No. _____

In The
Supreme Court of the United States

CLUB ONE CASINO, INC., dba CLUB ONE CASINO, GLCR, INC., dba THE DEUCE LOUNGE AND CASINO,

Petitioners,

vs.

DAVID BERNHARDT, SECRETARY OF THE INTERIOR, in his official capacity; TARA KATUK MACLEAN SWEENEY, ASSISTANT SECRETARY OF THE INTERIOR - INDIAN AFFAIRS, in her official capacity; UNITED STATES DEPARTMENT OF THE INTERIOR,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

ROBERT A. OLSON
Counsel of Record
TIMOTHY T. COATES
GREINES, MARTIN, STEIN & RICHLAND LLP
5900 Wilshire Boulevard, 12th Floor
Los Angeles, California 90036
Telephone: (310) 859-7811
Facsimile: (310) 276-5261
E-mail: rolson@gmsr.com
tcoates@gmsr.com

ROBERT D. LINKS
SLOTE, LINKS & BOREMAN, LLP
1 Embarcadero Center, Suite 400
San Francisco, CA 94111
Telephone: (415) 393-8001
Facsimile: (415) 294-4545
E-mail: bo@slotelaw.com

Counsel for Petitioners

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTIONS PRESENTED

A Nevada gambling corporation donated a parcel of private California land to the United States to hold in trust for an Indian tribe for an off-reservation gambling casino to be run by the tribe and the private gambling corporation. Over four million California voters, a 60 percent majority, rejected a casino on this parcel, a parcel which had never been Indian owned or governed. The State of California never consented to relinquishing its jurisdiction over the parcel. Nonetheless, the Ninth Circuit held that tribal jurisdiction over the land, required by The Indian Gaming Regulatory Act, 25 U.S.C. § 2710, was automatically created: "[A]s a matter of law, the federal government confers tribal jurisdiction over lands it acquires in trust for the benefit of tribes" (including by private donation) even absent State jurisdictional consent or cession.

The questions presented by this petition relate to fundamental questions of State sovereignty over State lands:

1. Does the Indian Reorganization Act, 25 U.S.C. § 5108, by authorizing the Secretary of the Interior "in his discretion" to acquire lands "for the purpose of providing land for Indians," silently operate, by virtue of a simple transfer of title, to divest States of their inherent and exclusive jurisdiction over such acquired lands and transfer it, without State cession or consent, to a tribe?

QUESTIONS PRESENTED – Continued

2. If the Indian Reorganization Act, 25 U.S.C. § 5108, is read to unilaterally transfer State jurisdiction to the federal government and tribes, did Congress have the power to do so under the Indian Commerce clause, art. I, § 8 of the Constitution, notwithstanding other constitutional provisions limiting federal usurpation of State lands, e.g., art. IV, § 3 (no involuntary reduction or combination of a State's territory), art. I, § 8, cl. 17 (requiring State consent to federal enclaves), and the Tenth Amendment (reserving to the States powers not expressly delegated to Congress)?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

The parties to the proceeding in the Court whose judgment is sought to be reviewed are:

- Club One Casino, Inc., dba Club One Casino; GLCR, Inc., dba The Deuce Lounge and Casino, plaintiffs and appellants below, and petitioners here;
- David Bernhardt, Secretary of the Interior, in his official capacity; Tara Katuk MacLean Sweeney, Assistant Secretary of the Interior – Indian Affairs, in her official capacity;[1] U.S. Department of the Interior, defendants and appellees below and respondents here.

There are no publicly held corporations directly involved in this proceeding. Other interested persons, not parties to this proceeding, but aligned with respondents are:

- The North Fork Rancheria of Mono Indians, and
- Stations Casinos, LLC, which is majority owned by Red Rock Resorts, Inc.

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[1] Ms. Sweeny replaces Mike Black, the former Acting Assistant Secretary.

RELATED PROCEEDINGS

- United States Court of Appeals, Ninth Circuit, Case No. 18-16696, *Club One Casino, Inc., dba Club One Casino; GLCR, Inc., dba The Deuce Lounge and Casino v. David Bernhardt, Mike Black, Acting Assistant Secretary of the Interior-Indian Affairs; U.S. Department of the Interior*, opinion and judgment entered May 27, 2020, petition for rehearing and rehearing en banc denied August 3, 2020.
- United States District Court, Eastern District of California, Case No. 1:16–CV–01908–AWI–EPG, *Club One Casino, Inc., dba Club One Casino; GLCR, Inc., dba The Deuce Lounge and Casino v. Ryan Zinke, Secretary of the Department of the Interior, Mike Black, Assistant Secretary of the Interior-Indian Affairs; U.S. Department of the Interior*, judgment entered July 13, 2018.
- United States Department of the Interior, Secretarial Procedures for the North Fork Rancheria of Mono Indians, July 29, 2016.

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OPINIONS BELOW

The Secretary of the Interior's July 29, 2016 Secretarial Procedures for the North Fork Rancheria of Mono Indians are not published but are reproduced in the appendix to this petition ("Petn. App.") at pages 64 to 271. The district court's March 12, 2018 order granting summary judgment to respondents is published, *Club One Casino, Inc. v. U.S. Dep't of Interior*, 328 F. Supp. 3d 1033 (E.D. Cal. 2018), and is reproduced in the appendix at pages 26 to 60. The Ninth Circuit's May 27, 2020 opinion affirming the district court's grant of summary judgment is published, *Club One Casino, Inc. v. Bernhardt*, 959 F.3d 1142 (9th Cir. 2020), and is reproduced in the appendix at pages 1 to 25. The Ninth Circuit's August 3, 2020 order denying panel rehearing and rehearing en banc is not published and is reproduced in the appendix at page 62 to 63.

BASIS FOR JURISDICTION IN THIS COURT

This Court has jurisdiction to review the Ninth Circuit's May 27, 2020 decision on writ of certiorari under 28 U.S.C. § 1254(1). The petition is timely filed per Supreme Court rule 13.1 and the Court's March 19, 2020 order extending the time to file any petition to 150 days after denial of rehearing.

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The Secretary granted permission to conduct casino-style "Class III" gambling on the parcel in question under the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2719, which in relevant part states:

25 U.S.C. § 2710

(d) Class III gaming activities; authorization; revocation; Tribal-State compact

(1) Class III gaming activities shall be lawful on Indian lands only if such activities are—

(A) authorized by an ordinance or resolution that—

(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,

. . . .

(3)

(A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

. . . .

