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ARTFUL PLEADING DEFEATS HISTORIC COMMITMENT TO AMERICAN INDIANS

Bethany Henneman*

INTRODUCTION

The United States government has specific commitments to federally recognized American Indian tribes through treaties, Congressional Acts, Executive Orders, and Executive Agreements as well as judicially created commitments.¹ One such commitment is the Department of the Interior's responsibility to hold American Indian lands in trust for the benefit of tribes.² This responsibility requires the Bureau of Indian Affairs, the primary federal agency charged with carrying out the United States' trust responsibility to American Indian people, to manage trust land in a way that best serves American Indian interests.³

In *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*,⁴ the Supreme Court incorrectly interpreted the Quiet Title Act ("QTA")⁵ in such a way so as to significantly hinder the Secretary of the Interior's ("Secretary") responsibility to carry out the fee-to-trust process for American Indian tribes. In *Patchak*, the Supreme Court considered: (1) whether the QTA's reservation of immunity for actions respecting Indian Trust Lands barred Patchak's suit and (2) whether Patchak's economic, environmental, and aesthetic interests

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¹ Indian Affairs, U.S. DEP'T OF THE INTERIOR, <http://www.bia.gov/FAQs/index.htm> (last updated Mar. 12, 2014, 5:23 PM). "Congress ended treaty-making with Indian tribes in 1871." *Id.*

² *Holt v. Comm'r of Internal Revenue*, 364 F.2d 38, 41 (8th Cir. 1966) ("Tribal land is held in trust by the United States for the use of the tribe. No individual Indian has title or an enforceable right in tribal property.").

³ Indian Affairs, *supra* note 1.

⁴ 132 S. Ct. 2199 (2012).

⁵ 28 U.S.C.A. § 2409a (West 1986) [hereinafter QTA].

were sufficiently within section 465 of the Indian Reorganization Act's⁶ zone of interests as necessary to establish prudential standing.⁷

The Court found that the QTA's "Indian Lands Exception"⁸ barred the type of grievance Patchak advanced and concluded that the Administrative Procedure Act's general waiver of sovereign immunity applied to Patchak's suit.⁹ In addition, the Court found that Patchak had prudential standing to challenge the Secretary's acquisition of the Bradley property because Patchak's land use interests were within the Indian Reorganization Act's zone of interests.¹⁰

The Supreme Court incorrectly focused on the nature of Patchak's action in its determination that the QTA's Indian Lands Exception did not apply.¹¹ However, the test for whether the United States waives sovereign immunity under the QTA should be based on the relief requested, an "effects test," instead of the plaintiff's grievance.¹² In this case, Patchak asked the Court to strip the United States of title to the Match-E-Be-Nash-She-Wish Band of Pottawatomie Indian's property.¹³ Under the effects test, the QTA would bar suits by claimants such as Patchak who are not technically asserting an adverse claim but who are seeking an equally harmful result through artful pleading to the fee-to-trust process for American Indian lands.¹⁴ This standard would be consistent with the QTA's allowance of suits beyond routine quiet title actions¹⁵ and include those suits that are impliedly forbidden by the Indian Lands Exception.¹⁶

⁶ 25 U.S.C.A. § 465 (West 1988).

⁷ *Patchak*, 132 S. Ct. at 2203.

⁸ 28 U.S.C.A. § 2409(a) (West 1986). The Indian Lands Exception refers to the language "[t]his section does not apply to trust or restricted Indian lands." *Id.*

⁹ *Id.* at 2208.

¹⁰ *Id.* at 2211.

¹¹ *Id.* at 2201.

¹² *Id.* at 2214–15 (Sotomayor, J., dissenting).

¹³ *Id.* at 2204 (majority opinion).

¹⁴ *Id.* at 2215 (Sotomayor, J., dissenting).

¹⁵ An action to quiet title is defined as "a proceeding to establish a plaintiff's title to land by compelling the adverse claimant to establish a claim or be forever estopped from asserting it." BLACK'S LAW DICTIONARY 4 (9th ed. 2009).

