f) and (g) to the Section 16 of the IRA. Subsection (f), titled "Privileges and Immunities of Indian Tribes" prohibited all federal agencies from promulgating regulations or making decisions "that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes." Subsection (g) accomplished this same goal, but retroactively, by proclaiming that any regulation or administrative decision that treated tribal governments in a disparate manner "shall have no force or effect."[27]

One of many tragic results of the *Carcieri* decision is that it has breathed life back into this misguided argument that Tribal governments are either "historic" or "created". Former Assistant Secretary for Indian Affairs, Kevin Washburn, testifying in his capacity as a Professor of the University of Iowa College of Law, attempted to refute this line of thinking:

> Since the 1990s, there has been a requirement that each year the Federal Government publish the list of tribes that are recognized. It would have been nice if we had had that in 1934. That would have saved a lot of this work for tribes. But the fact is there is no tribe that exists today that did not exist in 1934. We don't create tribes out of whole cloth in this country. We spend a lot of time working on the reformation of that tribal recognition process, and those tribes have always existed and so they deserve to have land if they have existed. So, I would respectfully urge the Committee to try to move H.R. 375 through the House.[28]

**Administrative Attempts to Address the *Carcieri* Decision**

In the wake of the *Carcieri* decision, the Interior Department was forced to make determinations of whether a Tribe that filed an IRA application to place land into trust was under federal jurisdiction on a case-by-case basis. Tribal governments were given little guidance about what factors would be considered in this determination.

To provide Tribes and the public with some guidance, the Interior Department's Office of the Solicitor issued an official M-Opinion on March 12, 2014, that provided a framework of how the agency would determine whether an Indian tribe was "under federal jurisdiction" in 1934 for purposes of the administrative fee to trust process. The M-Opinion set forth a two-part test. The first factor requires a sufficient showing that "the United States had, in 1934 or at some point in the tribe's history prior to 1934, an action or series of actions—through a course of dealings or other relevant acts for or on behalf of the tribe or in some instance tribal members—that are sufficient to establish, or that generally reflect federal obligations, duties, responsibility for or authority over the tribe by the Federal government." The second question is to "ascertain whether the tribe's jurisdictional status remained intact in 1934."[29]

While the M-Opinion provided some needed transparency to the land into trust process post-*Carcieri*, it required extensive analysis and work by attorneys and historians from both the applicant Tribe and the Interior Department. Some "under federal jurisdiction" determinations took years to achieve. Often, when a land into

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[26] 140 Cong. Rec. 11235 (May 19, 1994).

[27] P.L. 103-263 (May 31, 1994), codified at 25 U.S.C. § 5123(f), (g). Given the background of Section 16 of the IRA detailed by Professor Rice, it is beyond comprehension why or how the Interior Department undertook this effort.

[28] Legislative Hearing on H.R. 312, Mashpee Reaffirmation Act; H.R. 375, National *Carcieri* Fix; and Discussion Draft of the RESPECT Act, at 17 (April 3, 2019) (Testimony of Professor Kevin Washburn) (online at https://www.congress.gov/116/chrg/CHRG-116hhrg35971/CHRG-116hhrg35971.pdf).

[29] *The Meaning of Under Federal Jurisdiction for Purposes of the Indian Reorganization Act*, M-37029 at 19 (Mar. 12, 2014).

trust decision was finalized pursuant to the M-Opinion, the Tribe had to wait additional years for the land to be placed into trust by wading through the federal court process. However, federal courts have generally upheld Interior's determinations pursuant to the 2014 M-Opinion.

On March 9, 2020, then-Solicitor Daniel Jorjani issued a new M-Opinion withdrawing the 2014 M-Opinion, replacing it with two memoranda. The first examines the recognition and jurisdiction elements of the phrase "any recognized tribe now under federal jurisdiction". The second established a four-part test that replaced the test established in the 2014 M-Opinion. Step 1 acknowledged that if Congress enacted a law after 1934 making Section 5 of the IRA applicable to the Tribe, then no "under federal jurisdiction" determination would be necessary.[30] In the absence of post-IRA legislation, Step 2 required a Tribe to show evidence that it was subject to "the federal government's administration of its Indian affairs authority with respect to that particular group of Indians." If there is sufficient evidence "presumptively demonstrat[ing]" federal jurisdiction, the trust acquisition may proceed. Step 3 required a Tribe to show that it was recognized prior to 1934 and remained under federal jurisdiction in 1934. Examples meeting Step 3 include "ratified treaties still in effect in 1934; tribe-specific Executive Orders; tribe-specific legislation, including termination legislation enacted after 1934, which acknowledges the existence of a government-to-government relationship with a tribe at the time it is enacted."[31] If a Tribe did not meet Steps 1–3, Step Four asks whether the "totality of an applicant tribe's non-dispositive evidence . . . is sufficient to show that the tribe was 'recognized' in or before 1934 and remained 'under federal jurisdiction' through 1934 [notwithstanding gaps in the historical record]." Step 4 also stated that applicant tribes recognized after 1934 or acknowledged after 1978 under the administrative procedures at Part 83 could also show evidence of "political-legal 'recognition' in or before 1934."[32]

**Regulatory Improvements to the Land into Trust Process**

Recognizing the limited shelf life of Interior M-Opinions, in October 2021, the Interior Department initiated an effort to amend its Part 151 regulations that implement the IRA's Section 5 land into trust provision. On December 12, 2023, the Interior Department published a final rule to amend these regulations governing the discretionary acquisition of tribal fee to trust applications at 25 C.F.R. Part 151.[33]

This is the first substantive update of the administrative Tribal fee into trust process since 1995. The regulatory changes streamline the land into trust process by establishing a 120-day deadline for the Department to make a final determination on trust land applications. Importantly, the new regulation establishes criteria for a Tribal Government's eligibility to use the regulation by clarifying the Department's process to determine whether a Tribe was "under federal jurisdiction" in 1934, as required by the Supreme Court's *Carcieri* decision.[34]

Our Tribe truly appreciates the Interior Department's efforts to improve the administrative land into trust process, and we fully support these changes. While the updated regulations make the process for a Tribe to prove that it was "under federal jurisdiction" much clearer, the updated process still requires teams of attorneys and historians from both the Tribe and the Interior Department to navigate through the regulatory process. If the prior M-Opinions are any indication, even the streamlined process could take years to come to resolution.

In addition, we remain concerned that the regulations will be the subject of future litigation. Just as the Department's recent land into trust decisions made pursuant to the various M-Opinions have been challenged in court, decisions made pursuant to the updated regulations will likewise be challenged. The ensuing legal process will also take many years to achieve a final ruling. The legal challenges will most likely start at the Interior Board of Indian Appeals, which is already backlogged with dozens of tribal trust land acquisition appeals and faces multiple administra-

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[30] Memorandum from Interior Solicitor Jorjani to Regional and Field Solicitors, *Procedure for Determining Eligibility for Land-Into-Trust under the First Definition of "Indian" in Section 19 of the IRA*, at 2 and fn. 4-6 (Mar. 10, 2020).

[31] *Id.* at 6-8.

[32] *Id.* at 8-10.

[33] Land Acquisitions, 88 Fed. Reg. 86,222 (Dec. 12, 2023) (to be codified at 25 C.F.R. pt. 151).

[34] In October 2021, Interior held Tribal Leader consultation sessions that discussed the need to improve the administrative process to restore tribal homelands. On March 28, 2022, the Department released draft revisions to Part 151, and held four Tribal Leader consultations, which led to a proposed rule that was published on December 6, 2022. The Interior Department held several consultations on the proposed rule, and accepted verbal and written comments through March 1, 2023.

tive judicial vacancies. Claims will then have to wind their way through the federal district and appellate courts, again consuming countless hours and resources.

As a result, our Tribe is taking what for us is a new approach to addressing our government's need for additional trust lands by working with our congressional delegation and nearby local governments to gain support and passage of the Poarch Band of Creek Indians Lands Act, which would clarify that our Tribe was under federal jurisdiction in 1934 for purposes of the IRA. Our approach is consistent with the Interior Department's updated land to trust regulations and past and recent precedent in Congress.

Section 151.4(b) of Interior's updated regulation clarifies that if Congress enacted legislation after 1934 making the IRA's land into trust provisions applicable to a specific Tribe, no "*under federal jurisdiction*" analysis is needed. Section 151.4(b) of the final rule provides,

> (b) For some Tribes, Congress enacted legislation after 1934 making the IRA applicable to the Tribe. The existence of such legislation making the IRA and its trust acquisition provisions applicable to a Tribe eliminates the need to determine whether a Tribe was under Federal jurisdiction in 1934.[35]

While new to our Tribe, this approach simply follows the approach that Congress has taken since the 1970s for Tribes that were restored to federal recognition through an act of Congress.[36]

**Legislative Efforts to Address the *Carcieri* Decision**

February 24, 2024, marked the 15-year anniversary of the *Carcieri* decision. Congress has considered national *Carcieri* fix bills every year for the past 15 years.[37] With some minor differences, each of these bills sought to amend the IRA to eliminate the phrase "under federal jurisdiction" and clarify that the IRA's land to trust provision applies to all federally recognized Indian tribes. The House of Representatives passed a national *Carcieri* fix in the 116th and 117th Congresses with broad bipartisan support each time under suspension of the rules.[38] However, those bills did not reach final passage.

The Poarch Band of Creek Indians has been one of the leading advocates for a national "*Carcieri* fix." Today, I again offer our full support for Chairman Cole's bipartisan bill, H.R. 1208, which would accomplish this goal.

In the 118th Congress, however, we are taking a parallel track similar to the strategy taken by dozens of Tribes who have worked with their congressional delegation to enact bills to mandate fee-to-trust actions, reaffirm trust lands, or clarify that the IRA applies to their individual tribe.[39]

We are grateful to Rep. Carl for introducing the Poarch Band of Creek Indians Lands Act, H.R. 6180, which would clarify that the IRA's land-into-trust process applies to our Tribe. H.R. 6180 will enable us to work with the Interior Department and local governments restore and protect our lands to meet the acute needs of our growing community. This bill is targeted and tailored, and it has the strong support of the Alabama congressional delegation and the cities and counties surrounding our trust land, including Elmore County, Escambia County, and Montgomery County.

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[35] 88 Federal Register 86251 (Dec. 12, 2023).

[36] Legislative Hearing on H.R. 312, Mashpee Reaffirmation Act; H.R. 375, National *Carcieri* Fix; and Discussion Draft of the RESPECT Act, at 32 and fn. 5 (April 3, 2019) (Testimony of Professor Colette Routel) (online at https://www.congress.gov/116/chrg/CHRG-116hhrg35971/CHRG-116hhrg35971.pdf).

[37] 117th Congress—H.R. 4352 (McCollum), S. 1901 (Tester); 116th Congress—H.R. 375 (Cole), S. 2808 (Tester); 115th Congress—H.R. 130 (Cole), H.R. 131 (Cole)(reaffirmation); 114th Congress—H.R. 407 (McCollum), H.R. 249 (Cole), S. 732 (Tester), H.R. 3137 (Cole)(reaffirmation); 113th Congress—H.R. 666 (Markey), H.R. 279 (Cole), S. 2188 (Tester); 112th Congress—H.R. 1234 (Kildee), H.R. 1291 (Cole), S. 767 (Akaka); 111th Congress—H.R. 3742 (Kildee), H.R. 3697 (Cole), S. 1703 (Dorgan).

[38] Roll call vote on H.R. 4352, passed 302–127 (Dec. 1, 2021) (online at https://clerk.house.gov/Votes/2021393); Roll call vote on H.R. 375, passed 323–96 (May 15, 2019) (online at https://clerk.house.gov/Votes/2019208).

[39] *See e.g.*, NDAA for FY'2020, P.L. 116-92 (Dec. 20, 2019) (as enacted included the Santa Ynez Band of Chumash Indians Land Affirmation Act (§ 2868), the Lytton Rancheria Homelands Act (§ 2869), the Little Shell Tribe of Chippewa Indians Restoration Act (§ 2870)); Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, P.L. 115-121 (Jan. 29, 2018); Gun Lake Trust Land Reaffirmation Act, P.L. 113-590 (July 30, 2013).

I respectfully ask the full Committee to bring H.R. 6180 to a markup and advance the bill to final passage in the 118th Congress. On behalf of the Poarch Band of Creek Indians, I am honored to speak to you today, and I am happy to answer any questions. Thank you.

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The following documents were submitted as supplements to Ms. Bryan's testimony.

**In Support of Poarch Band of Creek Indians Parity Act—Legislation to clarify the Land Into Trust Process for the Poarch Band of Creek Indians**

**October 12, 2023**

**To: Members of the U.S. Senate and House of Representatives**

**RE: Support for the Poarch Band of Creek Indians Parity Act**

On behalf of the undersigned, we write in strong support of the Poarch Band of Creek Indians Parity Act, legislation to clarify the Land Into Trust Process for the Poarch Band of Creek Indians (Tribe.)

The Tribe is a major economic driver in our counties and cities and throughout Alabama, and employs over 3500 Alabamians, 90 percent of whom are not Tribal members. Additionally, with over 2,700 enrolled Poarch Creek tribal members who are citizens of our state, we feel a duty to do our small part to ensure the Tribe can exercise its inherent sovereignty to provide for future generations.

This legislation is necessary because the Supreme Court ruled in 2009 that the Department of Interior's (DOI's) tribal fee-to-trust authority is limited to only those tribal governments that were "under federal jurisdiction" as of June 18, 1934, the date of enactment of the Indian Reorganization Act (IRA). DOI has struggled to consistently define the term "under federal jurisdiction." The term "under federal jurisdiction" is not defined in the IRA and there is no legislative history to discern congressional intent of the term. Since 2009, DOI has relied on multiple Solicitor M-opinions to determine whether a tribe is under federal jurisdiction. This ambiguity has made the process subject to litigation based on unfounded legal claims and has resulted in heavy legal/administrative burdens for tribes. As such, the Tribe has been subjected to unnecessary litigation over the status of its lands since 2009. Further, the U.S. must commit significant resources from the Departments of Justice and Interior to do archival analysis, legal research, and litigation support for these decisions at great taxpayer expense.

Fortunately, the Tribe has prevailed in these cases, but these constant attacks have taken an unnecessary toll on the Tribe—stalling development for improved housing, health care, and other essential services to the community. The Tribe is a great community partner, and it is important that we support their efforts to correct this legal ambiguity. This legislation would allow the Tribe to strengthen its capacity to better provide for its nation and the surrounding communities. We offer our full support of the Poarch Band of Creek Indians Parity Act.

Sincerely,

Greg Albritton
Alabama Senate District 22

Alan Baker
Alabama House of Representatives
District 66

Jim Staff, Mayor
City of Atmore

Jerry Willis, Mayor
City of Wetumpka

Steven Reed, Mayor
City of Montgomery

Charles W. Jinright, President
Montgomery City Council

Doug Singleton, Chairman
Montgomery County Commission

Bart Mercer, Chairman
Elmore County Commission

Mack Daugherty
Elmore County Commission

Dennis Hill
Elmore County Commission

Henry Hines
Elmore County Commission

Desirae Lewis Jackson
Elmore County Commission

Raymond Wiggins, Chairman
Escambia County Commission

Steven Dickey
Escambia County Commission

Larry White
Escambia County Commission

Karean L. Reynolds
Escambia County Commission

Brandon Smith
Escambia County Commission

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QUESTIONS SUBMITTED FOR THE RECORD TO THE HON. STEPHANIE BRYAN, TRIBAL CHAIR & CEO, POARCH CREEK INDIANS

**Questions Submitted by Representative Westerman**

*Question 1. Your written testimony described your tribal history in the state of Alabama and the tribe's current relationships with many local governments. Can you expand on how your tribe was able to build and maintain these relationships?*

*1a) How can Congress help to promote congenial relationships between tribes and localities?*

Answer. When we first went through the Interior Department's land into trust process, our Tribe did not have much in the way of resources. Over the years, as our economy developed and the Tribe's enterprises grew and diversified, we were able to strengthen our relationships with nearby counties and local governments, entering into dozens of MOUs and intergovernmental agreements as noted in my written statement. However, far too many tribal governments lack resources to meet the most basic needs of their citizens. As a result, they are not able to help their neighboring state or local governments.

One proposal that would help foster relationships between tribes and local units of government would be to include tribal trust lands in the Payment In Lieu of Taxes ("PILT") program. Congress established the PILT program in 1976 to help local governments offset losses in property taxes due to the existence of nontaxable Federal lands within their boundaries. PILT payments are made annually for tax-exempt Federal lands administered by Department of the Interior agencies, including the Bureau of Land Management, the National Park Service, the U.S. Fish and Wildlife Service, and the Bureau of Reclamation. In addition, PILT payments cover Federal lands administered by the U.S. Forest Service, the U.S. Army Corps of Engineers, and the Utah Reclamation Mitigation and Conservation Commission.

Many local government concerns with tribal government land-into-trust applications relate to potential losses of tax revenue. Including tribal trust lands in the PILT program would resolve these concerns. While Indian trust lands are not public lands owned by the United States, the government does hold legal treaty and trust obligations to make existing Indian lands livable homes to tribal citizens and to help restore the tribal government land base.

*Question 2. You mentioned in your testimony that several litigation challenges continually use the Carcieri decision reasoning, even after cases have been resolved.*

*2a) Is there any litigation still ongoing?*

*2b) If so, what is the status of the litigation?*

Answer. Fortunately, our Tribe, often with the support of the federal government, has been successful in defeating most *Carcieri*-based arguments in court during the early stages of litigation. We have also settled a handful of lawsuits where *Carcieri* arguments were raised in connection with alleged injuries involving our various businesses and facilities. The U.S. Court of Appeals for the Eleventh Circuit has already rejected challenges to the status of our trust lands on two separate occasions. See Poarch Band of Creek Indians v. Hildreth, 565 F. App'x 934, 942-44 (11th Cir. 2016); Alabama v. PCI Gaming Authority, 801 F.3d 1278, 1291-93 (11th Cir. 2015). The United States filed brief in support of our Tribe in both of these cases, expending valuable federal resources.

The only ongoing litigation where a *Carcieri* challenge has been raised is a lawsuit brought by the Muscogee (Creek) Nation challenging our right to develop our trust land in Wetumpka, Alabama. The United States District Court for the Middle District of Alabama dismissed all of Muscogee's claims against our Tribe and the United States in March 2021, but Muscogee has appealed that ruling to the Eleventh Circuit Court of Appeals. Muscogee's *Carcieri* claims ignore the two prior decisions on this now well-settled legal question, and further prove our point that our Tribe will be forced to litigate these baseless legal claims time and again without enactment of H.R. 6160. And Muscogee's lawsuit, which names various federal officials and entities as defendants, has forced the federal government to once again expend taxpayer funds to relitigate this twice-decided issue. After Muscogee filed its appeal, our two tribal nations engaged in a lengthy mediation process in an effort to amicably resolve the dispute, but it proved unsuccessful, and the appeal is moving forward. The only question on appeal is whether the Poarch Band of Creek Indians can be sued in federal court without our consent; the district court dismissed Muscogee's claims without even needing to reach the Carcieri argument. All appellate briefs have been filed, and oral argument before a panel of the Eleventh Circuit is set for September of this year.

*Question 3. In your written testimony, you mentioned that your tribe is looking to develop a nursing home but needs additional land.*

*3a) Are there lands your tribe is seeking to have taken into trust currently?*

*3b) Have you seen any opposition to these applications?*

Answer. Currently, we do not have any pending trust land applications due to the concerns the Tribe has regarding the definition of "under federal jurisdiction" in 1934. As previously stated the Poarch Band of Creek Indians has already spent millions of dollars defending our existing trust lands. While we are confident that our Tribe qualifies to have land taken into trust under current law, as the federal government has repeatedly concluded, we are equally confident that any trust land application by our Tribe will lead to costly, extended litigation that will frustrate the purpose and value of any potential trust acquisition. Until the Department of Interior's authority to take land into trust for our Tribe is unequivocally affirmed, we cannot risk facing additional costly challenges that may arise due to the lack of clarity on the definition of 'under federal jurisdiction' as required by the Indian Reorganization Act.

*Question 4. Is there anything else you would like to add to your testimony on how the Department of the Interior's fee-to-trust process could be reformed to benefit tribes and state and local governments?*

Answer. As noted in my written testimony, the Poarch Band of Creek Indians generally supports the amendments to the Part 151 regulations. We support the clarification to the process for a Tribe to prove that it was "under federal jurisdiction." However, as noted below, upon further review of new Part 151.11, the Tribe does not support the elimination of the "bungee cord" approach, which had been employed since at least 1995.