(7)

(B)

(iv) If a State and an Indian tribe fail to conclude a Tribal-State compact governing the conduct of gaming activities on the Indian lands subject to the jurisdiction of such Indian tribe within the 60-day period provided in the order of a court issued under clause (iii), the Indian tribe and the State shall each submit to a mediator appointed by the court a proposed compact that represents their last best offer for a compact. The mediator shall select from the two proposed compacts the one which best comports with the terms of this chapter and any other applicable Federal law and with the findings and order of the court.

(v) The mediator appointed by the court under clause (iv) shall submit to the State and the Indian tribe the compact selected by the mediator under clause (iv).

. . . .

(vii) If the State does not consent during the 60-day period described in clause (vi) to a proposed compact submitted by a mediator under clause (v), the mediator shall notify the Secretary and the Secretary shall prescribe, in consultation with the Indian tribe, procedures—

(I) which are consistent with the proposed compact selected by the mediator under clause (iv), the provisions of this chapter, and

> the relevant provisions of the laws of the State, and
>
> (II) under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction.

Respondents claim that the Indian tribe had jurisdiction over the parcel in question pursuant to the Indian Reorganization Act, 25 U.S.C. §§ 5101-5144, which, in relevant part, states:

25 U.S.C. § 5108

The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed $2,000,000 in any one fiscal year. . . .

The Ninth Circuit held Congress was empowered to usurp State jurisdiction over State lands under the Indian Commerce Clause, United States Constitution art. I, § 8, cl. 3, which provides:

Art. I, § 8, cl. 3

The Congress shall have power . . .

To regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes . . .

Petitioners claim that Congress's power to unilaterally obtain or transfer to Indian tribes jurisdiction over State lands is constrained by other provisions in the United States Constitution, art. I, § 8, cl. 17, art. IV, § 3, and the Tenth Amendment, which provide, in relevant part:

Art. I, § 8, cl. 17

The Congress shall have power . . .

. . . To exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful buildings . . .

Art. IV, § 3

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

Tenth Amendment

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Petitioners further claim that the Indian Reorganization Act has to be read in light of other statutes that constrain the transfer of territorial jurisdiction from States to the federal government:

40 U.S.C. § 3112

(b) Acquisition and Acceptance of Jurisdiction—

> When the head of a department, agency, or independent establishment of the Government, or other authorized officer of the department, agency, or independent establishment, considers it desirable, that individual may accept or secure, from the State in which land or an interest in land that is under the immediate jurisdiction, custody, or control of the individual is situated, consent to, or cession of, any jurisdiction over the land or interest not previously obtained. The individual shall indicate acceptance of jurisdiction on behalf of the Government by filing a notice of acceptance with the Governor of the State or in another manner prescribed by the laws of the State where the land is situated.

Pub. L. No. 71-467, 46 Stat. 828 (1930)

> No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any

> armory, arsenal, fort, fortification, navy yard, customhouse, lighthouse, or other public building of any kind whatever, until the written opinion of the Attorney General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given.

STATEMENT OF THE CASE

A. Background Of The Action.

This case "concern[s] the proposed construction and operation of a Nevada-style casino on off-reservation land in the County of Madera, California (the 'Madera Parcel') by the North Fork Rancheria of Mono Indians (the 'North Fork' or 'Tribe')." Petn. App. at 4-5. California voters passed Proposition 48 "with sixty-one percent of the vote—meaning that Assembly Bill 277, which had ratified the compact between the Tribe and the State [allowing for the casino's operation], was vetoed by the voters." Petn. App. at 6. The Tribe and the federal government proceeded with the casino plan anyway with the Secretary of the Interior ultimately issuing "Secretarial Procedures" directing that the casino project proceed. Petn. App. at 6-7.

The present dispute is whether the Tribe, by virtue of the Secretary of the Interior accepting a donation of land in trust, gained sufficient jurisdiction over off-reservation property as required by the Indian Gaming Regulatory Act, 25 U.S.C. § 2710(d)(1)(A), to

allow respondents to authorize a California-Constitution-prohibited Nevada-style casino[2] on never previously Indian owned or governed land, land that until now was under the exclusive jurisdiction of the State of California. *See Stand Up For California! v. U.S. Dep't of Interior*, 204 F. Supp. 3d 212, 228-29, 231 (D.D.C. 2016), *aff'd*, 877 F.3d 1177 (D.C. Cir. 2018).

1. A private Nevada gaming company purchases a proposed casino site (the Madera Parcel) 40 miles (an hour's drive) from the North Fork reservation.

The proposed casino site ("the Madera Parcel") consists of 305.49 acres located in Madera County, California. Petn. App. at 26-27, 30. It is located approximately 15 miles north of Fresno just off State Route 99, a major North-South freeway. Petn. App. at 30. Fresno is California's fifth most populous city.

The North Fork tribe's Rancheria lands are 38 miles away, near the town of North Fork. The Tribe owns a second parcel about 36 miles away from the

[2] "Nevada-style" or "Class III" gambling includes slot machines and house-banked games, e.g., games where the casino or the "house" itself can profit (or lose) based on the outcome of the bet. 25 U.S.C. § 2703(6),(7)(B)&(8). Such gambling is illegal under California law. Cal. Const. art. IV, § 19(e); Cal. Penal Code §§ 330, et seq. Although California allows federal law-permitted gambling, without tribal jurisdiction, federal law does not apply.

site which is used for housing. Petn. App. at 29-30; *see Stand Up for California!*, 204 F. Supp. 3d at 231.

Fresno Land Acquisitions LLC, a subsidiary of Station Casinos, a Nevada gambling entity, purchased the land. *See* ER 584, 39.[3] Prior to the purchase, a related Station Casinos entity entered into an agreement with the North Fork Tribe to operate and manage a casino on "unspecified" land that Station Casinos intended to gift to the federal government to be held in trust for the tribe for gaming purposes. ER 589. The North Fork tribe had not previously occupied or governed the Madera Parcel. *See* Petn. App. at 31-32.

The United States did not reserve jurisdiction over the Madera Parcel at the time California was admitted to the Union. *See* 9 Stat. 452 (1850) (California Admission Act); Petn. App. at 32. The State has never ceded or surrendered jurisdiction over the Madera Parcel. Petn. App. at 32.

