NATIONAL CONGRESS OF AMERICAN INDIANS

April 14, 2009

Chairman Nick Rahall
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Ranking Member Doc Hastings
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Rahall and Ranking Member Hastings:

I write on behalf of the National Congress of American Indians to thank you for the Committee's hearing regarding the adverse implications of the U.S. Supreme Court's decision in *Carcieri v. Salazar*. As you know, the *Carcieri* decision overturned the Department of Interior's longstanding interpretation of law regarding the Indian Reorganization Act of 1934 (IRA). We particularly appreciate Chairman Rahall's strong and clear statements regarding the need for Congress to restore the principle that all federally recognized Indian tribes are eligible for the benefits of the IRA.

The fundamental purpose of the IRA was to reorganize tribal governments and to restore land bases for Indian tribes that had been decimated by prior federal policies. The passage of the IRA marked a dramatic change in federal Indian policy. Congress shifted from assimilation and allotment policies in favor of legislation to revitalize tribal governments and Indian culture. In a decision that runs contrary to these purposes, the Supreme Court held the term "now" in the phrase "now under Federal jurisdiction" in the definition of "Indian" limits the Secretary's authority to provide benefits of the IRA to only those Indian tribes "under federal jurisdiction" on June 18, 1934, the date the IRA was enacted. The *Carcieri* decision is squarely at odds with Congressional policies of tribal self-determination and tribal economic self-sufficiency. In particular, this decision runs counter to Congress' intent in the 1994 amendments to the IRA, which directs the Department and all other federal agencies, to provide equal treatment to all Indian tribes regardless of how or when they received federal recognition.

Our concern is that if the *Carcieri* decision stands unaddressed by Congress, it will engender costly and protracted litigation on an arbitrary legal question that serves no public purpose. We strongly agree with statements made at the hearing that Congress and the Administration should focus their efforts on the future, rather than attempting to reconstruct the state of affairs in 1934. The *Carcieri* decision is likely to create litigation on long settled actions taken by the Department pursuant to the IRA, as well as on the Secretary's ability to make future decisions that are in the best interests of tribes. This litigation could threaten tribal organizations, contracts and loans, tribal reservations and lands, and could negatively affect tribal and federal jurisdiction, public safety and provision of services on reservations across the country.

Legislative Action Needed

We see this legislation as similar to the *Lilly Ledbetter Fair Pay Act* signed by President Obama on January 29, 2009. When the Supreme Court interprets a federal statute in a narrow manner that is fundamentally unfair and not in accordance with its original purposes, Congress should move quickly to amend and clarify the law to the effect that all federal recognized tribes are included in the definitions section of the IRA. We greatly appreciate your leadership and efforts to amend the IRA to make clear that IRA benefits are available to all federally recognized Indian tribes.

In addition, NCAI believes it is necessary for an amendment to retroactively ratify the Department of Interior's past decisions. As argued by the U.S. Department of Justice in *Carcieri,* for over 70 years the Department of Interior has applied a contrary interpretation – that "now" means at the time of application of the IRA – and has formed entire Indian reservations and authorized numerous tribal constitutions and business organizations under the provisions of the IRA. NCAI strongly believes it is essential for Congress to address in one comprehensive amendment all of the problems created by the Court in *Carcieri.*

In conclusion, NCAI urges the Committee to work closely with Indian country and the Administration on legislation to address *Carcieri* and allow all federally recognized Indian tribes to enjoy the benefits of the IRA. We thank you for your diligent efforts on behalf of Indian country on these and many other issues.

Sincerely,

Joe A. Garcia

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The National Congress of American Indians
Resolution #ECWS-09-002

TITLE: Remedy the Unjust and Unequal Treatment of Indian Tribes under the Supreme Court's Decision in Carcieri v. Salazar

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the United States Constitution and hundreds of treaties, federal statutes, and regulations all acknowledge the inherent sovereignty of Indian tribes and recognize that Indian tribes are distinct governments; and

WHEREAS, on February 24, 2009 the Supreme Court issued an extraordinarily troubling decision, limiting the authority of the Secretary of the Interior under the provisions of the Indian Reorganization Act ("IRA"). The Court held that the term "now" in the phrase "now under Federal jurisdiction" in the definition of "Indian" limits the authority of the Secretary to only provide the benefits of the IRA to Indian tribes that were under federal jurisdiction on June 18, 1934, the date the IRA was enacted; and

WHEREAS, the Supreme Court has invoked a discriminatory and circular reading of a few sentences in the Indian Reorganization Act to create different classes of tribes; and

WHEREAS, the fundamental purpose of the IRA was to reorganize tribal governments and restore land bases for tribes that had been torn apart by prior federal policies and the Court's ruling is an affront to the most basic policies underlying the IRA; and

WHEREAS, if the decision stands, it will engender costly and protracted litigation and will require Interior Department determinations of the meaning of "under federal jurisdiction" on June 18, 1934, an arbitrary and uncertain legal question that undermines the fundamental principle of federal Indian policy that tribal sovereignty and existence were not created by the federal government but are inherent and preexisted the United States; and

WHEREAS, the Court's decision threatens a significant number of Indian tribes. For over 70 years the Department of Interior has applied a contrary interpretation – that "now" means at the time of application – and has formed entire Indian reservations and authorized numerous tribal constitutions and business organizations under the IRA. There are serious questions about the effect on long settled actions as well as on future decisions; and

WHEREAS, by calling into question which federally recognized tribes are or are not eligible for the IRA's provisions, the Court's ruling in *Carcieri* threatens the validity of tribal business organizations, subsequent contracts and loans, tribal reservations and lands, and could affect jurisdiction, public safety and provision of services on reservations across the country.

WHEREAS, the Supreme Court's new interpretation of the Indian Reorganization Act is squarely at odds with Congress' 1994 amendments to the IRA that directed equal treatment of Indian tribes regardless of how or when they received federal recognition.

NOW THEREFORE BE IT RESOLVED, that the NCAI calls upon Congress to reverse the Supreme Court's discriminatory decision and the damage to Congress' policy and intent, and amend the IRA to make clear that the benefits of the Indian Reorganization Act are available to all federally recognized Indian tribes; and

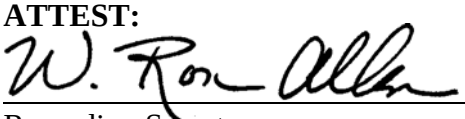
NOW THEREFORE BE IT FURTHER RESOLVED, that the NCAI calls upon the President of the United States, the Secretary of Interior and the Attorney General to consult with Indian tribes on the concerns raised in this resolution and to actively work with Congress to support an amendment that will restore the intention of the IRA.

CERTIFICATION

The foregoing resolution was adopted by the Executive Committee at the 2009 Executive Council Winter Session of the National Congress of American Indians, held at the Westin Washington Dc Center in Washington, DC on March 2, 2009, with a quorum present.

President

ATTEST:



Recording Secretary