

## Supreme Court says Congress can stop lawsuit that threatens Tribe's casino

9 March 2018

The Supreme Court, in a 6-3 decision last Tuesday affirmed the judgment of the United States Court of Appeals for the District of Columbia in *Patchak v. Zinke*, holding that Congress through the Gun Lake Act, which reaffirms tribal property as trust land and stops litigation challenging that land status, did not violate Article III of the Constitution. *Patchak v. Zinke*, 2018 WL 1054880 (Feb. 27, 2018). As a result, the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians' (Band) fight to operate its casino on the land in question has finally come to an end after years of litigation and uncertainty.

### **The back story on the legal fight**

In 2001, the Band in Michigan identified a parcel of land, known as Bradley Property, to build a casino. In 2005, the Secretary of the Interior announced approval of the Band's request, but waited 30 days for public notice, during which time an anti-gaming organization filed suit to challenge the proposed decision. As a result, Interior did not take the land into trust at that time. The case wound its way through the courts for years, with the Band winning when the Supreme Court denied the opponents request to review it. *Michigan Gambling Opposition v. Norton*, 477 F.Supp.2d 1 (D.D.C. 2007); *Michigan Gambling Opposition v. Kempthorne*, 525 F.3d 23 (D.C. Cir. 2008). At that point, Interior took the land into trust in January, 2009. Two years later, the Band opened its casino on the Bradley Property.

Meanwhile, David Patchak, a nearby landowner, filed suit in 2008 challenging the Secretary's authority to take the land into trust. Patchak's suit ended up in the Supreme Court in 2012, where he won. The Court ruled that he had standing to challenge Interior's land-into-trust decision and that he could sue the United States despite the Quiet Title Act's sovereign immunity bar on claims challenging Indian title. See *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209 (2012).

Thus, Mr. Patchak continued to litigate his claims in the lower courts. Notably, he relied on the Supreme Court's *Carciere* ruling—issued in February 2009—to argue the Band was not eligible to take land into trust because it was not a tribe “under federal jurisdiction in 1934.” *Carciere v. Salazar*, 555 U.S. 379 (2009). When partner Hilary Tompkins was Solicitor of the Department of the Interior, she issued an opinion establishing a test for Indian tribes to determine if they met the standard set forth in the *Carciere* decision. See M-37029: “The Meaning of Under Federal Jurisdiction for Purposes of the Indian Reorganization Act” (March 12, 2014). Her opinion formed the basis of support for the Band's land acquisition in the litigation.

## Congress takes matters into its own hands

While Mr. Patchak's case proceeded and the courts were considering his *Carcieri* challenge, Congress enacted the Gun Lake Act, reaffirming as trust land the Bradley Property and blocking judicial review, including pending cases. Section 2(b) of the Act states, "[A]n action . . . relating to [the] land shall not be filed or maintained in a Federal court and shall be promptly dismissed." Based on the Gun Lake Act, the D.C. district court dismissed Patchak's suit, and the D.C. Circuit affirmed. *Patchak v. Jewell*, 109 F.Supp.3d 152 (D.D.C. 2015); *Patchak v. Jewell*, 828 F.3d 995 (D.C. Cir. 2016).

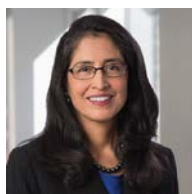
## And the Supreme Court agrees with Congress

Last Tuesday, the Supreme Court agreed with the rulings below, holding that the Gun Lake Act does not violate Article III of the Constitution. Justice Thomas, writing the opinion for the Court, stated that when Congress strips Federal courts of jurisdiction, it exercises a valid legislative power. Congress violates Article III of the Constitution when it "compels findings or results under old law" but not when it "changes the law." Justice Thomas provided an example: If Congress passed a statute stating, "In *Smith v. Jones*, Smith wins," Congress would be violating Article III. On the other hand, the legislative power allows Congress to pass laws that apply retroactively to pending lawsuits, even if such passage effectively ensures that one side will win.

The Court found that the Gun Lake Act "...strips federal courts of jurisdiction over actions 'relating to' the Bradley Property. Before the Gun Lake Act, federal courts had jurisdiction to hear these actions . . . Now they do not. This kind of legal change is well within Congress' authority and does not violate Article III." Thus, "...the only function remaining to the court is that of announcing the fact and dismissing the cause." Justices Ginsburg and Sotomayor each concurred, stating that Congress was simply reimposing the United States' sovereign immunity. Justices Roberts, Gorsuch, and Kennedy dissented, expressing dismay that Congress was interfering with the merits of pending litigation.

As a result the Supreme Court's ruling, Mr. Patchak's long-lived challenge to the Band's casino has finally come to an end. The Court's ruling demonstrates that Congress' plenary authority can be an effective tool to protect tribal trust land from judicial review. Other tribes facing similar legal challenges to their land-into-trust acquisitions will likely be making trips to the Capitol for similar relief, particularly given that the Court's other ruling on tribal trust lands—the infamous *Carcieri* decision—remains unchanged by Congress.

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