2. The North Fork tribe's gambling approval efforts.

2011: The Section 2719 Determination. The Secretary of Interior decided that the North Fork tribe could conduct gaming on the Madera Parcel, if the tribe eventually acquired the parcel (the "§ 2719 decision"). Petn. App. at 5-6; *see* 25 U.S.C. § 2719. The

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[3] *See* Station Casinos LLC SEC Form 10-K, Exhibit 21.1-Subsidiaries of Station Casinos LLC, filed March 30, 2012 (https://www.sec.gov/Archives/edgar/data/1503579/000150357912000002/stn-ex211x10k.htm) (last accessed November 27, 2018).

Secretary issued the § 2719 decision before the land (still owned by the Nevada gambling corporation) was accepted in trust for the Tribe. Petn. App. at 5-6.

2012: California Governor's Concurrence. California's Governor concurred, as required by 25 U.S.C. § 2719, in the Secretary's determination that the North Fork tribe could conduct gaming on the parcel. Petn. App. at 6.

2012: Compact Negotiations. The Governor entered into a compact with the North Fork tribe to allow Nevada-style gambling on the Madera Parcel. Petn. App. at 6, 32. As required by California law, the California Legislature ratified the compact, but the ratification statute did not cede jurisdiction to the North Fork tribe. Petn. App. at 6, 32; *see also* Cal. Gov't Code § 12012.25(a), § 12012.59; A.B. 277, 2013-2014 Reg. Sess. (Cal. 2013). The California Constitution gives the voters power to override legislative action by way of a statewide referendum. *See* Cal. Const. art. II, §§ 9-10.[4] A referendum was promptly submitted to the California Secretary of State. Petn. App. at 6, 33. When California forwarded the North Fork compact to the Secretary, the transmittal letter made "clear that if the referendum measure [Proposition 48] qualified for the ballot, [California's approval] would not take effect until the voters had voted on it." Petn. App. at 32-33.

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[4] Upon a timely referendum filing, the statutory enactment is suspended. *Assembly v. Deukmejian*, 639 P.2d 939, 950 (Cal. 1982).

2012-2013: The Madera Parcel Is Transferred To The United States. In November 2012, with the referendum pending, the Secretary of the Interior approved the United States taking the Madera Parcel into trust to hold for the North Fork tribe (the "fee-to-trust decision"). Petn. App. at 6, 31. The fee-to-trust decision contains no finding regarding jurisdiction. In 2013, Fresno Land Acquisitions deeded the Madera Parcel to the United States to be held in trust for the North Fork tribe. Petn. App. at 31.

3. In a State-wide referendum, over four million California voters reject the proposed Madera Parcel casino.

In 2014, California voters rejected the North Fork compact by referendum (Proposition 48). The vote was 61% to 39%. Petn. App. at 6, 33; *see also* https://elections.cdn.sos.ca.gov/sov/2014-general/pdf/2014-complete-sov.pdf at 93 (last accessed October 20, 2020) (4.2 million votes to 2.7 million votes).

4. Post-referendum, the North Fork tribe and the Secretary of the Interior proceed with the Madera Parcel casino plan.

In the wake of the decisive referendum vote, the Governor, following the will of the people, declined to negotiate another compact for casino gaming on the Madera Parcel. Petn. App. at 6, 33-34; *North Fork Rancheria of Mono Indians v. California*, 2015 WL 11438206 at *3 (E.D. Cal. 2015).

The North Fork tribe sued under 25 U.S.C. § 2710(d)(7)(A)(i), claiming the State was not acting in "good faith" under the Gaming Act when it refused to ignore the popular referendum result. The district court ruled in the Tribe's favor and sent the matter to "mediation" pursuant to 25 U.S.C. § 2710(d)(7)(B)(iv). *See North Fork Rancheria of Mono Indians*, 2015 WL 11438206 at *4. Under that process, the mediator selects and recommends one or the other of the proposals submitted by the Tribe and the State.

In 2016, the mediator recommended the Tribe's proposal and respondents proceeded to issue so-called Secretarial Procedures, rules permitting the North Fork tribe to conduct Nevada-style gaming without the State's consent. Petn. App. at 7. This was the first actual authorization of casino gambling on the Madera Parcel.

The Secretary made no finding about whether or how the North Fork tribe had acquired jurisdiction over the site. *See* Petn. App. at 7.

B. This Lawsuit:

1. Petitioners sue for Administrative Procedure Act relief and the district court grants summary judgment against them.

Plaintiffs sued the Secretary under the Administrative Procedure Act, 5 U.S.C. § 702, seeking to set aside the Secretarial Procedures purporting to allow the North Fork tribe to engage in gambling activities

on land that remains within the State of California's territorial jurisdiction. Petn. App. at 7-8.

The district court had jurisdiction under 28 U.S.C. § 1331.

Petitioners alleged that the Tribe had never acquired jurisdiction over the Madera Parcel and therefore the Secretary had no statutory power to authorize gambling there and that to the extent the Indian Reorganization Act authorized transfer of jurisdiction from California to the Tribe, it violates the Tenth Amendment to the Constitution by reducing the State's jurisdiction over land within its territory without its agreement. Petn. App. at 7-8.

Both sides moved for summary judgment. Petn. App. at 8. Plaintiffs' core claim is that a private party cannot shift territorial jurisdiction by simply transferring title—deeding property to the United States—and that the United States cannot create the Gaming Act required tribal jurisdiction unilaterally by accepting such a transfer.

The Secretary argued that the mere taking of the Madera Parcel in trust for the North Fork tribe, even if done without the State's consent, automatically divested California of at least some portion of its sovereign jurisdiction and transferred that jurisdiction to the North Fork tribe. Petn. App. at 27.

The district court found:

1) "Prior to the acquisition of the Madera Site in trust for the North Fork, the land was privately owned";

2) "Jurisdiction over the land was not reserved by the United States when California was admitted to the Union in 1850";

3) "The State of California has never taken express steps to cede territorial jurisdiction over the land to the United States or [to the North Fork tribe]";

4) "[T]he United States has never issued a written acceptance of cession of jurisdiction in connection with the Madera" Parcel. Petn. App. at 31-32.

Nonetheless, the district court concluded that jurisdiction shifted upon the land being placed in trust with the federal government. Petn. App. at 41, 45-48. In the district court's view, the Madera Parcel qualified as "Indian land" for purposes of the Gaming Act by virtue of having title transferred to the United States to be held in trust for the tribe. Petn. App. at 49-50.

The district court refused to consider plaintiffs' Tenth Amendment argument that the deed transferring title to the federal government affected title only and did not shift jurisdiction. The district court held that private parties, such as plaintiffs, had no standing to assert Tenth Amendment rights. Petn. App. at 41.