¹⁶ *Id.* at 2216–17.

I. THE CASE

In 2001, the Match-E-Be-Nash-She-Wish Band Of Pottawatomi Indians (“the Band”) petitioned the Department of the Interior to take the Bradley Property into trust, announcing a plan to construct and operate a casino on the property in an effort to promote economic self-sufficiency.¹⁷ In May 2005, the Bureau of Indian Affairs announced that it would take the Bradley Property into trust for the Band pursuant to section Five of the Indian Reorganization Act (“Reorganization Act”).¹⁸ The Federal Register published the decision with a thirty-day review period before the Secretary of the Interior (“Secretary”) could carry out the transaction.¹⁹

On August 1, 2008, David Patchak filed suit under the Administrative Procedure Act alleging section 465 of the Reorganization Act did not authorize the Secretary to acquire property for the Band because the Band was not a federally recognized tribe when the Reorganization Act was enacted in 1932.²⁰ Patchak requested both a declaration that the decision to acquire the Bradley Property violated the Reorganization Act and an injunction to stop the

¹⁷ *Patchak v. Salazar*, 646 F.Supp.2d 72, 74 (D.C.Cir. 2009). The Band owned the land consisting of 147 acres in rural Wayland Township, Michigan. *Patchak v. Salazar*, 632 F.3d 702, 703 (D.C. Cir. 2011). The Band petitioned the Department of the Interior to take the Bradley Property into trust because “if gaming is to occur on off-reservation lands[,] those lands must be trust lands ‘over which an Indian tribe exercises governmental power.’” Memorandum from Carl Artman, Assistant Sec’y U.S. Dep’t of Indian Affairs to the Reg’l Dirs. of the Bureau of Indian Affairs and George Skibine (Jan. 3, 2008), *available at* <http://www.indianz.com/docs/bia/artman010308.pdf>.

¹⁸ *Patchak*, 646 F.Supp.2d at 74. *See* § 5 of the IRA, which provides: “[t]he Secretary of the Interior is authorized . . . to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands . . . within or without existing reservations, including trust or otherwise restricted allotments . . . for the purpose of providing land for Indians.” 25 U.S.C.A. § 465 (West 1988).

¹⁹ *Patchak*, 632 F.3d at 703. *See* 25 C.F.R. § 151.12(b) (2014). During the thirty-day period, an anti-gambling non-profit organization, MichGo, filed a lawsuit alleging that the Interior’s approval of the casino violated the National Environmental Protection Act and the Indian Gaming Regulatory Act. *Patchak*, 646 F.Supp.2d at 75. The district court granted summary judgment for the defendants and the court of appeals affirmed. *Id.*

²⁰ *Patchak*, 646 F.Supp.2d at 75. The Band intervened in the suit to defend the Secretary’s decision. *Patchak*, 632 F.3d at 704.

Secretary from accepting title.²¹ On October 6, 2008, both the Band and the United States filed Rule 12 motions seeking judgment in their favor on the grounds that Patchak lacked prudential standing.²²

The district court held Patchak lacked prudential standing to challenge the Secretary's acquisition of the Bradley property because Patchak's interests did not fall within the zone of interests protected or regulated by section 465 of the Reorganization Act.²³ The district court reasoned that Patchak's requested remedy was likely to frustrate the objectives of the Reorganization Act, which are to enable self-determination, self-government, and self-sufficiency.²⁴ As a result, the court lacked subject matter jurisdiction over the case and granted the United States motion to dismiss and the Band's motion for judgment on the pleadings.²⁵

The D.C. Circuit Court of Appeals disagreed and held that Patchak had prudential standing to bring his claim against the Secretary.²⁶ The court found the interests of those in the community surrounding the proposed casino, who would suffer from living near the proposed casino, were arguably protected interests for parties attempting to enforce Reorganization Act restrictions.²⁷ After

²¹ *Patchak*, 646 F.Supp.2d at 76. In January 2009, the Supreme Court denied certiorari for *Michigan Gambling Operation v. Kempthorne*, 129 S. Ct. 1002 (2009), and the Secretary of the Interior took the Bradley Property into trust, mooted Patchak's request for an injunction and making the suits sole purpose to divest the Federal Government of title to the Bradley Property. *Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians v. Patchak*, 132 S. Ct. 2199, 2204 (2012).

