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Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak

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***Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S. Ct. 2199 (2012).**

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ABSTRACT

In 2009, the Department of the Interior acquired land so the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians could build a casino. David Patchak owns land adjacent to the proposed casino and he filed a lawsuit alleging that the acquisition of the land violated federal law. The Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians and the federal government asserted the federal Quiet Title Act prohibits lawsuits like this one, which challenge the government's ownership of Indian trust lands. The U.S. Supreme Court held that the Quiet Title Act did not apply because Patchak asserted the acquisition of the land was unlawful, not that he was the rightful owner of the land.

I. INTRODUCTION

In *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*,[1] the Supreme Court considered whether David Patchak, who owns land adjacent to a proposed Indian casino, could challenge the federal government's acquisition of the land.[2] The Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (the Band) and the federal government claimed the federal Quiet Title Act (QTA) statutorily barred Patchak's claim.[3] The Court held that because Patchak did not claim an interest in the land the QTA did not apply and the lawsuit could proceed under the Administrate Procedure Act (APA).[4]

II. FACTUAL AND PROCEDURAL BACKGROUND

Although the Band has a long history, in 1999, the federal government formally

[1] *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S. Ct. 2199 (2012).
[2] *Id*. at 2201.
[3] *Id*.
[4] *Id*.

recognized the Band for the first time.[5] Two years later, the Band petitioned the Secretary of the Interior (the Secretary) to take land in Michigan into trust so they could build a casino.[6] The Secretary has the authority to acquire property for an Indian tribe under § 465 of the Indian Reorganization Act (IRA).[7] In 2005, after conducting an administrative review, the Secretary announced her decision to acquire the property.[8] Within the 30-day window for judicial review under the IRA, an organization known as the Michigan Gambling Opposition group (MichGO) filed a lawsuit alleging that the acquisition violated federal environmental and gaming statutes.[9] As a result of the lawsuit, the Secretary postponed taking title to the property.[10]

In late 2008, shortly after the U.S. Court of Appeals for the District of Columbia Circuit affirmed the dismissal of MichGO's complaint, Patchak filed a new lawsuit, which advanced a different legal theory under the APA.[11] He asserted that § 465 of the IRA did not authorize the Secretary to acquire property for the Band because they were not federally recognized when Congress enacted the IRA in 1934.[12] To establish standing, Patchak asserted that he lived near the property and the casino would harm him with increased traffic, increased crime, decreased property value, and an irreversible change in the rural character of the area.[13] Patchak sought a declaration that the Secretary's decision to acquire the land violated the IRA.[14]

In January 2009, the U.S. Supreme Court denied MichGO's petition for certiorari review, and the Secretary took the property into trust.[15] The acquisition mooted Patchak's request for an injunction, but the parties agreed the lawsuit could continue as an action to divest the federal

[5] *Id*. at 2003.
[6] *Id*.
[7] *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians*, 132 S. Ct. at 2002 (citing 25 U.S.C. § 465 (2006)).
[8] *Id*. (citing 70 Fed. Reg. 25596 (May 13, 2005)).
[9] *Id*. at 2203.
[10] *Id*.
[11] *Id*.
[12] *Id*.
[13] *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians*, 132 S. Ct. at 2203.
[14] *Id*.
[15] *Id*. at 2204.

government of title to the land.[16] A month after the government acquired the property, the Supreme Court held in *Carcieri v. Salazar*,[17] that § 465 of the IRA authorizes the Secretary to take land into trust only for Indian tribes that were federally recognized in 1934.[18] The district court held that Patchak lacked prudential standing to challenge the Secretary's decision and dismissed his complaint without considering its merits, including the applicability of the recent *Carcieri* decision.[19] The D.C. Circuit reversed the district court because it held Patchak had standing and rejected the defendant's alternative argument that the QTA barred the lawsuit.[20] The Supreme Court granted certiorari to resolve circuit split the D.C. Circuit's holding created with the holdings of three other circuits.[21]

III. ANALYSIS

The federal government is generally immune from civil suits; however, a plaintiff may sue the federal government if Congress has waived sovereign immunity for a specific cause of action. In this case, the Court examined whether the plaintiff's APA claim was barred by the QTA provision stating the QTA "does not apply to trust or restricted Indian lands."[22] The APA waives the federal government's immunity for non-monetary suits that claim an agency action violates a federal law.[23] However, the waiver of immunity does not apply if any other statute grants consent for the suit or forbids the relief sought.[24] The QTA authorizes suits by plaintiffs asserting a "right, title, or interest" in real property that conflicts with the "right, title, or interest" claimed by the federal government.[25] The QTA's waiver of sovereign immunity also contains an