*Question 5. The new 25 CFR Part 151 regulations governing lands into trust provide no geographic boundaries within which tribes can acquire trust lands, eliminates the previous requirement that the Secretary use heightened scrutiny the further a tribe goes from its existing reservation to seek new trust lands, and failed to include a consultation requirement with nearby tribes for any new trust land acquisitions. In fact, the regulations do not even require the Department to notify a tribe*

*if another tribe applies for trust lands. The Interior Secretary would be able to review such an application with complete discretion and no requirement to notify or consult affected tribes.*

*5a) Does Poarch Band support this part of the new regulations that eliminate the heightened scrutiny for applications that seek to acquire lands far from a tribe's existing reservation?*

*5b) Would you want the Interior Secretary to be mandated to consult with you if any other tribe applies for trust lands within your ancestral territory in Alabama?*

Answer. The updated regulations to Part 151.11, now listed under the question "How will the Secretary evaluate a request involving land outside of and noncontiguous to the boundaries of an Indian reservation?", eliminate the requirement that as the distance between the applicant-tribe's reservation and the land sought to be placed in trust increases, "the Secretary shall give greater scrutiny" to application.

As noted in my written testimony, our Tribe appreciates the Interior Department's efforts to improve the administrative land into trust process. We generally support the changes at Part 151.4 to clarify the process for a Tribe to prove that it was "under federal jurisdiction." However, upon further review of new Part 151.11, the Tribe does not support the elimination of the requirement that the Secretary give greater scrutiny to off-reservation land into trust applications as the distance between the applicant tribe's current lands increases, also known as the "bungee cord" approach, which had been employed since at least 1995.

Yes, we would want the Interior Secretary to consult if any other tribe applied for trust lands within our ancestral territory in Alabama. Failure to require consultation with nearby federally recognized Indian tribes has been a long-standing gap in the fee to trust process. While the regulations in place from at least 1995 to 2024 required Interior to provide notice and comment to state and local governments, it did not provide similar outreach to federally recognized Indian tribes that have existing trust lands nearby the proposed land into trust application and have never required meaningful consultation with nearby federally recognized Indian tribes.

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Ms. HAGEMAN. Thank you, Ms. Bryan. The Chair now recognizes the Honorable David Rabbitt for 5 minutes.

**STATEMENT OF THE HON. DAVID RABBITT, DISTRICT 2 SUPERVISOR, SONOMA COUNTY BOARD OF SUPERVISORS, SONOMA, CALIFORNIA**

Mr. RABBITT. Chair Hageman, thank you very much. Ranking Member Leger Fernández, thank you, as well. And members of the Subcommittee, thank you for the opportunity to participate in today's hearing. My name is David Rabbitt. I am an elected supervisor from Sonoma County, California and current Chair. The testimony that I am delivering is on behalf of the National Association of Counties, or NACo, which represents America's 3,069 counties, nearly 40,000 county elected officials, and over 3.6 million county employees. I am an active member of NACo, formerly serving on its board of directors, and have been a leading voice in county and tribal relations.

Incidentally, I am from Sonoma County, a county that has five federally recognized tribes. A sixth is also looking to move into the county. Three of those tribes currently operate casinos: two within the county, one within the Bay area. But I will say this, that we have agreements with all five of our federally recognized tribes, and that is what I am here today to hope that you also agree that that is a great way to go forward.

Counties play, as you know, a critical role in everyday life of the nation's residents. Strong intergovernmental partners, county support, government-to-government relations that recognize the

unique role and interests of tribes, state, counties, and other local governments, all to protect the members of our communities.

It is incumbent upon Congress to fix the long-standing systemic defects in the Department of the Interior's broken fee-to-trust process. And to be clear, we believe that any *Carcieri* fix or any legislation that would restore the Interior Secretary's authority to take land into trust for tribes must be coupled with much-needed, long-overdue reforms in the Federal Government's deeply flawed trust land decision-making process.

Unfortunately, the so-called clean *Carcieri* fix would do nothing to repair the underlying problems in the trust land system, and would only serve to exacerbate and perpetuate the inherent conflict and fundamental flaws of the current process, a process, incidentally, that is broken for all parties: tribes and local governments.

Existing Federal laws and regulations simply fail to address the off-reservation impacts of tribal land development, including casinos, and particularly in those instances of local land use and health and safety regulations.

Trust acquisitions often increase demands for critical county services and resources such as law enforcement, fire protection, transportation, and water, without providing any mitigation for these impacts. Not only is mitigation ignored in the fee-to-trust process, a county's capacity to address the impacts is reduced by eliminating the land from the local tax base.

Nonetheless, although trust acquisitions often result in significant off-reservation impacts, the Department of the Interior does not provide impacted local governments and communities with sufficient notice or meaningful opportunity to comment regarding fee-to-trust applications. Furthermore, the Department does not accord county concerns in off-reservation impacts adequate weight in the land-to-trust process.

The Federal process is also flawed in that it does not provide an avenue for tribes to engage in good faith discussions regarding mitigation of environmental impacts of tribal development, nor is there any incentive for tribes to enter into mitigation agreements with local governments. It should be noted that an approach that encourages the intergovernment agreements between tribes and local governments affected by fee-to-trust applications is required and working well under recent California State gaming compacts.

Again, in Sonoma County we entered into a comprehensive intergovernmental agreement to create an over 500-acre homeland for the Lytton Band of Pomo Indians, and supported legislation by Congressman Huffman to take that land into trust.

Not only does such a collaborative approach offer the opportunity to streamline the application process, it can also help us ensure that success of the tribal project within the local community. The establishment of a trust land system that incentivizes intergovernmental agreements between tribes and local governments is at the heart of NACo's fee-to-trust reform recommendations.

I would like to take just a few minutes to talk about that further. I can tell you personally I am an architect by profession, therefore, involved in development. And every development has an impact, an off-site impact, especially the smaller pieces of land, lands where that development occurs. And it is incumbent upon the developer,

or the applicant, or the owner of that property to make sure that they are mitigating those impacts to the best extent possible. You can't eliminate everything, but you certainly can mitigate it. And I think, if you don't, what you end up doing is pushing that can down the road. And, unfortunately, I think what we have seen in the past is that many times leads to litigation.

Some people think, by having these intergovernmental agreements beforehand, that that would delay a process. I personally believe, and by evidence with our experiences in our county believe, that actually it would speed the process because you would eliminate the chances of having litigation in the future over things that weren't transparent or fully explained prior.

I think it is really just sitting down with each other, like most things are, communicating with one another. We totally understand and respect the sovereignty of the Tribal Nations. We can't dictate what is going to be built on those properties, but we can talk about how people will come and go from those properties. We can talk about what water will be used for those properties. We can talk about how the fire services, the law enforcement services, and so on and so forth.

And I very much appreciate the board's willingness to hear me out today. And certainly, there is more within the written testimony.

[The prepared statement of Mr. Rabbitt follows:]

PREPARED STATEMENT OF THE HON. DAVID RABBITT, SUPERVISOR, SONOMA COUNTY, CALIFORNIA ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES (NACO)

ON H.R. 1208 AND H.R. 6180

Thank you, Chair Westerman, Chair Hageman, Ranking Member Leger Fernandez, and Members of the Subcommittee, for the opportunity to testify today. My name is David Rabbitt, and I am a County Supervisor in Sonoma County, California and am actively involved in and formerly served as a member of the Board of Directors of the National Association of Counties (NACo). This testimony is submitted on behalf of NACo, which has been a leader in pursuing federal laws and regulations that provide the framework for constructive government-to-government relationships between counties and tribes.

Established in 1935, NACo is the only national organization representing county governments in Washington, DC. Over 2,600 of the 3,069 counties in the United States are members of NACo, representing over 80 percent of the nation's population. NACo provides an extensive line of services including legislative, research, technical and public affairs assistance, as well as enterprise services to its members.

I am also an active member of the California State Association of Counties (CSAC), which was founded in 1895, and is the unified voice on behalf of all 58 of California's counties. The primary purpose of the association is to represent county government before the California Legislature, administrative agencies, and the federal government. Along with NACo, CSAC has been a leader in actively pursuing federal policies aimed at fostering productive tribal-county relationships.

Counties play a critical role in the everyday lives of our nation's residents. Many county responsibilities are mandated by both the state and the federal government. While county responsibilities differ widely, most states grant their counties significant authority to fulfill public services. These authorities include construction and maintenance of roads, bridges and critical infrastructure, assessment of property taxes, record keeping, administering elections, and overseeing jails, court systems and public hospitals. Counties are also responsible for child welfare, consumer protection, economic development, employment and workforce training, emergency management, land use planning and zoning. As strong intergovernmental partners, counties support government-to-government relations that recognize the unique role and interests of tribes, state, counties and other local governments to protect all members of our communities and provide governmental services and infrastructure beneficial to all.

At the outset, I'd like to take this opportunity to reaffirm NACo's absolute respect for the authority of federally recognized Indian tribes. We reaffirm our support for the right of tribes to self-governance and recognize the need for tribes to preserve their heritage and to pursue economic self-reliance. Furthermore, NACo recognizes the disparity and inequity caused by the Court's 2009 decision in *Carcieri v. Salazar* and believes that it continues to be the responsibility of Congress to pass legislation that would put all federally recognized tribes on equal footing relative to the opportunity to have land taken into trust.

At the same time, it is absolutely essential that Congress fix the long-standing, systemic defects in the Department of the Interior's broken fee-to-trust process. To be crystal clear, we believe that **any** *Carcieri* fix—that is, any legislation that would restore the Interior Secretary's authority to take land into trust for tribes—must be coupled with much-needed, long overdue reforms in the Federal Government's deeply flawed trust land decision-making process. Unfortunately, a so-called "clean *Carcieri* fix," such as the one embodied in H.R. 1208, would do nothing to repair the underlying problems in the trust-land system and would only serve to perpetuate the inherent conflict of the current process—a process, incidentally, that is broken for all parties, tribes and local governments.

Notably, recent action taken by the U.S. Department of the Interior—namely a series of updates to the Bureau of Indian Affairs' (BIA) fee-to-trust regulations found at 25 CFR Part 151—did nothing to repair the underlying flaws in the trust acquisition system. Rather, the Department's new regulation, which went into effect in January 2024, further undercuts counties' already limited ability to participate in the fee-to-trust process. Of paramount concern to counties, the rule does not adequately account for—or include any sort of mechanism to address—the significant impacts to local governments and communities that often occur as a result of major tribal development projects, including casinos.

**The Deficiencies of the Current Trust-Land Process**

The fundamental problem with the trust acquisition process is that Congress has not established objective standards under which any delegated trust-land authority is to be applied by the BIA. The relevant section of federal law, Section 5 of the Indian Reorganization Act of 1934 (IRA), reads as follows: "The Secretary of the Interior is hereby authorized in his discretion, to acquire [by various means] any interest in lands, water rights, or surface rights to lands, within or without reservations . . . for the purpose of providing land to Indians." 25 U.S.C. § 465.

This general and undefined congressional guidance, which was codified 90 years ago, has resulted in a trust-land process that fails to meaningfully include legitimate interests, provide adequate transparency to the public, or demonstrate fundamental balance in trust-land decisions. The unsatisfactory process, which is governed by the BIA's Part 151 regulations, has created significant controversy, serious conflicts between tribes and states, counties and local governments—including litigation costly to all parties—and broad distrust of the fairness of the system. Tribes deserve an efficient and predictable trust acquisition process that is not continually bogged down by controversy and legal action. Likewise, states and counties also deserve a process that considers their legitimate governmental interests.

With 574 federally recognized tribes across the United States, no two fee-to-trust applications are alike. In California, we see this diversity firsthand with over 100 federally recognized tribes, all of which have unique cultural history and geography. The diversity of applications and circumstances across the country reinforces the need for both clear, objective standards in the fee-to-trust process and the importance of local intergovernmental agreements to address specific concerns.

Notably, many California tribes are located on "Rancherias," which were originally federal property on which landless Indians were placed. No "recognition" was extended to most of these tribes at that time. Therefore any *Carcieri*-related legislation must address the significant issues raised in states like California and many others across the country which did not generally have a "reservation" system and that are now faced with small Bands of tribal people who are recognized by the federal government as tribes and who may seek to establish large commercial casinos. In particular, legislation must ensure improved notice to counties and define the standards by which property can be removed from local jurisdiction. Moreover, requirements must be established to ensure that the significant off-reservation impacts of tribal projects are fully mitigated.

It should be noted that many of the deficiencies in the trust-land process were reaffirmed in a quantitative analysis of all 111 fee-to-trust decisions by the Pacific

Region BIA Office between 2001 and 2011.[1] The analysis found that BIA granted 100 percent of the proposed acquisition requests and in no case did any Section 151 factor weigh against approval of an application.[2] The analysis further found that because of the lack of clear guidance and objective criteria, Pacific Region BIA decisions avoid substantive analysis in favor of filler considerations and boilerplate language.[3]

These same conclusions were reached in a 2006 Government Accounting Office Report to Congress on the fee-to-trust process, which determined that the regulations do not provide a clear, uniform or objective approach. The Report found:

> [T]he regulations provide wide discretion to the decision maker because the criteria are not specific, and BIA has not provided clear guidelines for applying them. Given the wide discretion that exists and the increased scrutiny that the land in trust process has come under with the growth of Indian gaming, it is important that the process be as open and transparent as possible.[4]

Unfortunately, the fee-to-trust process remains broken as community concerns are ignored or downplayed, applications are rubber-stamped at a 100 percent acceptance rate, and tribes and local governments are forced into unnecessary and unproductive conflict.[5] Moreover, the deficiencies in the process could soon be amplified by the recent revisions to BIA's Part 151 regulations, which further streamline the fee-to-trust process by eliminating certain criteria and establishing several new presumptions of approval. Additionally, the new regulations establish a 120-day time frame for a Tribe to receive a final fee-to-trust decision. Currently, this process takes 958 days, on average, and while counties agree this is simply too long for Tribes to wait for a decision, 120 days is not a sufficient amount of time for BIA to comprehensively review and evaluate the impacts of an application.

While there are a number of major flaws in BIA's fee-to-trust process, one of NACo's central concerns is the severely limited role that state and local governments play. The implications of losing jurisdiction over local lands are very significant, including the loss of tax base, loss of planning and zoning authority, and the loss of environmental and other regulatory power. Yet, in practice, state, county and local governments are afforded limited, and often late, notice of a pending trust land application, and, under the Part 151 regulations, are asked to provide comments on two narrow issues only: 1) potential jurisdictional conflicts; and, 2) loss of tax revenues.

Moreover, the notice that local governments receive typically does not include the actual fee-to-trust application and often does not indicate how the applicant tribe intends to use the land. Further, in some cases, tribes have identified a non-intensive, mundane use, only to change the use to heavy economic development, such as gaming or energy projects, soon after the land is acquired in trust.

One measure of the severe dysfunction is that local governments are often forced to resort to Freedom of Information Act (FOIA) requests to ascertain if a trust application or a petition for an Indian lands determination—a key step in the process for a parcel of land to qualify for gaming—has been filed with the BIA. Again, despite the significant impact on counties, and the relevant information they hold, local governments do not receive notice of the filing of either a trust application or Indian Lands determination. Although trust applications are often deemed incomplete by the BIA, it is during this time that counties and tribes are best positioned to collaboratively address any concerns before receiving formal notice of a complete application and be given 30 days to decide whether to support or oppose the project. The lack of consultation is even worse with Indian lands determinations, as counties are not notified of the requests and are not allowed to comment or otherwise invited to participate in the process. These processes must include local participation in order to ensure that there is a complete factual basis upon which objective decisions can be made.

While the Department of the Interior has acknowledged the increased impacts and conflicts inherent in recent trust-land decisions, its new regulations do not strike a reasonable balance between tribes seeking new trust lands and the states

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[1] (Kelsey J. Waples, *Extreme Rubber Stamping: The Fee-to-Trust Process of the Indian Reorganization Act of 1934*, 40 Pepperdine Law Review 250 (2013).

[2] Id., pp. 278.

[3] Id., pp. 286, 293, 302.

[4] *Indian Issues: BIA's Efforts to impose Time Frames and Collect Better Data Should Improve the Processing of Land in Trust Applications*," U.S. Government Accounting Office, at pp. 36-38 (July 2006).

[5] Id., pp. 292, 295, 297.

and local governments experiencing unacceptable impacts. Indeed, the notification process embodied in the new Part 151 regulations is insufficient and falls far short of providing local governments with the level of detail needed to adequately respond to proposed trust-land acquisitions. This point was included as a "Recommendation for Executive Action" in the GAO Report, as the Interior Secretary was recommended to direct BIA to revise trust regulations and "guidelines for providing state and local governments more information on the applications and a longer period to provide meaningful comments on the applications[.]"[6] Regrettably, the 2024 regulations do not embody this important recommendation and state and local governments continue to have only 30 days to provide comments on a pending fee-to-trust application.

***Carcieri v. Salazar*—An Historic Opportunity**

On February 24, 2009, the U.S. Supreme Court issued its landmark decision on Indian trust lands in *Carcieri v. Salazar*. The Court held that the Secretary of the Interior lacks authority to take land into trust on behalf of Indian tribes that were not under the jurisdiction of the federal government upon enactment of the IRA in 1934.

Because the *Carcieri* decision definitively confirmed the Secretary's lack of authority to take land into trust for post-1934 tribes, Congress has the opportunity not just to address the issue of the Secretary's authority under the current failed fee-to-trust system, but to reassert its primary authority for these decisions by setting specific standards for taking land into trust that address the main shortcomings of the trust land-process.

In the 15 years since this significant court decision, varied proposals for reversing the *Carcieri* decision have been generated, some proposing administrative action and others favoring a congressional approach. Today's hearing, like several hearings before it, is recognition of the significance of the *Carcieri* decision and the need to consider legislative action.

We believe that the responsibility to address the implications of *Carcieri* clearly rests with Congress and that a decision to do so in isolation of the larger problems of the fee-to-trust system would represent an historic missed opportunity. Indeed, a legislative resolution to *Carcieri* that keeps the current trust-land system in place will be regarded as unsatisfactory to counties, local governments, and the people we serve. Rather than a "fix," such a result would only perpetuate a broken system, where the non-tribal entities most affected by the trust acquisition process are without a meaningful role. Ultimately, this would undermine the respectful government-to-government relationship that is necessary for both tribes and neighboring governments to fully develop, thrive, and provide critical services to the people dependent upon them for their well being.

Accordingly, our primary recommendation to the Subcommittee and Congress is this: Do not advance a congressional response to *Carcieri* that allows the Department of the Interior to continue the flawed fee-to-trust process. Rather, Congress should make meaningful, comprehensive reforms to the trust-land system that reflect the right to self-governance of our Tribal neighbors and which address the legitimate concerns of counties and other key stakeholders.

NACo believes that the *Carcieri* decision presents Congress with an opportunity to carefully exercise its constitutional authority for fee-to-trust acquisitions and to define the respective roles of Congress and the Executive Branch in trust-land decisions. Additionally, it affords Congress with the opportunity to establish clear and specific congressional standards and processes to guide trust-land decisions in the future. A clear definition of roles is acutely needed regardless of whether trust and recognition decisions are ultimately made by Congress, as provided in the Constitution, or the Executive Branch under a congressional grant of authority.

As we have urged for years, we respectfully ask Members of this Subcommittee to employ a comprehensive approach to addressing the implications of the *Carcieri* decision and the deficiencies in the trust land process, , namely: 1) the absence of authority to acquire trust lands, which affects post-1934 tribes, and, 2) the lack of meaningful standards and a fair and open process, which affects states, local governments, businesses and non-tribal communities. As the Subcommittee considers potential *Carcieri* legislation, it should undertake reform that is in the interests of all affected parties—both Tribes and non-Tribal governments alike.

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[6] GAO Report, *supra*. at p. 37.

**Legislative Recommendations**

**1. Require Full Disclosure and Fair Notice and Transparency from the BIA on Trust Land Applications and Other Indian Land Decisions.** The Part 151 regulations are not specific and do not require sufficient information to be furnished to affected parties regarding tribal plans to use the land proposed for trust status. As a result, it is very difficult for those parties (local and state governments, and the public) to determine the nature of the tribal proposal, evaluate the impacts, and provide meaningful comments.

Federal law should require BIA to ensure that tribes provide reasonably detailed information about the intended uses of proposed trust land, not unlike the public information required for planning, zoning and permitting on the local level. This assumes even greater importance since local planning, zoning and permitting are being preempted by the trust land decision; accordingly, information about intended uses is reasonable and fair to require.

Legislative changes need to be made to ensure that affected governments receive timely notice of fee-to-trust applications and petitions for Indian land determinations in their jurisdiction and have adequate time to provide meaningful input. Indian lands determinations, a critical step for a tribe to take land into trust for gaming purposes, is conducted in secret without notice to affected counties or any real opportunity for input. As previously indicated, counties are often forced to file a FOIA request to even determine if an application was filed and the basis for the petition.

