Nos. 11-246 & 11-247

IN THE

Supreme Court of the United States

MATCH-E-BE-NASH-SHE-WISH BAND OF POTTAWATOMI INDIANS, ET AL.,

Petitioners,

v.

DAVID PATCHAK, ET AL.,

Respondents.

KEN SALAZAR, SECRETARY OF THE INTERIOR, ET AL.,

Petitioners,

v.

DAVID PATCHAK, ET AL.,

Respondents.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF OF 28 CALIFORNIA COMMUNITY GROUPS AS AMICI CURIAE IN SUPPORT OF RESPONDENT PATCHAK

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INTEREST OF THE AMICI CURIAE[1]

Amici curiae are twenty-eight California community groups: Alexander Valley Association, Barstow Christian Ministerial Association, Big Lagoon Park Company, Blythe Boat Club, California Coalition Against Gambling Expansion, Citizens for a Better Way, Coalition of Retailers, Citizens for a Sustainable Point Molate, Colorado River Residents for Justice, Dehesa Valley Community Council, Friends of Amador County, Jamulians Against the Casino, Joshua Tree Community Association, Madera Community Action Network, Madera Ministerial Association, Neighbors of Casino San Pablo, No Casino in Cloverdale, No Casino in Plymouth, Old Barona Road Association, Rohnert Park Families, Santa Ynez Valley Alliance, Santa Ynez Valley Concerned Citizens, Save Our Communities, Stand Up For California, Stop Casino 101 Coalition, Stop Reservation Shopping, WE Watch, and West Bank Homeowners.

Amici have a strong interest in the Court's resolution of the questions presented. *Amici* oppose many fee-to-trust conversions of land in California. They also oppose the construction and operation of casinos in their hometowns because casinos degrade quality of life and have other negative impacts. Unfortunately, the fee-to-trust conversion process often

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[1] Pursuant to Rule 37, counsel for *amici* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than the *amici*, their members, or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief, and letters reflecting their consent have been filed with the Clerk.

excludes residents and community groups from meaningfully participating in this critical stage in the development of Indian casinos. *Amici* want all affected parties to have a chance to participate constructively and fairly. *Amici* also believe that judicial review provides a vital check on fee-to-trust conversions and that private citizens and community groups are sometimes the only parties with the wherewithal to bring actions challenging fee-to-trust conversions.

INTRODUCTION

Throughout the history of federal policy toward Indians and their lands—whether or not it has been consistent, whether or not it can or should be criticized—Congress has consistently focused on the policy's local effects on Indians' relations with non-Indians. Despite that history and evident focus, the United States in this case denies that the local impacts of its decision to put land into trust for an Indian population are within the zone of interests of the federal Indian laws. The Court should reject that antithetical position.

Today, Indian gaming is at the center of Indians' relations with non-Indians. Across the country, 241 Indian tribes operate 462 casinos, high stakes bingo halls, and other gambling facilities on Indian lands. See National Indian Gaming Commission, *Gaming Tribe Report* (Feb. 9, 2012). With at least 62 tribes operating 70 gambling facilities throughout California, Indian casinos dot the state's landscape. *Ibid.* For tribes and private investors, however, that is not enough. Because tribes may operate gaming facilities only on "Indian lands" like trust lands, see 25 U.S.C. §§ 2703, 2710, 2719, tribes in California

push the Secretary of the Interior to undertake fee-to-trust conversions of lands they have purchased with casino profits and lands bought by non-Indian management companies angling to run new casinos.

Take the Soboba Band of Luiseno Indians. Since 1998, the Band has operated a huge casino on its 3,172-acre reserve—an 80,000 square foot gaming floor with blackjack, roulette, and poker tables and 2,020 slot machines. See Valley, JACKPOT TRIAL: INDIAN GAMING IN SOUTHERN CALIFORNIA 93-96 (2003); Soboba Casino website, http://www.soboba.com. With their gambling proceeds, the Band has purchased 534 additional acres outside the reserve, and in 2009, the Band asked the Secretary of the Interior to put that fee land into trust so the Band can build another casino, a 300-room hotel, and a convention center on the site. See *Draft Environmental Impact Statement for the Soboba Band of Luiseno Indians' Proposed 534-Acre Trust Acquisition and Casino Project, Riverside County, California*, 74 Fed. Reg. 31,747 (July 2, 2009).