²² *Patchak*, 646 F.Supp.2d at 76. To establish standing, Patchak contended that he lived in close proximity to the Bradley Property, and that a casino there would destroy the lifestyle he enjoyed by causing increased traffic, increased crime, decreased property values, an irreversible change in the rural character of the area, and other aesthetic, socioeconomic, and environmental problems. *Patchak*, 132 S. Ct. at 2203.

²³ *Patchak*, 646 F.Supp.2d at 76.

²⁴ *Id.* at 77.

²⁵ *Id.* at 78.

²⁶ *Patchak v. Salazar*, 632 F.3d 702, 704 (D.C. Cir. 2011).

²⁷ *Id.* at 706. The Supreme Court introduced the zone of interests test in recognition of the "trend . . . toward enlargement of the class of people who may protest administrative action." *Id.* at 705. The zone of interests analysis focuses on "who in

addressing the standing issue, the court turned to the question of whether the government consented to Patchak's suit.²⁸ The court held Patchak's claim fell "within the general waiver of sovereign immunity set forth in section 702 of the APA."²⁹ The court found that the QTA did not cover Patchak's suit because Patchak was not claiming an ownership interest in the Bradley Property.³⁰ The D.C. Circuit Court's holding conflicted with three other United States Circuit Court decisions, which held that the United States retained immunity from suits similar to Patchak's.³¹ This circuit split prompted the United States Supreme Court to grant certiorari to decide the two questions arising from Patchak's action: (1) whether the United States had sovereign immunity from Patchak's suit by virtue of the QTA, and (2) whether Patchak had prudential standing to challenge the Secretary's acquisition.³²

II. LEGAL BACKGROUND

In 2012, the QTA underwent a transformation in which the United States Supreme Court imposed a substantial burden on the government by opening it up to lawsuits which both Congress and the Executive Branch thought to be immune from challenge due to the "national public interest."³³ Part II.A of this note discusses how historically, claimants asserting title to land held by the United States had only limited means of obtaining resolutions for title disputes.³⁴ Part II.B examines the enactment of the QTA, and specifically how Congress sought to rectify the difficulty plaintiffs experienced in title disputes against the United States.³⁵ Part II.B.1 through Part II.B.2 discuss how the government's waiver of sovereign immunity was strictly construed by the Supreme Court, preventing plaintiffs from

practice can be expected to police the interests the statute protects," not "who Congress intended to benefit." *Id.*

²⁸ *Id.* at 707.

²⁹ *Id.* at 712 [hereinafter APA].

³⁰ *Id.* at 709.

³¹ *Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians v. Patchak*, 132 S. Ct. 2199, 2204 (2012).

³² *Id.* at 2203.

³³ *Id.* at 2218 (Sotomayor, J., dissenting).

³⁴ *Block v. North Dakota ex rel. Bd. of Univ. & Sch. Lands*, 461 U.S. 273, 280 (1983).

³⁵ *Id.* at 282.

avoiding the carefully crafted provisions of the QTA through artful pleading. Part II.B.3 completes the background analysis by examining the creation of the effects test used by the Tenth Circuit Court of Appeals to further interpret the government's waiver of sovereign immunity—by allowing suits to be characterized as quiet title actions based on the relief sought by plaintiffs.