Notice for trust and other land actions for tribes that go to counties and other governments is not only very limited in coverage, the opportunity to comment is minimal; this must change. A new paradigm is needed where counties are considered meaningful and constructive stakeholders in Indian land-related determinations. For too long, counties have been excluded from providing input in critical Department of Interior decisions and policy formation that directly affects their communities. NACo believes counties should be provided 120 days to respond to land in trust applications and request that BIA provide a response explaining the rationale for acceptance or rejection within 90 days.[7]

**2. Establish Clear and Objective Standards for Agency Exercise of Discretion in Making Fee-to-Trust Decisions.** The lack of meaningful standards or *any* objective criteria in fee-to-trust decisions made by the BIA has been long criticized by the U.S. Government Accountability Office and local governments. As previously indicated, BIA requests only minimal information about the impacts of such acquisitions on local communities and trust land decisions are not governed by a requirement to balance the benefit to the tribe against the impact to the local community. As a result, there are well-known and significant impacts of trust land decisions on communities and states, with consequent controversy and delay and distrust of the process.

Furthermore, the BIA has broad authority and discretion to make acquisition decisions in favor of tribes, an authority that was affirmed and further broadened through BIA's recent Part 151 revisions. To reasonably balance the interests of tribes and local governments, Congress should provide the Executive Branch with clear statutory standards that take into account the legitimate interests of both parties. However any delegation of authority is ultimately resolved, Congress must specifically direct balanced standards that ensure that trust land requests cannot be approved where the negative impacts to other parties outweigh the benefit to the tribe.

**3. Tribes that Reach Local Intergovernmental Agreements to Address Jurisdiction and Environmental Impacts Should Have a Streamlined Process.** The legal framework should encourage tribes to reach intergovernmental agreements to address off-reservation project impacts by providing a streamlined fee-to-trust process when such agreements are in place. Tribes, states, and counties need a process that is less costly and more efficient. The virtually unfettered discretion delegated to the BIA by virtue of the Part 151 regulations, along with the lack of clear standards, almost inevitably creates conflict and burdens the system. A process that encourages cooperation and communication provides a basis to expedite decisions and reduce costs and frustration for all involved. Furthermore, counties oppose any federal actions that limit our ability to reach mutually acceptable and enforceable agreements and/or provide critical services to our communities.

It should be noted that an approach that encourages intergovernmental agreements between a tribe and local government affected by fee-to-trust applications is

[7] National Association of Counties (NACo). 2024. *American County Platform*. https://www.naco.org/resources/2023%E2%80%932024-american-county-platform-and-resolutions

required and has worked well in recent California gaming compacts. Not only does such an approach offer the opportunity to streamline the application process, it can also help to ensure the success of the tribal project within the local community. The establishment of a trust-land system that incentivizes intergovernmental agreements between tribes and local governments is at the heart of NACo's fee-to-trust reform recommendations and should be a top priority for Congress.

**4. Secretarial Determination Regarding Off-reservation Impacts**—While there are many examples of successful collaboration between tribes and counties, neighboring governments will not always see eye-to-eye on major development projects. Therefore, in cases in which tribes and counties are unable to reach enforceable mitigation agreements with respect to potential trust acquisitions, legislation should require the Secretary of the Interior to undertake a comprehensive analysis of all anticipated off-reservation impacts in direct consultation with the state and affected local government(s). In turn, and as a condition of approving a trust acquisition, the Secretary should be required to certify that the applicant has taken steps to ensure that **all significant jurisdictional conflicts and impacts—including increased costs of local services, lost revenues, and environmental impacts—have been mitigated to the maximum extent practicable.** Counties believes that this type of Secretarial determination **must** be part of any *Carcieri*/fee-to-trust reform package.

**Conclusion**

Congressional action must address the critical repairs needed in the fee-to-trust process. Unfortunately, legislation currently pending in the U.S. House (H.R. 1208) fails to set clear standards for taking land into trust, to properly balance the roles and interests of tribes, state, local and federal governments in these decisions, and to clearly address the apparent usurpation of authority by the Executive Branch over Congress' constitutional authority over tribal recognition.

We ask Members of the Subcommittee to incorporate the aforementioned reforms into any legislation that addresses the *Carcieri* decision. Counties' proposals are common-sense reforms, based upon a broad national base of experience on these issues that, if enacted, will eliminate some of the most controversial and problematic elements of the current trust land acquisition process. The result would help states, local governments and non-tribal stakeholders. It also would assist trust land applicants by guiding their requests towards a collaborative process and, in doing so, reduce the delay and controversy that now routinely accompany acquisition requests.

Thank you for considering these views.

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QUESTIONS SUBMITTED FOR THE RECORD TO THE HON. DAVID RABBITT, SUPERVISOR, SONOMA COUNTY BOARD OF SUPERVISORS AND MEMBER OF NATIONAL ASSOCIATION OF COUNTIES

**Questions Submitted by Representative Westerman**

*Question 1. Can you expand from your testimony on how intergovernmental mitigation agreements between tribal and local governments have benefited land-into-trust projects? And have you seen a specific benefit to tribal gaming projects that include these intergovernmental mitigation agreements?*

Answer. In Sonoma County and other jurisdictions, the development and approval of intergovernmental mitigation agreements have greatly benefited land-into-trust projects, particularly in the case of proposed gaming operations. While I describe in greater detail Sonoma County's experience in this regard (please see the answer to question 2), to follow are a number of examples in California that illustrate how mitigation agreements have yielded favorable outcomes. In all cases in which county and tribal leaders have come together, the result has been enhanced respect and renewed government-to-government partnerships.

In Yolo County, the Board of Supervisors has a long history of working with the Yocha Dehe Wintun Nation to ensure adequate services in the area where the tribe's casino is operating. In addition to reaching an agreement for the mitigation of off-reservation impacts resulting from the tribe's casino expansion and hotel project, Yolo County has entered into agreements with the tribe to address impacts created by other tribal trust-land projects in the county.

In southern California, numerous tribes in San Diego County have worked with the county sheriff's department on law enforcement-related issues in communities where tribal casinos are located. Additionally, San Diego County has entered into agreements with several tribes to address transportation impacts created by various land-into-trust/casino projects.

On a broader scale, San Diego County and the Santa Ysabel Band of Digueño Indians reached a comprehensive agreement back in 2005 that paved the way for the tribe to construct a new large-scale gaming complex. The tribe's chairman hailed the agreement as a model for future pacts between tribes and government entities.

In northern California, Humboldt, Placer, and Colusa Counties have memorandums of understanding in place with various tribes to address law enforcement-related issues. In the case of Humboldt County, the Board of Supervisors also signed agreements with several tribes regarding the operation of a court facility/sub-station and library. Additionally, Humboldt County and several tribes have agreed to a cooperative approach for seeking federal assistance to increase water levels in nearby rivers, and have reached accords with regard to road improvements.

Madera and Placer Counties also have reached comprehensive agreements with the tribes that operate casinos in their communities. While these intergovernmental agreements provide differing approaches to mitigating off-reservation impacts of Indian casinos, each is effective in addressing the unique concerns of the community in question.

Finally, in Santa Barbara County, a tribe that completed a significant expansion of an existing casino negotiated with the county a mitigation agreement to address ingress/egress and flood control issues that arose as a result of the casino's expansion. Santa Barbara County and the tribe continue to address impacts caused by the tribe's development of its trust land on a case-by-case basis, reaching intergovernmental agreements where possible.

The takeaway is that intergovernmental partnerships—memorialized by cooperative agreements that address the specific impacts of tribal development projects—benefit tribes, counties, and local communities and facilitate the fee-to-trust process by helping parties avoid costly litigation.

*Question 2. During your testimony, you mentioned your county has had successful intragovernmental projects with tribes due to the presence of information up front during the land-into-trust process.*

*2a) Please share with the committee specific examples of successful intergovernmental projects that have benefited from an open exchange of information that you were involved in, or you are aware of.*

Answer. Sonoma County has five federally recognized tribes within its boundaries: the Dry Creek Rancheria; Lytton Rancheria; Federated Indians of Graton Rancheria (FIGR); Kashia Band of Pomo Indians; and, the Cloverdale Rancheria. Except for Cloverdale Rancheria, all of these tribes have federally established reservation lands, or "trust lands," within Sonoma County.

Three of these tribes have intergovernmental agreements with the County intended to mitigate the off-site impacts of various on-reservation development projects. These intergovernmental agreements also address other important issues. The agreements reflect a mutual understanding of the importance of addressing the impacts of tribal development projects while furthering respectful and mutually beneficial government-to-government relationships.

In the case of the Dry Creek Rancheria, the Tribe operates the River Rock Casino near Geyserville, CA. On February 28, 2023, the Board of Supervisors approved an amended and restated Memorandum of Understanding (MOA) between the Tribe and the County. The financial terms under the restated MOA provide for an annual baseline payment of $750,000 to offset the costs related to County services impacted by operations on the Dry Creek Rancheria.

With regard to The Lytton Rancheria, the Tribe does not operate a gaming facility in Sonoma County, but does possess a reservation of over 500 acres outside the Town of Windsor. A tribal housing development project is currently under construction, with a winery and resort development planned for the future. The County entered into an MOA with the Lytton Rancheria on March 10, 2015 to establish a framework for government-to-government relations, address the impacts of the proposed residential housing development, and establish parameters and processes for addressing the impacts of potential future tribal development.

Finally, the Federated Indians of Graton Rancheria currently operate the Graton Casino located in Rohnert Park. On June 6, 2023, the Board of Supervisors approved an Amended and Restated Intergovernmental Mitigation Agreement (IMA) between the Tribe and the County. The IMA provides $14,500,000 per year,

adjusted annually for CPI, to mitigate impacts of the gaming facility in a number of key areas, including: law, justice and public safety; health and human services; traffic, transportation, and road maintenance; affordable housing; greenhouse gasses and air quality; fire and emergency services; groundwater and water conservation projects; tourism impacts; and, socioeconomic impacts.

*2b) Are you aware of any tribal gaming projects that have benefited from this way of operating, and, if yes, how did that benefit the project?*

Answer. As previously indicated, the Federated Indians of Graton Rancheria currently operate a casino in Rohnert Park. According to the Tribe's leadership, the revenue from the gaming project allows the Tribe to provide programs and services to Tribal Citizens to help them realize their dreams of self-sufficiency. Absent transparency and cooperation at the local level and without a mitigation agreement in place that offsets impacts on public services, projects such as the Graton Casino typically face increased scrutiny and community skepticism, if not widespread opposition from local government and community stakeholders. Based on our experience in Sonoma County, we strongly believe that tribes—and the projects they operate—as well as local governments and the surrounding community greatly benefit when intergovernmental partnerships result in agreements that recognize the impacts of developments projects.

Additionally, and expanding upon the aforementioned Yolo County example, I'd note that the County and the Yocha Dehe tribe did not always have a positive and productive working relationship. Rather, the parties remained at odds for years over the tribe's proposed Cache Creek Casino Resort expansion project. After much negotiation, however, the parties entered into an agreement that allowed the project to move forward. The comprehensive agreement addresses a number of key issues, including the mitigation of gaming-related impacts, including language addressing transportation needs, law enforcement, and fire and emergency services.

*Question 3. You testified during the hearing that state and local governments would prefer a 120-day window to submit comments during the land-into-trust process. Could you elaborate further on the benefits of a longer comment period?*

Answer. Many fee-to-trust acquisitions—particularly for large-scale economic development projects—result in significant impacts to the surrounding community. Accordingly, it is essential that counties thoroughly consider and examine the potential ramifications of any tribal development project, particularly as it relates to the health, safety, and welfare of community members.

I'd note that as part of the typical zoning, planning, and permitting process at the local level, counties are responsible for conducting public outreach and engagement in order to determine how proposed development projects will impact the community. In doing so, counties must consider a whole host of issues, including land-use compatibility, ingress-egress, jurisdictional matters, transportation, environmental impacts, and many other issues. This process is highly complex and takes time.

As I indicated in my written testimony, federal law should require the BIA to provide jurisdictional governments with detailed information regarding proposed trust land acquisitions, not unlike the public information required for local planning, zoning and permitting. This assumes even greater importance since local ordinances and laws are ultimately preempted by trust-land decisions. In order to provide counties, our jurisdictional partners, and local communities with sufficient opportunity to evaluate potential impacts in their entirety, NACo policy calls for 120 days for parties to review and comment on a pending fee-to-trust application.

*Question 4. Is there anything else you would like to add to your written testimony on how the Department of the Interior's fee-to-trust process should be reformed to benefit tribes and state and local governments?*

Answer. For 15 years, tribes and counties—along with other stakeholders—have been urging Congress to address the implications of the *Carcieri v. Salazar* decision. It is long past time for lawmakers to act.

Moving forward, Congress must pass a single legislative remedy that accomplishes two essential objectives: put all tribes on equal footing as it relates to the opportunity to have land taken into trust; and, establish a fair and balanced trust-land system that takes into account the legitimate interests of local governments and the communities they serve.

Ms. HAGEMAN. Thank you very much. We appreciate your comments and your insight, as well as your personal experience.

I will now recognize Members for 5 minutes of questioning, and I will start with me.

Since the *Carcieri* decision was issued in 2009, it has been unclear how many tribes could be affected by that decision. And I think for policymakers it is helpful to know the breadth of this particular problem. I am going to direct this question to Ms. Isom-Clause.

Does the Department know how many federally recognized tribes would not be considered "under Federal jurisdiction" pursuant to the *Carcieri* decision?

Ms. ISOM-CLAUSE. Thank you for the question, Chair Hageman.

We look at these tribe by tribe, so we don't have kind of one centralized list that would have all of that. It is a very fact-intensive and specific dive into the complicated history of the relationship between——

Ms. HAGEMAN. So, even after 15 years, the Department has not yet determined how many of our 574 recognized tribes would be impacted by this decision?

Ms. ISOM-CLAUSE. Well, I would also say all tribes are impacted by this decision, because every tribe is required to go through this analysis. Some may have kind of more clear facts and some have more complicated facts, but there is always an expansion of government resources, tribal resources, and risk of litigation. So, everyone is impacted. Some have more complicated histories that take longer to wade through.

Ms. HAGEMAN. OK. What type of land-into-trust applications tend to draw the most concern or opposition?

Ms. ISOM-CLAUSE. Well, we have we have heard from the Supervisor that gaming applications tend to draw more concern. But I will note that the majority of fee-to-trust applications are on reservation, non-controversial, and it is only a tiny 1 to 3 percentage, at most, that are gaming.

Ms. HAGEMAN. But you would agree that the gaming projects are the ones that tend to be the most controversial.

Ms. ISOM-CLAUSE. In some cases they are. And when there are comments, there is an additional review process.

I want to separate out the fee-to-trust process and gaming, because the fee-to-trust process is an entirely separate process. If a tribe wants to take land into trust for gaming, there is a separate process to go through to determine whether that land is eligible for gaming. That is another comment period. There is another NEPA review. So, the fee-to-trust process is one opportunity for comment; the gaming process is an entirely different one.

Ms. HAGEMAN. And Mr. Rabbitt, I would like to follow up on the testimony that you were providing near the end there. You mentioned the success of intergovernmental mitigation agreements in California related to gaming compacts. Can you expand on how this approach has been beneficial?

Mr. RABBITT. Oh, yes, like I said, we have five agreements. We have agreements with all five within our county.

There is one within my district, the Federated Grayton Tribe Rancheria, with a large casino. But prior to that casino and that

land being taken into trust, we did have an agreement with the Tribe to identify certain known impacts, transportation for instance, and there was an agreement with our local transportation authority to make sure that we had access to the property. Groundwater was a concern, residents around the site had very shallow wells and spotty groundwater.

So, we had independent, third-party folks come in to monitor that groundwater to make sure there are no impacts in the future, but it is just those kinds of things that we put in place prior that made for a much smoother process and, quite honestly, alleviated the concerns around the neighborhood and, I think, made the project that much more successful.

Ms. HAGEMAN. OK. So, you would agree that, with these kinds of mitigation agreements, it tends to allow for the process to move forward more quickly as the community itself can understand what the benefits may be?

Mr. RABBITT. That has always been my experience. And, again, as an architect, I can tell you that if someone is going through and wanting to build something that everyone is up in arms with, you are more likely to have a slower process, you are more likely to end up in litigation than if you go through and actually meet with people prior and come to an agreement about what that should be.

Ms. HAGEMAN. What happens in those circumstances when a mitigation agreement cannot be reached between a tribe and a local government?

Mr. RABBITT. We totally think that there should be a Secretarial determination to make sure that those impacts were properly mitigated. We just want to be part of that conversation. We want to have that opportunity, and we think it needs to be a meaningful time frame to make sure that we can opine and run that by all the different districts, perhaps, that are also going to be putting services forward.

For instance, in the casino that I mentioned, law enforcement was not part of the Tribe's purview, nor was the fire department. So, those were important agreements to get into place prior to having thousands and thousands of people on a piece of property——

Ms. HAGEMAN. Well, just very, very quickly, the Department of the Interior recently updated its Part 151 regulations governing the fee-to-trust process. Do the revisions address any of the issues that counties and localities have raised about the fee-to-trust process over the years?

Mr. RABBITT. As quickly as I can, I would say no.

Ms. HAGEMAN. OK. I will now recognize the Ranking Member for 5 minutes of questioning.

Ms. LEGER FERNÁNDEZ. Thank you very much, Madam Chair.

Chairman Pierite and Chair Bryan, I want to ask a couple of questions about the fact that there are issues that were raised about the importance of communication, collaboration, and input. Can I ask each of you if, in the fee-to-trust applications you have engaged in, did you go through those kinds of interactions and feedback with local governments and with interested parties?

We will start with Chair Bryan.

Ms. BRYAN. Yes, we have actually engaged with those counties any time they have a comment period to go through if you put land into trust, so they have an opportunity to voice their concerns or any questions they may have.

But I will tell you from our experience, we have almost given back $37 million to local communities. We know what it is like not to have much. So, it is important for us to give back. And it has always been a goal for me, as a leader, to work collaboratively together with the counties, the cities, and the state because we are a part of those communities. And if we work collaboratively together, and we have MOUs with the various counties, and we also have their support of Montgomery County, Elmore County, Escambia County, the cities where we are located. So, we have definitely improved that communication and that ability to work with the surrounding areas.

Ms. LEGER FERNÁNDEZ. Thank you.

Chairman Pierite?

Mr. PIERITE. Yes, Tunica-Biloxi went through the same process. Early on, we established the collaboration, as well as cooperation, and having an understanding on what gaming will bring to not only Tunica-Biloxi, but of Avoyelles Parish, as well as central Louisiana, the jobs that we create.

And this is not only about developing our understanding about job creations, it is about providing hope, providing a purpose not only for the tribal community, but for the overall community, and developing and building that understanding we have done at a very early stage.

And our relationship with central Louisiana of the non-tribal community is part of our extended family and vice versa.

Ms. LEGER FERNÁNDEZ. Thank you, and I think that the letters of support that you have submitted exemplify that.

And I think it is really important that these bills we are talking about today aren't about what the process should be. If I am understanding it, the bills we are talking about is that your 2 tribes and all the 548 tribes should be treated equally, right?

Is that how you see the bills that we are addressing today, that you want to be able to go through the same process as every other tribe when you are seeking to take land into trust, Chairman?

Mr. PIERITE. Yes, ma'am. That is accurate. We are in support of a full *Carcieri* fix for all 574 tribal governments, and as well as the Acts the Congress, not to put an emphasis on the 1 percent that is for the gaming and that is land into trust for gaming, but the 99 percent. That is what the emphasis should be on. That is where the focus should be on, because that 99 percent can be utilized for advanced manufacturing, for textiles.

If you look at the lay of the land over the last 30 years, Tunica-Biloxi just celebrated 30 years in gaming. But at the same time, during the 30 years, over 11.2 million jobs, advanced manufacturing jobs, left the United States.

Ms. LEGER FERNÁNDEZ. Right.

Mr. PIERITE. Thousands of textile jobs left the United States. Tribes can bring them back.

Ms. LEGER FERNÁNDEZ. Thank you. I think that both of the tribal leaders' testimony today, which are the most important ones

that we must listen to, actually emphasize the need to take into land for other purposes and this addresses that.

Ms. Kathryn Isom-Clause, I was just out meeting with Taos Pueblo. Will the passage of this bill change any of the laws and regulations regarding land into trust for gaming?

Ms. ISOM-CLAUSE. Thank you for your visit to Taos Pueblo, first of all. I am glad you were able to be there.

No, this will not change any of the fee-to-trust applications. It is only a threshold question of whether the Secretary has authority to take land into trust for a tribe. If so, then we can proceed through the entire regulatory process it takes.

Ms. LEGER FERNÁNDEZ. And I have run out of time, but I wanted to just get this $10 million for just one tribe on litigation. Will the passage of these bills save the Department money?

Ms. ISOM-CLAUSE. Yes.

Ms. LEGER FERNÁNDEZ. Thank you, and I yield back.

Ms. HAGEMAN. Thank you. The Chair now recognizes Mr. Carl for 5 minutes of questioning.

Mr. CARL. Thank you.

