No. 17-8

IN THE

Supreme Court of the United States

TOWN OF VERNON, NEW YORK, PETITIONER

v.

UNITED STATES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR CITIZENS EQUAL RIGHTS FOUNDATION AS AMICUS CURIAE SUPPORTING PETITIONER

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Interest of the *Amicus Curiae*

The Citizen Equal Rights Foundation (CERF) was established by the Citizens Equal Rights Alliance (CERA). Both CERA and CERF are South Dakota non-profit corporations. CERA has both Indian and non-Indian members in 34 states. CERF was established to protect and support the constitutional rights of all people, to provide education and training concerning constitutional rights, and to participate in legal actions that adversely impact constitutional rights of CERA members. CERA actually has two board members that live in New York. One of these board members raised her family and still resides in Vernon, New York. Central New York Fair Business is a member organization of CERA and is incorporated as a non-profit in Oneida, New York. CERA and Central New York Fair Business had their petition for certiorari over the same subject as this case denied May 15, 2017. CERF and Central New York Fair Business are primarily writing this *amici* brief to support the other parties in the fee to trust litigation and explain how destroyed the common citizens of the area feel after this Court acknowledged their justifiable expectations to the governance of the area and now have turned their back on their plight without explanation. All of the persons living in the Town of Vernon and little City of Sherrill that is actually within the boundaries of Vernon are now living in Indian country without any legal authority to contest or even protest the massive changes being wrought upon their community. [1]

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[1] Pursuant to Rule 37.6 of the Court, no counsel for a party has authored this brief, in whole or in part. No person or entity, other

CERF submits this *amicus curiae* brief to add the perspective of its members that the Constitution should apply to all persons in the United States and to all lands within the exterior boundaries of the United States. CERF firmly believes that the United States government should be promoting the interests of all of its citizens on an equal basis. This case addresses the unlimited authority of the Secretary to take lands into trust and to create Indian country. This *amici* brief is not a rehashing of previous arguments. Instead, counsel will present a broader historical perspective than can be made when specifically advocating as a party. Both parties have consented by letter to the filing of this *amici curiae* brief.

Summary of the Argument

A federal policy of purchasing lands for Indians or allowing fee lands they have purchased to be placed into federal trust status may be an extreme affirmative action program but by itself does not create a major constitutional issue. What creates the major constitutional conflict with all other civil rights and liberties is the designation that the Indian land taken into trust status becomes federal Indian country. The term Indian country began as a practical temporary description of an area occupied by Indians that had not yet been "civilized" to European laws and customs. While CERF does not agree with the Eighteenth century viewpoints that segregated by class and race

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than *amici curiae*, CERF, its members or its parent CERA's members including Central New York Fair Business, or its counsel have made any monetary contribution to the preparation or submission of this brief.

the diverse cultures in the young United States, those views still form the basis of federal Indian policy today. Even more important is the fact that the term Indian country has become a permanent legal description that defines an area that is removed from state jurisdiction and made subject to plenary federal authority. Whether this authority is still a true war power or is a hybrid between federal criminal law and the military and territorial powers of the United States has not been defined or limited by this Court. While CERF understands how this historical reality occurred, CERF does not accept that lands placed into federal trust by the Secretary automatically become federal Indian country. Nor should Indian country be treated as a permanent land status as it has become. This fee to trust case presents a unique opportunity to put into context what the definition of Indian country means to the continuing function of our federalism constitutional structure in the Twenty-first century.

ARGUMENT

This case concerns whether 13,000 acres of the original colony of New York can be removed from state jurisdiction and placed into trust status under the plenary power of the Secretary of the Interior and Congress through Section 5 of the Indian Reorganization Act (IRA). Act of June 18, 1934, 48 Stat. 988, 25 U.S.C. § 5108 (formerly 465). The IRA was not intended by Congress to be the sweeping act originally envisioned by John Collier. After the original bill failed to pass the Senate, a hastily cobbled together full bill substitute was introduced and passed into law at the urging of President Roosevelt. The IRA that became law never had a hearing or major review in either

house of Congress. It was created and passed in a few days after the sweeping original bill was defeated.