2. The Ninth Circuit affirms: The United States, by taking donated private land in trust for an Indian tribe, as a matter of law, automatically transfers jurisdiction from the State to the tribe, without the State's consent or cession.

The Ninth Circuit recognized that the Tribe can conduct gambling on off-reservation trust land (as here) "*only if* [the] tribe exercises governmental power over this trust or restricted land." Petn. App. at 9 (italics added).

The Ninth Circuit did not question petitioners' standing. *See Bond v. United States*, 564 U.S. 211, 214 (2011) (private parties may raise Tenth Amendment concerns); *Artichoke Joe's v. Norton*, 216 F. Supp. 2d 1084, 1100-09 (E.D. Cal. 2002), *aff'd*, 353 F.2d 712, 719 n.9 (9th Cir. 2003), *cert. denied*, 543 U.S. 815 (2004) (plaintiff cardrooms have standing to challenge whether Gaming Act's fundamental prerequisites have been satisfied). Nor did it accept respondents' argument that petitioners had to challenge the jurisdictional defect in the Secretary's decision sooner. *See Stop the Casino 101 Coalition v. Salazar*, 2009 WL 1066299 at *3 (N.D. Cal. 2009) ("[T]he Secretary's acceptance of the land into trust did not authorize this project. . . . [T]he Tribe has no authorization to operate a gaming facility on the parcel. . . . The alleged injury . . . is therefore 'too speculative' to invoke this Court's jurisdiction"), *aff'd*, 384 F. App'x 546, 548 (9th Cir. 2010) ("Injuries related to the possible building of a casino are hypothetical and not fairly traceable to an

agency action that affirmatively declined to determine whether or not a casino could be built on the Property. . . . Here, the resultant injuries are all hypothetical, related to the possible building of a casino in the future.").

Rather, the Ninth Circuit broadly held:

- The Indian Reorganization Act (IRA) "authorizes the Secretary 'in his discretion' to acquire 'any interest in lands, water rights, or surface rights to lands, within or without existing Indian reservations,' through purchase, gift, or exchange 'for the purpose of providing land for Indians.'" Petn. App. at 11.

- By accepting land from a private party to be held in trust for a tribe, "the federal government confers tribal jurisdiction over lands it acquires in trust for the benefit of tribes." Petn. App. at 14; *see id*. at 16 ("the federal government confers tribal jurisdiction over lands it acquires in trust for the benefit of tribes as a matter of law").

- Such lands automatically become "Indian country" with "'primary jurisdiction over land that is Indian country rest[ing] with the Federal Government and the Indian tribe inhabiting it, and not with the States.'" Petn. App. at 16 (citation omitted). Thereupon, the land "is generally not subject to (1) state or local taxation; (2) local zoning and regulatory requirements; or, (3) state criminal and civil jurisdiction [over Indians], unless the tribe consents to such jurisdiction." Petn. App. at 14

> (citation and internal quotation marks omitted, brackets in original). (The State retains certain *concurrent* criminal jurisdiction, *see* Petn. App. at 15 n.4.)

Thus, according to the Ninth Circuit, by the simple expedient of transferring private land to the United States to hold in trust for a tribe, a private party, with the acquiescence of the federal government, may deprive a State of "primary" jurisdiction over private lands that until then have been under the State's exclusive territorial jurisdiction.

This usurpation of State sovereignty, the Ninth Circuit holds, occurs as a matter of law: "As noted above, the Tribe's jurisdiction over the Madera Parcel operates as a matter of law; it is not a question of fact. *Upstate Citizens for Equality*[*, Inc. v. United States*], 841 F.3d [556,] 569 [(2d Cir. 2016)] ('When the federal government takes land into trust for an Indian tribe, the state that previously exercised jurisdiction over the land cedes some of its authority to the federal and tribal governments.')." Petn. App. at 17; *see* Petn. App. at 18-19 ("The Tribe's jurisdiction over the Madera Parcel operates as a matter of law"), 25 (same).

Per the Ninth Circuit, "the federal government is not accepting jurisdiction 'from the State.' In other words, the jurisdiction at issue here—which was created by operation of law, as noted above—was not granted by the State to the federal government, or taken by the federal government from the State." Petn. App. at 20. In its view, the deprivation of State

jurisdiction occurs automatically, without State consent, upon a private party transferring property to the United States to be held in trust for a tribe.

REASONS WHY CERTIORARI IS WARRANTED

The issues here are fundamental to the relationship between the federal government and the States: Can the federal government unilaterally deprive a State of exclusive jurisdiction over private State lands? According to the Ninth Circuit, the answer is "yes." The court held that the Indian Reorganization Act (IRA) permits the federal government to *create* tribal jurisdiction by accepting a private party's donation of land to be held in trust for a tribe, thereby enabling the land to be used for virtually any purpose, free of State and local regulation.

The Ninth Circuit's decision cannot be squared with the plain language and legislative history of the IRA, the decisions of this Court establishing that usurpation of state power not be lightly inferred, or other provisions of the Constitution limiting the power of the federal government to infringe on the territorial rights of the states. Accordingly, review is warranted for the following reasons:

- Certiorari is warranted to determine the critical issue of whether Congress, in enacting the IRA, intended to empower the federal government to unilaterally displace a sovereign state's jurisdiction over lands ceded to the state on admission. Nothing in the language

or legislative history of the IRA remotely suggests such an intent. Moreover, the Ninth Circuit's conclusion that Congress sub silencio undertook such a massive invasion of state sovereignty is directly contrary to the presumption this Court reaffirmed in *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) that the states retain their basic police powers "unless that was the clear and manifest purpose of Congress."

- Assuming the IRA is somehow interpreted as authorizing displacement of state jurisdiction via the artifice of having a private party transfer property title to the federal government to be held in trust for a tribe, certiorari is necessary to address the fundamental question whether the Indian Commerce Clause empowers Congress to take such action. Such broad authority to invade core state sovereignty is contrary to other provisions of the Constitution, such as art. IV, § 3 (no diminution of state territory) and art. I, § 8, cl. 17 (consent to federal enclaves) which specifically limit federal incursion on state territorial jurisdiction as well as the Tenth Amendment reservation of sovereignty to the States. This Court has never defined the precise scope of the Indian Commerce Clause and the overreaching federal power the Ninth Circuit ascribes to the provision necessitates that the Court now do so. *See Upstate Citizens for Equality, Inc. v. United States*, ___ U.S. ___, 140 S. Ct. 2587 (2017) (Thomas, J., dissenting from denial of certiorari).

