No. 07-526

IN THE
Supreme Court of the United States

DONALD L. CARCIERI,
GOVERNOR OF RHODE ISLAND, ET AL.,
Petitioners,

v.

DIRK KEMPTHORNE, SECRETARY OF INTERIOR, ET AL.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF OF THE COUNCIL OF STATE GOVERNMENTS, NATIONAL LEAGUE OF CITIES, U.S. CONFERENCE OF MAYORS, NATIONAL ASSOCIATION OF COUNTIES, AND INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION AS *AMICI CURIAE* SUPPORTING PETITIONERS

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QUESTIONS PRESENTED

1. Whether the Indian Reorganization Act of 1934 authorizes the Secretary of the Interior to take land into trust for the benefit of tribes that were not federally recognized at the time it was enacted.

2. Whether the Rhode Island Settlement Act permits the Secretary to take non-settlement land into trust for the Narragansett Tribe.

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INTEREST OF THE *AMICI CURIAE*

Amici are organizations whose members include state, county, and municipal governments and officials throughout the United States.[1] *Amici* have a compelling interest in the two issues presented in this case.

Disputes over the ownership of and sovereignty over land claimed by tribes have spawned much litigation and called into question title to property in many jurisdictions. Several state and local governments accordingly have entered into agreements with tribes, subsequently codified by Congress, in an attempt to resolve these disputes. The decision below, however, raises doubts about the finality of these settlements. In addition, by allowing the Secretary to restore tribal sovereignty over property that had long been subject to state and local control, the judgment below denies petitioners essential regulatory authority, which could "seriously burden the administration of state and local governments and . . . adversely affect landowners neighboring the tribal patches." *City of Sherrill* v. *Oneida Indian Nation*, 544 U.S. 197 (2005). *Amici* accordingly submit this brief to assist the Court in the resolution of this case.

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[1] No counsel for a party authored this brief in whole or in part and no person other than *amici* and their counsel made a monetary contribution to its preparation or submission. The parties' letters consenting to the filing of this brief have been filed with the Clerk.

SUMMARY OF ARGUMENT

I. Nineteenth-century federal policy toward Indian tribes was based on assimilation of Indians into the American mainstream. The Dawes Act, 25 U.S.C. §§ 331-333, converted tribal land ownership to private ownership through the allotment of land to individual Indians. This policy was a profound failure, with devastating consequences for Indian land ownership. Fully two-thirds of the Indian treaty land base, about 90 million acres, was lost through allotment. The devastation this policy wrought on Indian communities caused a tectonic shift in federal Indian policy away from assimilation to fostering tribal autonomy.

The failure of the Dawes Act led directly to the passage of the Indian Reorganization Act of 1934. Congress intended the IRA to be a first step in reversing Indian policy by, in part, allowing the Secretary to take land into trust for the benefit of tribes that had been adversely affected by the Dawes allotment policy. But given this goal, the IRA necessarily was directed only at tribes that had been affected by the allotment policy – that is, tribes (unlike the Narragansetts) that had a reservation and were federally recognized at the time IRA was enacted. The policy and fundamental goals of the IRA compel the conclusion that the statute benefits only tribes that were recognized in 1934.

II. Congress prohibited the Secretary from taking land into trust for the benefit of the Narragansetts when it enacted the Rhode Island Settlement Act. Rhode Island's Settlement Act was the first of several similar statutes, virtually all of which maintain state jurisdiction over settlement land. The Secretary's reading of the Rhode Island Act, which allows

for real property to be converted into tribal land subject to tribal jurisdiction, departs radically from this legislative policy, threatens to undermine longstanding settlements of state-tribal land disputes, and ignores Congress's great sensitivity to the maintenance of state jurisdiction.

ARGUMENT

I. THE IRA AUTHORIZES THE SECRETARY TO TAKE LAND INTO TRUST ONLY FOR THE BENEFIT OF TRIBES THAT WERE FEDERALLY RECOGNIZED AT THE TIME OF ITS ENACTMENT.

A. The IRA Was Intended To Remediate Harm Caused To Tribes By Allotment Programs Authorized Under The Dawes Act.

1. Until the 1850s, the Federal Government supported the right of Indian tribes to maintain treaty lands and determine, on the tribal level, the political and social practices that would govern on those lands. But as public opinion began to favor assimilation, full private ownership of parcels of land by individual Indians was viewed as a crucial step in the process.[2] Federal assimilation policy culminated in 1887 with passage of the General Allotment Act, also known as the Dawes Act. 24 Stat. 388, §§ 1-3 (formerly codified at 25 U.S.C. §§ 331-333).

