STOP THE CASINO 101 COALITION
Let the People Be Heard!

979 Golf Course Drive, No. 170
Rohnert Park, CA 94928
www.stopthecasino101.com

November 12, 2009

The Honorable Barack Obama
President of the United States of America
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

re: *Carcieri v. Salazar*

Dear Mr. President

Stop the Casino 101 Coalition is a non-sectarian, multi-cultural group founded in August, 2003, by thousands of concerned Sonoma County, CA citizens in response to plans by the Federated Indians of Graton Rancheria to build a massive, 760,000 square foot Las Vegas-style urban casino on the outskirts of the City of Rohnert Park. We are writing to urge you to reconsider your position on a so-called "Carcieri Fix".

We believe that federal Indian policy has in many respects supplanted Constitutional law, and that with its three landmark decisions, *City of Sherrill v. Oneida Nation* (2005), *Carcieri v. Salazar* (2008) and *Hawaii v. Office of Hawaiian* Affairs (2008), the Supreme Court has correctly begun to assert the law of the land with regard to what often amount to federal land grabs.

One thing we all must do when we continuously hear federal and state agency administrators referring to a "government-to-government" relationship with Indian tribes is to add a strong dose of reality. The federal government has a government-to-government relationship with all states, and states have this same relationship with its counties and other municipal subdivisions.

The pattern that always confronts us is a tendency to assume that a "government-to-government" relationship with an Indian tribe supplants the same and existing government-to-government relationship between the federal government and the states, and with affected states and their subdivisions.

States have ongoing government-to-government relations with neighboring states but this does not invoke a duty to a neighboring state. The federal government government-to-government relationship with a Native American tribe does not supplant its duties and obligations with the states, nor does any state's government-to-government relationship with an Indian tribe invoke "duty" that supplants a state's relationship with its affected subdivisions.

This egregious phrase, "government-to-government relationship", has been expanded far beyond its intended purpose to open dialogue, respectfully communicate with tribal governments, and at times negotiate partnerships that are MUTUALLY beneficial, and not partnerships that further impair a state or its subdivisions. The phrase "government-to-government relationship" is badly abused by federal and state officials and is exaggerated by tribal leaders.

Trust land benefits only a fraction of all Native Americans: It has been estimated that less than 1% of Native Americans live on reservations, yet there are millions of acres in trust for tribes at this time, with thousands of acres more being proposed for trust acquisition. It is the leaders of these reservations who are currently driving federal Indian policy, yet these people do not speak for the 99% + of Native Americans who do not live on reservations. Naturally, reservation leadership has a vested interest in sustaining the current land to trust policies; they directly benefit from them through federal aid and tax-free businesses.

Thus, the land trust process, so disruptive to so many, benefits only a very few, and among those very few are those who need it to expand their own power.

Trust land "clouds title" to land admitted to the Union under the Admissions Act: Federal Indian policy of setting aside land for Native American tribes came to fruition at a time in our country's history when there were vast expanses of empty territories held in fee by the federal government. With the exception of the original thirteen colonies, it is that land which was used to create the bulk of the reservations across the country.

When a state was admitted to the Union, it was required to cede sovereignty over any existing Indian reservation land that would fall within its borders. Now, however, the government is removing land belonging to the state, and giving it to a new "sovereign", an Indian tribe. This is an extraordinary action for the federal government to take: to remove land from a state which was given sovereignty over it upon its admission to the Union.

The *Carcieri* ruling was almost immediately reinforced by the release of the Supreme Court ruling in Hawaii v. Office of Hawaiian Affairs: It is our opinion *Hawaii v. Office of Hawaiian Affairs*, a ruling published shortly after *Carcieri*, ITSELF "fixes" *Carcieri* and that was the Court's intent. In this 9-0 ruling, the Court affirmed that

> "Congress cannot, after statehood, reserve or convey submerged lands that have already been bestowed upon a State." *Idaho* v. *United States*, 533 U. S. 262, 280, n. 9 (2001) (internal quotation marks and alteration omitted);see also *id.*, at 284 (Rehnquist, C. J., dissenting) ("[T]he consequences of admission are instantaneous, and it ignores the uniquely sovereign character of that event . . . to suggest that subsequent events somehow can diminish what has already been bestowed"). And that proposition applies *a fortiori* where virtually all of the State's public lands—not just its submerged ones—are at stake. In light of those concerns, we must not read the Apology Resolution's nonsubstantive "whereas" clauses to create a retroactive "cloud" on the title that Congress granted to the State of Hawaii in 1959. See, *e.g.*, *Clark* v. *Martinez*, 543 U. S. 371, 381–382 (2005) (the canon of constitutional avoidance "is a tool for choosing between competing plausible interpretations of a statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts")."

