



Office of The Attorney General
State of Connecticut

**TESTIMONY OF
ATTORNEY GENERAL RICHARD BLUMENTHAL
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
MAY 21, 2009**

I appreciate the opportunity to comment on the issue of Native American trust lands and to urge the committee to take no further action -- leaving in place the system Congress created and permitting post-1934 tribes to seek congressional approval to take private or public land into trust.

The current system for pre-1934 tribes -- authorizing the Secretary of the Interior to determine when and whether to take lands into trust on behalf of a Native American tribe that was recognized prior to 1934 -- should be critically reviewed to determine whether such an administrative process is still necessary to achieve the original goals of the Indian Reorganization Act (IRA). Congress should either reform the administrative process in order to achieve fair and equitable decisions regarding trust lands for these tribes or repeal the Act, thereby establishing for pre-1934 tribes the same Congressional trust approval as post-1934 tribes.

The United States Supreme Court's decision in *Carcieri v. Salazar* recognized Congress' "plain and unambiguous" intent that the Indian Reorganization Act ("the IRA") permits the Secretary of the Interior to take land into trust only on behalf of Indian tribes federally recognized at the time of the IRA's 1934 enactment.

The Court's decision was not only consistent with the IRA's plain language, but also consistent with the Act's broader purpose, namely, to help remediate the impact of pre-1934 federal policies and bureaucratic failings on tribes that were under federal jurisdiction at that time. The IRA halted the federal government's policy of allotment, which began with the passage of the General Allotment Act of 1887. Under this policy, more than two-thirds of Indian land was acquired by non-Indians. The IRA also sought to remediate the consequences of "deficiencies in the Interior Department's performance of its responsibilities" to protect the assets of recognized tribes under federal jurisdiction prior to 1934. *United States v. Mitchell*, 463 U.S. 206, 220 (1983).

For tribes that were recognized after 1934, the Court's decision in *Carcieri* vests the final decision regarding trust lands of such tribes with Congress rather than the United States Secretary of the Interior. This decision is consistent with Article First of the United States Constitution which vests in Congress authority over Indian tribes. U.S. Const. Art. 1, §8, cl.3

Taking land into trust on behalf of an Indian tribe has significant ramifications for states and local communities:

- First, trust land is outside state and local taxation and thus is removed from town tax rolls, often resulting in a significant loss of tax revenue for local governments. 25 U.S.C. § 465.
- Second, trust lands are outside land use regulation potentially burdening the State and surrounding communities with increased traffic, noise, and pollution.
- Issues may arise as to criminal and civil jurisdiction, including key public health and safety laws.

Critical decisions should remain with Congress -- as representatives of the people -- rather than an appointed individual, ensuring that state and local communities have a voice and real input in the process. Congress is uniquely able to balance the interests of the state and local governments against those of the tribes, in a process that is transparent, accountable, ensures input from all affected parties and reflects a consensus among tribes, states and local communities.

Congressional action has been an effective route for tribal recognition. Connecticut's two federally-recognized tribes -- the Mashantucket Pequot and the Mohegan -- were recognized in the 1980's through Settlement Acts that provided them with substantial land holdings. *See* 25 U.S.C. § 1751 *et. seq.* (The Mashantucket Pequot Indian Land Claims Settlement Act); 25 U.S.C. § 1775 *et. seq.* (The Mohegan Nation Land Claims Settlement Act). Several other states have similarly reached agreements with tribes and their Congressional delegation to federally recognize the tribes and establish reservation land for such tribes. *See, Rhode Island Land Claims Settlement Act*, 25 U.S.C. §1701 *et seq.*; *Maine Indian Claims Settlement Act*, 25 U.S.C. § 1721 *et seq.*

Although any such settlement necessarily entails compromises for the impacted state and local communities, as well as the tribe, the involvement of Congress ensures that all interests are heard and considered, and lends the result a legitimacy that the administrative process cannot and does not.

Additional legislation with regard to post-1934 tribes is unnecessary. Congress is the appropriate body to make trust decisions concerning tribes that were not impacted by defective federal policies and bureaucratic deficiencies that the IRA was intended to remediate.