The Dawes Act provided that "*in any reservation* created for [Indian] use," Congress or the President

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[2] "Individual land ownership was supposed to have some magic in it to transform an Indian hunter into a busy farmer." Delos S. Otis, *The Dawes Act and the Allotment of Indian Lands* 141 (Francis Paul Prucha ed., 1973).

were authorized "to allot the lands in said reservation in severalty to any Indian located thereon." 49 Cong. Ch. 119 (emphasis added); 24 Stat. 388. This policy effectively forced tribal members "to surrender their undivided interest in tribally owned common estate." Felix S. Cohen, *Handbook of Federal Indian Law* § 16.03 (1982 ed.). After 25 years, Indian lands could be sold to non-Indians. 49 Cong. Ch. 119, 24 Stat. 390. See also *Handbook of Federal Indian Law* § 16.03. All told, 118 reservations were allotted under the authority of the Dawes Act, 44 of which were opened to non-Indian homesteading. American Indian Policy Review Commission, *Final Report* 309 (1977).

Even the limited protection afforded by the 25 year waiting period was attacked by land speculators and critics of federal guardianship as a means of achieving assimilation.[3] Congress responded by amending the Dawes Act to authorize the early issuance of fee patents by the Secretary of the Interior. Burke Act of 1906, 34 Stat. 182 (amending § 6 of the Dawes Act) (codified at 25 U.S.C. § 349). As a result, 27 million patented acres were sold to non-Indians. *Handbook of Federal Indian Law* 138.

Prior to the Dawes Act, treaty and reservation land held by Indians totaled 138 million acres. Forty-seven years later, when the allotment policy was abandoned, only 48 million acres were left in Indian hands. Office of Indian Affairs, U.S. Department of the Interior, Report on Land Planning 6 (GPO 1935); see also Wilcomb Washburn, *Red Man's Land, White Man's Law* 145 (1995). The Department of the Inte-

[3] Frederick E. Hoxie, *A Final Promise: The Campaign to Assimilate the Indians, 1880-1920* 165 (1984).

rior estimated that 95% of the allotted reservation land would be sold to non-Indians, *id*. at 6, while other findings calculated the amount of allotted land remaining in Indian ownership at 3%. American Indian Policy Review Commission, *Final Report* 309.[4]

2. This wholesale loss of tribal land ignited calls for a federal response. *Hearings on H.R. 7902 before the House Comm. on Indian Affairs*, 73d Cong., 2d Sess. 16 (1934). Congress took up consideration of the IRA with the specific aim of ending allotments and undoing its effects. See H. Rep 1804, 73d Congress, 2d Session (May 28, 1934) ("The bill now under consideration definitely puts an end to the allotment system through the operation of which the Indians have parted ways with 90,000,000 acres of their land in the last 50 years. . . . To make many of the now pauperized, landless Indians self-supporting, it authorizes a long term program of purchasing land for them."); S. Rep 1080, 73d Congress, 2d Session (May 10, 1934) ("Under the operations of allotment, the land holdings of Indians have steadily dwindled and a considerable number of Indians have become entirely landless. By section 1 of [this] bill, future allotment in severalty to Indians is prohibited. . . .").

As Indian Commissioner John Collier wrote, "[t]he Wheeler Howard Act . . . endeavors to provide the means, statutory and financial, to repair as far as possible, the incalculable damage done by the allotment policy and its corollaries." Annual Report of the Secretary of the Interior, 1934, 78-83. Collier

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[4] See also Wilcomb Washburn, *Red Man's Land/White Man's Law* 145 (2d ed. 1995); U.S. Dep't of Interior, 10 Rep. on Land Planning 6 (GPO 1935).

continued: "[the] result of the allotment system brings about the forced sale of Indian heirship lands, usually to white buyers. . . . [The] Wheeler-Howard Act is taking the first hesitant step toward the solution of this problem." *Id*. The IRA was thus specifically directed at providing assistance to those tribes that had been harmed by the Dawes Act, i.e., those federally recognized tribes that, prior to 1934, had reservation lands subject to allotment.