From the moment the IRA became law its lack of definitions and hastily written sections granting new authorities led to major controversy between the Bureau of Indian Affairs (BIA) and the Congress over its implementation. Congress was openly threatening to repeal the IRA in 1936 and forced the BIA to curtail its broad interpretations of the act that were attempts to interpret it as John Collier had originally intended. In all of the controversy over the first ten years of the IRA no mention is made of Section 5. Likely there was no controversy because the BIA did not interpret Section 5 to allow the Secretary to remove lands purchased in fee from state jurisdiction. The BIA did restore former Indian allotments claimed to be held in fee by counties taxing them to the reservations. The BIA argued that allotted lands not formally released from the trust provisions of the various allotment acts were still subject to restoration under the IRA. In many cases the trust period had expired many years prior but the federal documents releasing the allotments from the trust provisions had not been processed by the BIA or General Land Office. Most likely the authority to restore these formally unreleased allotted lands was the purpose of Section 5 when negotiated and written by John Collier and Senator Elmer Thomas. Because no notes of their meeting at the Senator's home were kept, there is no legislative history of the meaning or purpose for any of the provisions of the IRA other than what is stated in the plain language of the act.

It was not until after the modern codification of the term "Indian country" in 1948 as codified in 18 U.S.C. Sec. 1151-1153 that Section 5 of the IRA was

given new meaning by the Executive branch. The language of Section 5 codified in 25 U.S.C. 5108 has never been amended by Congress, it has just been reinterpreted by the BIA to allow any lands purchased in fee by tribes or outside casino interests to be placed into federal trust status.

This Court has acknowledged that restoring tribal interests in mostly non-Indian areas upsets the "justifiable expectations" of the property owners and citizens of that area. *See City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197, 215 (2005). *Amici* remind this Court that the main issue in *City of Sherrill* as briefed and argued by the parties was whether the federal government could federalize the remaining State reservation of 32 acres by claiming it was Indian country under 18 U.S.C. § 1151. This issue of whether the United States could essentially alter the primary jurisdiction of New York as an original colony that acquired rights under the Articles of Confederation over the Indians residing in the State and prevent New York from changing the use of state lands was not answered in *City of Sherrill.* Instead, this Court wrongly assumed that the United States Department of the Interior and Bureau of Indian Affairs would apply 25 U.S.C. § 465 (now § 5108) to balance the interests of all in making its decision whether to take land into trust for the remnants of the Oneida of New York. As CERA realized in its litigation against the fee to trust process initiated because of the opinion in *City of Sherrill*, in New York, federal Indian law has always been administered partially under the war power authority of the United States. *See* Decision and Order, November 2, 2015, Document 131 6:08-cv-0660 (LEK/DEP) Northern District Court of New York

citing 43 U.S.C. § 1457 as the source of the fee to trust authority of the United States.

I. THE TERMS "ASSIMILATION" AND "INDIAN COUNTRY" INTERMIXED WAR POWERS WITH CIVIL AUTHORITY

This Court described some of the Indian land status history of New York in the *City of Sherrill* decision. This history is unusually complex because it was the location where the state interests and federal interests over the Indian rights at the time of the adoption of the Constitution were tested and then finally decided by the Supreme Court. This complexity was caused by the fact that the nascent United States as well as the State of New York were trying to develop a new way for a civilized nation founded on principles and not on the divine right of a sovereign to allow the indigenous people the same opportunities as all other Americans. Everything at the founding of our nation was about "Becoming Americans" as the Colonial Williamsburg Foundation has summarized and continues to educate about.[2]

