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October 13, 2011

Statement on the Carcieri Crisis: The Ripple Effect on Jobs, Economic Development and Public Safety in Indian Country
by
Congressman Tom Cole

Mr. Chairman, thank you for holding this hearing and thank you for allowing me to make a statement on this important issue.

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.

As the only current Member of Congress who is an enrolled tribal member, I cannot understate the importance of tribal members' relationship to the land to their identity and culture. In many cases it is also the driving force for economic development for tribes and tribal members. Tribes across the Great Plains and the Western United States rely on their trust lands to produce energy, both conventional and renewable. Tribes in these areas also use land in agricultural production. Tribes in the Northwest use the fish from the waters adjacent to their land not only to feed their people but also

as a catalyst for jobs catching, processing and marketing those fish. Much land has been taken from tribes and tribal members. It is unconscionable for us to make it harder for tribes to gain back their traditional lands.

The land-in-trust system has problems for sure, but it is the system we have had in place for over 70 years. Current laws make it difficult to develop trust land. Projects that should take weeks to plan and secure regulatory approval for can take years. The federal government already puts burdens on tribal land, the *Carcieri* decision just adds to those burdens by making it harder for tribes to manage and grow their sovereign territory.

In addition to economic development, trust land allows tribes territory to provide essential government services. These services include tribal police and courts. Last Congress, we passed the Tribal Law and Order Act of 2010, which provides tribal police and courts with resources to develop active and expert justice systems. Tribal police forces are better equipped to address the unique needs and concerns of tribal members. Without a sovereign land base, tribal justice systems will be undermined. This is just another way the *Carcieri* Decision hurts tribes' ability to provide essential government services to the most challenged Americans.

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.

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. 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.