The issues raised in this petition concern the core power of states to regulate what occurs on lands that have been within state jurisdiction since admission. Under the Ninth Circuit's decision, virtually any private land in California can be removed from State jurisdiction via the IRA. Here, the result is an island of tribal jurisdiction far removed from any reservation, created by a private party donating the land for purposes of casino gambling, in direct contravention of state law and the express will of the people. But this jurisdictional sleight of hand could just as easily be employed to construct a resort on coastal property otherwise shielded from development by local law, a sports arena in a residential area or a mall next to a school. State and local regulation is rendered meaningless as to any private party with land to "donate" that can find a tribe willing to partner with it in a project in the name of tribal economic development. This is not and cannot be the law. It is essential that the Court grant certiorari to address these critical issues concerning state sovereignty.

I. CERTIORARI IS NECESSARY TO RESOLVE THE IMPORTANT ISSUE OF WHETHER CONGRESS INTENDED THE INDIAN REORGANIZATION ACT TO ALLOW THE FEDERAL GOVERNMENT TO UNILATERALLY USURP STATE TERRITORIAL JURISDICTION.

A. States Have Inviolable Jurisdiction Over Their Own Territory.

"It is incontestable that the Constitution established a system of 'dual sovereignty.' Although the States surrendered many of their powers to the new Federal Government, they retained 'a residuary and inviolable sovereignty,' The Federalist No. 39, at 245 (J. Madison). This is reflected throughout the Constitution's text." *Printz v. United States*, 521 U.S. 898, 918-19 (1997) (citations omitted); accord *Murphy v. National Collegiate Athletic Ass'n.*, 584 U.S. ___, 138 S. Ct. 1461, 1477 (2018) quoting *Printz* (Constitution's allocation of sovereignty to States protects individuals from abuse and tyranny). "[E]ach State is a sovereign entity in our federal system." *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 54 (1996) (Congress cannot deprive a state of Eleventh Amendment immunity from suit in federal court by tribe; "'[i]t is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent,'" citations and additional quotation marks omitted); *see Franchise Tax Board of California v. Hyatt*, 139 S. Ct. 1485 (2019) (State sovereignty includes immunity from suit in another State's courts).

Central to State sovereignty is jurisdiction over the land within the State's borders. The Constitution, for example, expressly *prohibits* the involuntary reduction or combination of a State's territory. U.S. Const. art. IV, § 3; *see id.* art. I, § 8, cl. 17 (requiring State consent to federal enclaves).

> [N]either the United States, *nor a state*, nor any other sovereignty loses the power to govern the people within its borders by the existence of towns and cities therein endowed with the usual powers of municipalities, *nor by the ownership nor occupancy of the land within its territorial jurisdiction by citizens or foreigners.*

Brendale v. Confederated Tribes & Bands of Yakima Indian Nation, 492 U.S. 408, 457-58 (1989) quoting *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 143 (1982) (citation and internal quotation marks omitted, first italics added, second italics in *Merrion*).

As this Court has observed:

> The several States of the Union are not, it is true, in every respect independent, many of the right and powers which originally belonged to them being now vested in the government created by the Constitution. But, except as restrained and limited by that instrument, they possess and exercise the authority of independent States, and the principles of public law to which we have referred are applicable to them. One of these principles is, that *every State possesses*

> *exclusive jurisdiction and sovereignty over persons and property within its territory*.

Pennoyer v. Neff, 95 U.S. 714, 722 (1877), *overruled in part by Shaffer v. Heitner*, 433 U.S. 186 (1977) (italics added); *see Kleppe v. New Mexico*, 426 U.S. 529, 543 (1976) ("a State undoubtedly retains jurisdiction over federal lands within its territory, but Congress equally surely retains the power to enact legislation respecting those lands pursuant to the Property Clause"). The ability to control and maintain jurisdiction over territory within State borders—and not to be deprived of that jurisdiction without its consent—is central to State sovereignty.

There is no issue here of tribal sovereignty over "Indian Country" or tribal members. The parcel in question has always been private State land far from the Tribe's reservation lands with no tribal members ever residing on it. The question is a tribe's ability to partner with nontribal private parties to create tribal jurisdiction over State land without State consent in order to use private land in a manner forbidden by State law.

Nor can there be any doubt about the reach of the Ninth Circuit's opinion or its interference with State sovereign territorial rights. According to the Ninth Circuit, the *effect* of a private party's accepted donation of land to the federal government for a tribe is to unilaterally transfer "primary jurisdiction" over that land to the federal government and the Tribe such that the land "'is generally not subject to (1) state or local

taxation; (2) local zoning and regulatory requirements; or, (3) state criminal and civil jurisdiction [over Indians], unless the tribe consents to such jurisdiction.'" Petn. App. at 14 quoting *Upstate Citizens for Equality, Inc. v. United States*, 841 F.3d 556, 561 (2d Cir. 2016) in turn quoting *Conn. ex rel. Blumenthal v. U.S. Dep't of Interior*, 228 F.3d 82, 85-86 (2d Cir. 2000); *see* 25 C.F.R. § 1.4 (broadly asserting that as to lands held in trust "none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or controlling the use or development of any real or personal property, . . . " applies). Thus, under the Ninth Circuit's view, a private landowner desiring to develop a resort, sports arena, stadium, amusement park, or virtually any other project that runs afoul of local regulation and sensibilities or faces community resistance need only engage a willing tribe to share profits and transfer land in trust to the tribe, with the acquiescence of the federal government (charged with promoting the tribe's interests), and thereafter be able to evade local regulation.

The Ninth Circuit decision shakes the Constitution's federal-State structure loose from its foundation, holding that by the simple expedient of donating property and transferring title to the United States to hold in trust for a tribe, a private party, with the acquiescence of the United States *but not the State in question*, automatically creates tribal governmental jurisdiction over lands which until then had been subject *exclusively* to State jurisdiction, thereby depriving the State

of its territorial integrity. This is, indeed, a remarkable impingement on what this Court has previously recognized to be core State sovereignty.

B. Nothing In The Language Or Legislative History Of The Indian Reorganization Act Supports The Conclusion That The Act Was Intended To Silently Displace State Territorial Jurisdiction And Sovereignty.