Chairwoman Bryan, three quick questions. It is rapid fire here, so get ready.

[Laughter.]

Mr. CARL. I keep hearing "gaming" popping up here. Are we talking about gaming on our bill that we are looking at, H.R. 6180?

Ms. BRYAN. Absolutely not. This is about parity and all tribes being treated equally, actually.

I think, as the Interior stated, there is IGRA that you can go through for the gaming process. And we heard from the champion on this *Carcieri* fix, Congressman Cole, that it is about 1 percent that is to do with gaming.

Mr. CARL. Right.

Ms. BRYAN. Less than 1 percent. So, this is not to do with gaming.

Mr. CARL. When you look at Poarch Creek, and I have been a County Commissioner for 8 years, so I understand the permitting process, I understand your developments on the properties that we are talking about here. I just want to say it is always first class. You all are a five-star Michelin group. Everything you all do is first class or not at all. What you all do for our community is priceless. And I am not talking about just community, I am talking about the entire state. Most people don't realize how many different companies actually have sprung from a simple group of folks in Atmore, Alabama that has remained simple, and I think that is very important. They have not forgotten everyone in the process.

Could you elaborate on how the Poarch Creek bill will enhance the Tribe's ability to serve the community?

Ms. BRYAN. It would actually give us the ability to place land into trust for housing, for a nursing home to take care of our elders who sacrificed all those years that didn't have much. That would allow us an opportunity to meet the demanding needs of our community going forward.

Mr. CARL. And you all do an incredible job. I came and saw the Boys and Girls Club situation 2 years ago, 3 years ago. And, of course, I have been there for several situations.

Ms. BRYAN. That services over 500 children, and only 10 percent are tribal members.

Mr. CARL. Yes.

Ms. BRYAN. It services the community, not just the Poarch Band of Creek Indians.

Mr. CARL. And Atmore is a very small community. It truly is, the city of Atmore itself. And I know how you work with the County Commission and the city there.

Can you discuss the relationships the Tribe has developed with the county bordering the trust lands, which would be Mobile County, obviously, Escambia County, Washington County?

Ms. BRYAN. Absolutely. We have given to the counties financially. We have MOUs with them. But most importantly, we collaborate together to use our tribal dollars along with the county dollars to help with infrastructure, to maintain roads, build roads. We have a great relationship with the counties.

And I will tell you this. The letters of support that are a part of the written testimony, you will see that those counties are so grateful and appreciative because we do help provide fire protection, drug task force, we support the drug task force, we are also working with them on some issues that all of America is facing, which are mental issues. We are actually in the process of helping build, hopefully, a rural hospital. We are trying to collaborate together to build a rural hospital because with the old one, the maintenance fees are so exorbitant. So, we are in the process of actually working to do those types of things within our communities and counties.

Mr. CARL. So, just for the record, I have been working with the County Commission there in Escambia County. We were going to replace a bridge, Poarch Creek stepped up, they are going to actually put the money up with a little bit of help, I hope, from my folks. But we were able to shift that county money that was earmarked for that, actually, to another road project. So, I know the county is happy. They should be.

And our rural health care in America as a whole is horrible. But again, I know Poarch Creek well enough. They are not going to let the health in that area go down. And we do have some problems there and, of course, the whole county, so I appreciate any help you all are willing to step up on the health care portion with the hospitals.

With that, Madam Chair, I turn back. Thank you.

Ms. HAGEMAN. Thank you, Mr. Carl. The Chair now recognizes Representative Radewagen for 5 minutes of questioning.

Mrs. RADEWAGEN. Thank you, Madam Chairwoman. I would like to yield my time over to the Chairwoman.

Ms. HAGEMAN. Thank you. I would like to get into a bit more detail about the nature of the *Carcieri* fix that we are talking about, and I would like to direct my questions to Chairman Pierite, as well as Tribal Chair, Ms. Bryan.

Mr. Chairman Pierite, do you think legislatively reforming the fee-to-trust process along with a *Carcieri* fix would benefit both tribes and local communities? And if so, how?

Mr. PIERITE. It would benefit both tribes. But the Act today is for a legislative fix, a *Carcieri* fix for all tribes. And I don't want

to be on record leaving any tribes behind. Everything we do, we have to do as a family. Because yes, we are 574 distinct tribes, individually tribes, but we are one tribal family, we are one Indian Country. And by having a clean *Carcieri* fix, it will allow us to simplify the process of getting land into trust, and bringing land into trust will allow us to get ahead of the game as far as economic opportunities.

I mentioned before about the United States being the greatest country in the world, but the biggest assets in the United States are the 574 tribal governments, because those 574 tribal governments, working together with a united effort, can bring manufacturing back to this great country.

And, again, I mentioned 11.2 million jobs have migrated over the last 30 years. And we have not only positioned ourselves to fill that gap, but again, it is not only about job creation, it is about building hope for the next generation.

It is also about establishing passion, establishing purpose, aligning purpose for our next generation of workers, that they have purpose for it to become who they choose to become by creating that hope, believe in that dream, and having that ability to put the land into trust, having the ability to work with Congress, work with the local as well as state agencies to provide economic opportunities for all, not just for tribal employees or tribal citizens.

Ms. HAGEMAN. But for the local communities, as well?

Mr. PIERITE. Yes, ma'am.

Ms. HAGEMAN. OK. And Ms. Bryan, could you please address my question as to whether reforming the fee-to-trust process along with the *Carcieri* fix, how would that benefit both tribes and the local communities?

Ms. BRYAN. I do want to be clear that the Poarch Band of Creek Indians, we have been very supportive of a national fix for 15 years since the decision was made. And we are very supportive, and we will continue to be very supportive.

But Congress has passed bills that address certain tribes, so we took the parallel approach to do a Poarch-specific bill because the national fix continues to get stalled, and hasn't passed for 15 years. So, that is the reason why.

This is nothing new to Congress. They have passed individual bills before for tribes. So, we decided that, now that we have the support of our Alabama Delegation and all the great things that we are doing, we have diversified our portfolio with over 40 different companies that has nothing to do with gaming.

And we have been afforded those opportunities because we have worked with our state, we have created jobs, have contracts with NASA, Department of Defense. So, we just want to remove the cloud that is over the Tribe of uncertainty because of the *Carcieri* decision. So, this will be very helpful for us to remove that cloud of uncertainty and provide benefits that we need for our people.

Ms. HAGEMAN. OK. Thank you.

The Chair now recognizes Jenniffer González-Colón for her 5 minutes of questioning.

Mrs. GONZÁLEZ-COLÓN. Thank you, Madam Chair, and good morning, everybody here.

Deputy Assistant Secretary, to what extent has the *Carcieri* decision increased the need for the Department to defend land-into-trust decisions in the Court?

Ms. ISOM-CLAUSE. Thank you for the question.

We know that at least 12 Federal court cases have been brought, and over 20 cases before the Interior Board of Indian Appeals since the *Carcieri* decision. And as we know, Federal court litigation can take years, maybe 2 years, maybe 10 years. And the IBIA also can take up to 5 years to issue a decision, which can then be appealed to Federal court and be another case for us to litigate.

Mrs. GONZÁLEZ-COLÓN. Have the tribes reported to the Department that they are facing more litigation challenges since this case?

Ms. ISOM-CLAUSE. Yes, absolutely.

Mrs. GONZÁLEZ-COLÓN. And are there any concerns that H.R. 6180 or H.R. 1208 could lead into unintended consequences?

And what recommendation, if any, does the Department have for either bill?

Ms. ISOM-CLAUSE. Thank you for the question.

The *Carcieri* fix would restore the status quo that was working for 75 years, and it would be returning to settled expectations. So, we don't foresee any consequences that would not be intended, but merely a settling of expectations again.

Mrs. GONZÁLEZ-COLÓN. And you don't have any recommendation for any of those bills?

Ms. ISOM-CLAUSE. We just support both bills.

Mrs. GONZÁLEZ-COLÓN. So, no amendments to any of them?

Ms. ISOM-CLAUSE. No, no amendments. Thank you.

Mrs. GONZÁLEZ-COLÓN. I was reviewing, and I would like to know how the Department of the Interior sought to address the concerns of state and local governments who believe, whether rightly or wrongly, that they do not have enough involvement in the land-into-trust application process.

Ms. ISOM-CLAUSE. Well, as we have mentioned here, we have recently gone through a rulemaking process with the 151 regulations. We received hundreds of comments on those, all of which were addressed as part of the process, and many were from states and local communities about our process.

We made changes from the proposed rule to the final rule based on those comments. We kept in a comment period, a notification and comment period, even for on-reservation acquisitions, just to ensure that everyone is able to be heard when they need to be. If those comments are submitted, we will consider them.

Mrs. GONZÁLEZ-COLÓN. I will have a question for Supervisor Rabbitt.

How will having more information up front about the land acquisition application benefit both tribes and counties during the Part 151 process?

Mr. RABBITT. I am sorry. Having more information?

Mrs. GONZÁLEZ-COLÓN. Yes.

Mr. RABBITT. Oh, I think having more information and, really, having that communication is vitally important.

And I do recognize that, and again I have made mention of my own county, that individual counties and individual tribes certainly

do have excellent relationships. You have heard some of those examples here today. But, unfortunately, it is not universal, and Congress does have a unique opportunity to fix a broken process and encourage successful intergovernmental mitigation agreements and, I think, also streamline the process.

Honestly, by fixing one word I don't think you take care of half of the problem that is in front of you, and I do think that our county is a good example of having those relationships, having those intergovernmental agreements in place, and having successful projects and successful tribal projects because of it.

Mrs. GONZÁLEZ-COLÓN. You said in your testimony that any legislation to restore the Interior Secretary's authority, and I quote, "much-needed, long-overdue reforms in the Federal Government, deeply flawed trust land decision-making process." Could you elaborate on this and discuss some of the proposals you believe Congress should enact to reform the land trust process?

Mr. RABBITT. I think part of that is some of the noticing requirements. Even with the 151 changes that were made, they are really not transparent. They really don't give enough notice.

We would need to reach out not just to the community, but to the districts that might be involved: fire districts, water districts, whomever they might be that might be impacted or affected by taking that land into trust. They should have an opportunity to provide some input on that and for the Secretary to take that all into consideration.

But with the short time period, the lack of transparency, counties are sometimes, honestly, the last to know. And we just believe that we need to be at the table, having a conversation, understanding what these impacts are all about.

And I will be honest. In our county, and I can't speak for all counties, and I know I am here as a NACo representative, it is not always about the money. There are those services that still need to be provided, and there are the impacts that need to be mitigated, and the two don't always go hand in hand, but they need to be taken into consideration.

We have had successful projects because we sat down and had those agreements beforehand. It is great that the tribes in our county volunteered to do that, but right now there is no requirement for the tribes to sit down and do that, or for the counties, for that matter. And we just think here is an opportunity, and we have been saying this for 15 years as well, because we totally accept the fact that the *Carcieri* is a broken system and it creates, unfortunately, two classes of tribes, and that is all wrong. We would love to see it fixed, but we would like to see it fixed with the additional conditions that really encourage that conversation, that collaboration, all the things that we talk about that have happened, but just make sure that we can encourage that and have that be universal across the country.

Mrs. GONZÁLEZ-COLÓN. Thank you, Supervisor.

My time expired, I yield back.

Ms. HAGEMAN. Thank you. The Chair now recognizes Chairman Cole for 5 minutes of questioning.

Mr. COLE. Thank you very much, Madam Chair, and it is very generous of you. Again, thank you for allowing me to participate in your hearing today.

Chairwoman Bryan, let me ask you. And you alluded to this, but I am going to ask you to think a little more broadly about the total cost that the Tribe absorbed through the *Carcieri* since the *Carcieri* decision in terms of, obviously, the cost of legal representation, but also delayed projects, things that weren't done that could have been done. Do you have any kind of estimate for what that has done to the Poarch Creek Nation?

Ms. BRYAN. I will tell you, I have with me our Attorney General. The $10 million that I shared with you, it is probably more than that, I would say, because of the hours that our Attorney General, I don't know how many hours she has logged, but we have several attorneys that in-house have had to work on this to take away from those resources that we needed to address internally for our tribal government. We had to pull our attorneys off and put them on these cases because it was that important to our Tribe.

And that $10 million, every day that is what motivates me, is helping people improve their quality of life and giving them opportunity, giving them the tools that they need and opportunity for advancement. So, that $10 million would have done so much for our community, it would have saved a lot of time from our legal department. We would have used that $10 million, we are in the process of building an elder care center where we feed our elders lunch. So, that $10 million could have done a lot for our members and our citizens.

Mr. COLE. And these are costs you would not have had, had it not been for the *Carcieri* decision. In other words, you weren't expending these kind of resources before that decision in 2009.

Ms. BRYAN. No, sir, we weren't.

Mr. COLE. So, that is why the system is broken, in my view, Madam Chair. It is really a court decision that has caused the problem.

Ms. BRYAN. It has cost the Federal Government, taxpayers' dollars, too, as well, because Department of the Interior, Department of Justice, you know, they have to travel. They have to have attorneys work on it, travel to the 11th Circuit. So, it is costing tribes and the Federal Government a lot of money on these frivolous lawsuits.

Mr. COLE. Let me go, if I may, to Deputy Assistant Secretary, I hope I get it right, Isom-Clause.

Ms. Isom-Clause, would you have a rough estimate of how many cases have been brought contesting BIA trust acquisition approval because of *Carcieri*?

Ms. ISOM-CLAUSE. Yes. Thank you for the question, Representative.

Our rough estimate is at least 12 Federal court cases and over 20 cases before the IBIA have been brought since the *Carcieri* decision.

Mr. COLE. And when you get into one of these suits, and I know some of them are still ongoing, but how long does it take you to actually work through that and come to a settlement, on average?

Ms. ISOM-CLAUSE. At minimum, 2 years. We know it has been up to 10 years in some cases, and that is in Federal court. And in the IBIA it can be up to 5 years for the court to issue a decision, which can then be followed by a challenge in Federal District Court if the agency's decision is upheld.

Mr. COLE. And is there any way you could tell us how did it work pre-*Carcieri* and post-*Carcieri*?

How much more difficult, if at all, it made it for the Department to come to relatively speedy decisions in these matters?

Ms. ISOM-CLAUSE. Sure. I mean, it is difficult to estimate exactly the time because it varies so much. But typically through the process we go through title reviews, environmental reviews, regulatory reviews, and then we add on this extra layer of a legal review of whether a tribe is under a Federal jurisdiction. So, that is researching the tribe's history and documents, maybe going back to the tribe for more information, which can take some months to get through that process. And then, as you have mentioned, tacking on added litigation on the back end.

Mr. COLE. I am trying to remember, Madam Chair, and I would need to check this out, but the Indian Reorganization Act, I think, listed fewer than 200 tribes that were recognized at the time. I recall it being more like 130. So, if there are 570-odd tribes out there, we put a lot of people that for years had been moving land into trust operating under one set, and this was precedented under Democrats and Republicans, there was no difference, the Secretary was moving along. So, this is one where the Supreme Court really did throw a wrench in the works, so to speak, and made it very difficult.

I just want to end with this. I think you could multiply what these tribes have gone through dozens, if not hundreds of times, that other tribes have dealt with this. Again, it wasn't broken before. I don't think this fixed it, it made it a lot worse. And we can look at other things, but I think we ought to look at restoring what existed and worked before, and did not cost tribes huge delays and millions of dollars' worth of litigation, and not to mention the uncertainty that comes when, literally, you are contested as to whether or not your land is actually protected or not.

With that, thank you again for the hearing. I really, really appreciate it. Thank you for allowing me to participate. I yield back.

Ms. HAGEMAN. Chairman Cole, you make a compelling case, and your insight and history has been invaluable today.

Mr. COLE. Thank you.

Ms. HAGEMAN. So, thank you for being willing to join us. I know that you have other commitments, and in fact, I believe you are chairing another Committee right now, as we speak.

[Laughter.]

Mr. COLE. Yes, I am.

Ms. HAGEMAN. So, you are kind of magical, too, which is always nice.

The Chair now recognizes Chairman Westerman for 5 minutes of questioning.

Mr. WESTERMAN. Thank you, Madam Chair, and to the witnesses, and I also wanted to thank my friend, Chairman Cole, for taking time out of a very, very busy schedule this week. We

have three appropriation bills on the Floor, but you know this issue is important to him because he took time to come over to the Natural Resources Committee to be involved, as he has been very involved all along.

Ms. Isom-Clause, over the past decade there have been some that have questioned whether there are standards or limits on the Secretary's authority to place land in trust, pursuant to the Indian Reorganization Act. In previous years, the administration has pointed to its 151 regulations.

So, my question to you: Are there statutory limits on the Secretary's authority to place land into trust for tribes?

Ms. ISOM-CLAUSE. Well, the IRA, of course, authorizes the Secretary to take land into trust. It is not a limit, but an authorization. And then our regulations provide the guidelines of all of the factors that need to be met in terms of documentation and legal reviews and regulatory reviews. So, that kind of provides our limits and how we look at applications.

Mr. WESTERMAN. But can't regulations change from administration to administration?

And aren't these really self-imposed regulations?

Ms. ISOM-CLAUSE. Yes, they can change, and the Department issues the regulations. So, yes, we impose them on ourselves.

Mr. WESTERMAN. So, could the Department change the regulations and do a better job now than what is being done?

Or do you think there needs to be a bigger fix by Congress for the Department to be able to do their job correctly?

Ms. ISOM-CLAUSE. Thank you for the question.

Our testimony today is focused on *Carcieri*, which we hope it can be separated from the land-into-trust process by just kind of knocking out this threshold question of the Secretary's authority.

We did just go through a process to update our 25 CFR Part 151 regulations, which has taken place over the last few years. It has involved many tribal consultations and public comment periods, many, many comments that we received from local communities, states, and tribes, and we did our best in taking that all into account and trying to streamline the process and make it more efficient and better overall for tribes.

Mr. WESTERMAN. Talking about making it more efficient, how were concerns from states and local communities taken into consideration during the land-to-trust process?

Ms. ISOM-CLAUSE. States and local communities are given 30 days of notice and opportunity to comment, and any of those comments that are submitted are taken into account as part of the application.

Mr. WESTERMAN. I guess it can be a broad range of comments and issues. Are there requirements for the Department to take local concerns about zoning, land use, or other similar issues into consideration?

Ms. ISOM-CLAUSE. Yes, that is specifically part of the regulations, that we do take that into consideration.

And, again, the vast majority of land-into-trust applications are not controversial. They are often on-reservation, consolidating tribal land holdings. So, kind of clarifying jurisdiction and making

tribal governance simpler because consolidating their tribal homelands can make jurisdictional boundaries a little clearer.

Mr. WESTERMAN. Thank you.

Supervisor Rabbitt, the Department is supposed to provide notice to impacted state and local governments when fee-to-trust applications are submitted. In your experience, what has this actually looked like in practice?

Mr. RABBITT. Honestly, a fire drill. Thirty days is a very short period of time.

And, again, it is not just the county proper itself, because it is also those districts that serve that land. So, then we have to reach out to those districts in order to get them to be able to give feedback. Like you, we are a public body, and we need to take that information back not just from staff, but actually from the public. It is their land, as well, at that point in time, and getting that information back from the boards of those different districts.

So, 30 days, in my opinion, and I think in the counties' opinions, is woefully inadequate. We would love to see something more like 120. And I think it is one of those things where if you go slow to go fast, that you actually will have a better project, long term, if you make sure that you compile all the comments thoughtfully and not just rushed in and boilerplate it down, or comments that may go above and beyond even the scope of the project, but just wanting to cover those topics. And I think 30 days is just inadequate, 120, 90, whatever. Whatever can be more reasonable in terms of getting that information would be beneficial.

Mr. WESTERMAN. It almost seems like a process where the Department moves slow, but wants everybody else to move fast.

Mr. RABBITT. That happens.

Mr. WESTERMAN. Yes. I yield back.

Ms. HAGEMAN. Thank you. The Chair now recognizes the Ranking Member for a UC request.

Ms. LEGER FERNÁNDEZ. Madam Chairwoman, thank you.

I ask unanimous consent to submit into the record the Department of the Interior's new land acquisition regulations, which I would note were developed over a year of seeking input from state, local, and tribal governments.

Ms. HAGEMAN. So ordered. Thank you.

[The document is available for viewing at:]

https://docs.house.gov/meetings/II/II24/20240626/117352/HHRG-118-II24-20240626-SD010.pdf

Ms. LEGER FERNÁNDEZ. Madam Chair, I ask unanimous consent to enter into the record the Indian Gaming Regulatory Act which sets the standards for conducting gaming on tribal lands, just to clarify that that is indeed a separate standard, and separate from the issue of whether all tribes should be treated with parity in this process.

Ms. HAGEMAN. So ordered. Thank you. Without objection.