Many of the consequences of fee-to-trust conversions are grim. Not all fee land put into trust for tribes is contiguous with other Indian land. The patchwork of converted land can take a variety of shapes, sometimes surrounding non-Indian fee land and creating, in effect, a jurisdictional island that can cause the land's owners great hardship. See, for example, the story of Lloyd Fields and his family property, told at http://www.morongolandgrab.com. And even if landowners are not cut off, a tribe's assertion of sovereign control over converted land always changes the character of a community, as one would expect to happen if an independent nation claimed part of an established town.

The inevitable construction and operation of casinos on trust land compound the troubles for residents of surrounding communities. Casinos—illegal to run on lands governed by state law—are inconsistent with local land use and zoning plans. They increase water use, exacerbating fire protection needs, interfering with wells, and blighting agriculture. They pollute and disrupt wildlife migration in sensitive environmental areas. They generate traffic and constant loud noise. They are associated with drunk driving and car accidents. And they unfairly compete with small and family-run local businesses.

Sometimes, state and local governments ally with private citizens and community groups against fee-to-trust conversions in California. See, *e.g.*, Barfield, *Criticism Fills Forum On Casino In Jamul*, U-T SAN DIEGO, Oct. 1, 2006 (noting that Governors Davis and Schwarzenegger opposed the fee-to-trust applications of the Jamul tribe in 2001 and 2004). Yet public and private interests do not always align. After all, Indian tribes are some of the biggest spenders on political campaigns in the state of California, and Indian casinos pay state coffers millions of dollars a year. See California Fair Political Practices Commission, *Big Money Talks*, at 4 (Mar. 2010); California Legislative Analyst's Office, *California Tribal Casinos: Questions and Answers* (Feb. 2007) (detailing tribal payments to state government), *available at* http://www.lao.ca.gov/2007/tribal_casinos/tribal_casinos_020207.aspx. Private citizens and community groups can be the only ones willing to stand up to authorities bent on converting more fee land into trust and developing more Indian casinos despite the problems they create. What's more, because so much of the decisionmaking process behind fee-to-trust conversions occurs out of the

public eye, private citizens and community groups need judicial review in order to have a meaningful opportunity to challenge fee-to-trust conversions.

SUMMARY OF ARGUMENT

In this case, the United States, the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, and others contend that private citizens lack standing to seek judicial review of unlawful fee-to-trust conversions because private citizens' "interests are so marginally related to or inconsistent with the purposes implicit in" the federal laws governing fee-to-trust conversions and Indian gaming "that it cannot reasonably be assumed that Congress intended to permit the suit." *Clarke* v. *Securities Industry Assn.*, 479 U.S. 388, 399–400 (1987). That contention is wrong and twists the zone-of-interests test past the breaking point.

The zone-of-interests test is designed to prevent lawsuits by persons who "might technically be injured in an Article III sense but whose interests are unrelated to the statutory prohibitions." *Thompson* v. *North Am. Stainless, LP*, 131 S. Ct. 863, 870 (2011). The injuries of private citizens who take the brunt of the impact of fee-to-trust conversions that unlawfully reshape and change their neighborhoods are not mere technicalities. The deep personal, property, and economic interests that give private citizens Article III standing are exactly the sort of interests protected by the relevant statutes. Under the Indian Reorganization Act, only some Indians—those under federal jurisdiction in 1934—are eligible to have fee land converted into trust land for their benefit. See 25 U.S.C. §§ 465, 479; see also *Carcieri* v. *Salazar*, 555 U.S. 379 (2009). Private citizens

have a protected interest in ensuring that fee-to-trust conversions not be expanded to benefit ineligible tribes who have long resided on fee land in established communities. In acknowledging the link between Indian gaming and the conversion of land and in protecting surrounding communities from the impact of both, the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*, buttresses that conclusion.

Recognizing that the zone-of-interests test cannot be applied to bar all possible challenges to agency action, the United States argues that state and local governments alone have standing to challenge fee-to-trust conversions. But there is no basis to distinguish between the private citizens who live near the land in question and the local governments with jurisdiction over the land: the economic and property interests of both stand to be diminished by the challenged conversion. Moreover, given the intense pressure to develop casinos, states and local governments simply cannot be counted on to object.