A. Prior to 1972, States and All Others Asserting Title to Land Claimed by the United States had Limited Means of Obtaining Resolutions

Without an express congressional waiver, the states and all other entities are barred from suing the United States by federal sovereign immunity.³⁶ Prior to the passage of the QTA in 1972, the United States retained sovereign immunity with respect to suits involving title to land.³⁷ The result of sovereign immunity was that any party seeking to assert title to land already claimed by the United States was left with limited means of enforcing their right; claimants could attempt to induce the United States to file a quiet title action against them, or, they could petition Congress or the Executive for discretionary relief.³⁸ Claimants also attempted a third means of asserting their right: by initiating suits against federal officers as a method of obtaining relief in a title dispute with the federal government.³⁹

However, in *Malone v. Bowdoin*,⁴⁰ the Supreme Court announced a rule regarding officer suits stating,

the action of a federal officer affecting property claimed by a plaintiff can be made the basis of a suit for specific relief against the officer as an individual only if the officer's action is “not within the officer's statutory powers or, if within those

³⁶ *Id.* at 280 (citing *California v. Arizona*, 440 U.S. 59 (1979)).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 281.3

⁴⁰ 369 U.S. 643 (1962).

powers, only if the powers, or their exercise in the particular case, are constitutionally void.”⁴¹

As a result of the rule announced by the Supreme Court in *Malone*, plaintiffs were left with little recourse to assert and resolve title disputes with the federal government.⁴²

B. The QTA's Waiver of Sovereign Immunity Allows Citizens to Effectively Seek Recourse from the Courts

Subject to certain exceptions, the QTA waives the United States' sovereign immunity and permits plaintiffs to name the United States as a party defendant in civil actions to adjudicate title disputes involving real property in which the United States claims an interest.⁴³ By passing the QTA, Congress sought to rectify the difficulty plaintiffs had long experienced when employing a suit to resolve a title dispute with the United States.⁴⁴ The original version of the QTA stated “[t]he United States may be named a party in any civil action brought by any person to quiet title to lands claimed by the United States.”⁴⁵ The Executive Branch opposed the original Senate Bill and proposed several limits on the waiver of sovereign immunity for the protection of the public interest.⁴⁶ One of those limits excluded Indian lands from the scope of the waiver. The Executive branch argued that a waiver of immunity with regards to American Indian lands was inconsistent with existing commitments the government made to the Indians through treaties and other agreements.⁴⁷ The final version of the bill included many of the exceptions proposed by the Executive Branch, including the Indian Lands Exception.

⁴¹ *Id.* at 647 (quoting *Larson v. Domestic & Foreign Corp.*, 337 U.S. 682, 702 (1949)).

⁴² *Block*, 461 U.S. at 282.

⁴³ *Id.* at 275–76.

⁴⁴ *Id.* at 282.

⁴⁵ *Id.*

⁴⁶ *Block*, 461 U.S. at 282–83.

⁴⁷ *Id.* at 283.

1. Early Interpretations of the QTA's Waiver of Sovereign Immunity

*Block v. North Dakota ex rel. Bd. of Univ. and Sch. Lands*⁴⁸ illustrates the Supreme Court's early construal of the QTA with regards to the government's waiver of sovereign immunity. In *Block*, the issue before the court was whether Congress intended the QTA to provide the exclusive procedure by which a claimant could judicially challenge a United States' title claim to real property.⁴⁹ North Dakota asserted that even if suit was barred by section 2409a(f) of the QTA, North Dakota's suit against the federal officers was maintainable independent of the QTA.⁵⁰ The Supreme Court held that Congress intended the QTA to provide the exclusive means by which adverse claimants could challenge the United States' title to real property.⁵¹ *Block* applied the rule of statutory construction that a precisely drawn, detailed statute preempts more general remedies.⁵²

In *State of Florida, Dep't of Bus. Regulation v. United States Dep't of Interior*,⁵³ the Eleventh Circuit also strictly construed the QTA to conclude that Congress' decision to exempt Indian lands from the government's waiver of sovereign immunity impliedly forbid the relief sought by plaintiffs, although technically the plaintiff's suit was not a quiet title action.⁵⁴ The court articulated Congress' purpose in enacting the QTA, "to prohibit third parties from interfering with the responsibility of the United States to hold lands in trust for Indian Tribes."⁵⁵ Therefore, the court reasoned, it would be anomalous to allow other claimants, whose interests might be less than that of an adverse claimant, to divest the government's title to Indian trust land.⁵⁶

⁴⁸ 461 U.S. 273 (1983).