[The document is available for viewing at:]

https://docs.house.gov/meetings/II/II24/20240626/117352/HHRG-118-II24-20240626-SD011.pdf

Ms. HAGEMAN. I want to thank the witnesses for your valuable testimony, and I also want to thank the Members and those folks who waived on today and joined us for your questioning, as well. This is an important issue that I think we need to be addressing these long-term challenges and see if we can find some resolution for all of our tribes.

The members of the Committee may have some additional questions for the witnesses, and we will ask you to respond to these in writing if they are submitted.

Under Committee Rule 3, members of the Committee must submit such questions to the Committee Clerk by 5 p.m. on Monday, July 1, 2024, and the hearing record will be held open for 10 business days for these responses.

If there is no further business, without objection, the Subcommittee stands adjourned.

[Whereupon, at 12:24 p.m., the Subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

## Submissions for the Record by Rep. Westerman

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**
**Washington, DC**

November 14, 2006

Mr. Brad Mehaffy, REM
NEPA Compliance Officer
National Indian Gaming Commission
1441 I Street, N.W., Suite 9100
Washington, DC 20005

Re: Proposed Approval of a Management Contract for the Expansion of Existing Gaming Facility by the Poarch Band of Creek Indians, Wetumpka, Alabama

Dear Mr. Mehaffy:

On October 3 2006, the Advisory Council on Historic Preservation (ACHP) received the additional documentation regarding the referenced undertaking. ACHP requested this information in response to your notification that the National Indian Gaming Commission (NIGC) was reviewing the Poarch Band of Creek Indians' (Poarch Band) proposed management contract for expansion of the existing gaming facility on Hickory Ground, a property listed in the National Register of Historic Places. Based upon this documentation, it is apparent that activities undertaken by the Poarch Band prior to the completion of the review required by Section 106 of the National Historic Preservation Act (NHPA) have adversely affected the National Register-listed property.

According to the documentation provided, the Poarch Band sponsored extensive investigations and ultimately data recovery at Hickory Ground between 1988 and the present. The investigations included archaeological site identification surveys within the approximately 16-acre trust property and the approximately 5-acre tract of fee land. As a result, a multi-component archaeological site, Hickory Ground, was delineated, boundaries expanded, and finally, extensive archaeological data recovery was undertaken, including the removal of numerous human burial. As we understand, the recovered remains, artifacts, and site documentation are in various stages of analysis and curation by the Poarch Band's consultants.

Regrettably, the archaeological surveys and data recovery were not carried out in compliance with Section 106 of the NHPA. Since the Section 106 process must be initiated by a Federal agency prior to the initiation of project activities, it is unclear why the applicant, a tribe with a tribal historic preservation office approved by the National Park Service pursuant to Section 101(d)(2) of the NHPA, proceeded with project planning and archeological investigations. As you know, the Federal agency must consult with the State Historic Preservation Officer (SHPO), any Indian tribes that attach religious and cultural significance to historic properties affected by the undertaking, and other appropriate stakeholders, and provide adequate notification to the public in carrying out the steps of the Section 106 review.

Based on the information provided, there was no Federal agency review of the archaeological investigations carried out by the Poarch Band; no consultation with the Alabama SHPO prior to excavation of the portion of the site on fee lands, and no consultation with any other Indian tribe, particularly the Muscogee Creek Nation. The initial notification of the ACHP (see 36 CFR 800.6(a)(1)) did not occur until after the destruction of the site. Furthermore, there is no indication that the public has been notified about the nature of the undertaking and its effects on historic properties (36 CFR 800.3(e)).

In your correspondence, you indicate that the Poarch Band completed more than 90% of the archaeological data recovery within the area of potential effect for the proposed project. In the initial letter to the ACHP regarding this project, you invited us to participate in consultation to resolve the potential adverse effects of the undertaking. You have also indicated that NIGC intends to invite the Alabama SHPO to participate in any further Section 106 consultation, and have outlined steps NIGC will take to complete the Section 106 review process for any areas where there has been no land disturbance. NIGC has indicated that it proposes to develop a memorandum of agreement with all parties following consultation.

Please note, however, that Section 110(k) of the NHPA requires that

> Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106 of this Act, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant (16 U.S.C. 470h-2(k)).

While NIGC has provided documentation regarding archaeological work conducted to date, we have no indication of NIGC's views regarding the applicability of Section 110(k) and no record of the views of the Alabama SHPO and others, specifically the Muscogee Creek Nation regarding this matter. In accordance with Section 800.9(c)(2 of the ACHP's regulations, NIGC must determine whether or not the Poarch Band's actions were undertaken with the intent to avoid the requirements of Section 106. If NIGC determines that this did occur, NIGC should notify the ACHP and provide documentation specifying the circumstances under which the adverse effects to the historic property occurred and the degree of damage to the integrity of the historic property. This documentation must include any views obtained from the applicant, SHPO, and other parties known to be interested in the undertaking. Within thirty days of receiving such information, unless otherwise agreed to by NIGC, the ACHP will provide the agency with its opinion as to whether circumstances justify NIGC granting its approval to the applicant and any possible mitigation of the adverse effect. If, after considering the views of the ACHP, NIGC determines to grant its approval, NIGC should consult further with the ACHP and other consulting parties to conclude a memorandum of agreement for treatment of the remaining effects to historic properties resulting from the project.

Should you have any questions or wish to discuss this matter further, please contact Valerie Hauser, Native American Program Coordinator.

Sincerely,

DON KLIMA,
*Office of Federal Agency Programs*

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**COALITION OF LARGE TRIBES**

June 21, 2024

Hon. Brian Schatz, Chair
Hon. Lisa Murkowski, Vice Chair
Senate Committee on Indian Affairs
838 Hart Senate Building
Washington, DC 20510

Hon. Bruce Westerman, Chair
Hon. Raul Grijalva, Ranking Member
House Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Re: Coalition of Large Tribes Opposition to H.R. 6180/S. 3263

Dear Chair Schatz, Vice Chair Murkowski, Chair Westerman, and Ranking Member Grijalva:

The Coalition of Large Tribes (COLT) is an intertribal organization representing the interests of the more than 50 tribes with reservations of 100,000 acres or more, constituting more than 95% of Indian lands in the United States and encompassing approximately one half of the Native American population. We write now to voice our opposition to H.R. 6180/S. 3263. As an organization representing multiple tribes, we are concerned that this legislation wrongfully seeks to benefit one tribe and will set a precedent that harms hundreds of others. For this reason, we oppose this proposed legislation.

To be sure, how to address the Supreme Court's 2008 decision in *Carcieri v. Salazar* has generated a good deal of debate and controversy over the last 16 years. While many may disagree on how to effectuate a proper *Carcieri* fix, we believe strongly that the solution is not singling out one tribe for favorable treatment to the detriment of others. The Court's *Carcieri* decision affects a multitude of tribes, and yet this proposed legislation seeks only to help the tribe that already has the most resources. No doubt, should this proposed legislation become law, the multitude of other tribes excluded from this legislation—whose need for a *Carcieri* fix is much greater—will be left at a significant disadvantage. The passage of single-tribe legislation will inevitably diminish the political will to achieve additional *Carcieri* fixes, and it sets a precedent that will require every affected tribe to seek to address *Carcieri* through individual legislation. There is no justification for passing a one-off piece of legislation to help the wealthiest of tribes when Indian Country and Congress should be working together towards a solution that will help all tribes affected by the Court's decision in *Carcieri*.

Second, the passage of this legislation would also set a dangerous precedent for sacred sites by rewarding the tribe that has used gaming as a weapon to destroy and desecrate the burial grounds of other tribes and, in doing so, incentivize more such acts in the future. There are many tribes negatively impacted by *Carcieri* that have not engaged in violations of federal law and have not defiled sacred sites listed on the National Register of Historic Places. Thus, if any tribe is to be rewarded in such an exclusive manner, it should not be the tribe whose course of conduct violates some of the most fundamentally basic moral codes understood by sister tribes throughout Indian Country.

Finally, while we can all agree that a *Carcieri* fix is essential, the desecration of Hickory Ground in Wetumpka, Alabama, serves to demonstrate why any proposed *Carcieri* fix legislation must include protections for sacred sites located within the historical homelands of removed tribes. The heresy of Hickory Ground was shocking and demoralizing. It would be beyond shameful to create a law that invites the destruction of a Native sacred site protected on the National Register of Historic Places to happen again. Thus, any proposed legislation seeking to address *Carcieri* must provide removed tribes with the ability and authority to protect their sacred sites and the burials of their relatives within their homelands. We all agree that gaming is a critical form of economic development that supports tribal sovereignty and tribal self-governance. No one wants to stand in the way of a tribe's ability to

engage in gaming. But there is no need for any tribe to engage in gaming on another tribe's burial ground. Thus, protections to prevent repeating what happened at Hickory Ground are critical to any proposed *Carcieri* fix legislation.

Thank you for considering the position and perspective of COLT. We hope you will move away from H.R. 6180 and S. 3263 and instead focus on legislation that will benefit all tribes in Indian Country, not one, and that you will include protection for sacred sites in any land legislation. This is the unanimous policy of COLT and we hope you afford our views of our broad consensus the weight they deserve.

Sincerely,

HON. MARVIN WEATHERWAX, JR.,
*Chairman, and*
*Member, Blackfeet Tribal Business Council*

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TO:
F. Lawerence Oaks, Executive Director
Alabama Historical Commission
725 Monroe St.
Montgomery, Alabama 36130

FROM:
Creek Nation East of the Mississippi Inc.
Poarch Band of Creeks
Route 3, Box 243-A
Atmore, Alabama 36502

Re: U.S. Department of Interior (HCRS) letter 712

Dear Sir:

Application is hereby made for funds from the Historic Preservation Discretionary Fund Grant-in-Aid program. This application should be considered under Category #1 as the proposed undertaking both assists in preserving part of a historic district of Native Americans and results in the direct participation of Native American Groups.

Hickory Ground (1-Ee-89) is of major importance in the history of the Muscogee (Creek) Nation. It has supplied many of the important leaders in Creek history. One of particular note was Alexander McGillvray.

"O-Che-au-po-fau"; from the Muskogean "Oche-ub", a hickory tree, and "po-fau", in or among, called by the traders "Hickory Ground" (Owen 1921:1088). Hickory Ground was located on the east bank of the Coosa River, south of the present-day Wetumpka approximately two miles above the French Fort Toulouse (Pickett 1962:229,343,357; Owen 1921:1088; Hemperly 1969:224; Brewer 1955:25; Swanton 1952:162).

Hickory Ground was an Upper Creek town and by tradition was originally inhabited by the Coosa or Abihkas (Corkran 1967:307; Owen 1921:1088; Swanton 1922:242). It was here that Lachland McGillvray married Sehoy Marchand in 1745, and established a trading house (Brewer 1955:15; Debo 1967:38; Swanton 1922:242). Lachland and Sehoy were the parents of Alexander McGillvray an important Creek leader having special trade relationships with the Panton Leslie and Company trading house in Pensacola.

With the French established at Ft. Toulouse McGillvray's residence at Hickory Ground was the center of Spanish, French, British and American intrigue. Don Pedro Olivier, a frenchman in the Spanish Service, spent many months at Hickory Ground (Debo 1967:52; Pickett 1962:413). Hickory Ground was loyal to the British during the revolutionary war, and was a place of refuge for many loyalists (Brewer 1955:25-26; Corkran 1967:307-308). President Washington sent Col. Willett to Hickory Ground to encourage Alexander McGillvray to come to the capitol at New York for treaty negotiations (Brewer 1955:27; Pound 1951:58). Hickory Ground was visited by Benjamin Hawkins, the first american agent to the Creeks, many times (Pound 1951;111; Hemperly 1969:224; Owen 1921:1088; Swanton 1952:154).

During the Creek War of 1813–1814, Otchiapofa was listed as a hostile Creek town, and was visited by Tecumseh. Here he was able to enlist more followers (Halbert and Ball 1969;68,79,99-100; Pickett 1962:511). As a hostile Creek town Hickory Ground was not un-noticed by Andrew Jackson. The Jackson Trace was opened primarily so Jackson could move his army to Hickory Ground (Brewer 1955:15; Pickett 1962:592).

From the above it is apparent that Hickory Ground was involved in nearly all the major historic events in the southeast before the removal of Creeks from Alabama in 1836. With the proper techniques and data recovery methods Creek involvement in these events can be studied. More importantly the effects of these activities upon the Creek Nation can be understood. Hickory Ground has the potential of measuring changes in the political, social, and economic structures of the Creek people in pre-removal times.

As outlined by the Secretary of the Interior this project is designed to meet the general and specific standards for acquisition as applies to this particular site.

**THE USE OF THE LAND**

Acquisition of the property is principally a protection measure. Acquisition will prevent development on the property. All historic structures on the site have been destroyed. What is left consists of below surface remains. Through proper archaeological methods and techniques these below surface features can reveal a tremendous amount of information about the Creek way of life in the late 1700's and early

18OO's. Upon gaining fee-simple title to the land as called for in this proposal plans will be developed to minimize continued destruction of the archaeological resources. Prior to any type of development of the property a scientifically sound archaeological program will be conducted to mitigate or minimize effects upon the historic resources.

The property will serve as valuable resource for cultural enrichment of Creek people. The site can serve as a place where classes of Creek culture may be held. The Creek people in Oklahoma pride in heritage and ties to original homeland can only be enhanced. There is still an existing Hickory Ground tribal town in Oklahoma. They will be pleased to know their home in Alabama is being preserved. The site may serve as an open air classroom where Creek youth can learn of their heritage. Interpretive programs can be developed around the vast array of history connected with Hickory Ground. The Creek Nation East of the Mississippi, Inc. (Poarch Band of Creeks) has already conducted CETA sponsored training in archaeological methods for Creek youth. The Hickory Ground site will continue to enhance their understanding of their history, without excavation.

**SPECIFIC STANDARDS OF PROTECTION**

For most cases land in the hands of Realtors and developers is viewed from the prospective of income producing property. At this location in order to have a commercial development the land will have to be cleared and leveled. In order to halt the destruction planned for the site and insure against future destruction funds for acquisition of fee simple title are requested.

As the landowner is very much interested in developing the property for commercial purposes it is felt acquisition of fee simple title is necessary to prevent destruction of the site. The land was scheduled for commercial development. Plans for development called for construction of Recreation facilities and multi-family dwellings.

To the immediate east of the property is existing commercial property. These commercial properties include a Hardees and local restaurant. To the immediate south ajoining the land of the site, a contract has been entered into with an option to by agreed upon between Aeronov Corporation and the landowner, Mr. W.D. DeBardeleben. This agreement is based upon Aeronov's plans for construction of a Kmart store upon the property.

Mr. Gary Skaret and the landowner have plans for constructing apartments for low-income and handicapped persons upon the land to the immediate west of the proposed Kmart and to the immediate south of the Hickory Ground site.

From the forgoing it is evident that the surrounding area, and indeed the land, the site itself, is prime development land and may very well be bulldozed and cleared soon.

The property is in the process of being nominated to the National Register of Historic Places. The Alabama State Historic Preservation Officer has determined the property eligible and the required forms are now being processed by the Keeper of the National Register.

Project does conform to Secretary of Interior Standard for Historic preservation projects. Specific end products of the project is to provide protection for a particularly important site in Creek History, while providing a foundation for innovative educational programs. Hickory Grounds may also be a place where Creeks from Oklahoma may return and visit their ancestral home.

Upon approval of the proposal the site will be maintained almost entirely by minority groups. One half the appraised value will be donated to Creek Nation Foundation, Inc. in Oklahoma. The grants-in-aid proposal is designed to be awarded to Creek Nation East of the Mississippi, Inc. (Poarch Band of Creeks). Both are Native American groups. The Creek Nation Foundation, Inc. represents western Creeks that were removed to Oklahoma from Alabama. While Creek Nation East of the Mississippi, Inc. (Poarch Band of Creeks) represents a group of Creeks that were excluded from removal and remained in Alabama in the Mobile Region.

Under this plan the property will be jointly owned by both groups of Creeks. They will be equally responsible for the protection and care of the site. This is an opportunity for the Creek people to enter into cultural resource management by guarding and preserving a site directly connected with their culture history.

The significant aspect of this project is the protection by acquisition of a historic Creek site by Creeks. Archaeological resources, directly related to Native Americans have for the most part been managed and investigated by non-Native Americans. This is an opportunity for Native Americans to manage their archaeological records. Presently on staff with the Creek Nation East of the Mississippi, Inc. (Poarch Band of Creeks) is Larry D. Haikey who has a Master's degree in Anthropology. Mr. Haikey is well trained and aware of the proper management of archaeological

resources. He will act as advisor to the tribal councils on plans for permanent protection of the site.

Time for complete acquisition of the site is not expected to take longer than forty-five days. This time schedule includes time necessary for mailing contracts between Oklahoma and Alabama. Both tribal groups will have adequate time for review by respective lawyers and approval of council meetings.

The Creek Nation East of the Mississippi, Inc. (Poarch Band of Creeks) agrees to the provisions of covenants and letter of agreements. They are also aware of the information needed for an acquisition Project Completion Report. A detailed completion report will be the responsibility of Creek Nation East of the Mississippi, Inc., and will be done by Mr. Haikey as a part of his normal job activities, at no cost to the Heritage Conservation and Recreation Service (HCRS) Project.

Consultant and technical assistance will be in the nature of legal services. The property deed and other agreements will need to be legally sound with respects to the by-laws and intents of the corporations. These legal services will be the responsibilities of the respective tribal groups.

Mr. John Charloe, Attorney for Creek Nation Office of Justice, will handle legal matters for Creek Nation Foundation, Inc. in Oklahoma. Mrs. Hollis Geer, Legal Services Corporation of Alabama, will handle matters for Creek Nation East of the Mississippi, Inc. Technical advice concerning the site as to maintaining its archaeological integrity will be handled by Larry Haikey and other archaeologists with interest in Creek cultural history.

Hickory Ground fits in a historic preservation district which includes the area of Wetumpka, Alabama. There have been numerous maps of Creek sites referenced in historic documents as being located in this area (Swanton 1922; Owen 1921). Swanton (1922) provides numerous maps of Creek Tribal town locations at various times in their history. One, (Appendix A) is partially reproduced for enclosure with this proposal, it shows the location of Hickory Ground as concerns this project and in the time period for which the site has been dated. As is evidenced by the other town locations on the map the area was heavily populated by Creek in the pre-removal period. Some of the other towns have been located and are on record in Alabama archaeological site files. An item of importance concerning Hickory Ground is the immediacy of its near destruction. The others that have been located are not as close to destruction at this time.

A matter of great importance about this project is the involvement of Creek People through their government in the management and protection of their archaeological resources. It can be safely said that anthropology and archaeology have had a bad name among Native American groups. This has stemmed from the archaeologists being more concerned in the research potential of the sites rather than the significance as they relate to Native Americans. The excavation and research has been carried out without very much returned to the Indian community, causing Native Americans to distrust the motives of archaeologists.

The Creek Nation is attempting to take an active role in management of their cultural resources. In the winter of 1978 and 1979 the Creek Nation East of the Mississippi cooperated with the University of Alabama in Birmingham on an archaeological excavation to test an area of burial remains. Attention was called to the site after treasure hunters removed a couple of burials.

In the summer of 1979 the Creek Nation East of the Mississippi conducted a CETA Title VI training program in archaeology. The main emphasis of this program was to train young Creek people in the proper techniques of archaeology. It was hoped that some of these young people would continue into the field and help preserve Creek archaeological resources.

Destruction of archaeological resources in Alabama adversely effects the profession of Archaeology, while destroying the cultural history of Creek people. There is an increased recognition in the field of archaeology of the need for Native Americans and archaeologists to work together in the cultural resource management area (Lipe 1977:22-23; Schiffer and Gumerman 1977:586). Creek People feel that this proposed project would do a great deal toward bridging the communication gap between archaeology and Native Americans.

**MUSCOGEE (CREEK) NATION**

July 9, 2024

Hon. Bruce Westerman, Chair
Hon. Raul Grijalva, Ranking Member
House Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Re: H.R. 6180

Dear Chair Westerman and Ranking Member Grijalva:

As the Principal Chief of the Muscogee (Creek) Nation, I write to formally submit my Nation's Written Testimony for the record in opposition to H.R. 6180. The Muscogee (Creek) Nation opposes this legislation for five reasons: (1) the legislation will selectively help one Tribe to the detriment of others; (2) the legislation rewards one Tribe for conduct that is morally reprehensible and violative of the cultural code all other sister tribes collectively abide; (3) the legislation encourages other Tribes to engage in similar immoral conduct, creating a significant threat that more sacred sites will be destroyed in the homelands of forcibly removed Tribal Nations, (4) the advocacy for this legislation has been predicated on lies and falsehoods, and (5) the legislation would effectively grant a people "successor in interest" status to treaties that an entirely separate Tribal Nation signed with the United States. For these reasons, we oppose H.R. 6180. The Muscogee (Creek) Nation advocates for a clean *Carcieri* fix for *all* Tribal Nations that empowers removed or displaced Tribal Nations to protect their sacred sites in their homelands.