Holding that private citizens lack standing to challenge fee-to-trust conversions of local land could spill over into other areas of federal Indian law. Private citizens' prudential standing is an issue in other Indian cases. It has been challenged in cases questioning the approval of gaming ordinances, management contracts, and compacts; in cases challenging Indian lands determinations; and in cases involving other Indian contracts. See, *e.g.*, *Hollywood Mobile Estates Ltd.* v. *Seminole Tribe*, 641 F.3d 1259, 1268–1271 (CA11 2011) (holding that a non-Indian lessee lacked prudential standing to challenge the Secretary of the Interior's decision regarding its lease under the Indian Long-Term Leasing Act, 25 U.S.C. § 415).

Because Patchak, like private citizens and community groups generally, has vested interests protected by the laws governing fee-to-trust conversions, the Court should affirm the standing judgment of the court of appeals. The Court also should reject the United States' contention that the Quiet Title Act, in effect, defeats Patchak's standing. Private citizens have protected interests in whether neighboring land is held in fee or in trust, but those interests do not transform private citizens into "adverse claimants" whose suits under the Administrative Procedure Act are barred by the Quiet Title Act.

ARGUMENT

I. A PRIVATE CITIZEN HAS A RIGHT TO OBTAIN JUDICIAL REVIEW OF FEE-TO-TRUST CONVERSIONS IN HIS OR HER NEIGHBORHOOD.

As will almost certainly be true of private citizens and community groups complaining about fee-to-trust conversions in their backyards, the non-Indian neighbor in this case, Patchak, has constitutional standing to challenge the Secretary of the Interior's decision to convert fee land into trust land for a tribe that was not under federal jurisdiction in 1934. Judicial reversal of that decision will redress the serious economic, personal, and property harms that the conversion will cause Patchak. No party disputes this.

Because private citizens challenge fee-to-trust conversions as final agency action under the Administrative Procedure Act, 5 U.S.C. § 702, Patchak must have more than Article III standing to proceed. He also must have prudential standing, that is, he

must show that the interests he hopes to vindicate are "arguably within the zone of interests to be protected or regulated by the statute * * * in question." *Nat'l Credit Union Admin.* v. *First Nat'l Bank & Trust*, 522 U.S. 479, 488 (1998) (quoting *Ass'n of Data Processing Serv. Orgs., Inc.* v. *Camp*, 397 U.S. 150, 152 (1970)). The court of appeals correctly held that Patchak satisfies the zone-of-interests test. The interests of non-Indians who live near fee land slated to be converted into trust land are among the interests protected by the fee-to-trust provisions in the Reorganization Act and the integrally related Gaming Act.

In arguing to the contrary, the United States makes three fundamental errors. *First*, the United States wrongly contends that the only injuries in play flow from the post-conversion development and operation of a casino; in fact, regardless of whether a casino is ever built, private citizens have a protected interest in not having large swaths of their communities transformed (which is precisely what petitioners claim the power to do). *Second*, the United States wrongly contends that private citizens' casino-related interests are outside the scope of interests at stake in fee-to-trust conversions; but the fee-to-trust conversion decision is the foundation for the development and operation of Indian casinos. And *third*, the United States wrongly contends that state and local governments are differently situated than private citizens and community groups concerned about local fee-to-trust conversions; the differences between private citizens and local governments actually demonstrate that private citizens are ideal plaintiffs to dispute fee-to-trust conversions.

A. Private citizens' interests in fee-to-trust conversions are within the Indian Reorganization Act's zone of interests.

The zone-of-interests test is "not meant to be especially demanding." *Clarke*, 479 U.S. at 399. It turns on nothing more than the "evident" and "apparent" purposes of the statute at issue. *Id.* at 399 & n.14. Its single aim is to keep courts from litigating challenges to agency action brought by plaintiffs who are "merely incidental beneficiaries" of the relevant statutes. *Nat'l Credit Union*, 522 U.S. at 494 n.7. Thus, for example, courts will not hear a court reporter's challenge to an agency's failure to hold a hearing the reporter would have been hired to record. See *Lujan* v. *Nat'l Wildlife Federation*, 497 U.S. 871, 889 (1990).