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[2] Becoming Americans: Our Struggle to Be Both Free and Equal-A Plan of Thematic Interpretation Cary Carson, Editor Visitors are fascinated by the authenticity of the historic interpretations at Colonial Williamsburg. This book is a synthesis of the scholarship on which those interpretations are based. It explains how diverse groups of people, holding different and sometimes conflicting personal ambitions, evolved into a society that valued both liberty and equality. Americans still cherish these values as their birthright, even when their promise remains unfulfilled. The introductory essay and the 5 thematic story-line essays-"Taking Possession," "Enslaving Virginia," "Buying Respectability," "Choosing Revolution," and "Freeing Religion"-explore the history behind the critical challenges that divide American society and the

Becoming American was supposed to represent unlimited opportunity if individuals could overcome prior prejudices. This idealism and deliberate attempt to improve human character was a necessary part of the experiment of self-government. It was only if we could put aside our petty differences and a majority aspire to the larger principles that self government could succeed. This idealism was the basis of the original federal Indian policy of assimilation. The United States and the State of New York while contesting specific land issues and jurisdiction regarding the Indians were both working toward the goal of assimilation.

A. The Assimilation Policy

The law we inherited from Great Britain completely separated the war powers from the domestic law. Either an area was under military jurisdiction or it was under civil jurisdiction. This was the most direct way to prevent the authority to wage war from influencing or affecting the domestic authority. An area under military jurisdiction was under martial law with virtually all civil liberties suspended unless specific rights were granted by the King or Parliament. All of the Colonies prior to the Revolutionary War were classified as British territories primarily under military jurisdiction. Under British law at that time there was no legal means to transition those born under the territorial military status of a Colony to becoming equal in status to those born within

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historic forces that simultaneously unite it. Softbound, 206 pages, 78 color and 38 black and white illustrations.

the British Isles. It was over this impasse in the common law that we fought the Revolutionary War.

This understanding of the common law was built into the Constitution where it is most visible in the clause preventing the suspension of the writ of habeas corpus except in times of rebellion or invasion. Defining and controlling the authority to wage war was seen by the Framers as one of the most difficult problems in designing the structure of the Constitution. One of the most prominent members of the Constitutional Convention, George Mason of Virginia, refused to sign the finished Constitution because he did not believe the document contained enough restriction on the federal authority to wage war given the slavery and Indian situations. These groups were situations because they were not "white." The authority to classify slaves as 3/5ths human and Indians not taxed as separate required treating them as potential enemies using military authority. These clauses also deliberately intermix the authority to wage war and the civil authority in order to create an opportunity for all people to become equal. From the beginning our Framers rejected the old British absolute classification of individuals and attempted to create something new. The assimilation policy for the Indians and all emigrants was a whole new concept incorporating the belief that all men were created equal.

The majority of the Framers believed that this deliberate intermixing of war and civil authorities was acceptable because they had designed a document that made permanent the civil liberties and would require all other designations to be "temporary." They specifically applied this temporary versus permanent restriction in the Property Clause, Art. IV, Sec. 3, Cl. 2., to limit the federal authority to keep an area

indefinitely under military jurisdiction by requiring disposal of the territories.

Applying the policy of assimilation to Native Americans while trying to acquire the lands they had been using was a novel and difficult proposition. The Indian Commerce Clause, Art. I, Sec. 8, Cl. 3, was intended to avoid military conflict with the various Indian tribes while allowing the United States to continually acquire more Indian land. Only lands ceded outside of State boundaries were deemed "federal territory" under the Property Clause. These federal territorial lands were subject to the Northwest Ordinance of 1787 originally under the Articles of Confederation, and then adopted as the first law passed under the new Constitution. The Northwest Ordinance in Article 3 contained a written federal Indian policy designed to protect and assimilate the Native Americans. The Northwest Ordinance was the idealistic adaptation of the British discovery doctrine. The doctrine of discovery is a war power doctrine. *Johnson v. McIntosh*, 21 U.S. 543, 588-90 (1823). It did not specifically apply in New York or any of the other original 13 Colonies. The Organic Act of 1787, as it is sometimes called, was the attempt to reconcile the brutality of the discovery doctrine with the new individual rights principles embodied in the Constitution.