⁴⁹ *Id.* at 276–77.

⁵⁰ *Id.* at 280.

⁵¹ *Id.* at 286.

⁵² *Id.* at 285. "[Section] 702 provides no authority to grant relief when Congress has dealt in particularity with a claim and has intended a specified remedy to be the exclusive remedy." *Id.* at 286 n.22.

⁵³ 768 F.2d 1248 (11th Cir. 1985).

⁵⁴ *Id.* at 1254.

⁵⁵ *Id.*

⁵⁶ *Id.* at 1254–55.

2. Court's Ensure Plaintiffs are Unable to Avoid the QTA by Characterizing Suits Under a Different Guise

In *United States v. Mottaz*,⁵⁷ an action was brought to challenge the government's sale of three Indian allotments to the United States Forest Service.⁵⁸ Plaintiffs sought to avoid the carefully crafted limitations of the QTA by characterizing their suit as a claim for allotment under the General Allotment Act of 1887.⁵⁹ Applying *Block*, the Court concluded that plaintiffs could not use section 345 of the General Allotment Act for a quiet title action against the government.⁶⁰

The Court found that if plaintiffs were permitted to sue under the General Allotment Act, they might be entitled to actual possession of the challenged property.⁶¹ Thus, the Court reasoned, permitting suits against the United States under the General Allotment Act would allow plaintiffs to avoid the QTA's twelve-year statute of limitations and seriously disrupt ongoing federal programs, precisely the threat the QTA was enacted to avoid.⁶² The Court explained that "[t]he limitations provision of the QTA reflects a clear congressional judgment that the national public interest requires barring stale challenges to United States' claims to real property, whatever the merits of those challenges."⁶³

⁵⁷ 476 U.S. 834 (1986).

⁵⁸ *Id.* at 836. Ancestors of respondent Florence Mottaz each received an 80 acre allotment on the Leech Lake Reservation and Mottaz inherited a one-fifth interest in one of the allotments and a one-thirtieth interest in each of the other two. *Id.* United States held in trust title to all three allotments. *Id.*

⁵⁹ *Id.* at 844. Under the General Allotment Act of 1887, Congress imposed American real property and inheritance law upon American Indian territories, forcing the division of tribal land amongst the individual citizens of tribes to be held by the United States in trust for the individual allottee. G. William Rice, *The Indian Reorganization Act, The Declaration on the Rights of Indigeous Peoples, and a Proposed Carcieri Fix: Updating the Trust Land Acquisition Process*, 45 IDAHO L. REV. 575, 576 (2009).

⁶⁰ *Mottaz*, 476 U.S. at 846.

⁶¹ *Id.* at 847. Plaintiff sought a declaration that she alone possessed valid title. *Id.* at 842. The fact that the plaintiff in *Mottaz* claimed the right to elect a remedy that would not require the Government to relinquish its possession of the disputed lands was irrelevant to the Supreme Court. *Id.* at 847.

⁶² *Id.* at 847.

⁶³ *Id.* at 851.

3. The Circuit Courts Create an Effects Test, Characterizing Suits as Quiet Title Actions Based on the Relief Sought by Plaintiffs

After *United States v. Mottaz*,⁶⁴ it was evident that the QTA's limitation on suits should not be circumvented through artful pleading.⁶⁵ Following the Supreme Court's lead, the circuit courts focused their attention on how a plaintiff's suit would impact the United States' title to Indian trust land rather than focusing on the type of property interest a plaintiff asserted in their complaint.⁶⁶

In *Metropolitan Water District of South California v. United States*,⁶⁷ the plaintiffs argued that the QTA did not apply to their suit because the Metropolitan Water District was not seeking to quiet title but instead seeking a determination of the boundaries of an Indian Reservation.⁶⁸ However, the Ninth Circuit held in favor of the United States, stating that although plaintiffs sought a determination of the boundaries of the reservation, the effect of a successful challenge would be to quiet title in others than the Tribe.⁶⁹ The court stated that to allow this suit would be to permit third parties to interfere with the government's discharge of its responsibilities to Indian tribes with respect to the lands it holds in trust for them. The court concluded that third parties are not permitted to interfere when the Secretary claims an interest in real property based upon that property's status as trust or restricted Indian land.⁷⁰

Additionally, the Tenth Circuit used an effects test in *Neighbors for Rationale Development, Inc. v. Norton*.⁷¹ Neighbors argued that the QTA was inapplicable to its case because the plaintiffs

⁶⁴ 476 U.S. 834 (1986).