Without much trouble, one can imagine a small army of plaintiffs whom the zone-of-interests test would properly keep from challenging fee-to-trust conversions. Federal employees and officials complaining about the extra work of administering new trust land. Private citizens from a faraway state. Those who are morally opposed to gambling but who are otherwise unaffected by it.

But private citizens who live close to the land at issue can have interests germane to the decision to convert fee land to trust land. If land is converted, they have to deal with the immediate consequences day in and day out. Conversion changes where people hunt and fish or where cattle graze. It diminishes the local tax base, which in turn reduces public services. Most importantly, communities of non-Indians and Indians who have long lived together are torn apart by the creation of a practically independent state out of a theretofore integrated whole.

The interests of neighboring property owners with settled expectations upset by an unlawful fee-to-trust conversion come within the Reorganization Act's zone of interests. While the Reorganization Act in general may have been designed to put an end to many pre-1934 Indian policies, see *Yakima County* v. *Confederated Tribes*, 502 U.S. 251, 254–255 (1992), Congress *limited* that policy reversal to tribes under federal jurisdiction in 1934, see *Carcieri*, 555 U.S. at 395–396 (holding that the fee-to-trust conversion provision, 25 U.S.C. § 465, is limited by 25 U.S.C. § 479). The evident purpose of that limitation is to limit the increase and expansion of Indian trust land. And the apparent beneficiaries of that limitation are the private citizens who own land near and reside among Indians who have long been ineligible for fee-to-trust conversions. Congress was concerned with how the increase in trust land changes how Indians and non-Indians relate and coexist with each other.

The United States largely writes off these interests—interests injured by the conversion of fee land *whether or not a casino is ever built there*. According to the United States' reading of the Reorganization Act's legislative history, Congress limited the Secretary of the Interior's authority to take land into trust for Indians simply to reduce the burden on the government, not "to benefit surrounding communities or individual non-Indians." U.S. Br. 31.

In so arguing, the United States falls into two common traps. First, it is the apparent or evident purpose of a law, not legislative history, that drives the inquiry into the law's zone of interests. See *Nat'l Credit Union*, 522 U.S. at 490 (discussing *Arnold Tours, Inc.* v. *Camp*, 400 U.S. 45 (1970)). Second, a

superficial reference in a statute (or even its legislative history) to one set of intended beneficiaries does not mean that no one else's interests are protected. See *id.* at 489 ("[W]e should not inquire whether there has been a congressional intent to benefit the would-be plaintiff."); see also *Clarke*, 479 U.S. at 398 ("[I]t was enough to provide standing that Congress, for its own reasons, primarily its concern for the soundness of the banking system, had forbidden banks to compete with plaintiffs by entering the investment company business."); *id.* at 396 n.10 ("The Court [in *Arnold Tours*] found it of no moment that Congress never specifically focused on the interests of travel agents in enacting § 4 of the Bank Service Corporation Act."). The whole point of the zone-of-interests test is to identify plaintiffs whom Congress did *not* specifically intend to benefit but who nonetheless are rightfully aggrieved by a law's violation.

Along the same lines, noting that the Reorganization Act specifically provides that state and local governments lose power to tax converted lands, the United States argues that those governments alone have interests within the Act's zone of interests. See U.S. Br. 31. But, again, the mere mention of one group of possible plaintiffs in the text of a statute does not preclude other groups from suing to enforce the statute. In fact, the United States' concession that state and local governments have prudential standing dooms its challenge to private citizens' prudential standing, for their interests are of the same sort, as the court of appeals observed. See *Patchak* v. *Salazar*, 632 F.3d 702, 707 (CADC 2011). Private citizens, community groups, and state and local governments all are entities in close proximity to the land at issue; all have interests, economic and otherwise, immediately harmed by fee-to-trust con-

version. Holding that all of them have prudential standing here is no different than holding that hunters, campers, bird watchers, loggers, and local residents all have prudential standing to challenge a decision regarding land use in a national park they frequent, work in, or live near.