B. Congress Intended The IRA To Apply Only To Tribes That Were Recognized At The Time Of Its Enactment.

Against this background, the IRA limited its benefits, in relevant part, to "any recognized Indian tribe now under federal jurisdiction." 25 U.S.C. § 479. The question is whether Congress's use of the term "now" limits the Secretary's authority to take land into trust to tribes recognized when the IRA was adopted. The answer is that it does. The IRA's goal was to reverse the allotment policy that had been directed only at the reservation lands of recognized tribes then under federal jurisdiction; Congress accordingly could not have expected the IRA to apply to tribes that had not been subject to this policy. This construction is confirmed by related provisions of the IRA, all of which point to the conclusion that the tribes identified by the statute were those recognized at the time of enactment.

1. In arguing to the contrary, the Secretary repeats the reasoning of the court below that "now" is ambiguous. Opp. 6. But this Court's recognition in *United States* v. *John*, 437 U.S. 634, 650 (1978), that Congress intended "now" to mean "in 1934" is compelled by the history of the IRA. As noted above, the Dawes Act provided for allotment only of land "in

any reservation created for [Indian] use." The IRA was intended to counteract the harms inflicted by this policy. It would entirely distort Congress's intent in enacting the IRA to apply it to tribes that had not been recognized by the United States, and did not have a reservation subject to allotment, at the time the Dawes Act was in effect.

2. This conclusion is confirmed in several ways by the IRA's structure. *First*, the IRA contained a one-year time limit for tribes to accept or reject the Act: "[t]his Act shall not apply to any reservation wherein a majority of adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application. It shall be the duty of the Secretary of the Interior, *within one year after the passage and approval of this Act*, to call such an election…" S. 3645, 73d Congress, Sess. II, Ch. 576, June 18, 1934 (emphasis added).[5] Congress soon extended this deadline, but precisely limited the time period within which a tribe could accept the IRA. Act of June 15, 1935, ch. 260, § 2, 49 Stat. 378 (extending the time for holding elections from June 18, 1935 to June 18, 1936).[6] Once more eligibility for

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[5] The one-year period was the result of considerable debate and eventual compromise between the House and Senate (the House proposed six months, while the Senate favored one year). That the question of the cut-off date required debate further suggests it was a matter of some consequence. Had lawmakers not viewed this time limit as final, it is unlikely they would have attached such importance to its precise length. See H. Rep. 1090, 73d Congress, 2d Session (May 28, 1934).

[6] Others to consider the Act's eligibility provisions have concluded that eligibility to opt into the IRA ended upon the conclusion of the additional year set forth under § 2, 49 Stat. 378. "During the two-year period within which tribes could accept or reject the IRA, 258 elections were held." Comment, *Tribal Self-*

the IRA's benefits was tied to the date of its enactment.[7] In this context, the congressional expectation necessarily would have been that the IRA would apply only to tribes that were recognized – and in a position to vote on the IRA's application – at the time that the statute went into effect.

Second, Congress tied eligibility to participate in the IRA scheme to connection with a reservation. Only Indians who resided on a reservation and had a legal interest in its affairs were eligible to vote on the question whether to accept or reject the IRA. Such a legal interest included "any property holding on the reservation, entitlement to participate in tribal elections or other tribal affairs on a given reservation, and receipt of benefits of any sort from the representatives of the Interior Department stationed on a given reservation." Legal Opinions of the Solicitor of the Interior Relating to Indian Affairs 1917-1974 Vol. I, 1170 (citing *Waldron* v. *United States*, 143 Fed. 413). This restriction on voter eligibility demonstrates Congress's intent to extend coverage under the IRA only to those tribes federally recognized and possessing a reservation prior to the acceptance deadline.

Third, by its plain terms the IRA does not have universal application and expressly denies coverage to some tribes. For example, Section 13 provides that the Act does not apply to territories or other possessions of the United States, except that five sections

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Government and the Indian Reorganization Act of 1934, 70 Mich. L. Rev. 965, 972 (1972).

[7] Two provisions of the IRA apply even to tribes that did not or could not vote to accept the IRA: its restriction on alienation (§ 462) and the authority of the Secretary to issue a charter to tribes on petition (§ 477). See 25 U.S.C. § 478-1.

apply to Alaska. 25 U.S.C. § 473; see also, S. 3645, 73d Congress, Sess. II, Ch. 576, June 18, 1934. Six separate sections do not apply to specified tribes in Oklahoma.[8] *Id*. Commissioner Collier expressed the "hope[ ] that the next Congress will enact legislation designed to finally settle all Indian claims in the shortest possible time . . . ." Annual Report of the Secretary of the Interior, 1934, 73-83. There accordingly is nothing anomalous in the conclusion that the IRA does not provide a means of addressing any and all Indian land claims.