The difficulty of applying the assimilation policy started in New York with the 1794 Treaty of Canandaigua, 7 Stat. 44. Two of our Founding Fathers were involved in land speculation in Western New York (Robert Morris and Alexander Hamilton) and used their considerable influence to convene federal treaty negotiations at Canandaigua in 1794. It was later decided that while the United States could accept the

relinquishment of the occupancy rights of the New York Indian tribes under the Treaty Clause and Indian Commerce Clause that it did not have any sovereign authority over any land in New York because the preemptive rights belonged to the State of New York. *See Fletcher v. Peck*, 10 U.S. 87 (1810). The right of preemption is the right maintained by the sovereign over conquered land before the land is settled and civilized to become private property. This ensures that any lands that are not successfully developed return to the sovereign to be reassigned to another pioneer to develop. Under the British doctrine of discovery conquered lands remained under military control as long as the right of preemption was maintained. *Johnson* at 588-90. After the decision in *Fletcher*, the United States did not have any territorial land subject to the Property Clause in New York. But the 1794 the Treaty of Canandaigua had generously allowed the Indians to remain on their state reservations of land and claimed to grant them continuous usufructory rights for hunting and passage on all waterways. All that is required to realize how difficult all these issues were to finally determine in New York is an examination of the dates when different actions occurred. As was correctly described in *City of Sherrill* all Indian land had been ceded to the State of New York by the Treaty of Fort Schuyler in 1788 before the Constitution was in effect. *See City of Sherrill* at 203-204.

B. The Meaning of Indian Country

To make matters even more complicated the Seneca uprising in New York in the 1790's required the federal courts to create a temporary federal common

law designation to deal with New York's temporary loss of jurisdiction assumed by the United States Army. As a matter of federal Indian common law, the federal courts interpreted these conflict zones created by Indian uprisings as "Indian country." *See generally United States v. Donnelly*, 228 U.S. 243 (1913). Acknowledging a temporary status of "Indian country" because of an Indian uprising did not change the underlying ownership or jurisdiction of the land. *See Fletcher v. Peck*, 10 U.S. 87 (1810). As a matter of federal law, the Seneca lands in the State of New York never left state jurisdiction. *See United States ex rel Kennedy v. Tyler*, 269 U.S. 13 (1925).

In 1834, Congress codified the term Indian country in the Indian trade and Intercourse Act, 4 Stat. 729, in deliberate opposition to Chief Justice Marshall's attempted interference with the Removal Act of 1830, 4 Stat. 411, with his rulings in *Cherokee Nation v. Georgia*, 30 U.S. (5 Peters) 1 (1831) and *Worcester v. Georgia*, 31 U.S. 515 (1832). The 1834 Indian Trade and Intercourse Act deliberately ceded all federal jurisdiction over Indian tribes and Indian land East of the Mississippi River once their lands were exchanged pursuant to the Removal Act. The Trade and Intercourse Act was the second attempt by Congress to cede all federal jurisdiction over the remaining Eastern Indians. The first was the act passed by the United States Congress as part of the compromise to enable the Louisiana Purchase. That statute authorized the President to negotiate the removal of any Indian tribe East of the Mississippi to the Western territories. The same statute conceded that those Indians and Indian Tribes that remained in the Eastern States were under state jurisdiction. *See* Act of March 26, 1804, § 15, 2 Stat. 289. This act has never been repealed.

