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Upstate Citizens for Equality, Inc. v. United States

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Upstate Citizens for Equality, Inc. v. United States, 841 F.3d 556 (2d Cir. 2016)

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The Indian Reorganization Act of 1935 is the proper avenue for Tribes pursuing restoration of their historic trust lands. The Oneida Indian Nation of New York long sought to reassert tribal jurisdiction over its historic homeland in Central New York. These efforts were largely unsuccessful until 2008 when the United States took 13,000 acres of this historic homeland into trust on behalf of the Tribe under the Indian Reorganization Act. This case affirms the federal government's plenary powers over Indian Tribes, and that neither state sovereignty principles, nor the Enclave Clause upset that authority.

I. INTRODUCTION

The Oneida Indian Nation of New York's ("Tribe") aboriginal homeland once covered six million acres across New York.[1] In 1788, the Tribe ceded all but a 300,000 acre reservation ("Reservation") to New York State ("State") in the Treaty of Fort Schuyler ("Treaty I").[2] Allotment Era policies and criminal purchases vastly reduced the Tribe's jurisdiction over reserved and historic homelands.[3] Although the Tribe began repurchasing lost reservation lands in the 1990's, those lands remained under State jurisdiction.[4] Following Indian Reorganization Act ("IRA") procedure, the Tribe petitioned the United States Department of the Interior ("DOI") to take a portion of its lost lands into trust.[5] In 2008, the DOI complied and restored 13,000 acres to tribal jurisdiction.[6]

Two towns, a civic organization, and residents of the newly established trust lands ("Plaintiffs") quickly challenged the DOI's land-into-trust determination.[7] Invoking federal jurisdiction pursuant to the Administrative Procedures Act ("APA"), Plaintiffs argued acquiring land in trust for the Tribe exceeded constitutional federal power by infringing on state sovereignty, as well as violating the Constitution's Enclave Clause.[8] Plaintiffs further challenged the DOI's interpretation of "tribe" and "Indians" pursuant to the IRA and Indian Land Consolidation Act ("ILCA"), arguing that the Tribe met neither definition.[9] The court rejected each of these arguments, holding that neither principles of state

1. Upstate Citizens for Equality, Inc. v. United States, 841 F.3d 556, 562 (2d Cir. 2016).
2. *Id.*
3. *Id.* at 562-63.
4. *Id.* at 563.
5. *Id.* at 560.
6. *Id.*
7. *Id.*
8. *Id.* at 578.
9. *Id.* at 572.

sovereignty, nor the Enclave Clause barred the DOI's plenary authority to take land into trust on behalf of the Tribe under the IRA.[10] Further, the court upheld the DOI's interpretation that the Tribe became eligible to have land taken into trust on its behalf under the IRA in 1983, and that the DOI had statutory authority to take land into trust for the Tribe under ILCA.[11]

III. FACTUAL BACKGROUND

The Tribe's relationship with the State is long, complex, and tenuous.[12] Beginning in the Allotment Era, Congress sought to "extinguish tribal sovereignty, erase reservation boundaries, and force the assimilation of Indians into society at large."[13] Through unwise and even fraudulently procured deals, many Indians quickly lost their allotments.[14] Although the Non-Intercourse Act of 1790 prohibited selling Tribal land without federal consent, and the 1794 Treaty of Canandaiua acknowledged Treaty I's "free use and enjoyment" of the Reservation, the State continued to buy Reservation lands.[15] By 1920, tribal members owned only 32 acres of the Reservation's original 300,000.[16] However, the Reservation remained established.[17]

Indian policy abruptly changed course in 1934 with passage of the IRA, which repudiated Allotment Era policy and sought to restore or replace Indian lands and related economic opportunities lost during allotment.[18] Under § 5, the IRA authorized the "Secretary of the Interior . . . to acquire land and other property interests 'within or without existing reservations… for the purpose of providing land for Indians.'"[19] The lands were then held by the "United States in trust for the Indian tribe," and not subject to State taxation, zoning laws, civil or criminal jurisdiction without tribal consent.[20] The tribes could, however, opt out of IRA provisions by majority vote, which the Tribe did in 1936.[21] In 1983, at the Tribe's request, Congress overrode the Tribe's opt out vote under ILCA.[22]

The Tribe repurchased former Reservation lands throughout the 1990's, assuming that the properties were exempt from local property taxes because of their former Reservation status.[23] After the Tribe opened

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10. *Id.* at 572.
11. *Id.* at 577.
12. *Id.* at 562.
13. *Id.* at 561 (quoting Cnty. of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation, 502 U.S. 251, 254 (1992)).
14. *Id.* at 561 (citing *Cty. Of Yakima*, 502 U.S. at 254).
15. *Id.* at 562-63.
16. *Id.* at 563.
17. *Id.*
18. *Id.* at 561.
19. *Id.* (quoting 25 U.S.C. § 465 (2012)).
20. *Id.* (quoting 25 U.S.C. § 465).
21. *Id.* at 572.
22. *Id.*
23. *Id.* at 563.