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[16] *Id*.
[17] *Carcieri v. Salazar*, 555 U.S. 379, 399 (2009).
[18] *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians*, 132 S. Ct. at 2204.
[19] *Id*.
[20] *Id*.
[21] *Id*.
[22] *Id*.
[23] *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians*, 132 S. Ct. at 2204.
[24] *Id*. (citing 5 U.S.C. § 702).
[25] *Id*. at 2205 (quoting 28 U.S.C. § 2409a(d)).

exception: it "does not apply to trust or restricted Indian lands," for which the government retains full immunity from suit.[26]

Justice Kagan, writing for the eight-justice majority, held that the QTA did not apply in this case because Patchak was not asserting a claim to the land that was adverse to the government's ownership of the land. Although if Patchak were successful, the government would lose title to the land, he was not seeking to gain title to the land for himself.[27] Instead, Patchak was asserting "a garden-variety APA claim:" namely, the Secretary's decision to take land into trust violated a federal statute.[28]

After finding that Patchak had stated a valid claim under the APA, the Court addressed several of the dissent's arguments. The Court acknowledged that this holding could pose a significant barrier to the Band's ability to promote economic development on their land, but responded the argument should be addressed to Congress because the Court is bound by the words of a statute as it finds them.[29]

The court then addressed whether Patchak had prudential standing to challenge the Secretary's decision. A person suing under the APA must satisfy the U.S. Constitution's article III standing requirements, as well as an additional test: The interest asserted must be "arguably within the zone of interests to be protected or regulated by the statute."[30] The standing test "is not meant to be especially demanding" because an agency action is presumptively reviewable.[31] The government argued that Patchak lacked standing because the Band could use the land for other non-gaming purposes, which would not adversely affect Patchak.[32] However, the Court

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[26] *Id*. (quoting 28 U.S.C. § 2409a(a)).
[27] *Id*. at 2207.
[28] *Id*. at 2208.
[29] *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians*, 132 S. Ct. at 2210.
[30] *Id*. (quoting *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 153 (1970)).
[31] *Id*. (quoting *Clarke v. Securities Industry Assn.*, 479 U.S. 388, 399 (1987)).
[32] *Id*. at 2210.

held that when the Secretary acquired the land, she did so with an eye to the tribe's economic interests and it was clear from the administrative record that the land was for a casino, therefore it fell within the zone of actions regulated by § 465 of the IRA.[33] The Court affirmed the D.C. Circuit and remanded the case to the district court to proceed to the merits of Patchak's arguments.[34]

IV. DISSENT

Justice Sotomayor dissented from the majority's opinion because she believed the QTA barred Patchak's suit.[35] She alleged the Court had sanctioned an end-run around Congress's desire not to waive the federal government's sovereign immunity for lawsuits related to the government's ownership of land that it holds in trust for an Indian tribe.[36] She believed Patchak was asserting an interest in the disputed property, and the QTA allowed for a wider range of claims than a regular state-law based quiet title action.[37] Therefore, the QTA should have applied to bar Patchak's claim.[38]

Justice Sotomayor predicted the Court's holding would have wide-ranging consequences. Before, an aggrieved party only had 30 days to challenge the Secretary's decision to take land into trust for an Indian tribe.[39] Now, the fate of the land will remain uncertain during the APA's 6-year statute of limitations.[40] For example, in this case Patchak did not challenge the decision during the 30-day window, but rather waited until three years later to challenge Secretary's decision.[41]

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[33] *Id*. at 2211.
[34] *Id*. at 2212.
[35] *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians*, 132 S. Ct. at 2212 (J. Sotomayor dissenting).
[36] *Id*.
[37] *Id*.
[38] *Id*.
[39] *Id*. at 2217.
[40] *Id*.
[41] *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians*, 132 S. Ct. at 2217 n. 8.

V. CONCLUSION

This case is an example of NIMBYism (not in my back yard). The Court allowed Patchak to proceed with his challenge of a government-approved casino that he does not want near his home. In the five years since the federal government acquired the land, the tribe has spent $137 million to build a casino, which opened in February 2011, on the land. Given the Court's holding in *Carcieri* (that the Secretary cannot acquire land for tribes, like the Band, that were not under federal jurisdiction in 1934),[42] it appears Patchak could prevail on his APA claim. With the uncertainty in the Secretary's authority to acquire lands for tribes recognized after 1934, Congress should provide guidance on how the Secretary can acquire land to provide for recently recognized tribes.

[42] *Carcieri*, 555 U.S. at 399.