Section 1 of the 1834 act defined Indian country as all that part West of the Mississippi River where the Indian title had not been extinguished. This definition linked the definition of Indian country directly to the territorial lands subject to the Property Clause. Congress has plenary territorial war power authority to determine the processes and rights of persons in the territories until those territories become States. *See American Insurance Co. v. Canter*, 26 U.S. 511 (1828). The Framers of our Constitution because of this distinction in fundamental rights between the application of domestic and territorial law specifically required that Congress "dispose of the territories." Property Clause, Art. IV, Sec. 3, Cl. 2. This requirement to dispose of the territory and create new States was defined by this Court as allowing the United States to retain territorial land only on a temporary basis. *See Pollard's Lessee v. Hagan*, 44 U.S. 212, 221 (1845). This specific requirement was meant to prevent the United States from being able to use the territorial war powers as permanent domestic law against the States and individuals.

In 1864, Section 20 of the 1834 Act was amended to prohibit the sale or introduction of liquor into the Indian Country. This statute was to be enforced by the Department of War. Many sections were included in the Revised Statutes that used the term Indian country. The 1834 act was essentially codified as 1 Rev. Stat. Section 533. The definition of Indian country was amended to extend all of the general laws of the United States with the adoption of the 1871 Indian policy and the end of the treaty making. *See* 2 Rev. Stat. § 2145. This harsh policy was adopted because so many of the Indian tribes had fought for the Confederacy during the Civil War.

The Congress and the federal agencies considered that the changes made to stop making treaties with the Indian tribes and to transfer the primary responsibility over the Indian tribes from the Department of State to the Department of the Interior in 1871 ended the assimilation policy of the Northwest Ordinance and began a much harsher direct war power policy toward the Indians. See 25 U.S.C. § 71, 1 Rev. Stat. § 441 and § 442. *See also U.S. v. Lara*, 541 U.S. 193, 201 (2004). The Indian policy of 1871 rejects the idea that Indians can ever become productive citizens of the United States in complete opposition to the earlier assimilation policy. In the Revised Statutes setting the Indian Policy of 1871 are numerous statutes defining different types of Indian country. These definitions were not designed to protect the Indians from non-Indians trespassing or encroaching on lands reserved to them as the Indian country statute of June 30, 1834 was drafted. 4 Stat. 729, *See also Bates v. Clark*, 95 U.S. 204 (1877). The Indian country sections in the later Revised Statutes were done to allow the Indians and Indian tribes to be suppressed by military action on the reservation or if they left the reservations. *See generally Dick v. U.S.*, 208 U.S. 340, 352 (1908). With the 1871 Indian policy, numerous amendments to the term Indian country appeared. Most were new Indian criminal statutes.

II. THIS COURT CONTINUES TO IGNORE THE REAL BASIS OF FEDERAL INDIAN POLICY

The Indian policy of 1871 is a war power policy. *Lara* at 201. The separate racial classification of "Indian" from *Dred Scott* v. Sandford, 60 U.S. 393

(1857) was deliberately preserved in the Indian Policy of 1871 as codified in the Revised Statutes of the Reconstruction era. The Indian policy of 1871 was based on all Indians and Indian tribes as a race being potential belligerents against the authority of the United States. This change happened because so many Indian tribes raised hostilities during the Civil War. Many Indian tribes formed alliances with the Confederate States. *See Holden v. Joy*, 112 U.S. 94 (1872). This codification of the Reconstruction power over Indians preserved the territorial war powers used to fight the Civil War and to Reconstruct the Southern states following the war. *See* War Powers by William Whiting (43rd edition) p. 470-8. Under the 1871 policy the only good Indian was a dead Indian. Even if an Indian left the reservation of territorial land made for his tribe and resided in town as a member of American society, he was deemed to be under the complete authority of Congress as an undomesticated person not capable of exercising the responsibilities of a citizen. Only Congress could change his status and grant citizenship *See Elk v. Wilkins*, 112 U.S. 94 (1884).

By the 1880's senior members of Congress were intentionally going around the 1871 Indian policy and trying to fulfill the promises that had been made to friendly Indian tribes under the original assimilation policy. *See Nebraska v. Parker*, 136 S.Ct. 1072 (2016). This attempt to return to the assimilation policy was incorporated into the Dawes or General Allotment Act of 1887.

