

July 12, 2011

Statement on H.R. 1291, 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.

**by
Congressman Tom Cole**

Mr. Chairman, thank you for holding this hearing and thank you for allowing me to make a statement on this legislation that I introduced.

The Supreme Court in 2009 turned the entire notion of tribal sovereignty on its head. By taking land into trust for the use of tribes, the federal government preempts state regulation and jurisdiction allowing tribes as sovereign governments to deal directly with the United States on a government to government basis.

In the *Carcieri* decision the Court ruled that the Indian Reorganization Act (IRA) provides no authority for the Secretary of the Interior to take land into trust for the Narragansett Indian Tribe because the statute applies only to tribes under federal jurisdiction when that law was enacted in 1934. This decision creates two classes of Indian Tribes: those that can have land in trust and those that can not. Many tribes in existence in that year were wary of the federal government, and for good reason. Inclusion in that legislation bears no relation on whether a tribe existed at that time or not. This two class system is unacceptable and it is unconscionable for Congress not to act to correct the law as the Supreme Court interpreted it in the *Carcieri* decision.

Mr. Chairman, the *Carcieri* decision overturns over 70 years of precedent and puts billions of dollars worth of trust land in legal limbo. Without a legislative fix, more billions of dollars and decades will be spent on litigation and disputes between Tribes and state and local governments. My legislation would restore a system that has worked since 1934 and prevent costly and time consuming disputes.

You may hear many things about what having land into trust leads to. You may hear that this is all about gaming. The truth is that, of the nearly current 2000 requests for the Secretary to take land into trust over 95% of those requests are for non-gaming purposes. Tribes are governments and conduct inherently government functions, and need land to do so. In the case of the Narragansett tribe which was a party to the *Carcieri* decision, they were seeking land into trust for housing. This legislation does not grant tribes new rights, but just restores the system that functioned since 1934 allowing tribes to provide government services.

You also may hear that a *Carcieri* fix will allow tribes to take vast swaths of land into trust without regard to zoning or environmental regulations. It is true that local land use ordinances

are not enforceable on trust land, just as with any other piece of federal property. This does not mean that tribes will have free range to build on or excavate land into trust. Complex systems of environmental review as well as secretarial approval for new construction or leasing make land use regulations on trust land more restrictive than most if not all local ordinances.

You also may hear that trust land is undercutting states' tax base. Like any federal land, trust land is not subject to state taxation; neither is land housing military bases, national parks and national forests just to name a few. This is no reason to oppose this bill. Federal programs such as Impact Aid and Payment in Lieu of Taxes (PILT) address these shortfalls.

You also may hear that tribes not subject to the 1934 act are not real tribes, but are new groups of people seeking recognition in order to receive federal benefits. The truth is when a tribe is federally recognized, it must prove that it has continually existed as a political entity for generations. Therefore it makes no sense to draw an arbitrary date for tribal recognition in order to enable the Secretary to put land into trust. Many tribes recognized post-1934 have treaties that pre-date the existence of the United States. The Narragansett Tribe has treaties with the colony of Rhode Island. To claim they did not exist prior to 1934 is preposterous.

Mr. Chairman, if Congress fails to act, the standard set forth in *Carcieri v. Salazar* will be devastating to tribal sovereignty and economic development. Resolving any ambiguity in the Indian Reorganization Act is vital to protecting tribal interests and avoiding costly and protracted litigation.