the Turning Stone Resort Casino ("Casino") on one of the newly acquired properties and continued to default on its property tax payments, the Town of Sherrill filed suit to evict the Tribe from lands within the Town's boundaries.[24] While the lower courts agreed that the Tribe's newly acquired land was exempt from local property taxes, the United States Supreme Court reversed.[25] The Court held that "equitable considerations precluded restoration of the Tribe's sovereignty over land since purchased on the market."[26] However, the Court suggested that § 5 of the IRA was the Tribe's "proper avenue . . . to reestablish sovereign authority over territory last held … 200 years ago."[27]

Almost immediately, the Tribe petitioned the DOI to take 17,000 acres of tribally-owned land into trust on its behalf.[28] In 2008, after finding the land-into-trust decision necessary to support tribal self-determination, tribal housing and economic development, the Secretary of the Interior agreed to take 13,000 acres of land into trust on behalf of the Tribe.[29] While the Secretary acknowledged the potential negative effects on the State, she concluded that those effects did not warrant land-into-trust denial.[30] Plaintiffs filed suit in 2008.

IV. PROCEDURAL BACKGROUND

While Plaintiffs' challenges were still pending, the Supreme Court held in *Carcieri v. Salazar* that only tribes under federal jurisdiction in 1934, the year Congress passed the IRA, were eligible to opt out of IRA procedures.[31] The district court remanded to the DOI, which determined that the Tribe was under federal jurisdiction as of 1934.[32] The district court then granted the government's motion for summary judgement, finding that the federal government acted within its powers under the IRA.[33] The State appealed.[34]

V. ANALYSIS

A. Standing

As a threshold matter, the government contended that Plaintiffs lacked standing, because the Casino upon which the State asserted its harms would operate lawfully regardless of litigation. The court

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24. *Id.* at 563.
25. *Id.* at 566.
26. *Id.* (citing City of Sherrill v. Oneida Indian Nation, 544 U.S. 197, 216-17 (2005)).
27. *Id.* (citing *City of Sherrill*, 544 U.S. at 221).
28. *Id.*
29. *Id.* at 564.
30. *Id.*
31. *Id.* at 564 (citing Carcieri v. Salazar, 555 U.S. 379 (2009)).
32. *Id.* at 564.
33. *Id.* at 564-65.
34. *Id.*at 565.

disagreed.[35] The court determined that Plaintiffs' challenge could impact the Casino's lawful operation, in that if the land-into-trust decision were overturned, the Tribe could no longer assert jurisdiction over the Casino.[36] Thus, Plaintiffs had standing and the court considered the rest of the case on its merits.[37]

B. Constitutionality of Land into-Trust Procedures

Plaintiffs' primary contention was that the federal government lacks constitutional authority to take land into trust on behalf of the Tribe.[38] They first argued that because the land-into-trust action was entirely intra-state it did not trigger Indian Commerce Clause authority.[39] The court soundly disagreed, citing prominent case law establishing the government's constitutional "plenary and exclusive" power with respect to the tribes through both the Indian Commerce Clause and Treaty power.[40] The court held that unlike in Interstate Commerce Clause, the Indian Commerce clause contained no interstate limitation.[41] Instead, "the Indian Commerce Clause vest[ed] Congress with plenary power over Indian Tribes and that this power [was] not delimited by state boundaries."[42] The court further held that acquisition of land for Indian use was squarely within Congress's power to regulate commerce under the Indian Commerce Clause, even where it divested the State of jurisdiction over the land.[43]

Plaintiffs next argued that even where the Indian Commerce Clause authorized land-into-trust determinations, underlying principles of state sovereignty precluded the land-into-trust decision.[44] While principles of state sovereignty impose some limits on federal authority over tribes, the court held that those limits were not triggered here.[45] Rather, the court held that the federal government retained the power to oust state jurisdiction over the newly Tribe-entrusted lands.[46]

Finally, Plaintiffs argued that under the Enclave Clause the federal government had to obtain express State consent before taking land into trust for the Tribe.[47] The court again disagreed, finding that consent was