The Court made it clear in this ruling that Congress can't amend or repeal the State's rights and obligations under Admission Act (or any other federal law), nor can it cloud the title that the United States held in "absolute fee" and transferred to the State upon its admission to the Union. A Carcieri "fix" would controvert that finding.

In the case of California, for instance, there were ***no*** federal Indian lands within the state's borders when California attained statehood. The land that is now California was legally acquired from Mexico by the United States, which transferred it free and clear to California upon statehood. Congress cannot now "cloud" California's title to its own land, and require California to surrender land within its borders and under its sovereign rule, in order to give the land to a new "sovereign", an Indian tribe.

Trust land disrupts local laws and creates islands of non-jurisdiction: In every instance where the federal government takes land into trust for an Indian tribe, local and state law is displaced, and even federal law is inadequate to the task of ensuring the safety and well-being of both reservation residents and their neighbors.

In a number of states, such as New York State, this has resulted in, for example, tribes selling cigarettes and gasoline without collecting the state taxes. Although tribes claim absolute sovereign power, under the Constitution, tribes are not more powerful than states, yet the federal government has failed to define the exact parameters of their power. This is creating extraordinary problems that result from the federal government setting up tribal land, then simply washing its hands and walking away, leaving state and local government to try to deal with the consequences.

In one local case, an Indian man wanted to murder sought refuge on Indian land. The tribal council of that land refused to allow authorities onto the land to take the man in

custody. In another local case, a Coyote Valley Pomo man had to fight for ten years to get the federal government to take action against the tribal council, which was, to a man, engaging in illegal activities including embezzlement of the children's' trust funds.

Casino gaming has resulted in the creation of phony tribes: The success of tribal casinos has had the unintended result of the creation of phony tribes. These groups, backed by deep-pocket investors, are funded through the recognition or restoration process. Here in California, there are at least four "tribes" that have never existed at any time in history, that are not cohesive cultural units, nor are members related by blood.

Three of these California "tribes", for example, have casino contracts with Station Casinos of Las Vegas. They are the Federated Indians of Graton Rancheria in our area, the Mechoopda Tribe of the Chico Rancheria and the North Fork Rancheria of Mono Indians. Careful research has shown beyond a doubt that none of these are legitimate "tribes", but were created out of whole cloth.

In the case of the Federated Indians of Graton Rancheria, four years of research has proved that no tribe ever existed on the Graton Rancheria. Almost two years of research has shown that its Chairman, Greg Sarris, appears to have no Native American blood whatsoever.

What all three of these "tribes" have in common other than Station Casinos is that their first "reservations" are casino sites on major highways and close to cities. Taking land into trust for these phony tribes would be a mockery of a process already flawed and fraught with internal problems.

Trust land disrupts local planning: The practice of taking property into federal trust has the immediate effect of bypassing local controls on land use, traffic infrastructure and resource allocation.

California has state-mandated community planning. Local officials invest much time, effort, money and resources in developing general plans and zoning ordinances to regulate, coordinate and plan land use. They carefully and painstakingly consider the interests and desires of residents, businesses, and other stakeholders, and make difficult decisions balancing and accommodating the various interests and desires.

Communities establish policies and make further decisions based on those policies. These controls are supposed to govern land use and be applicable to all. If an Indian tribe takes land into trust and is suddenly exempt that property from all local land use controls, and make use of the property that is wholly inconsistent with the prior plans, the work of local government is undercut and greatly weakened.

Here in Sonoma County, we have seen first-hand how a trust land grab can disrupt community planning and resource apportionment. The construction of the notorious parking structure at the Dry Creek Rancheria is a good example of how tribes can ignore planning,

zoning, and even environmental concerns with no consequences.

This multi-story structure was not only non-conforming, but because it was built with no permits, and the tribe allowed no inspection, we have no way of knowing if it complies with code, including the earthquake safety standards so vital in our state. In addition, the grading and earth moving for the structure was not done to code, and in this landslide-prone area, there has already been one landslide as a result of the sub-standard grading. This non-compliance puts anyone who uses the structure at risk. It is a health and safety issue that the community cannot address in any way, because of the federal trust status of the land in question.

In a world of diminishing resources, we believe that there should be no local growth without a local voice, but there is no local voice when it comes to federal trust land.

Trust land deprives citizens of their legal rights: Local governments and residents have no power to challenge inappropriate tribal land use, as they would normally have under local law; once land is taken into trust for a tribe, the tribe may do what is pleases with the land.