Amici will not waste the time of this Court by describing in detail the complete vilification of the General Allotment Act by John Collier and his cadre in the BIA in the 1930's. The IRA as originally proposed by John Collier required this vilification to try to

convince Congress to rewrite history and retroactively change how the Indians and their lands had been treated. Just a smattering of Felix Cohen's compilation of Federal Indian Law is enough to prove the total vilification not only of the Dawes Act but of the whole original policy of assimilation made by the promoters of the IRA. What we now try to forget or deliberately ignore is the almost immediate consequence of that vilification.

The inherent racism contained in the 1871 Indian policy was copied by the United States military to figure out how to legally detain and remove persons of Japanese descent during World War II. It was no accident that the Japanese Relocation centers and detainment camps were located on current and former federal Indian reservations. Many cases filed by Japanese citizens challenged their treatment during the war. This Court upheld the military authority applied through the civil criminal laws against the Japanese citizens because of their race until the end of 1944 when it finally granted a *habeas corpus* petition. *See generally Ex Parte Mitsuye Endo*, 323 U.S. 283 (1944). We don't want to remember how the 1871 Indian policy was justified and upheld in principle in *Hirabayashi v. United States*, 320 U.S. 81 (1943) and *Korematsu v. United States*, 323 U.S. 214 (1944).

This was the state of our law when Congress in 1948 finally got around to codifying the definition of Indian country in what is still 18 U.S.C. § 1151. 62 Stat. 757. These definitions apply the 1871 Indian policy. The United States since 1948 has argued that Indian country is a permanent land status that allows the Secretary and Congress to displace the civil law by permanently removing state jurisdiction. While this Court has addressed part of this problem in *Alaska v.*

Native Village of Venetie, 522 U.S. 520 (1998) which prevented the Department of the Interior from further expanding the definition of Indian country it has never allowed a case to confront whether Congress has ever had the authority to create a permanent Indian country land status.

It is the current definition of Indian country that has divested the state of New York of jurisdiction over the remaining state reservations and allowed the application of territorial war powers to create federal territorial land in New York where it never existed. But this Indian country does not exist without the Secretary's approval to accept the 13,000 acres of land into trust status.

III. THIS COURT HAS A CHOICE WHETHER TO ADDRESS THE CONSTITUTIONALITY OF SECTION 5 OF THE IRA OR TO ADDRESS THE CONSTITUTIONALITY OF 18 U.S.C. § 1151

This Court can either attempt to sort out the contradictory federal Indian policies that Congress has made or it can start making its own common law position that it can use to decide this case and subsequent cases. Continuing to defer to the elected branches to determine federal Indian policy just continues the morass of contradictory federal laws without resolution. This Court needs to admit that Congress is incapable and unwilling to make significant changes that confront the contradictions in the policies and law. This Court also needs to admit that the Executive administration is taking great advantage of the legal morass surrounding federal Indian policy as in this case and has gone overboard in promoting tribal

sovereignty to the point of tearing down the very principles this nation was founded upon.

There are significant reasons for this Court to address the constitutionality of Section 5 of the IRA instead of the slate of suits being developed to challenge the constitutionality of Indian country. As the petition for certiorari effectively argues, Section 5 of the IRA as a statute written pursuant to the domestic authority of Congress is based solely on the authority of the Indian Commerce Clause. The IRA was not passed under any emergency or to protect public safety from Indian uprisings. This means that addressing the constitutionality of Section 5 allows the Court to explain that the constitutional provisions used in the 1871 Indian policy to wage war and suppress the Indians are not and cannot be a part of the IRA. More importantly, the Court can explain that Congress in rejecting the sweeping bills written by John Collier intentionally did not incorporate the 1871 Indian policy into the IRA. The IRA Congress passed was based on the federal Indian policy of assimilation and not the 1871 policy of annihilation.