For purposes of the zone of interests of the Reorganization Act's fee-to-trust conversion provisions, then, there are no material differences between private citizens and community groups, on the one hand, and state and local governments, on the other. If anything, the interests of private citizens and community groups put them in a better position to dispute fee-to-trust conversions. This case illustrates the point. No state or local government challenged the conversion of the fee land of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, *despite the conversion's invalidity under Carcieri*. The economic allure of an Indian casino is too great for cash-strapped local governments to resist. But private citizens (like Patchak) and community groups (like MichGO, who also sued to stop the conversion, see *Michigan Gambling Opposition* v. *Norton*, 477 F. Supp. 2d 1 (D.D.C. 2007)) experience the downsides of fee-to-trust conversions in more than their wallets and pocketbooks. Inasmuch as the zone-of-interests test is a means for identifying classes of plaintiffs whose interests ensure that they will reliably seek to hold the government to the limitations that federal laws impose, the United States' resistance to Patchak's prudential standing is off base.[2]

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[2] Even assuming that the interests of state and local governments are within the Reorganization Act's zone of interests but that those of private citizens are not, the Court has held

(footnote continued on next page)

B. The Indian Gaming Regulatory Act confirms that private citizens can challenge fee-to-trust conversions.

The Gaming Act reinforces the conclusion that local residents' interests are germane to fee-to-trust conversions. In provisions dealing with Indian casinos on lands converted to trust after October 17, 1988, the Gaming Act specifically identifies "the surrounding community" as among those whose interests are protected. 25 U.S.C. § 2719(b)(1)(A). Those provisions reveal Congress's acknowledgment that Indian gaming and fee-to-trust conversions are linked activities that have an impact on residents.

The United States erroneously contends that the Gaming Act is categorically irrelevant to the zone-of-interests question presented in this case. Quoting *National Wildlife Federation*, the United States asserts that "the zone-of-interests analysis is *limited* to the particular 'statutory provision whose violation forms the legal basis for his complaint,'" which here is the Reorganization Act, not the Gaming Act. U.S. Br. 32–33 (emphasis added) (quoting 497 U.S. at 883). Notwithstanding that formulation, the Court has not actually aimed the zone-of-interests test at only the precise statute a plaintiff claimed was violated. The Court, in fact, has stated that it is "not limited to considering the statute under which [plaintiffs] sued, but may consider any provision that helps us to understand Congress' overall purposes." *Clarke*, 479 U.S. at 401; see *id.* at 396–397 (noting

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that private citizens with constitutional standing have prudential standing to complain about the way federal action affects a state. See *Bond* v. *United States*, 131 S. Ct. 2355 (2011).

how *Data Processing* construed the "relevant statute" broadly by relying upon a statute different from that which the plaintiff had claimed was violated). A statute other than one whose violation forms the legal basis of a plaintiffs complaint may be relevant if it has an "integral relationship" with the primary statute. *Air Courier Conference* v. *Am. Postal Workers Union, AFL-CIO*, 498 U.S. 517, 529–530 (1991).

The Gaming Act has an integral relationship with the Reorganization Act. The acts are not linked only insofar as both deal with Indians. Regulation of Indian gaming explicitly depends on the nature of the land where the gaming occurs and when that land was acquired. See 25 U.S.C. §§ 2710, 2719.

The United States overemphasizes the Gaming Act in its effort to discredit the court of appeals' correct holding that private citizens have prudential standing to challenge fee-to-trust conversions. Indians conducted gaming on their lands before the Gaming Act. The act was Congress's response to the Court's determination that states could not regulate gaming on Indian lands, which left such gaming effectively unregulated. See *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202, 221–222 (1987). Gaming and Indian lands were integrally related before the Gaming Act, so it is completely understandable that residents' concerns about local gaming are interests relevant to the decision regarding fee-to-trust conversion.

* * * * *

In sum, the impact of Indian activities on local communities and non-Indian populations is one of the central concerns of federal statutes regulating Indian lands, if not the utmost concern. Precisely

because belated fee-to-trust conversions are so disruptive to integrated Indian/non-Indian communities, the Reorganization Act limits the Indians for whom the Secretary of the Interior can move land into trust to those that were under federal jurisdiction in 1934. Likewise, the Gaming Act expressly requires decisionmakers to consider the impacts on local communities in determining whether Indian gaming is allowed on lands recently converted from fee into trust. Local citizens and citizens groups are the most directly aggrieved parties when federal officials violate these statutes, and they have standing to vindicate their interests.