⁶⁵ *Neighbors for Rational Dev., Inc. v. Norton*, 379 F.3d 956, 965 (2004), *abrogated* by *Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians v. Patchak*, 132 S. Ct. 2199 (2012).

⁶⁶ *Id.*

⁶⁷ 830 F.2d 139 (1987), *abrogated* by *Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians v. Patchak*, 132 S. Ct. 2199 (2012).

⁶⁸ *Metro. Water Dist. of S. California*, 830 F.2d at 143.

⁶⁹ *Id.*

⁷⁰ *Id.* at 144.

⁷¹ 379 F.3d 956 (2004).

were not adverse claimants seeking to quiet title in the Indian school property and did not claim an ownership interest in the property.⁷² The court held that the QTA precluded Neighbor's suit to the extent it sought to nullify the Secretary's trust acquisition.⁷³ The court stated "[i]t is well settled law that the QTA's prohibition of suits challenging the United States' title to Indian trust lands may prevent suit even when a plaintiff does not characterize its action as a quiet title action."⁷⁴ The court reasoned that if Congress was unwilling to allow a plaintiff claiming title to land to challenge the United States' title to trust land, it was highly unlikely Congress intended to allow plaintiffs with no claimed property rights to challenge the same title to trust land.⁷⁵

III. THE COURT'S REASONING

In *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, the Supreme Court affirmed the judgment of the D.C. Circuit, holding that the QTA's reservation of sovereign immunity did not bar Patchak's suit nor did the doctrine of prudential standing.⁷⁶ The Supreme Court remanded the case for further proceedings consistent with the opinion.⁷⁷

The Supreme Court's first task involved determining whether the United States retained sovereign immunity from Patchak's suit.⁷⁸ To get to this question, the Supreme Court first looked at section 702 of the Administrative Procedure Act ("APA"), which generally waives the government's sovereign immunity for claimants seeking "relief other than monetary damages" and stating "a claim that an agency or an officer or employee thereof acted or failed to act in an official

⁷² *Id.* at 961.

⁷³ *Id.* at 965.

⁷⁴ *Neighbors for Rationale Dev., Inc.*, 379 F.3d at 961. See also Martin M. Heit, Annotation, *Real Property Quiet-Title Actions against United States under Quiet Title Act*, 60 A.L.R. FED. 645 (1982) ("Quiet Title Act's prohibition of suits challenging the United States' title in Indian trust land may prevent suit even when a plaintiff does not characterize its action as a quiet title action.").

⁷⁵ *Neighbors for Rationale Dev., Inc.*, 379 F.3d at 962.

⁷⁶ *Patchak*, 132 S. Ct. at 2212.

⁷⁷ *Id.*

⁷⁸ *Id.* at 2203.

capacity or under color of legal authority.”⁷⁹ The Court’s opinion noted that the APA’s general waiver does not apply “if any other statute granting consent to suit expressly or impliedly forbids the relief which is sought.”⁸⁰ Therefore, the Court considered both the Band and Secretary’s contention that the QTA expressly forbid the relief sought by Patchak.⁸¹