Fourth, language elsewhere in the IRA strongly suggests that Congress meant "now" to refer only to the time of enactment. In several provisions of the statute, for example, Congress used the phrase "now or hereafter" when describing future developments. See 25 U.S.C. § 468 ("Nothing contained in this Act shall be construed to relate to Indian holdings of allotments or homesteads upon the public domain outside of the geographic boundaries of any Indian reservation *now* existing or established *hereafter*.") (emphasis added); *id.* § 472 ("The Secretary of the Interior is directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed to the various positions maintained, *now or hereafter*, by the Indian Office, in the administration of functions or services affecting any Indian tribe.") (emphasis added); see also *id.* ("Such qualified Indians shall *hereafter* have the pre-

[8] The first version of the bill that became the IRA contained an exemption for New York Indians that was debated but ultimately not included in the final version. *Hearings on S. 2755 before the Senate Comm. on Indian Affairs*, 73d Cong., 2d Sess. (1934); *Hearings on H.R. 7902 before the House Comm. on Indian Affairs*, 73d Cong., 2d Sess. 16 (1934).

ference to appointment to vacancies in any such positions") (emphasis added). The "hereafter" reference would have been superfluous if, as the Secretary contends, "now" means "whenever."

Similarly, one of the alternative definitions of "Indian" in Section 19 refers to persons who are "descendants of . . . members [of any recognized Indian tribe now under federal jurisdiction] who were, on June 1, 1934, residing within the *present* boundaries of any Indian reservation." 25 U.S.C. § 479 (emphasis added). This formulation is most naturally read to reflect the understanding that the statute refers to tribal recognition accorded as of June 1, 1934. All of the indicia of congressional intent accordingly are of a piece: Congress intended the Secretary to have authority to take land into trust only for the benefit of tribes that had been recognized by the Federal Government at the time of the IRA's enactment.

3. When the IRA was enacted, the Narragansetts did not have a reservation. Indeed, in 1880 the Rhode Island legislature dissolved the Narragansetts Tribe and ended tribal jurisdiction over 927 acres of land.[9] The Rhode Island Supreme Court denied at-

[9] "From and after the passage of this act, the tribal authority of the Narragansett tribe of Indians shall cease, except for the purpose of carrying the provisions of this act into full effect; and all persons who may be members of said tribe shall cease to be members thereof, except as aforesaid, and shall thereupon and thereafter be entitled to all the rights and privileges, and be subject to all the duties and liabilities to which they would have been entitled or subject had they never been members of said tribe…" § 9, Chapter 800 of the Public Laws of Rhode Island, passed March 31st, 1880, cited in *In re Narragansett Indians*, 40 A. 347. See also Albert S. Gatschet, "Narragansett Vocabulary Collected in 1879," 39 *International Journal of American Linguistics* 14 (Jan. 1973); William Scranton Simmons, *Spirit of*

tempts at legal redress in 1898. *In re Narragansett Indians*, 40 A. 347 (R.I. 1898) ("The political officers of the United States seem never to have recognized the existence of such a tribe as the Narragansett; and hence these Indians are not a tribe with which Congress, by the constitution of the United States, is empowered to regulate commerce. . . ."). Although this may have been a violation of the Non-Intercourse Act of 1790, the Federal Government refused to intervene because the Narragansetts had never signed a treaty with the United States. See *Charlestown* v. *United States*, 696 F. Supp. 800, 802-03 (D.R.I. 1988). The Narragansetts were unable to regain their reservation until the settlement of the lengthy lawsuit that underlies this case.

Lacking a reservation or recognized Indian title to land, the Narragansetts were not subject to the Dawes Act. And having suffered no harm under the Dawes Act, the Narragansetts could not have been within the intended scope of the IRA. The judgment of the court of appeals should accordingly be reversed.

II. THE RHODE ISLAND SETTLEMENT ACT DOES NOT PERMIT THE SECRETARY TO TAKE NON-SETTLEMENT LAND INTO TRUST FOR THE NARRAGANSETTS.

The conclusion that the IRA does not provide the Secretary the authority to take land into trust for the benefit of the Narragansetts suffices to resolve this case. But even if the Secretary had such authority,

the New England Tribes: History and Folklore, 1620 – 1984, 30 (1986). See also Recommendation and Summary of Evidence for Proposed Finding for Federal Acknowledgement of the Narragansett Indian Tribe of Rhode Island dated July 29, 1982, at 4, available at http://64.62.196.98/adc/Nar/V001/D007.TIF.