Interpreting the specific language of Section 5 to allow the restoration of any Indian allotment that had not been formally released by the BIA or General Land Office even though the trust period of the allotment act had expired becomes a public land law decision under the domestic authority of the Congress. This means that 25 U.S.C. §5108 as written by Congress is not unconstitutional. What is unconstitutional is how the Secretary of the Interior has interpreted Section 5 without any amendment by Congress to allow fee lands purchased by or for an Indian tribe to be placed into trust status under this provision. In the original bill submitted by John Collier there was an actual fee to

trust provision that was removed by amendment to the bill very early in the attempt to pass it. Neither the House or the Senate versions ever passed any part of the IRA with the actual fee to trust provision in it.[3] Like the provision on the separate federal courts just for Indian claims, the fee to trust provision was just too extreme. Even with all of Collier's concessions to allow removal of virtually all his key provisions to reconfigure federal Indian policy, the final bill was still defeated in the Senate. This set up the full bill substitute at the request of President Roosevelt that was passed as the IRA.

The above interpretation also agrees with what Congress passed in the Indian Lands Consolidation Act (ILCA), 25 U.S.C. § 2202, 96 Stat. 2517. Allowing the consolidation of different categories of federal lands reserved for Indian use is well within the domestic authority of Congress. The ILCA allows fractionated allotments to be consolidated and included under Section 5 of the IRA. This Court specifically rejected the Second Circuit's broader interpretation of the ILCA made in this case in *Carcieri v. Salazar*, 555 U.S. 379, 394-395 (2008).

This Court rendering a majority opinion that the IRA as passed by Congress was not based on plenary authority but simply on the domestic authority of Congress could not be ignored by the Congress or Secretary of the Interior. Unless Congress was willing to admit and place into a bill that the Indians are still

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[3] CERF provided copies to this Court of the original IRA bills in the *Amici Curiae* brief filed in *Carcieri v. Salazar* detailing how the fee to trust provision was included in the original bills introduced in January 1934 and how that provision had disappeared from the late February versions of the same bills. *Amici* will gladly provide the same research upon request.

racially segregated and capable of waging war against the United States the Congress itself cannot justify using plenary authority. Plenary authority is normally considered total authority which is the same definition as the authority to wage war. When Congress passed the IRA in 1934 it had no intention in continuing indefinitely the Indians remaining a completely separate racial group subject to the extremely harsh federal Indian policy of 1871. Using this analysis also allows 18 U.S.C. § 1151 to be interpreted just as it is was meant to be by the Truman administration in 1948—as a federal criminal statute defining the jurisdiction of the United States over existing Indian reservations.

The problem with forcing *amici* and others to litigate over whether a specific area is Indian country begins with the fact that the consolidated definitions of Indian country contained in 18 U.S.C. § 1151-1153 really do derive from the 1871 Federal Indian War Power policy as explained in this brief. By this Court refusing to confront the Secretary's interpretation of the IRA and specifically Section 5, the 13,000 acres taken into federal trust and the entire original 300,000 acre Oneida Indian reservation that these lands have been restored within can be and are being interpreted by the BIA as federal Indian country. This means that this Court "has affected to render the military independent of and superior to the civil authority" in Upstate New York. That this Court "has combined with others to subject us to a jurisdiction foreign to our Constitution and unacknowledged by our laws," giving this Court's "assent to their acts of pretended legislation."

If these last two sentences above sound somewhat familiar it is because counsel has substituted Court where the Declaration of Independence says He

in referring to the grievances of the King of Great Britain against the Colonists. This Court is allowing tyranny to become the law. Suits against areas being designated as Indian country will cause this Court great embarrassment as we claim we have been interred just as wrongfully as the Japanese. At least then there was an actual war and fear as an excuse. Today there is no excuse except the unwillingness of an elitist Court to protect the rights of the people ahead of protecting itself from the opposition of the elected branches of our government.

Conclusion

This Court should reverse the decisions of the Second Circuit Court of Appeals and the federal district court.

Respectfully submitted,
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