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35. *Id.*
36. *Id.* at 566.
37. *Id.*
38. *Id.*
39. *Id.* at 567.
40. *Id.* (quoting Washington v. Confederated Bands & Tribes of Yakima Nation, 439 U.S. 43, 470-71 (1979); *See also* United States v. Lara, 541 U.S. 193, 200 (2004); Seminole Tribe v. Florida, 517 U.S. 44, 62 (1996)).
41. *Id.* at 568 (citing Cotton Petroleum Corp. v. New Mexico, 490 U.S. 163, 192 (1989)).
42. *Id.*
43. *Id.* (citing United States v. John, 437 U.S. 634, 653 (1978)).
44. *Id.* at 569.
45. *Id.*
46. *Id.* at 570 (citing *John*, 437 U.S. at 654).
47. *Id.* at 571.

not required because the federal government did not assert exclusive jurisdiction over the lands formerly under state jurisdiction.[48] Here, the court held that federal jurisdiction was not exclusive because the Tribe, and to a limited extent, the State, retained some criminal and civil jurisdiction over the entrusted lands.[49] The court ultimately held that, "because federal and Indian authority d[id] not wholly displace state authority over land taken into trust pursuant to § 5 of the IRA, the Enclave Clause pose[d] no barrier" to land-into-trust determinations.[50]

C. Tribe's Eligibility for Land-into-Trust Procedures

Plaintiffs next challenged the DOI's interpretation of the terms "Indians" and "tribe," arguing that the Tribe was not eligible for land-into-trust determinations, because the Tribe did not meet the definitional requirements under the IRA or ILCA.[51] The court disagreed and held that the Tribe indisputably qualified as a "tribe" under the IRA and ILCA, because it was under federal jurisdiction in 1934.[52] Thus, the federal government did not overstep its statutory authority by entrusting the land on behalf of the Tribe.[53]

The IRA defines "Indians" as "all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction."[54] It defines "tribes" as "any Indian tribe, organized band, pueblo or the Indians residing on one reservation."[55] Plaintiffs argued that the IRA's purpose was to restore Indian lands lost under the Dawes or Allotment Act, whereas here, the Tribe lost its lands through illicit sales to the State. The court rejected this argument, noting that the IRA's definition of "Indians" was unambiguously far-reaching and permitted the federal government to entrust land unaffected by the Dawes Act.[56]

In the alternative, Plaintiffs argued that the Tribe's IRA opt-out vote was still valid because the ILCA only overrode opt-out votes of "tribes" for which the federal government held lands in trust.[57] The ILCA, under § 2201(1), defines "tribe" as "any Indian tribe, band, group, pueblo, or community for which, or for the members of which, the United States holds lands in trust."[58] Plaintiffs argued that the Tribe did not meet ILCA's definition of "tribe," and thus did not have restored IRA land-into-trust eligibility because the federal government held no land in trust for the

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48. *Id.*
49. *Id.*
50. *Id.* at 572.
51. *Id.*
52. *Id.* at 577.
53. *Id.*
54. *Id.* at 572 (quoting 25 U.S.C. § 465).
55. *Id.*
56. *Id.* at 573.
57. *Id.* at 576.
58. *Id.* (quoting 25 U.S.C. § 2201(1)(2012)).

Tribe at the time of the land-into-trust determination in 2008.[59] The court again disagreed with Plaintiffs' analysis.[60]

The court relied heavily upon the term "community" as well as the ILCA's broad remedial purpose to find that the ILCA's definition was even broader than the IRA's. The definition included the Tribe and restored the Tribe's land-into-trust eligibility.[61] The IRA authorized the federal government to take land into trust where the Tribe is a recognized Indian tribe.[62] The court held that because the Tribe was within the ILCA's definition of "tribe," the Tribe had restored land-into-trust eligibility under the IRA. Since the Tribe was under federal jurisdiction in 1934, the federal government had statutory authority to entrust land on behalf of the Tribe.[63]

D. Authority of Tribal Leadership

Plaintiffs finally challenged the federal government's land-into-trust decision based on alleged illegitimate Tribal leadership.[64] However, Plaintiffs did not explain how this argument was relevant, because they did not challeng the validity of the Tribe's land-into-trust request. Even if they had, the court held the federal courts lacked "authority to resolve internal disputes about tribal law."[65] The court ended its inquiry there, affirming the federal governments plenary power to entrust land on behalf of the Tribe.[66]

V. CONCLUSION

Upstate Citizens for Equality, Inc. v. United States represents an important win for Indian tribes across the United States in that it represents a template for tribes seeking to restore tribal homelands under the IRA. The case reaffirms that the federal government's plenary power over the tribes is broad. Despite resulting conflicts between states and tribes over jurisdiction, state sovereignty claims do not upset the federal government's plenary power to take lands into trust on behalf of the tribes under the IRA.

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59. *Id.* at 574.
60. *Id.* at 577.
61. *Id.* at 576.
62. *Id.*
63. *Id.* at 577.
64. *Id.*
65. *Id.* (quoting Cayuga Nation v. Tanner, 824 F.3d 321 (2d Cir. 2016)).
66. *Id.*