The advocacy for the advancement of H.R. 6180 is full of falsehoods, and we are providing documentation that demonstrates the nefarious and misleading nature of Poarch's propaganda. As detailed in this testimony, the land Poarch is asking Congress to confirm as their trust lands is the homeland of the Muscogee (Creek) Nation, including a ceremonial site and burial ground for one of Muscogee (Creek) Nation's tribal towns, Hickory Ground. Poarch is not part of the Muscogee (Creek) Nation and they are not successors-in-interest to our treaties. They descend from individuals who willfully divorced themselves from the Muscogee (Creek) Nation in the early 1800s in exchange for land in southwest Alabama, where they historically lived. Ironically, several of the treaties Poarch seeks to claim as their own are treaties the Muscogee (Creek) Nation was coerced into signing with the United States, in part, because Poarch's ancestors fought with Andrew Jackson against our ancestors. Having betrayed us, they relinquished their affiliation with the Muscogee (Creek) Nation, avoided removal, and received land grants near Tensaw, Alabama.

Poarch's attacks on the Muscogee (Creek) Nation continue today, not by use of bayonets, but by bulldozers and backroom casino deals. Their claims to our lands are both legally and morally indefensible. They are not us.

We hope that by submitting this testimony, we can give a voice to the Muscogee (Creek) Nation and Hickory Ground, urging you to seriously consider the egregious, immoral and unlawful activities that H.R. 6180 would condone.

## I. The Legislation Will Selectively Help One Tribe to the Detriment of Others

First, there can be no question that the Supreme Court's decision in *Carcieri v. Salazar* has prevented many Tribal Nations from taking land into trust. While trust lands can be used for economic development, the primary purpose of the United States holding lands in trust on behalf of tribes is to protect, preserve and restore tribal homelands, including those of cultural and historical significance. The Muscogee (Creek) Nation supports a clean fix to address *Carcieri*, but opposes H.R. 6180 which singles out one Tribe at the expense of others. We have spoken to many Tribes who fear that if legislation is passed for one specific Tribe—instead of all Tribal Nations throughout Indian Country—it will set a harmful precedent that will require Tribes to get similar legislation in order to protect or restore their own tribal homelands.[1] This would not only be burdensome to Congress, it would create two classes of Tribes—those with the resources to advocate for legislation to address the negative impacts of *Carcieri* and those without. Should this proposed legislation

[1] Resolutions opposing the Poarch legislation and supporting a clean *Carcieri* fix are attached as an appendix to this testimony.

become law, the multitude of other Tribes excluded from this legislation—whose need for a *Carcieri* fix is much greater—will be left at a significant disadvantage. A congressional policy should not be established where the wealthiest Tribes get to cut the line with a one-off piece of legislation, while the Tribes who need the most help are left stranded. Indian Country and Congress should be working together towards a solution that will help all Tribes affected by the Court's decision in *Carcieri*.

**II. The Legislation Rewards Conduct that is Morally Reprehensible**

Second, even if helping one Tribe to the detriment of others could somehow be justified, Congress should never condone, legitimize, or excuse taking land into trust to desecrate the sacred site and burial ground of a separate Tribal Nation. It contradicts the primary purpose established in the Indian Reorganization Act for taking lands into trust, as well as the treaty rights of numerous removed Tribal Nations. It would also undermine efforts by the rightful successors to those sacred lands and burial grounds from taking action to protect and preserve these critical sites.

The Poarch Band purchased Hickory Ground, a sacred site and ceremonial ground of the Muscogee (Creek) Nation in present-day Wetumpka, Alabama that we were forced at gunpoint to abandon during removal and were subsequently denied the right to preserve, protect, or even visit for over 150 years after. Poarch could only purchase this sacred site within our treaty territory and homeland because Poarch received a taxpayer-funded historic preservation grant. Poarch received this federal grant because they promised to protect and preserve the Hickory Ground cultural and ceremonial site on behalf of the Muscogee (Creek) Nation. In its application for federal funds to buy Hickory Ground, Poarch stated that its "[a]cquisition of the property is principally a protection measure."[2] Poarch further stated that its "[a]cquisition would prevent development on the property." Indeed, Poarch told the federal government that if the government gave Poarch money to purchase Hickory Ground, then:

> The property will serve as a valuable resource for the cultural enrichment of the Creek people. . . . The Creek people in Oklahoma['s] pride in heritage and ties to their original homeland can only be enhanced. There is still an existing Hickory Ground tribal town in Oklahoma. ***They will be pleased to know their home in Alabama is being preserved***. . . . The Hickory Ground site will continue to enhance their understanding of their history, ***without excavation***.

Poarch proclaimed that "[d]estruction of archaeological resources in Alabama . . . destroy[s] the cultural history of Creek people." Ultimately, Poarch told the federal government that its acquisition of Hickory Ground was "necessary to prevent destruction of the site." Consequently, Poarch successfully bid to receive federal funding to purchase Hickory Ground.

But just as soon as the federal government placed our sacred site in trust for the Poarch, Poarch proceeded to illegally disinter our ancestors' remains and cultural artifacts. After breaking their promise to preserve the grounds to create space for a bingo hall, they eventually ruined Hickory Ground by bulldozing the site for a 26-story multi-million dollar luxury casino hotel and resort. All in all, Poarch removed 57 of our relatives from their final resting place. Poarch placed their remains in garbage bags and sent them off to be stored at a university. Our ancestors have never been returned and many remain stored in a garden shed and in boxes at a university because Poarch refuses to allow them to be repatriated. All of this was done over the strenuous objections of the Muscogee (Creek) Nation and in violation of numerous laws, and contrary to universal principles of human decency. Poarch has yet to be held accountable for its heinous, reprehensible conduct, and now brazenly seeks to be rewarded for their behavior through a Congressional act. Although gaming is a critical component of tribal self-determination, allowing one Tribal Nation to engage in gaming on another Tribal Nation's burial ground flies in the face of the protections afforded when lands are placed into trust.

**III. The Legislation Encourages Others to Follow in Poarch's Footsteps**

Indeed, enacting this legislation would condone Poarch's behavior and encourage others to follow in Poarch's footsteps. The roadmap created by this legislation would be very clear to any group of people living in the historical treaty territory of a

[2] Poarch's application for the federal funds used to purchase Hickory Ground is attached as an appendix to this testimony.

removed Tribal Nation. H.R. 6180 would encourage groups of people claiming Native ancestry to do the following:

- **Step One:** Claim to be a tribe based on the fact that current members of the group descend from one or more individuals who politically divorced themselves from a historic Tribal Nation;
- **Step Two:** Ask for federal preservation funds to buy one of the removed Tribal Nation's historic sites and burial grounds—under the pretenses that you will protect it;
- **Step Three:** Petition the federal government to make you a tribe (and thus become a federally recognized tribe);
- **Step Four:** Desecrate the sacred site and exhume the removed Tribal Nation's ancestors to build a multi-million dollar casino; and
- **Step Five:** Use the millions of dollars in revenue made from the casino built on burial grounds to lobby Congress for legislation entitling you to take more land into trust within the removed Tribal Nation's historic treaty territory with no provisions that protect sacred sites or Native burial grounds.

The five-step plan laid out by Poarch is immoral, to be sure. But the incentive to make money is real, and thus the roadmap laid out by Poarch is likely to be repeated by others. There is no need to allow Poarch to complete step five of their roadmap/plan. Doing so will undoubtedly encourage others to follow suit.

**IV. The Advocacy for This Legislation is Based on Lies and Falsehoods**

In addition to having legitimate policy, legal, and historical concerns with H.R. 6180, we have grave moral concerns that Poarch is disseminating statements that are demonstrably and purposefully false. While policy and legal disagreements are common and to be expected throughout the legislative process, we feel compelled to warn you that the papers in support of H.R. 6180 being pushed by Poarch are predicated on lies. Among them are the statements below in a white paper circulated to the members of your committee.

> *"Unbeknownst to the Tribe at the time of purchase, archaeological evidence later suggested the presence of a Creek ceremonial ground on property . . . ."*

**False.** As discussed in greater detail above, Poarch knew they were purchasing a "Creek ceremonial ground" *before* they purchased Hickory Ground. When asking the federal government for funds to purchase the site, Poarch told the federal government the site was a sacred ceremonial ground, and that they would protect it. Specifically, *before* purchasing the site, Poarch told the federal government:

- "Hickory Ground (1-Ee-89) is of major importance in the history of the Muscogee (Creek) Nation."
- "The property is in the process of being nominated to the National Register of Historic Places."
- "In order to halt the destruction planned for the site and to insure [sic] against future destruction, funds for acquisition of fee simple title are requested."
- "Acquisition of the property is principally a protection measure."
- "Acquisition would prevent development on the property."
- "The property will serve as a valuable resource for cultural enrichment of Creek people. . . . The Creek people in Oklahoma['s] pride in heritage and ties to original homeland can only be enhanced. There is still an existing Hickory Ground tribal town in Oklahoma. They will be pleased to know their home in Alabama is being preserved. . . . The Hickory Ground site will continue to enhance their understanding of their history, *without excavation*."
- "Hickory Grounds may also be a place where Creeks from Oklahoma may return and visit their ancestral home."
- A trained anthropologist would "act as an advisor to the tribal councils on plans for permanent protection of the site."
- "Destruction of archaeological resources in Alabama . . . destroy[s] the cultural history of Creek people."
- Poarch acquisition is "necessary to prevent destruction of the site."
- "In order to halt the destruction planned for the site and to insure against future destruction, funds for acquisition of fee simple title are requested."

Poarch is telling this Committee that Poarch purchased Hickory Ground without the knowledge that Hickory Ground was "a Creek ceremonial ground," but that is a blatant lie. Hickory Ground's significant cultural status was not "***unbeknownst***" to Poarch. Poarch knew about Hickory Ground's significant cultural status, and Poarch used that knowledge to convince the federal government to give it federal preservation funding on the pretense that Poarch would protect it.

> *"Muscogee has chosen to ignore what sovereignty means as it works to undermine tribal sovereignty in its attacks on the Poarch Band of Creek Indians."*

**False.** Muscogee (Creek) Nation is not attacking tribal sovereignty. Tribal sovereignty is the inherent right to exercise your treaty right to self-govern as a Tribal Nation. Tribal sovereignty is not the right to lie and destroy the sacred site of a separate Tribal Nation. Muscogee (Creek) Nation's fight to protect the Nation's sacred sites and burial grounds does not violate tribal sovereignty; it affirms it. The sovereignty of Tribal Nations flows from our culture, and when we destroy it for profit—as Poarch has done—we undermine it. Indeed, Poarch's conduct threatens the inherent sovereignty of all Tribal Nations.

> *"A federal district court already dismissed Muscogee's lawsuit."*

**Misleading.** While the United States District Court, Middle District of Alabama, dismissed the Nation's lawsuit, the Court's dismissal was not based on the merits of the Nation's claims, and the case is currently before the Eleventh Circuit Court of Appeals. The District Court determined Poarch officials could not be held liable for their violations of federal law based on a rarely applied and questionable Supreme Court decision known as *Coeur d'Alene*—a case that most lower courts no longer follow since it allows state and tribal officials to violate federal law with impunity. There is a good chance the Eleventh Circuit Court of Appeals will reverse the lower court's outlier of a ruling, and there is no reason to let Poarch off the hook before the Nation has had its day in court.[3]

> *"Nevertheless. the Tribe took great care to leave the ceremonial grounds undisturbed."*

**False.** Poarch did not leave Hickory Ground "undisturbed." Poarch brought in bulldozers and razed the ground. Poarch dug up 57 of our relatives and put their bodies in garbage bags and plastic bins in a storage shed. Poarch broke the promises it made in its federal application for grant funds and instead of protecting Hickory Ground, Poarch built a 246 million dollar casino on top of it. This is not leaving Hickory Ground "undisturbed."

> *"Prior to the archaeological study, there was no visible evidence of a Creek ceremonial ground at the site."*

**False.** Archaeologist David Chase of Auburn University discovered the Hickory Ground site in 1968 and due to its archaeological and historical significance, it was placed on the National Register of Historic Places on March 10, 1980. In its application to the federal government for the money Poarch needed to purchase the site, Poarch told the federal government it wanted to buy the land because it was Hickory Ground, and Poarch intended to protect it. Perhaps Poarch believes that constructing a narrative that the burials of Mvskoke ancestors were not visible prior to Poarch's digging will somehow exonerate Poarch for its actions, but the truth is that Poarch knew it was buying a culturally significant and historic site and used the land's status as a basis for asking the federal government for the funds Poarch needed to buy it.

> *"In accordance with our laws and traditions, any remains discovered outside of the ceremonial grounds were interred adjacent to the site with prayer and ceremony in April of 2013."*

**False.** First, the entire site of Hickory Ground Tribal Town is a ceremonial site. It is not clear what Poarch means by stating that remains were "discovered outside of the ceremonial grounds" since the relatives whose remains Poarch exhumed were buried *at the Hickory Ground Tribal Town and within the ceremonial grounds*, the site Poarch used federal preservation funds to purchase. Perhaps Poarch has drawn some sort of artificial boundary line around the areas where Poarch disturbed graves, but that line has no basis in Mvskoke culture or history. Burials were disturbed in all parts of the Hickory Ground Tribal Town.

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[3] We note that the Department of the Interior (DOI) is a defendant in the lawsuit, and further, that the DOI did not mention this fact when testifying in favor of H.R. 6180, a bill that would absolve the DOI of a claim brought against the agency in a federal lawsuit.

Second, less than one week prior to the "burial" Poarch refers to in April 2013, Muscogee (Creek) Nation and Mekko Thompson wrote to Poarch, asking them to hold off on "burying" Mekko Thompson's ancestors until Hickory Ground could consult and provide guidance on the proper way to rebury the ancestors Poarch wrongfully exhumed. Instead of repatriating Mekko Thompson's relatives to him, Poarch put them in the ground pursuant to what Poarch calls a "ceremony." It is hard to imagine what Poarch considers to be a "ceremony" or what kind of "prayer" Poarch offered in burying Mekko Thompson's relatives without his consent or involvement. Furthermore, Auburn University has confirmed—during the course of the current litigation—that not *all* of our relatives have been reburied by Poarch. Instead, several remain at Auburn, but Auburn won't return them to us because of active litigation and Auburn says Poarch has taken the position that our relatives should not be returned to us. Poarch has their billion dollar casino. The least they could do is release the collections at Auburn and allow us to rebury our relatives and their belongings in accordance with Mvskoke culture and ceremony.

> *"The Poarch Tribe voluntarily agreed, without compensation, to preserve and protect the northern 17 acres of the trust property . . ."*

**Misleading.** The fact that Poarch, in 2017, agreed to preserve a portion of the property is misleading because, in applying for the funds to buy the site in the first place, Poarch promised to protect the entire site. They received federal taxpayer funds in exchange for their promise to protect the entire site. Why, in 2017, should they expect to receive compensation to do something they promised to do in exchange for federal taxpayer dollars in 1980?

> *"The Tribe has complied with all applicable federal, historic, and cultural preservation laws pertaining to this property."*

**False.** This is the subject of the current lawsuit, and no decision on the merits by a court of law has yet to be issued. But even without a court decision determining whether Poarch complied, federal agencies noted almost two decades ago that Poarch was violating federal cultural preservation laws. For instance, on November 14, 2006, the Advisory Council on Historic Preservation (ACHP) noted that "there was no Federal agency review of the archaeological investigations carried out by the Poarch Band" and "no consultation with any other Indian tribe, particularly the Muscogee Creek Nation" in violation of the National Historic Preservation Act. Indeed, the ACHP inferred that "Poarch Band's actions were undertaken with the intent to avoid the requirements of Section 106." This is not compliance.[4]

**V. The Legislation Seeks to Backdoor Poarch into "Successor in Interest" Status for Muscogee (Creek) Nation's Treaties**

Despite claiming to be a successor in interest at the hearing and in its written testimony, Poarch is *not* a successor in interest to any of the treaties the Muscogee (Creek) Nation signed with the United States since, at the time of signing, Poarch did not exist as a tribe, entity, or even an organized group. The fact that a group of people claiming Creek ancestry organized themselves and asked to become a tribe in 1980 does not automatically qualify them to be a successor in interest to the treaties the Muscogee (Creek) Nation has signed.

In fact, historically, the people who today call themselves "Poarch" chose to politically divorce themselves from the Muscogee (Creek) Nation. When Andrew Jackson sought to exterminate the "Upper Creeks" (citizens of the Muscogee (Creek) Nation who had not intermarried with whites and who opposed removal and slavery), Poarch's ancestors teamed up with General Jackson and assisted in his attempts to wipe out the full-blood Muscogee (Creek) Nation citizens. In exchange for supporting Andrew Jackson, they were given land grants in and near Tensaw. Indeed, the Department of the Interior's acknowledgment recommendation and evaluation states that Poarch's ancestors fought on the side of Andrew Jackson during the "Creek War." *See* U.S. Dep't of the Interior, Bureau of Indian Affairs, Memorandum on recommendation and summary evidence for proposed finding for Federal acknowledgment of the Poarch Band of Creeks of Alabama pursuant to 25 C.F.R. 83 (Dec. 29, 1983) at 13, https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/013_prchcr_AL/013_pf.pdf ("many of the present group's ancestors, including Lynn McGhee, received grants for their land in the Tensaw area from the United States for their support in the Creek War."); *see id*. at 16 ("the lands they chose were . . . close to the Tensaw/Little River area"). By agreeing to stay, and

[4] The Letter from ACHP to National Indian Gaming Commission NEPA Compliance Officer (Nov. 14, 2006), is attached herein in the appendix.

by accepting these land grants, they gave up all political rights they had previously held as Muscogee (Creek) Nation citizens. To be clear, by betraying our Nation and fighting on the side of the United States against our Nation, they were allowed to avoid the violent, forced removal our Nation suffered on the Trail of Tears. Having betrayed and divorced themselves from our Nation, they have no right to claim any interest in the treaties we signed with the United States.

It is, therefore, disturbing that H.R. 6180 goes beyond simply stating that the Poarch Band shall be considered as under Federal jurisdiction in 1934 (they were not). The bill also ratifies and confirms all lands taken into trust prior to enactment, including those outside of Poarch's geographic area and within the treaty territory homelands of the Muscogee (Creek) Nation. Should Poarch ever receive legislation allowing lands to be taken into trust, the legislation should limit that authority to the geographic area their federal recognition was predicated on. When the individuals who called themselves "Poarch Creek" submitted an application to become a Tribe in 1980,[5] they were very explicit in telling the federal government that their ancestral ties to the Southeast are limited to the areas surrounding Tensaw and Atmore in present-day southwestern Alabama. Poarch's federal acknowledgment recommendation and evaluation states that the individuals who identify as Poarch have "lived in the same general vicinity in southwestern Alabama within an eighteen-mile radius for a time period beginning in the late 1700s to the present."[6]

H.R. 6180 attempts to put land into trust for the Poarch Band *outside* of their historical territory and within the historic treaty territory of the Muscogee (Creek) Nation. Given Poarch's horrific track record and atrocious treatment of the Muscogee (Creek) Nation's sacred sites, there is no reason to give Poarch carte blanche ability to take more land into trust within our Nation's historic boundaries. Indeed, doing so would violate the treaties our Nation signed with the United States. The United States has treaty trust duties and responsibilities to the Muscogee (Creek) Nation. One of those duties is the duty to uphold, protect, and preserve the sacred sites our Nation was forced to leave behind when we were forcibly removed from our homeland on the Trail of Tears. That treaty and the trust duty the United States owes to the Muscogee (Creek) Nation supersedes the Poarch Band's desire to expand gaming operations within our Nation's homelands and to the detriment of our cultural history.

**VI. Conclusion**

Ultimately, Poarch's destruction of Hickory Ground in Wetumpka, Alabama, demonstrates why removed or displaced Tribal Nations must be empowered to protect the sacred places and ancestral burials they were forced to leave behind. The destruction at Hickory Ground is heartbreaking and demoralizing. When the law allows for a self-identified group of people to take control of the sacred sites and burial grounds that were never theirs, and empowers that group to subsequently excavate graves and desecrate those sites, it fails every removed or displaced Tribal Nation in America. Comprehensive legislation is essential to ensure all Tribes can restore their land base without concern for the destruction of their most sacred sites. We cannot afford to let the destruction of another Native, historic, sacred site to take place. Thus, any proposed legislation seeking to address *Carcieri* must provide removed Tribes with the ability and authority to protect their sacred sites and the burials of their relatives within their homelands.

The Muscogee (Creek) Nation stands ready to work with all of Indian Country and Congress to achieve a clean, comprehensive *Carcieri* fix that applies to all Tribal Nations and empowers Tribal Nations to both restore their land base and protect sacred sites within the homelands from which they were forcibly removed.