Congress prohibited him from using it when it enacted the Rhode Island Settlement Act.[10]

1. As petitioners explain, the Settlement Act was Congress's ratification of an agreement negotiated among federal, state, and tribal officials to settle land disputes arising under the Non-Intercourse Act. This agreement, memorialized in a Joint Memorandum of Understanding, S. Rep. 95-972, 25-30 (1978) (JMOU), provided for title to 1800 acres of land in Rhode Island to be transferred to the Narragansetts (Settlement Land). Half of the Settlement Land had been state-owned and half was purchased for the Tribe with federal funds. In return for Rhode Island's relinquishment of title to 900 acres of its land, the State retained civil, criminal and regulatory jurisdiction over the entirety of the Settlement Land, JMOU § 13; 25 U.S.C. § 1708(a), and the Tribe consented to the extinguishment of any aboriginal title it held in any land within the State. JMOU § 6; 25 U.S.C. § 1712.[11]

There can be little doubt that all parties to the agreement believed that the JMOU as codified in the Settlement Act would permanently settle all land claims of the Narragansetts in Rhode Island. In his statement to Congress describing the Settlement Act, the U.S. Representative from Rhode Island, Edward

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[10] Since the Narragansetts were not federally recognized at the time of passage of the Rhode Island Settlement Act, a State Corporation acted on behalf of the Tribe.

[11] Other concessions by the parties include the State's exempting Settlement Lands from local property tax, JMOU § 9; 25 U.S.C. § 1715, and the Tribe's covenant that all Settlement Land contributed by the State would be permanently held for conservation purposes. JMOU § 12.

P. Beard, stated: "This bill will resolve all Indian land claims and it will do so to the satisfaction of all parties." *Rhode Island Indian Claims Settlement Act: Joint Hearing on S. 3153 and H.R. 12860 before the U.S. S. Select Comm. on Indian Affairs and the U.S. H. R. Comm. on Interior and Insular Affairs Subcomm. on Indian Affairs and Pub. Lands*, 95th Cong. 90 (1978) (statement of Edward P. Beard, U.S. Rep. from Rhode Island). Tribal Secretary Eric Thomas, expressing the views of the Narragansetts, told Congress,

> We wholly support S. 3153 and H.R. 12860. These bills embody a settlement to which our tribe agreed and, if enacted, will put an end to a 98-year struggle to regain reservation lands torn from us in 1880 when the State of Rhode Island attempted to terminate our tribal existence. Enactment of these bills will help to insure the continued survival of our people and open the door for a new age of mutual understanding and trust between our people and our neighbors.

Id. at 112.

2. The court below nevertheless held, and the Secretary now argues, that the Settlement Act did not affect the Secretary's authority to take land into trust for the Narragansetts, thus essentially restoring tribal sovereignty over the property. Petitioners show why this assertion cannot be reconciled with the language and manifest purpose of the Settlement Act. But in considering the Secretary's argument, the Court also should be mindful of an additional consideration: Rhode Island's Settlement Act was the first of, and the model for, other settlement acts that resolved disputes over land ownership and tri-

bal sovereignty. All use similar language and structure, and show Congress's great sensitivity to the maintenance of state jurisdiction. The Secretary's reading of the Rhode Island Settlement Act departs radically from Congress's approach and threatens to undermine long-settled resolutions of contentious property disputes in other States.

The States have generally declined to cede any jurisdiction over land that a tribe acquired pursuant to a settlement act. To the contrary, the acts that followed Rhode Island's and that explicitly define the jurisdictional relationship between State and tribe[12] do not yield full authority over settlement land to the tribe and rarely suggest that greater tribal jurisdiction may be achieved over non-settlement land.[13]

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[12] Certain acts do not reference jurisdictional questions because of the nature of the dispute and settlement, such as the Miccosukee Settlement Act II, 25 U.S.C. § 1750, *et seq.*, (resolving specific litigation over the construction of a section of Interstate 95) and the Crow Lands Settlement Act, 25 U.S.C. § 1776, *et seq*. (resolving a boundary dispute arising from a faulty survey). The Seneca Settlement Act, 25 U.S.C. § 1774, *et.seq.*, correcting and renewing leases established in the early 20th century, characterizes the land only as being held by the tribe in "restricted fee" status, and does not address broader jurisdictional questions. The Santo Domingo Pueblo Settlement Act, 25 U.S.C. § 1777, *et seq*., states only that land will be held in trust by the Secretary and "shall be treated as Indian country within the meaning of section 1151 of title 18."