The source of this power to deprive States of exclusive sovereignty over their historic lands and territory, the Ninth Circuit holds, is the Indian Reorganization Act. But that Act says *nothing* about transferring jurisdiction from a State to an Indian tribe without the State's consent. *See Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020) ("This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment. After all, only the words on the page constitute the law adopted by Congress and approved by the President"; Title VII and discrimination "based on sex"). Importantly, the Indian Gaming Regulatory Act requires tribal territorial *jurisdiction* over the land in question, not just federal or tribal ownership. *See* 25 U.S.C. § 2710(d)(3)(A); cf. *Kleppe*, 426 U.S. 529 (Property Clause, U.S. Const. art. IV, § 3, cl. 2, affords federal government certain legislative powers over land it owns even when State retains exclusive *jurisdiction* over the land). As a textual matter, the concept of

jurisdiction—federal, State, or tribal—over territory or land appears nowhere in the IRA.

Nor does the IRA's legislative history discuss transferring State jurisdiction to the federal government or to a tribe. A tangential mention of "jurisdiction" in an early draft was deleted from the final version. Even that reference was only as to jurisdiction over *individuals*: "The jurisdiction of the Federal Government shall extend to Indians under guardianship who become resident on such [acquired] lands:. . . ." H.R. Rep. No. 73-1804, at 3 (1934); *see id*. at 7 ("Section 7 gives the Secretary authority to add newly acquired land to existing reservations and extends Federal jurisdiction over such lands," i.e., *reservation* lands). The enacted statute and final legislative history contain no reference to territorial jurisdiction, much less to displacing State jurisdiction without State consent. The sole statutory reference was defining an "Indian" as a member of a *tribe* "under Federal jurisdiction." *See* Pub. L. No. 73-383, § 19, 48 Stat. 984 (1934); H.R. Rep. No. 73-2049 (1934).[5]

Nevertheless, the Ninth Circuit opinion holds, Congress can be *assumed* to have *implicitly* intended to displace a State's inherent jurisdiction over its territory, because the IRA *allowed* the federal government to *accept* lands donated in trust for tribes. Petn. App. at 13-16. The opinion does not explain how authorizing

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[5] The IRA, 25 U.S.C. § 5108, exempts acquired lands from State and local taxation, an exemption that would be unnecessary if jurisdiction transferred.

the federal government to act as a trustee of donated lands constitutes an intent to usurp States' historic territorial jurisdiction.[6]

In the inverse circumstance—the federal government selling or donating to private parties lands within a tribe's reservation jurisdiction—this Court recently held that the transfer of such ownership does not diminish tribal jurisdiction:

> The federal government issued its own land patents to many homesteaders throughout the West. These patents transferred legal title and are the basis for much of the private land ownership in a number of States today. But no one thinks any of this diminished the United States's claim to sovereignty over any land. To accomplish that would require an act of cession, the transfer of a sovereign claim from one nation to another. 3 E. Washburn, American Law of Real Property *521-*524. And there is no reason why Congress cannot reserve land for tribes in much the same way, allowing them to continue to exercise governmental functions over land even if they no longer own it communally.

McGirt v. Oklahoma, 140 S. Ct. 2452, 2464 (2020).

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[6] *But see City of Sherrill, N.Y. v. Oneida Indian Nation of New York*, 544 U.S. 197, 220 (2005) (tribe does not reacquire sovereignty over former lands by repurchase; dicta suggesting, without examining IRA language or legislative history, that the IRA might provide a means of reestablishing tribal sovereignty over former tribal lands).

Why does a transfer of ownership *to* the federal government *create* tribal jurisdiction when a transfer of ownership *from* the federal government does not defeat tribal jurisdiction? There is no good answer, but that is the inconsistency that the Ninth Circuit's opinion creates.

C. The Ninth Circuit's Interpretation Of The IRA Cannot Be Reconciled With The *Wyeth v. Levine* Presumption Requiring "Clear And Manifest" Congressional Intent To Interfere With State Prerogatives And Jurisdiction.

The Ninth Circuit's assumption that Congress acted implicitly and silently in overriding State territorial jurisdiction runs counter to this Court's enunciated rule that Congress is presumed not to usurp State prerogatives. The "assumption [is] that the historic police powers of the States were not to be superseded by the [f]ederal [a]ct unless that was the *clear and manifest purpose* of Congress." *Wyeth*, 555 U.S. at 565 (italics added) (internal quotation marks omitted). This presumption applies to depriving States of territorial jurisdiction rights. *See Utah Div. of State Lands v. United States*, 482 U.S. 193, 201 (1987) ("Although arguably there is nothing in the Constitution to prevent the Federal Government from defeating a State's title to land under navigable waters by its own reservation for a particular use, the strong presumption is against finding an intent to defeat the State's title."); *Nation v. City of Glendale*, 804 F.3d 1292, 1298 (9th Cir. 2015)

(applying *Wyeth* test to Indian lands issue; congressional enactment's manifest purpose preempted city's attempt to annex tribe's replacement land).

Instead of applying the *Wyeth* presumption, the Ninth Circuit opinion *assumes* that, at least when it comes to creating superseding tribal jurisdiction over land historically within the State's exclusive jurisdiction, Congress acted silently and by implication. The Ninth Circuit relied on Second and Eighth Circuit opinions that also *assumed* Congress must have silently and implicitly so intended. Petn. App. at 14-15 citing *Upstate Citizens for Equality, Inc. v. United States*, 841 F.3d 556, 561 (2d Cir. 2016) and *Yankton Sioux Tribe v. Podhradsky*, 606 F.3d 994, 1011 (8th Cir. 2010) ("land held in trust under [IRA] is effectively removed from state jurisdiction," for "when Congress enacted [IRA] 'it doubtless intended and understood that the Indians for whom the land was acquired would be able to use the land free from state or local regulation or interference as well as free from taxation,' " citation omitted); *see Citizens Against Casino Gambling in Erie County v. Chaudhuri*, 802 F.3d 267, 285 (2d Cir. 2015) (recognizing that "neither the text of the IRA nor that of [another statute] explicitly states that lands that pass from fee to trust or restricted fee status are subject to tribal jurisdiction"); cf. *Nation*, 804 F.3d at 1298 (applying *Wyeth* test to Indian lands issue). Conspicuously, neither *Upstate Citizens*, *Yankton Sioux*, *Citizens Against Casino Gambling*, nor the Ninth Circuit opinion here mentions *Wyeth* nor its "clear and manifest purpose" requirement.

D. The Ninth Circuit's Interpretation Of The Indian Reorganization Act As Silently Authorizing Unilateral Federal Usurpation Of State Jurisdiction Is Inconsistent With Other Federal Statutes Recognizing The Need For A State's Express Consent To A Cession Or Transfer Of Its Jurisdiction.