Respectfully submitted,

DAVID W. HILL,
*Principal Chief*

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[5] Poarch initially submitted its application under the name "the Muscogee Nation east of the Mississippi. Inc."

[6] U.S. Dep't of the Interior, Bureau of Indian Affairs, Memorandum on recommendation and summary evidence for proposed finding for Federal acknowledgment of the Poarch Band of Creeks of Alabama pursuant to 25 C.F.R. 83 (Dec. 29, 1983) at 2, https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/013_prchcr_AL/013_pf.pdf.

**ROBB & ROSS**
**Mill Valley, California**

June 21, 2024

Hon. Harriet M. Hageman
Hon. Teresa Leger Fernandez
House Natural Resources Subcommittee on Indian and Insular Affairs
1324 Longworth House Office Building
Washington, DC 20515

Re: Testimony for the Record—H.R. 1208 (Cole), To amend the Act of June 18, 1934

Dear Chairwoman Hageman and Ranking Member Fernandez:

I write on behalf of Artichoke Joe's, a California cardroom, located in San Bruno, California to offer testimony for the record regarding H.R. 1208, a bill with the stated purpose of "reaffirming" the authority of the Secretary of the Interior to take land into trust for Indian Tribes. The intent of the 73rd Congress in enacting Section 5 of the Indian Reorganization Act and the legal effect of the provision have been misunderstood and misapplied. The problem is conflation of two very different types of dominion over land, one, landowner *title* to land, and the other, governmental *jurisdiction* over land.

There is a common misconception that when the federal government takes off-reservation land into trust for a tribe, the tribe not only obtains *title* to the land but also gains *jurisdiction* over the land. However, that has never been the law.

Under well-established principles governing our federalist system of dual levels of government, a state has primary jurisdiction over all lands within its borders except (1) those lands over which the federal government reserved jurisdiction when it admitted the state into the Union, (2) those lands purchased by the federal government for the erection of needful buildings with the consent of the Legislature of the state in which the land lies (pursuant to the Enclaves Clause), and (3) those lands over which the state Legislature has ceded jurisdiction and the federal government has accepted jurisdiction pursuant to 40 U.S.C. § 3112.

Absent one of the three exceptions, when the federal government acquires title to land within a state, all it acquires is the title to the land, not legislative jurisdiction over the land. The federal government is well aware of these principles. A well-known GAO publication states, "Acquisition of land and acquisition of federal jurisdiction over that land are two different things." GAO, *Principles of Federal Appropriations Law*, 3rd Ed. 2008, Vol. III, Ch. 13, p. 13-101. The Supreme Court has held that the federal government cannot strip states of jurisdiction, calling such attempt an act of "disseisin." *Fort Leavenworth Railway Co. v. Lowe*, 114 U.S. 525, 538 (1885). Thus, the federal government has no power to divest a state of its territorial jurisdiction once bestowed. *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163, 176 (2009) quoting *Idaho v. United States*, 533 U.S. 262 ("[T]he consequences of admission are instantaneous, and it ignores the uniquely sovereign character of that event . . . to suggest that subsequent events somehow can diminish what has already been bestowed.")

This law applies to Indian lands the same as to non-Indian lands. See, for example, *Silas Mason Co. v. Tax Comm.*, 302 U.S. 186 (1937); and *Surplus Trading Co. v. Cook*, 281 U.S. 647 (1930). Also compare *Organized Village of Kake v. Egan*, 369 U.S. 60 (1962) [Alaska could enforce state anti-fish-trap law on Indian reservation over which federal government did not reserve jurisdiction on state's admission] to *Metlakatla Indian Community v. Egan*, 369 U.S. 45 (1962) [Alaska lacked jurisdiction to enforce state anti-fish-trap law on Indian reservation over which the federal government did reserve jurisdiction at time of state's admission.]

As in *Metlakatla Indian Community*, most Indian reservations were established before admission of the state in which they sit, and thus fit the first exception as lands over which the federal government reserved jurisdiction upon admission of the state. However, that is not the case with lands procured by a tribe today. When a tribe acquires title to land that has been under state jurisdiction, the tribe obtains title but the state retains its jurisdiction. The tribe has no jurisdiction unless and until the state cedes it.

Although these principles are foundational to our federalist system and well-established, the Department of Interior seems to have violated them in adopting regulations pursuant to section 5. In 1965, the DOI adopted a regulation (25 USC § 1.4) which provides that none of the laws of any State or political subdivision limiting, zoning, or otherwise governing the use or development of any real property

held in trust by the US for Indians shall be applicable to that land. More recently, the section 151 regulations assume that when land is taken into trust for a tribe, whether on-or off-reservation, all state and local law is preempted.

Such a jurisdictional shift was never intended by the 73rd Congress and is not consistent with the Constitution. And this mistaken application of Section 5 is the root of the problem with off-reservation acquisitions. The mistaken belief that there is a shift in jurisdiction means that taking land into trust upends existing controls and existing communities.

H.R. 1208 is likewise based on this misunderstanding of the law and would exacerbate the problem. It seeks not only to allow land to be taken into trust for tribes but is based on the assumption that once land is taken into trust, the state loses jurisdiction over Indians on the land and state laws restricting gambling conducted by the Indians on the land are no longer applicable to the land. Thus, H.R. 1208 would allow off-reservation casinos to proliferate.

Before referring out H.R. 1208, we respectfully suggest that the committee address this issue and clarify that Section 5 of the IRA allows the federal government only to take title to land into trust and does not affect the federal and state jurisdiction over the land. In specific, Congress should clarify that taking land into trust is not intended to infringe on states' rightful jurisdiction over the lands taken into trust.

We appreciate your consideration of these comments.

Sincerely,

ALAN TITUS

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**UNITED INDIAN NATIONS OF OKLAHOMA**

**RESOLUTION NO. 2024-02**

A Resolution in Support of a *Carcieri* Fix for all Tribal Nations—not *one*—and, in Support of the Inherent Right of all Removed Tribal Nations to Protect their Sacred Sites in their Homelands.

**WHEREAS**, the United Indian Nations of Oklahoma (UINO) is an organization established to protect the inherent sovereignty and self-determination of all Tribal Nations based in Oklahoma; and

**WHEREAS**, UINO seeks to safeguard the laws and treaties that benefit Tribal Nations and tribal citizens and to help improve government-to-government relations among Tribal Nations in Oklahoma and the United States; and

**WHEREAS**, UINO strives to protect the ceremonial, cultural, religious rights and access and usage of sacred sites of its member Tribal Nations; and

**WHEREAS**, nearly all of the member Tribal Nations in UINO were forcibly and violently removed from their historic homelands; and

**WHEREAS**, because so many of UINO's member Tribal Nations were removed from their homelands, UINO commands a unique understanding of the importance of protecting the right of removed Tribal Nations to protect their sacred sites in the homelands from which they were removed; and

**WHEREAS**, UINO understands the role the Supreme Court's decision in *Carcieri v. Salazar* has played in preventing numerous Tribal Nations from fully exercising tribal sovereignty and engaging in economic development to sustain tribal self-governance; and

**WHEREAS**, the passage of single-Tribe legislation to address *Carcieri* will inevitably diminish the political will to achieve additional *Carcieri* fixes, and will set a precedent that will require every affected Tribe to seek to address *Carcieri* through individual legislation, including those without the resources to do so; and

**WHEREAS**, UINO believes that if any legislative fix to *Carcieri* is to be passed, it must be for the benefit of all Tribal Nations—not just one; and

**WHEREAS**, although gaming is a critical component of tribal self-determination, there is no need for any Tribal Nation to engage in gaming on another Tribal Nation's burial ground; and

**WHEREAS**, a federally recognized tribe obtained ownership of another tribe's sacred burial site and violated a written promise to preserve and protect this site by removing and storing ancestral remains in boxes on shelves to make way for construction of a casino; and

**WHEREAS**, if any Tribe were to be rewarded in such an exclusive manner, it should not be the Tribe whose course of conduct violates some of the most fundamentally basic moral codes understood by sister tribes throughout Indian Country; and

**WHEREAS**, passing any legislation that does not address these injustices will condone and incentivize more such desecrations; and

**WHEREAS**, the desecration of Hickory Ground in Wetumpka, Alabama, serves to demonstrate why any proposed *Carcieri* fix legislation must include protections for sacred sites located within the historical homelands of removed Tribal Nations; and

**THEREFORE BE IT RESOLVED** that UINO declares that any proposed legislation seeking to address *Carcieri* must provide removed Tribal Nations with the ability and authority to protect their sacred sites and the burials of their relatives within their homelands.

**BE IT FURTHER RESOLVED** that UINO opposes H.R. 6180 and S. 3263.

**BE IT FINALLY RESOLVED** that UINO calls on Congress to pass legislation that provides a *Carcieri* fix for all Tribal Nations, not one.

**CERTIFICATION**

The foregoing resolution was adopted by the United Indian Nations of Oklahoma membership in Miami, Oklahoma, on this 18th day of June 2024, with a quorum present.

| | |
|---|---|
| Chief Ben Barnes, Chairman | Chief David Hill, Secretary |

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:

Tribal Government Services-FA

DEC 29 1983

MEMORANDUM

To: Assistant Secretary - Indian Affairs

From: Deputy Assistant Secretary - Indian Affairs (Operations)

Subject: Recommendation and summary of evidence for proposed finding for Federal acknowledgment of the Poarch Band of Creeks of Alabama pursuant to 25 CFR 83.

RECOMMENDATION

We recommend that the Poarch Band of Creeks be acknowledged as an Indian tribe with a government-to-government relationship with the United States and be entitled to the same privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes.

GENERAL CONCLUSIONS

The contemporary Poarch Band of Creeks is a successor of the Creek Nation of Alabama prior to its removal to Indian Territory. The Creek Nation has a documented history back to 1540. Ancestors of the Poarch Band of Creeks began as an autonomous town of half-bloods in the late 1700's with a continuing political connection to the Creek Nation. The Poarch Band remained in Alabama after the Creek Removal of the 1830's, and shifted within a small geographic area until it settled permanently near present-day Atmore, Alabama.

The Band has existed as a distinct political unit since before the Creek War of 1813-14. It was governed by a succession of military leaders and prominent men in the 19th century. From the late 1800's through 1950, leadership was clear but informal. A formal leader was elected in 1950.

The group's bylaws describe how membership is determined and how the group governs its affairs and its members. Virtually all of the Band's 1,470 members can document descendancy from the historic Creek Nation and appear to meet the group's membership requirements. No evidence was found that the members of the Poarch Band of Creeks are members of any other Indian tribes or that the tribe or its members have been terminated or forbidden the Federal relationship by an Act of Congress.

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The full document is available for viewing at:
https://docs.house.gov/meetings/II/II24/20240626/117352/HHRG-118-II24-20240626-SD016.pdf

## Submission for the Record by Rep. Grijalva

**Statement for the Record**

**USET Sovereignty Protection Fund**

**on June 26, 2024 Legislative Hearing on H.R. 1208 and H.R. 6180**

Chair Hageman, Ranking Member Leger-Fernandez, and members of the Subcommittee, thank you for this opportunity to provide testimony on H.R. 1208, "To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian Tribes, and for other purposes." This bill would address the long-standing inequities caused by the U.S. Supreme Court's 2009 decision in *Carcieri v. Salazar*, where the Court interpreted the Indian Reorganization Act (IRA) to require a Tribal Nation to have been "under Federal jurisdiction" when the IRA was enacted in 1934 to be eligible to acquire trust land.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.[1] USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

### I. Consistent Support by USET SPF for *Carcieri* Fix

Because of where we are located, our member Tribal Nations were the first to contend with 17th and 18th-century local colonial governments and distant European nations at the onset of colonization in North America. We engaged in treaty-making with both the British Crown (in addition to other foreign governments) and the nascent American government. Our relationship with the U.S. government involves a lengthier history of destruction, destabilization, termination, and assimilation than the Tribal Nations of many other regions throughout the country. Indeed, our region served as a "testing ground" for some of the most horrific and shameful federal policies visited upon Tribal Nations and Native people. While all Tribal Nations are working to rebuild in the wake of destructive federal policies and actions, many USET SPF Tribal Nation members are doing so from positions of greater and more extensive loss of population and natural and cultural resources. In spite of this, our story is one of triumph, as we have persevered over the last 400+ years against the greatest of odds and in the face of a centuries-long campaign to eradicate our people and governments.

One great consequence of this long relationship with the United States has been the steady loss of our Tribal Nations' lands, including through often-forced or coerced treaties and other takings. Indeed, USET SPF-member Tribal Nations retain only small remnants of our original homelands today. As a result, although the trust land acquisition authority of the IRA is deeply important to all of Indian Country, it is of particular significance and importance to our 33 Tribal Nation members.

During the 15-year period of time since *Carcieri*, the number of acres of homelands returned to Tribal Nations has lagged because of the burdensome hurdles caused by *Carcieri*, and the costs to Tribal Nations and the Department have skyrocketed—taking away from other important Indian Country issues requiring our attention. This is all avoidable with a simple *Carcieri* fix.

USET SPF has consistently advocated for a *Carcieri* fix for all Tribal Nations in the 15 years since the disastrous Supreme Court decision. Included in our advocacy, we have submitted testimony to Congress supporting legislation to resolve this

[1] USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe-Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA), and Wampanoag Tribe of Gay Head (Aquinnah) (MA).

issue, including but not limited to detailed written testimony submitted in the last 10 years in 2019, 2017, and 2015, and we have already prepared a support letter for this Congress's *Carcieri* fix legislation. We will not restate the points made in that testimony here, but rather we will focus on the topics central to this *Carcieri* hearing.

It is long past time that Congress cross the finish line in enacting this commonsense piece of legislation, which contains the two features necessary to restore parity to the land-into-trust process: (1) a reaffirmation of the status of current trust lands; and (2) confirmation that the Department has authority to take land into trust for all federally recognized Tribal Nations. USET SPF extends its gratitude to Rep. Tom Cole for his continued introduction of bi-partisan legislation that would right this wrong, and, once again, we urge the House Committee on Natural Resources and the whole of Congress to take immediate action on H.R. 1208.

## II. This Bill Would Narrowly Correct the Court's Mistaken Reading of the IRA in *Carcieri*

### A. The U.S. Supreme Court's Decision in *Carcieri* Undermined Congress's Intent in Enacting the IRA

Section 5 of the IRA authorized the U.S. Department of the Interior (Department) "to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians."[2] The IRA provided that title to such acquired lands "shall be taken in the name of the United States in trust for the Indian Tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation."[3]

The Supreme Court in *Carcieri* was tasked with construing potential temporal limitations of the Department's authority to acquire land in trust for Tribal Nations under the IRA.[4] The Court determined that a Tribal Nation seeking to acquire land in trust under the IRA must meet an IRA definition of "Indian."[5] The decision in *Carcieri* was limited to a statutory analysis of the meaning of "now" in the phrase "now under federal jurisdiction" in the first IRA definition of "Indian."[6] The Court held that a Tribal Nation meeting that definition must have been "under federal jurisdiction" when the IRA was enacted in 1934.[7]

This decision has since significantly undermined restoration of Tribal Nations' homelands, costing Tribal Nations and the Department valuable time and money to establish a Tribal Nation's 1934 "under federal jurisdiction" status prior to acquiring trust land for that Tribal Nation, in direct contravention of Congress's goals when enacting the IRA. As discussed below, Congress in enacting the IRA intended to address historical takings of Tribal Nations' lands by providing a legislative tool to aid in reacquiring Tribal homelands.

### B. The Pending Legislation is Narrow and Would Fix the Misinterpretation

H.R. 1208 would resolve this problem by clarifying that, beginning when the IRA was enacted, "Indians" are defined to include "all persons of Indian descent who are members of any federally recognized Indian Tribe," removing the phrase "now under Federal jurisdiction" entirely. This amendment to the IRA would be effective as if included at the original date of enactment of the IRA, and it would confirm actions already taken by the Department pursuant to the IRA to the extent they are

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[2] 25 U.S.C. § 5108.
[3] 25 U.S.C. § 5108.
[4] *Carcieri v. Salazar*, 555 U.S. 379 (2009).
[5] *Id.* at 393 (citing 25 U.S.C. § 5129).
[6] *Id.* at 382.
[7] *Id.* at 395. Nowhere in its decision did the Court hold a Tribal Nation must be federally recognized in 1934 to acquire land into trust under the IRA. Instead, Justice Breyer in his concurrence indicated a Tribal Nation may have been under federal jurisdiction in 1934 regardless of whether the federal government understood it to be federally recognized at that time. *Carcieri v. Salazar*, 555 U.S. 379, 397 (2009) (Breyer, J., concurring). He also stated that the IRA "imposes no time limit upon recognition." *Id.* at 398. Justice Breyer explained that sometimes "later recognition reflects earlier 'Federal jurisdiction.'" *Id.* at 398-99. The Department has confirmed that a Tribal Nation need not have been federally recognized in 1934. Memorandum from Solicitor to Secretary re The Meaning of "Under Federal Jurisdiction" for Purposes of the Indian Reorganization Act, 23-26 (Mar. 12, 2014), *available at* https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37029.pdf. Courts have upheld this confirmation. *See, e.g., Confederated Tribes of the Grand Ronde Community v. Jewell*, 830 F.3d 552, 565 (D.C. Cir. 2016). It is important not to conflate the two terms—"under federal jurisdiction" and "federal recognition"—which are distinct legal concepts.

challenged based on whether an Indian Tribe was federally recognized or under federal jurisdiction in 1934.

## III. All Tribal Nations Deserve Access to Tools for Rebuilding Homelands

### A. The United States Has a Long History of Taking Tribal Nations' Lands and Resources

Although the United States has always recognized Tribal Nations as inherently sovereign political entities—at least in words—it has taken actions throughout time to diminish our sovereign rights and authorities, including with regard to our land holdings and other resources. It is through this diminishment that the United States has amassed its land base, wealth, and power.

Federal Indian law sits atop the "Doctrine of Discovery," which colonizers long used to justify taking Indigenous peoples' lands and resources.[8] In 1493, Pope Alexander VI declared that all land not inhabited by Christians was available for "discovery" and colonization.[9] The doctrine was incorporated into American jurisprudence within the "Marshall Trilogy" of U.S. Supreme Court cases establishing the foundations of federal Indian law.

Utilizing the Doctrine of Discovery, the United States took the vast majority of Tribal Nations' lands and resources. The land base that compromises the modern-day United States of America was, and remains, Tribal homelands. The United States' territory covers a cumulative area of approximately 2.274 billion acres.[10] Of this, as of 2018, only 100 million acres (4.4%) was recognized by the United States as Tribal land, and just over half of that meager amount—56.2 million acres—was held in trust by the federal government for the beneficial occupancy of Tribal Nations and Tribal citizens.[11] The total amount of land held in trust thus represents just 2.47% of the United States' overall territorial holdings.

The land and resources the United States has taken from us are extremely valuable. As of 2019, the estimated total overall value of all lands and associated natural resources comprising the territory of the 50 states was worth over $34.6 trillion.[12]

The federal government has sought to seize control of Tribal lands and resources in primarily one of two ways: through relocation of Tribal Nations to new land bases, sometimes hundreds of miles away, often with limited natural resources and development potential; or by authorizing Tribal Nations to remain in our ancestral homelands but with a diminishment in size of Tribally-held territory and usually in the least agriculturally productive area of those lands. The United States' acquisition of Tribal Nations' lands and resources came as a result of often forced cessions,

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[8] Pope Alexander VI, *Inter caetera* [Among other] (May 4, 1493).

[9] Pope Alexander VI, *Inter caetera* [Among other] (May 4, 1493). ("[W]e, of our own accord, . . . give, grant, and assign to you and your heirs and successors, kings of Castile and Leon, forever . . . all islands and mainlands found and to be found, discovered and to be discovered . . . .").

[10] CAROL HARDY VINCENT & LAURA A. HANSON, CONG. RSCH. SERV., R42346, FEDERAL LAND OWNERSHIP: OVERVIEW AND DATA 1 (2020), https://sgp.fas.org/crs/misc/R42346.pdf.

[11] U.S. COMM'N ON CIV. RIGHTS, BROKEN PROMISES: CONTINUING FEDERAL FUNDING SHORTFALL FOR NATIVE AMERICANS 160, 165 (2018), https://www.usccr.gov/files/pubs/2018/12-20-Broken-Promises.pdf; *see also* OFF. OF INDIAN ECON. DEV, DEP'T OF THE INTERIOR, Benefits of Trust Land Acquisition (Fee to Trust), https://www.bia.gov/service/trust-land-acquisition/benefits-trust-land-acquisition (last visited Dec. 13, 2021).