II. THE QUIET TITLE ACT DOES NOT BAR SUITS BROUGHT BY PRIVATE CITIZENS CHALLENGING FEE-TO-TRUST CONVERSIONS UNDER THE INDIAN REORGANIZATION ACT.

Patchak challenges the government's fee-to-trust conversion as statutorily unauthorized, claiming that "because the Gun Lake Band was not under federal jurisdiction in 1934, the Indian Reorganization Act * * * did not authorize the Secretary to take the Band's land into trust." *Patchak*, 632 F.3d at 704. Because he does not seek damages or title and because he claims that the Secretary of the Interior acted under color of legal authority, the United States has waived its sovereign immunity to Patchak's suit, under the Administrative Procedure Act. See 5 U.S.C. § 702.

Relief under the Administrative Procedure Act would be limited if Patchak's suit was governed by another statute granting the United States' "consent to suit expressly or impliedly forbid[ding] the relief

which is sought." 5 U.S.C. § 702. Although the United States argues that the Quiet Title Act limits Patchak's relief, the court of appeals correctly concluded that the Act is inapplicable here. The United States should not be permitted to evade suit by asserting the Quiet Title Act in cases, like this one, where a private citizen or community group challenges government action as unauthorized under 25 U.S.C. § 465 and does not seek to quiet title as to any parcel of land.[3]

The Quiet Title Act provides that "[t]he United States may be named as a party defendant in a civil action *under this section* to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands * * * ." 28 U.S.C. § 2409a (emphasis added). The United States notes that "[t]his Court has twice held that 'Congress intended the [Quiet Title Act] to provide the exclusive means by which adverse claimants could challenge the United States' title to real property." U.S. Br. 18 (quoting *United States* v. *Mottaz*, 476 U.S. 834, 841 (1986) ((quoting *Block* v. *North Dakota*, 461 U.S. 273, 286 (1983))). And indeed, this Court has so held. But the key point here is that Patchak—like other private citizens and community groups challenging fee-to-trust conversions—is not an "adverse

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[3] The United States has sought to evade suit by relying on the Quiet Title Act in cases where citizens do not challenge title to land, but challenge whether a state has ceded sovereignty over land to a tribe or the government, as required by the Constitution. See, *e.g.*, *Citizens Against Casino Gambling in Erie Co.* v. *Kempthorne*, 471 F. Supp. 2d 295, 320 (W.D.N.Y. 2007).

claimant" and so has not brought an action "under" the Quiet Title Act. *Mottaz*, 476 U.S. at 841; *Block*, 461 U.S. at 841; 28 U.S.C. § 2409a.

A "claimant" is someone "who asserts a right or demand * * * esp., one who asserts a property interest in land, chattels, or tangible things." BLACK'S LAW DICTIONARY (9th ed. 2009). *See* Stake, *The Uneasy Case for Adverse Possession*, 89 GEO. L.J. 2419, 2426 n.45 (2001) ("An adverse claimant holds property under claim of title or claim of right when she has the intent to hold the land as an owner."). Patchak is certainly *adverse* to the Secretary's decision to convert fee land into trust land for the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, but because he does not assert a property interest in that land, he is not an adverse *claimant*.

What holds for Patchak holds for private citizens and community groups. Unlike true adverse claimants, private citizens and community groups would not be necessary parties to "a suit to remove a cloud or quiet title" of the land at issue in a fee-to-trust conversion. *Appalachian Elec. Power Co.* v. *Smith*, 67 F.2d 451, 456 (CA4 1933) (citations omitted). That is because non-Indian neighbors do not seek "both possession and legal title" to converted land. *Frost* v. *Spitley*, 121 U.S. 552, 556 (1887) (citation omitted) (emphasis added). They seek only to reverse the Secretary's unlawful decision to convert the land from fee land into trust land.

For these reasons, the Quiet Title Act does not prevent a court from adjudicating a private citizen's challenge to a fee-to-trust conversion as unlawful under 25 U.S.C. § 465. The court of appeals correctly held that Patchak's suit under the Administrative Procedure Act may proceed.

CONCLUSION

The Court should affirm the judgment of the court of appeals that private citizens like Patchak (and, by extension, community groups like *amici*) can challenge fee-to-trust conversions.

Respectfully submitted,

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