Federal statutes in existence before and after enactment of the IRA strongly indicate that with the IRA Congress was *not* silently intending a new rule allowing private parties and the federal government to displace exclusive State jurisdiction and sovereignty without State consent. When the IRA was enacted, Pub. L. No. 71-467, 46 Stat. 828 (1930), now 40 U.S.C. § 3112, directed that the federal government could not acquire State lands "*until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given*." (Italics added.) "[T]he well-settled presumption [is] that Congress understands the state of existing law when it legislates." *Bowen v. Massachusetts*, 487 U.S. 879, 896 (1988).

Yet, under the Ninth Circuit opinion, the assumption is that, in enacting the IRA, Congress silently intended to bypass State consent and enable a private party's land transfer to the federal government, and through it to a tribe, to deprive the State of its territorial jurisdiction. This, according to the Ninth Circuit, happens without State consent, in direct contravention of the will of the people who rejected this casino almost two to one.

The Ninth Circuit dismisses current 40 U.S.C. § 3112 as merely a "statute set[ting] forth requirements for the federal government's *acceptance* of jurisdiction over land." Petn. App. at 20 (original italics). But section 3112 is much broader than that. It requires that before accepting jurisdiction the United States must "accept *or secure*, *from the State* in which land or an interest in land that is under the immediate jurisdiction, custody, or control of the individual [federal officer] is situated, *consent to, or cession of*, *any jurisdiction over the land* or interest. . . ." 40 U.S.C. § 3112 (italics added). Section 3112 covers *any* acquisition, in whole or in part, of jurisdiction. In other words, a State must consent to, or cede, *any* transfer of jurisdiction over land within its borders before the United States can acquire separate jurisdiction. Section 3112 is not just an "acceptance" statute. It recognizes a basic constitutional truth—States *have to consent before they can be deprived of jurisdiction over their lands and territory.*

The Ninth Circuit then assumes away the effect of section 3112 and its public law predecessor. It holds that section 3112 cannot apply because the IRA already implicitly imposes as usurpation of exclusive State jurisdiction *without State consent*: "Here, the federal government is not accepting jurisdiction 'from the State.' In other words, the jurisdiction at issue here—which was created by operation of law, as noted above—was not granted by the State to the federal government, or taken by the federal government from the State." Petn. App. at 20. Having assumed an answer

inconsistent with other federal statutes, it creates a radical proposition—a private party's donation of private land to the United States to hold in trust for a tribe, with the United States' acquiescence but nothing more, automatically supplants exclusive State jurisdiction. Section 3112 and its predecessor Pub. L. No. 71-467, 46 Stat. 828 (1930) undermine the whole assumption that Congress was silently, implicitly creating such an operation-of-law, private-party-transfer-to-tribe jurisdiction scheme.

Nothing in the plain language or legislative history of the IRA suggests that Congress was silently empowering the federal government to usurp a state's jurisdiction over state lands, such an interpretation is directly contrary to the *Wyeth* presumption, and is inconsistent with other federal statutes recognizing clear limitations on the federal government's authority to take such action. The Ninth Circuit's broad and unsupported interpretation of the IRA will spawn further blanket circumvention of State and local regulatory authority by tribes and their private party partners. It is essential that this Court grant certiorari to resolve this critical issue concerning allocation of state and federal power.

II. ASSUMING THAT CONGRESS INTENDED THE INDIAN REORGANIZATION ACT TO PERMIT THE FEDERAL GOVERNMENT TO SEIZE JURISDICTION OVER STATE LANDS FOR INDIAN PURPOSES WITHOUT STATE CONSENT, CERTIORARI IS WARRANTED TO DETERMINE WHETHER THE INDIAN COMMERCE CLAUSE AUTHORIZES THIS BROAD INVASION OF STATE SOVEREIGNTY.

Assuming that Congress silently or implicitly intended to allow private parties, with the acquiescence of the United States, to transfer sovereignty and jurisdiction from a State to an Indian tribe without State consent, the Court must then address a more fundamental issue: Does Congress have the constitutional power to do that?

The Ninth Circuit holds that "[t]he federal government's power under IRA to acquire [lands] in trust for the benefit of the Tribe is derived from Congress' broad general power, pursuant to the Indian Commerce Clause, to legislate with respect to Indian tribes—power which has been consistently described as 'plenary and exclusive' power over Indian affairs." Petn. App. at 21 (citations omitted). That is the sole purported constitutional basis for the extraordinary power that the Ninth Circuit deemed Congress to possess.

But nothing in the Indian Commerce Clause says anything about the federal government being empowered to take territory or exclusive territorial jurisdiction from a State to give it to an Indian tribe. That is

not "power over Indian affairs." It is unbridled power over integral State sovereignty and territorial jurisdiction. *See*, *e.g.*, *Upstate Citizens for Equality, Inc. v. United States*, 140 S. Ct. 2587 (2017) (Thomas, J., dissenting from denial of certiorari); *Adoptive Couple v. Baby Girl*, 570 U.S. 637, 657, 656-66 (2013) (Thomas, J., concurring).

Nothing in the constitutional debates hinted at such an extraordinary power. *See* Gregory Ablavsky, *Beyond the Indian Commerce Clause*, 124 Yale L.J. 1012, 1022-23 (2015) ("The ratification debates that followed ignored the Indian Commerce Clause. The only sustained discussion appeared in *Federalist No. 42*, where James Madison praised the change from Article IX, observing that the elimination of the earlier qualifiers resolved earlier contentions over the division of authority," original italics); Robert G. Natelson, *The Original Understanding of the Indian Commerce Clause*, 85 Denv. U. L. Rev. 201, 247 (2007). Federalist No. 42 (James Madison), the only real discussion of the Indian Commerce Clause, contains no mention of territorial jurisdiction, much less its involuntary transfer from a sovereign State to an Indian tribe. If such a profound exception to States' otherwise jealously guarded sovereignty was intended, one would expect it to have been expressly mentioned.

Moreover, such an extraordinary power would be at odds with other constitutional guarantees of State territorial integrity. For example, art. IV, § 3 provides:

> New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, *without the Consent of the Legislatures of the States concerned* as well as of the Congress.

(Italics added.)