[12] *See Financial Accounts of the United States: Table B.1 Derivation of U.S. Net Wealth*, FED. RSRV. SYS. (June 10, 2021), https://www.federalreserve.gov/releases/z1/20210610/html/b1.htm (reporting federal government's net worth of $7.21 trillion in 2019); CATHERINE CULLINANE THOMAS & LYNNE KOONTZ, DEP'T OF THE INTERIOR, Natural Res. Report NPS/NRSS/EQD/NRR—2021/2259, 2020 NATIONAL PARK VISITOR SPENDING EFFECTS: ECONOMIC CONTRIBUTIONS TO LOCAL COMMUNITIES, STATES, AND THE NATION, at v (2021), https://doi.org/10.36967/nrr-2286547 (stating National Parks generated $41.7 billion in 2019); Natural Resources Revenue Data, DEP'T OF THE INTERIOR, https://revenuedata.doi.gov/explore (last visited Apr. 7, 2022) (select "Revenue" in data type field, "All" in commodity field, "2020" and "Calendar Year" in period field) (totaling the revenue associated with the United States' land base and natural resources at $34.6 trillion);CAROL HARDY VINCENT & LAURA A. HANSON, CONG. RSCH. SERV., R42346, FEDERAL LAND OWNERSHIP: OVERVIEW AND DATA 1 (2020), https://sgp.fas.org/crs/misc/R42346.pdf (reporting the 2.27 billion acres of land comprising the United States is worth approximately $12,000 per acre for a total of over $27.24 trillion); BUREAU OF LAND MGMT., DEP'T OF THE INTERIOR, THE BLM: A SOUND INVESTMENT FOR AMERICA 2020, at 1 (2020), https://www.blm.gov/sites/blm.gov/files/SoundInvest2019-6pages-FINAL-083019.pdf (stating BLM-managed lands generated $111 billion in 2019); WILLIAM LARSON, DEP'T OF COM., NEW ESTIMATES OF VALUE OF LAND OF THE UNITED STATES 1 (2015), https://www.bea.gov/research/papers/2015/new-estimates-value-land-united-states.

coercion, and theft. Later, acquisitions came through the gradual deterioration of federal policies toward Tribal Nations from those grounded in mutually respectful political negotiations to those that unilaterally sought the outright taking of our lands and resources, assimilation of our people, and termination of Tribal sovereignty and culture.

Over time, the original understandings of Tribal sovereignty recognized in the U.S. Constitution were maligned by federal power positioning and the insidious expansion of the philosophical underpinnings of the Doctrine of Discovery into American jurisprudence. For example, the U.S. Supreme Court wrongly came to interpret the Indian Commerce Clause in Article I, Section 8 of the Constitution to mean that Congress has so-called "plenary power" over Indian affairs to act as it sees fit with regard to Tribal Nations and our rights.[13] This concept was neither intended nor advanced in the Constitution or by its drafters, but rather it is a legal fiction created by the colonizer's own courts to facilitate taking Tribal Nations' lands and resources and prevent our rightful exercise of inherent sovereignty.[14] As an outgrowth, according to Supreme Court precedent that has evolved to serve the interests of the United States as colonizer, even Tribal homelands and other rights protected via treaties may be unilaterally abolished if done so clearly and explicitly by Congress.[15]

Today, the territorial jurisdiction of Tribal Nations is confined to a mixture of reservation, restricted fee, and trust land.[16] We are forced to operate within the federally imposed Tribal land system (i.e., reservation and trust land held for our "beneficial occupancy"), but our interests and practices extend beyond these boundaries. For instance, Tribal Nations are intimately tied to countless sacred and culturally significant sites whose importance almost defies comprehension. They hold the bones of our ancestors, connect us to our origin stories, are sites of ceremony and spiritual presence, and grow our medicinal plants and traditional foods, and, in some cases, the places themselves are alive and deeply respected as such. Yet, Tribal Nations continue to fight to preserve our interests beyond the reservation system and to regain our stolen lands, which are central to our existence as peoples and as governments in service to our communities. All the while, the United States has profited from the vast natural resources and essential environmental, agricultural, and cultural knowledge that Tribal Nations have cultivated over countless generations of intimate connection to our ancestral lands.[17]

Against this historical and ongoing backdrop, the unjust nature of the *Carcieri* decision becomes even more clear.

**B. Congress Enacted the IRA to Rebuild Tribal Homelands**

The IRA, enacted in 1934,[18] was designed in part to provide powerful tools to protect and rebuild Tribal Nations' land bases following nearly 200 years of systematic dispossession, from which Indian Country is still reeling, so that Tribal Nations may exercise jurisdiction over our land and provide for our people.

A central feature of the IRA intended to strengthen Tribal Nation self-government and self-sufficiency was Section 5, discussed above and interpreted in *Carcieri*, aimed at rebuilding Tribal Nations' land bases.[19] Additionally, in order to maintain

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[13] *See, e.g., Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163,192 (1989) (citations omitted) ("[T]he central function of the Indian Commerce Clause is to provide Congress with plenary power to legislate in the field of Indian affairs."); *Lone Wolf v. Hitchcock*, 187 U.S. 553, 565 (1903) ("Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning . . . .").

[14] *See Haaland v. Brackeen*, 599 U.S. 255, 318-331 (2023) (Gorsuch, J., concurring).

[15] *See, e.g., Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 202 (1999) (citation omitted) ("Congress may abrogate Indian treaty rights, but it must clearly express its intent to do so . . . ."); *Washington v. Wash. State Com. Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 690 (1979) ("Absent explicit statutory language, we have been extremely reluctant to find congressional abrogation of treaty rights."); *United States v. Santa Fe Pac. R.R. Co.*, 314 U.S. 339, 353-54 (1941) (requiring a "clear and plain indication" of congressional intent to extinguish Tribal rights, as "an extinguishment cannot be lightly implied in view of the avowed solicitude of the Federal Government for the welfare of its Indian wards").

[16] *See, e.g.*, U.S. COMM'N ON CIV. RIGHTS, BROKEN PROMISES: CONTINUING FEDERAL FUNDING SHORTFALL FOR NATIVE AMERICANS 165 (2018), https://www.usccr.gov/files/pubs/2018/12-20-Broken-Promises.pdf.

[17] *See, e.g., TEK vs Western Science*, NAT'L PARK SERV., https://www.nps.gov/subjects/tek/tek-vs-western-science.htm (last visited Apr. 7, 2022) (collecting studies on the traditional ecological knowledge, or "TEK," of Indigenous peoples).

[18] Indian Reorganization Act of 1934, Pub. L. No. 73-383, 48 Stat. 984 (codified as amended at 25 U.S.C. § 5101 *et seq*.).

[19] 25 U.S.C. § 5108.

and protect lands already held for Tribal Nations, the IRA also prohibited any further allotment of reservation lands,[20] extended indefinitely the periods of trust or restrictions on individual Indians' trust lands,[21] provided for the restoration of surplus unallotted lands to Tribal Nation ownership,[22] and prohibited any transfer of restricted Tribal Nations' or individual Indians' lands, with limited exceptions, other than to the Tribal Nation or by inheritance.[23]

Congressional representatives who debated and discussed enactment of the IRA uniformly understood that one of the main purposes of the IRA was to provide a mechanism whereby the Department could acquire land into trust for Tribal Nations.[24] Congress designed the IRA not only to "prevent further loss of land" but also to acquire additional land for Tribal Nations, as congressional representatives understood "prevention is not enough" to undo the problems caused by past federal Indian law and policy.[25] The Supreme Court later emphasized that Congress understood when enacting the IRA that the goal of self-government for Tribal Nations could not be met without "put[ting] a halt to the loss of tribal lands."[26]

### C. Congress Should Fix *Carcieri* To Benefit All Tribal Nations and to Carry Forward Its Own Mandate to Treat Federally Recognized Tribal Nations Equally

The Court's decision in *Carcieri* undermines Congress's intent in the IRA to right past wrongs by providing tools to rebuild homelands. The burdens of the *Carcieri* decision impact all Tribal Nations. Removing the burdensome process of receiving a positive *Carcieri* determination from the Department before acquiring land into trust will benefit all Tribal Nations and further Congress's original goals when it enacted the IRA in 1934.

Additionally, Congress made clear when it amended the IRA in 1994 to add the "privileges and immunities" clauses that departments and agencies of the federal government must not make any decisions "with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes."[27] We call upon Congress to carry its own mandate forward by removing barriers so that all federally recognized Tribal Nations may utilize the benefits of the trust acquisition provisions of the IRA.

## IV. Tribal Nations Acquire Land into Trust So That We May Exercise Jurisdiction Over Our Lands, Not to Establish Casinos Wherever We Acquire Trust Land

### A. United States Federal Indian law requires Tribal Nations to Request the U.S. Hold Title to Our Lands in Trust so We May Exercise Jurisdiction Over Them

Territorial jurisdiction is a bedrock principle of sovereignty, and Tribal Nations must exercise such jurisdiction in order to fully implement the inherent sovereignty as self-governing political entities that we possess and to serve our people. Just as states exercise jurisdiction over their land, Tribal Nations must also exercise jurisdiction, thereby promoting government fairness and parity between state governments and Tribal Nation governments.

However, the legal doctrines that have developed through federal Indian law hamstring Tribal Nations' exercise of jurisdiction over our own territories. Tribal Nations are generally recognized to have jurisdiction—albeit limited—over our "Indian Country."[28] While Indian Country includes lands within a Tribal Nation's reservation,[29] Tribal Nations seeking to reclaim territorial jurisdiction over land

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[20] 25 U.S.C. § 5101.
[21] 25 U.S.C. § 5102.
[22] 25 U.S.C. § 5103(a).
[23] 25 U.S.C. § 5107.
[24] *See e.g.*, H.R. 7902, Rep. No. 1804, at 6, 73d Cong. 2d sess. (May 28, 1934) (Submitted by Rep. Howard); 73rd Cong. Rec. 11125 (June 12, 1934) (Statement of Sen. Thomas); 73rd Cong. Rec. 9268 (May 22, 1934) (Statement of Rep. Hastings).
[25] *See* 73rd Cong. Rec. 11727 (June 15, 1934) (Statement of Rep. Howard); *see also To Grant To Indians Living Under Federal Tutelage The Freedom To Organization For Purposes Of Local Self-Government And Economic Enterprise*, 73rd Cong. 59 (1934) (Statement by Commissioner Collier).
[26] *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 151 (1973).
[27] 25 U.S.C. § 5123(f); *see also* 25 U.S.C. § 5123(g).
[28] *See, e.g.*, 25 U.S.C. § 1304.
[29] 18 U.S.C. § 1151.

must often do so through the arduous and protracted process of trust acquisition.[30] Yet, even trust acquisition is paternalistic, in that it requires the federal government to hold title for the benefit of the Tribal Nation as a "beneficial occupant."[31]

At base, a Tribal Nation's request to the United States to take land into trust for the Tribal Nation's benefit is simply a common prerequisite under the United States' own laws that allows a Tribal Nation to exercise its own sovereign powers over its lands and people to keep them safe—and even that exercise of jurisdiction is still very limited. Tribal Nations' trust acquisition requests are far from nefarious, and instead they are a simple attempt to take our rightful place in the American family of governments and work within the restrictive framework set out for us by United States courts and laws.

**B. Acquiring Land Into Trust Does Not a Casino Make**

The trust acquisition process under the IRA and the Department's 25 C.F.R. Part 151 (Part 151) implementing regulations and guidance is onerous, even if one removes the current requirement to submit evidence to demonstrate a Tribal Nation was "under federal jurisdiction" in 1934 as required by *Carcieri*. This trust acquisition process is separate and apart from the process spelled out in the Indian Gaming Regulatory Act (IGRA) and the Department's 25 C.F.R. Part 292 (Part 292) implementing regulations for establishing that land is eligible for gaming.

The Department's Part 151 process is arduous, time-consuming, costly, and extremely rigorous for the Department as well as Tribal Nations, and neither undertakes a trust acquisition application lightly.[32] Included as one of many hurdles within the Department's analysis of the criteria under Part 151 is a legal determination of whether the Department has statutory authority for the trust acquisition.[33] At present, as part of this determination when the trust acquisition is to take place under the IRA, the Department conducts a legal analysis regarding whether the acquisition complies with the Supreme Court's interpretation of the IRA in *Carcieri*. This legal examination involves a fact-specific review of a Tribal Nation's and its people's relationships with the United States throughout history.[34] The Department consults heavily with the Office of the Solicitor regarding this analysis, and a Tribal Nation submits a significant amount of evidence to show it meets the legal standard of having been under federal jurisdiction in 1934.

However, when a Tribal Nation seeks to game on land, there are completely separate criteria and procedures that must be met under IGRA and Part 292.[35] The general rule under IGRA is that gaming is prohibited on land acquired into trust after IGRA was enacted in 1988.[36] Thus, as a starting point, land taken into trust now is not eligible for gaming. There are very limited instances when the prohibition does not apply, including when the trust land is within or contiguous to a Tribal Nation's 1988 reservation[37] or certain former reservation land,[38] when lands qualify for an "equal footing" exception available to Tribal Nations,[39] or when the state's governor is involved in the decision to permit gaming under the "two-part" exception.[40] These narrow allowances are meant to either keep gaming contained to a Tribal Nation's reservation as it existed when IGRA was enacted or to put Tribal Nations who suffered especially difficult inequities on equal footing with other Tribal Nations. The "two-part" exception, while less limited by a Tribal Nation's ties to land, is only possible when a state is supportive of the gaming.

Each exemption or exception to the general gaming prohibition requires submitting significant amounts of evidence to the Department to demonstrate the land meets the very high legal standards to be eligible for gaming under IGRA and Part 292. And the starting point of the analysis is the general rule that the newly-

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[30] *See Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 511 (1991).
[31] 25 U.S.C. § 5108.
[32] See Acquisition of Title to Land Held in Fee or Restricted Fee Status (Fee-to-Trust Handbook) (June 28, 2016), available at https://www.bia.gov/sites/default/files/dup/assets/public/raca/handbook/pdf/Acquisition_of_Title_to_Land_Held_in_Fee_or_Restricted_Fee_Status_50_OIMT.pdf.
[33] 25 C.F.R. § 151.8(a)(3).
[34] 25 C.F.R. § 151.4; Memorandum from Solicitor to Secretary re The Meaning of "Under Federal Jurisdiction" for Purposes of the Indian Reorganization Act, 23-26 (Mar. 12, 2014), available at https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37029.pdf.
[35] 25 U.S.C. § 2719; 25 C.F.R. Part 292.
[36] 25 U.S.C. § 2719(a).
[37] 25 U.S.C. § 2719(a)(1).
[38] 25 U.S.C. § 2719(a)(2).
[39] 25 U.S.C. § 2719(b)(1)(B).
[40] 25 U.S.C. § 2719(b)(1)(A).

acquired trust land is not eligible for gaming because it was acquired after IGRA's enactment.

The Department makes a gaming eligibility determination if a Tribal Nation's trust acquisition states it seeks to acquire the land for the purpose of gaming, and therefore the record of decision to acquire land into trust for the purpose of gaming will encompass both the IRA trust acquisition decision and the IGRA gaming eligibility decision. Even so, it is often a completely different attorney in the Department's Office of the Solicitor conducting the gaming eligibility determination under IGRA and Part 292 than the attorney conducting the trust acquisition determination under the IRA and Part 151. Should a Tribal Nation later decide to game on land it has acquired into trust, the National Indian Gaming Commission rather than the Department makes the gaming eligibility determination under the standards of IGRA and Part 292, often through approval of a gaming ordinance, but the legal standards and evidentiary burdens remain just as high.

Any concern that a Tribal Nation acquiring land anywhere into trust will automatically be able to game on that land is not grounded in reality or truth, but this misinformation is being used as a fear tactic to the uninformed ear. The process of receiving approval to game on land acquired into trust is extremely burdensome, costly, and difficult.

Indeed, as Deputy Assistant Secretary for Indian Affairs Kathryn Isom-Clause explained during the hearing, only a very small percentage—about one to three percent at most—of trust acquisition requests are made for the purpose of gaming. Most others are made for the simple need to establish territorial jurisdiction, as described above.

**V. Tribal Nations May Choose to Exercise Our Sovereign Authority to Enter Into Cooperative Agreements with States, But This Must Be Our Choice**

There are many positive effects of Tribal Nations entering into cooperative agreements with local governments, including related to provision of emergency services, and many Tribal Nations do enter into such agreements. By investing our own resources in state and local governments' services, we are able to help ensure the quality of services. However, we stress that it is imperative such agreements are not a prerequisite to acquisition of trust land.

There is no language within the IRA that supports such a requirement.[41] And, for the limited percent of trust acquisitions that are for gaming purposes, IGRA specifically prohibits states from imposing any tax, fee, charge, or other assessment upon Tribal Nations.[42]

Instead, Congress understood when it enacted the IRA that returning Tribal Nations' lands to our territorial ownership, control, and jurisdiction may have some negative impacts on surrounding state and local governments. However, the IRA's trust acquisition provision was meant to undo past unjust and ineffective federal Indian laws and policies that often benefited non-Indians. In enacting the IRA, Congress upheld its trust and treaty obligations to Tribal Nations by prioritizing our interests, even if state and local governments may occasionally experience side effects stemming from its application, including a loss of jurisdiction or tax revenue.[43] In fact, Congress noted in Section 5 of the IRA that lands acquired into trust "shall be exempt from State and local taxation"—thereby stating with clarity its understanding that local interests may be harmed but that such harm is nonetheless necessary.[44] Additionally, prior to enactment, congressional members discussed in great detail the resulting removal of trust land from state taxation, knowingly moving forward with enactment.[45]

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[41] 25 U.S.C. § 5108.

[42] 25 U.S.C. § 2710(d)(4).

[43] Since 1977, the Department has issued billions of dollars in Payments in Lieu of Taxes (PILT) to local governments that help offset losses in property taxes due to the existence of non-taxable federal lands within their boundaries. However, while PILT payments are made for lands administered by the U.S. Bureau of Land Management, National Park Service, Fish and Wildlife Service, and Forest Service (part of the U.S. Department of Agriculture) and for Federal water projects and some military installations, lands held in trust for Tribal Nations are not currently eligible. USET SPF believes that PILT (or a PILT-like mechanism) for lands put into trust could help remove opposition to the restoration of Tribal homelands while also easing the perceived burdens of and impacts to local government as a result of lost tax revenue.

[44] 25 U.S.C. § 5108.

[45] *See, e.g.*, 73rd Cong. Rec. 9268 (Daily ed. May 22, 1934) (Statement of Rep. Hastings); To Grant To Indians Living Under Federal Tutelage The Freedom To Organization For Purposes Of Local Self-Government And Economic Enterprise, 73rd Cong. 28 (1934) (Statement by Commissioner Collier).

The Department has built into Part 151 procedural mechanisms to consider local government interests and provide those governments commenting opportunities. For trust acquisitions pursuant to the IRA, the Department must notify the state and local governments having regulatory jurisdiction over the land to be acquired and consider their feedback.[46] Each notified party is given 30 days to provide written comments regarding potential impacts on regulatory jurisdiction, real property taxes, and special assessments.[47] Part 151 also calls for compliance with NEPA.[48] As part of its Environmental Compliance Review under NEPA, the Department provides state and local governments with an extensive opportunity to comment and then considers comments received. These commenting opportunities and commenting periods are more than sufficient, especially when considering that no commenting opportunity is provided to Tribal Nations when states take actions that affect us.

Rather than focusing on the bad things states and local governments fear might happen if Tribal Nations acquire our land into trust, we should be focusing on all the good that does happen when Tribal Nations have success in rebuilding our homelands. USET SPF does not dismiss the fact that trust land acquisition can have a range of impacts on local communities in the area in which the land is located—but it should not be forgotten that these are often the same communities that benefited by gaining control of Tribal Nations' lands as a result of policies the IRA was intended to reverse. And it should be noted that, when Tribal Nations are able to exercise jurisdiction over our lands, surrounding communities and the United States as a whole benefit from the economic prosperity generated. Additionally, many Tribal Nations enter into agreements whereby we provide emergency and other essential services not just to our own lands but also to surrounding communities—seeking to ensure the safety of all.

**VI. Conclusion**

USET SPF thanks the Subcommittee for taking the time to conduct this oversight hearing. The importance of the IRA and its trust acquisition authority to Tribal Nations cannot be overstated. Full and equitable access to the IRA's trust acquisition authority is absolutely fundamental to our ability to thrive as vibrant, healthy, self-sufficient governments within the United States. The United States took an important step in the right direction when it enacted the IRA to help restore Tribal Nations' stolen homelands, and Congress must act now to remove the faulty barrier to the IRA's implementation erected by the Supreme Court's decision in *Carcieri*. USET SPF hopes this testimony has been helpful in illuminating that the IRA's underlying goals and the tools it gave us must be protected and strengthened as we continue to improve federal Indian law and policy and, through it, the lives of our people.



[46] 25 C.F.R. §§ 151.9(d), 151.10(d), 151.11(c), 151.12(d).
[47] 25 C.F.R. §§ 151.9(d), 151.10(d), 151.11(c), 151.12(d).
[48] 25 C.F.R. §§ 151.8(a)(5), 151.15.