[13] See, e.g., 25 U.S.C. § 1746 (Florida's settlement with the Miccosukee provides that "[n]othing shall diminish, modify or otherwise affect the extent of the civil and criminal jurisdiction of the State" in the leased area; state jurisdiction is assumed over trust lands conveyed by Florida to the United States for the Miccosukee); 25 U.S.C. § 1771e (Massachusetts' settlement with the Wampanoag explicitly preserves full state civil and criminal jurisdiction within the town of Gay Head, where the

The Secretary's extraordinary claim that he may take land purposefully excluded from the Settlement Act into trust and grant full and exclusive jurisdiction to the Narragansetts over that land is therefore both highly unusual and contrary to Congress's re-

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settlement land is located); 25 U.S.C. § 1772d(1) (maintaining Florida's full criminal and civil jurisdiction on Seminole settlement land "to the same extent the State has jurisdiction over said offenses committed elsewhere within the State"); 25 U.S.C. §§ 1725a, 1725(b)(1); 30 M.R.S. §§ 6209-A & 6209-B (Maine's settlement with the Passamaquoddy and the Penobscot tribes establishes exclusive jurisdiction for the tribes over certain minor criminal matters, child custody proceedings, and other domestic relations matters; Maine retains full state criminal and civil jurisdiction over "all Indians, Indian nations, or tribes or bands of Indians in the State of Maine … and any lands or natural resources owned by any such Indian, Indian nation, tribe or band of Indians and any lands or natural resources held in trust by the United States … to the same extent as any other person or land therein."); 25 U.S.C. § 941h (South Carolina Catawba Settlement Act provides for the creation of a tribal court with criminal jurisdiction over misdemeanors and other petty offenses and civil authority over contracts and torts related to the reservation land, while the State retains both concurrent jurisdiction over these matters and exclusive jurisdiction otherwise; land owned by the Catawba Tribe remains subject to criminal, civil and regulatory laws of the State "to the same extent as any other person, citizen, or land in the State"); 25 U.S.C. § 1773(g) (allowing Washington and its political subdivisions to retain and exercise jurisdiction concurrently with the Puyallup Tribe)

So far as *amici* are aware, only one settlement act, Connecticut's settlement with the Mohegan, permits a tribe to retain exclusive tribal civil jurisdiction over settlement land. H. Rep. 103-676. In that case, the tribe's jurisdiction existed prior to the settlement act. Even then, Connecticut maintains concurrent criminal jurisdiction. 25 U.S.C. § 1775d(a). This Act does not provide for tribal jurisdiction of any sort over non-settlement land.

spect for state jurisdiction.[14] Moreover, the Secretary's position is contrary to the great sensitivity that Congress has consistently shown to state jurisdiction.

Rather than asserting jurisdiction not created by the Settlement Act, the Tribe would be better served by approaching Congress if it now finds the Settlement Act irksome, as three other tribes have done. In Maine, the Houlton Band of Maliseet Indians reached a modified settlement with Maine through a supplementary act, PL 99-566, 100 Stat. 3184, six years after passage of the original Settlement Act; the legislation addressed the fund and land acquisition program administered by the Secretary for the Tribe's benefit. The Aroostook Band of Micmacs, one not originally benefited in the Maine Settlement Act, obtained a similar program through separate state and congressional legislation in 1991. PL 102-171, 105 Stat. 1143. And the Miccosukee Tribe, after reaching a settlement with Florida in 1982, sought and obtained a separate amending act in 1997, 25 U.S.C. § 1750, to resolve an ongoing dispute between the Tribe and the Florida Department of Transportation, providing further detail to the original settlement reached 15 years earlier. If the Narragansett

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[14] The Secretary's authority, and any limitations to that authority, to take land into trust under settlement acts is provided in the settlement act itself and does not rely on the IRA. In fact, only one of the settlement acts surveyed recognizes the Secretary's authority to take land into trust under § 475 of the IRA. 25 U.S.C. § 1773c. That settlement act, between Washington and the Puyallup, involves a tribe that had lost reservation land through allotment. 25 U.S.C. §1773(a)(3). As discussed in Section I, *supra*, the Puyallup are one of the tribes that suffered harm Congress intended the IRA to remediate.

Tribe seeks jurisdiction over non-settlement land, it, too, might consider a legislated solution.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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