As this Court recognized in *Idaho v. United States*, 533 U.S. 262 (2001), State territorial integrity means that the federal government cannot seize land already ceded to a state upon admission, to use for federal purposes. There, a dispute arose between Idaho and a local tribe concerning jurisdiction over submerged land in a lake. The case turned on whether Congress had intended to reserve the submerged lands for tribal use when Idaho was admitted as a state. *Id.* at 280-81. Critically, the majority noted that it agreed with the dissenting members of the court, that absent such reservation by Congress, the federal government could *not* claim the submerged lands for the tribe. *Id.* at 280 n.9 ("Congress cannot, after statehood, reserve or convey submerged lands that 'ha[ve] already been bestowed' upon a State."). The majority further observed that this was consistent with the Court's prior decisions in *Shively v. Bowlby*, 152 U.S. 1, 26-28 (1894) and *Lessee of Pollard v. Hagan*, 3 How. 212, 11 L. Ed. 565 (1845), which made it clear that unless specifically reserved by the federal government, states received full

sovereignty over lands transferred by the federal government.

Article I, § 8, cl. 17 similarly recognizes a limit on federal authority to take jurisdiction over lands otherwise subject to state jurisdiction, stating that Congress shall have "[a]uthority over all Places purchased *by the Consent of the Legislature* of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings." *Id*. (italics added).

The Tenth Amendment confirms the reservation to the States of rights, including sovereign rights over State lands, not granted to the federal government:

> The legislative powers granted to Congress are sizable, but they are not unlimited. The Constitution confers on Congress not plenary legislative power but only certain enumerated powers. Therefore, all other legislative power is reserved for the States, as the Tenth Amendment confirms.

Murphy, 138 S. Ct. at 1476.

Sovereignty over State lands, even contingent sovereignty over State lands, is *not* enumerated as delegated to the United States by the Constitution. The Indian Commerce Clause says nothing about the federal government being empowered to unilaterally obtain jurisdiction over State lands. It is framed in terms of "regulat[ing] Commerce . . . *with* the Indian Tribes." Const. art. I, § 8, cl. 3 (italics added). Sovereignty over

their own lands, thus, is reserved by the Tenth Amendment to the States.

This Court has *never* held that the federal government, under *any* guise, has the power to unilaterally deprive a State of its territorial jurisdiction without State consent or cession over any State land for *any* reason. *Cf. Kohl v. United States*, 91 U.S. 367 (1875) (federal government has power of eminent domain *to obtain ownership* of property but silent as to depriving State of sovereignty). Yet, that is the power that the Ninth Circuit has decreed exists under the Indian Commerce Clause: The power to seize "primary jurisdiction" over land, depriving a State of zoning, regulatory, tax, and other powers, "by operation of law, . . . not granted by the State to the federal government. . . ." Petn. App. at 16, 20.

The scope and limits of the Indian Commerce Clause have never been definitively determined by this Court. *See Upstate Citizens for Equality, Inc. v. United States*, 140 S. Ct. 2587 (2017) (Thomas, J., dissenting from denial of certiorari). This Court last recognized *some* limit to the Indian Commerce Clause almost twenty-five years ago in *Seminole Tribe of Florida*, 517 U.S. 44, where it held that the Indian Commerce Clause did not negate the Eleventh Amendment. Since then, there has been no rein suggested on the broad language in *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 192 (1989), a case about the non-exercise of congressional powers over reservation lands, that the Indian Commerce Clause affords Congress undefined "plenary power to legislate in the field of Indian

affairs." *See id*. (differentiating between application of Commerce Clause and Indian Commerce Clause jurisprudence because of "unique role of the States in our constitutional system" that has to be accounted for under the Commerce Clause but "that is not readily imported to cases involving the Indian Commerce Clause").

Certiorari is necessary to determine whether the Indian Commerce Clause affords power to the federal government to seize State jurisdiction over State lands so long as it does so for a tribal purpose.

III. THIS CASE PRESENTS AN IDEAL VEHICLE FOR INTERPRETING WHETHER THE INDIAN REORGANIZATION ACT AUTHORIZES OR THE INDIAN COMMERCE CLAUSE EMPOWERS THE FEDERAL GOVERNMENT TO UNILATERALLY SUPPLANT STATE JURISDICTION OVER STATE LANDS: A PRIVATE PARTY'S DONATION OF HISTORICALLY STATE LAND TO BE HELD IN TRUST FOR A TRIBE FOR THE TRIBE AND PRIVATE PARTY TO USE IN A MANNER COUNTER TO THE EXPRESS WISHES OF MILLIONS OF STATE VOTERS.

There cannot be a cleaner vehicle for determining the IRA interpretation and Indian Commerce Clause power issues here. The facts here starkly frame the problem. The land in question has never been Indian land—it has always been within California's

sovereignty from the first day of statehood. It was not reserved from the lands granted to California on its admission to the Union.

The land was owned by a private party and subject to California's sovereignty. The private party donated the land to the federal government to be held in trust for the Tribe in order for that private party and the Tribe to engage in conduct banned by California's constitution. Cal. Const. art. IV, § 19(e); Cal. Penal Code §§ 330, et seq. Millions of California voters rejected the use to which the private party and the Tribe wish to put the specific parcel of property. Respondents' position is that they are free to run roughshod over the will of California's voters as to land that until now has been within California's exclusive territorial jurisdiction, jurisdiction which California has never relinquished.

The Ninth Circuit's position could not be clearer: in its view, the federal government accepting the private party's donation and transfer of title to hold in trust for the Tribe automatically transfers jurisdiction from the State to the Tribe without State consent or cession. That was the exact position advocated by the United States.

The issue could not be any more clearly drawn regarding congressional intent reflected in the IRA and whether the Indian Commerce Clause, uniquely among constitutional provisions, empowers the federal government to seize jurisdiction over State lands.

CONCLUSION

For the foregoing reasons, petitioners respectfully submit that the petition for writ of certiorari should be granted.

Respectfully submitted,

ROBERT A. OLSON
Counsel of Record
TIMOTHY T. COATES
GREINES, MARTIN, STEIN & RICHLAND LLP
5900 Wilshire Boulevard, 12th Floor
Los Angeles, California 90036
Telephone: (310) 859-7811
Facsimile: (310) 276-5261
E-mail: rolson@gmsr.com
tcoates@gmsr.com

ROBERT D. LINKS
SLOTE, LINKS & BOREMAN, LLP
1 Embarcadero Center, Suite 400
San Francisco, CA 94111
Telephone: (415) 393-8001
Facsimile: (415) 294-4545
E-mail: bo@slotelaw.com

Counsel for Petitioners