Here in our community, the Federated Indians of Graton Rancheria, a group of Native Americans that never in history existed as A "tribe" prior to December, 2000, are attempting to build a 760,000 square foot casino in the family-friendly city of Rohnert Park, home to Sonoma State University. This community of around 3 square miles is the third largest city in Sonoma County, and is located a few short miles from the two other largest cities, Petaluma six miles to the south and Santa Rosa just three miles to the north. It is only 45 miles from the Golden Gate bridge. In other words, it is a prime location for a casino.

The issue of Class III gambling aside, no other developer would ever be permitted to build this project in this area. It is agricultural land, and includes 180 acres of Community Separator. It comprises the headwaters of the Laguna de Santa Rosa, the largest freshwater complex in the North Coast, is part of Sonoma County's vanishing vernal wetlands, is home to four endangered species, and also is vital a flood plain area in a region where annual rainfall is in excess of thirty inches.

The casino site/trust land is surrounded by residential homes, churches, schools and businesses. It is not in a remote area, and it is over twenty miles from what was the old Graton Rancheria. I do not believe it was ever the intention of the United States government to take land in well-developed areas into trust. Yet that is the new face of trust land acquisitions, driven by the desire for casino riches.

It is our position, as confirmed by the Supreme Court's ruling in *City of Sherrill v. Oneida Nation* that "long-settled communities" such as ours have a "reasonable expectation" not to be divided into a "patchwork" of tribal land. We have the right to expect that local law, including land use controls, will be honored, and that we should have standing to seek redress when that does not happen.

Trust land undermines local tax revenue and places an undue burden on the community: More and more, the land acquired by tribes is used for tax-free businesses such as casinos, smoke shops, retail malls and gas stations. They also do not pay property taxes, although Native Americans from these tax-exempt lands enjoy the benefits proved by local jurisdictions that are paid for by taxes.

The failure of tribes to collect and pay local, state and federal taxes like any other business or property owner allows them to offer cut-rate prices. Not only can local businesses not compete with these prices, these tax-free sales have the ultimate effect of undermining the many programs and services government pays with tax revenue, such as schools, road repairs, stop smoking campaigns, and clean air programs. Other tax payers who do not enjoy a tax-free status must then make up the difference, and again, the community at large suffers.

Casinos in particular impose enormous burdens on local resources. Casinos create crime and increase social disorders such as addiction, domestic violence, child abuse, bankruptcy and suicide. It has been estimated that for every $1.00 a local government receives from a tribal casino, it costs the local government $3.00 in costs directly associated with the casino's negative impact on the community – in increased costs to the justice system, social welfare systems, and health systems. Again, the burden of paying for the increased services falls on the community at large, and the tribe is left free and clear because of its federal trust status.

A Carcieri "fix creates a conflict with state and federal laws: A "fix would operate under the premise that once land is taken into trust for a tribe by the federal government, state sovereignty ends and Indian sovereignty begins automatically. This is contrary to well-established common law and legal precedent, including the aforementioned *Hawaii v. Office of Hawaiian Affairs*.

Only by a vote of the California State Legislative body can California relinquish its sovereign control over the land within its borders. Thus, even federal trust land remains under state control and subject to state law. <u>This is an issue that must be decided in the courts before any "fix" can go forward.</u>

Conclusion: As Native American tribes jockey for position in cities and towns so that they may build lucrative casinos, the issue of federal trust land has been thrust into the forefront of the American consciousness. Federal Indian land acquisitions have imposed unwelcome and non-conforming development on local jurisdictions, and the people affected by those trust land acquisitions are virtually powerless to stop them.

You propose a "fix" for *Carcieri v. Salazar*. Notably, no one is proposing a "fix" for *Hawaii v. Office of Hawaiian Affairs*. In its wisdom, the Supreme Court has made it clear with these two cases that Congress' power to remove lands from state control has been overreached.

A "fix" would have the ultimate result of forcing governments and citizens into court *again* to ask the courts to determine *again* how far the federal government can go in taking land from its states, even though that question has now been asked and answered twice in the highest court in the land.

There are too many legal issues that must be resolved before you throw the baby out with the bathwater by overriding the Supreme Court's ruling in *Carcieri.* I think that in the matter of these legal issues, the White House would be wise to submit to the experience and authority of the Supreme Court of the United States.

On behalf of our membership, I'd like to thank you for your service to the people of this great country. We greatly value your hard work and devotion..

Very truly yours,

Reverend Chip Worthington
Pastor, Rohnert Park Assembly of God Church
Founder, Stop the Casino 101 Coalition
Reply to: c/o 4427 Taylor Avenue
Santa Rosa, CA 95407

Email: chip@stopthecasino101.com

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