

Reasons to Support a Clarification of the Indian Reorganization Act of 1934
October 31, 2009

In February of 2009, the Supreme Court issued a decision in *Carciere v. Salazar* that is creating significant confusion in an important area of federal Indian law, the Indian Reorganization Act of 1934 (IRA). The Supreme Court overturned a longstanding interpretation and held that the phrase “now under Federal jurisdiction” limits the Department of Interior’s authority to provide benefits under the IRA to only those Indian tribes “under federal jurisdiction” on June 8, 1934.

The passage of the IRA in 1934 marked a dramatic change in federal Indian policy. Congress shifted from policies intended to destroy Indian tribes in favor of legislation to revitalize tribal governments and Indian culture, and to restore tribal land bases that had been decimated by prior federal policies. The *Carciere* decision is at odds with Congress’s intent to restore tribal self-determination. In particular, this decision runs counter to Congress’ intent in the 1994 amendments to the IRA which provide equal treatment to all Indian tribes regardless of how or when they received federal recognition.

Our concern is that if the *Carciere* decision stands unaddressed by Congress, it will engender confusion and litigation on a broad range of issues. The IRA is a comprehensive federal law that provides not only the authority of the Secretary to restore tribal lands, but also for the establishment of tribal constitutions and tribal business structures. Disorder in this area of the law will negatively affect all types of economic development, contracts and loans, tribal reservations and lands, and could negatively affect tribal and federal jurisdiction, public safety, and provision of services on reservations across the country.

For example, the Sauk-Suiattle Tribe in Washington State is a historic treaty tribe, but was not formally organized under the IRA in 1975. The Tribe currently has a fee to trust application for 1.64 acres, adjacent to the 19 acre reservation, which is needed for additional access into the reservation. The Tribe is small, does not have a casino and is located in a rural area of the Cascade Mountains. This land to trust application is on hold because of the *Carciere* decision.

This example illustrates that the need to clarify the IRA is not related to Indian gaming. Indian gaming is regulated under the Indian Gaming Regulatory Act, where Congress restricted gaming on lands acquired after 1988. The issue is much broader and more fundamental. The IRA is a toolbox for restoring tribal communities and building economic growth. We are concerned that these tools are weakened at a time when Indian reservations and the cities, counties and states that surround them, need economic aid the most.

Legislation is currently pending in both the Senate and the House that would provide a solution and clarify the authority under the IRA. The Senate version, S. 1703 sponsored by Senator Byron Dorgan, already has 8 co-sponsors. Two functionally identical *Carciere* fixes have also received significant support in the House, sponsored by Representative Dale Kildee and Representative Tom Cole. We urge you to take action in support of this legislation.

Contact the National Congress of American Indians at 202-466-7767 with any questions.