The QTA includes its own waiver of sovereign immunity, which authorizes suits against the government to adjudicate disputed titles to real property in which the United States claims an interest.⁸² However, the QTA’s waiver of sovereign immunity does not apply “to trust or restricted Indian lands.”⁸³ The Court, using language in a letter written by Justice Scalia during his time in the Office of the Attorney General,⁸⁴ stated that the Indian Lands Exception did not render the government immune from suit because the QTA addresses only quiet title actions which were different than the grievance advanced by Patchak.⁸⁵ According to the majority, the QTA speaks only to quiet title actions, which are “universally understood to refer to suits in which a plaintiff not only challenges someone else’s claim, but also asserts his own right to disputed property.”⁸⁶ The Court ruled that the Indian Lands Exception did not apply because Patchak was not asserting his own claim to the land, and thus his suit was distinguishable from a quiet title action. In reaching its decision, the Court differentiated Patchak’s case from two prior cases where the QTA was used to address suits in which the plaintiff asserted an ownership interest in property held by the government.⁸⁷ The court

⁷⁹ Administrative Procedure Act, 5 U.S.C. § 702 (2012).

⁸⁰ *Id.*

⁸¹ *Patchak*, 132 S. Ct. at 2205.

⁸² Quiet Title Act, 28 U.S.C. § 2409(a) (2006).

⁸³ *Id.*

⁸⁴ *Patchak*, 132 S. Ct. at 2205.

⁸⁵ *Id.* Patchak did not claim any competing interest in the Bradley Property. *Id.* at 2206.

⁸⁶ *Id.* The Court strengthened its argument by noting that the other provisions of the QTA made clear that the term quiet title action carried its ordinary meaning under the statute. *Id.*

⁸⁷ *Patchak*, 132 S. Ct. at 2208.

concluded that Patchak's suit was a "garden variety" APA claim and that the APA's general waiver of sovereign immunity applied.⁸⁸

Next, the Court considered the alternative argument that Patchak lacked prudential standing.⁸⁹ The Band and Government argued that Patchak's injuries were not within section 465's zone of interests because the Reorganization Act focuses on land acquisition whereas Patchak's interests were based on land use.⁹⁰ The Court noted that land forms the basis for Tribal economic life and that section 465 is the primary mechanism to foster the economic development of Indian Tribes.⁹¹ In turn, under section 465, the Secretary takes title to properties in trust if "the land is necessary to facilitate tribal self-determination, economic development, or Indian housing."⁹² In the Court's opinion, the Department of the Interior's policy reflected the Reorganization Act's dependence on the projected use of the property.⁹³ Therefore, according to the Court, the decision to acquire the Bradley Property for gaming purposes under section 465 involved questions of land use.⁹⁴ The Court concluded that Patchak's economic, environmental, and aesthetic interests in land use fell within the zone of interests protected by the Reorganization Act.⁹⁵

In dissent, Justice Sotomayor argued that the majority opinion was inconsistent with both the QTA and the APA.⁹⁶ Justice Sotomayor reasoned that as a result of the opinion, any person could sue under the APA "to divest the Federal Government of title to and possession of land held in trust for Indian tribes, relief expressly forbidden by the QTA, so long as the complaint does not assert a personal interest in the land."⁹⁷

⁸⁸ *Id.* at 2208.

⁸⁹ *Id.* at 2210. The Court applied its prudential standing test: a person suing under the APA must satisfy Article III standing requirements and the interest asserted must be "arguably within the zone of interests to be protected or regulated" by the IRA. *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* at 2211.

⁹² 25 C.F.R. § 151.3(a)(3) (2013).

⁹³ *Patchak*, 132 S. Ct. at 2211.

⁹⁴ *Id.* at 2211–12.

⁹⁵ *Id.*

⁹⁶ *Id.* at 2212. (Sotomayor, J., dissenting).

⁹⁷ *Id.*

The dissent laid out Congress' intent in enacting the QTA, which was to provide a comprehensive solution to the problem of real-property disputes between private parties and the United States.⁹⁸ Justice Sotomayor contended that the expansive provision in section 2409(a) of the QTA was limited, through the Indian Lands Exception, because the application of a waiver of immunity in regards to trust or restricted Indian Lands would frustrate earlier commitments the government had made to Indian Tribes.⁹⁹ Next, in regards to the QTA, she argued that the Indian Lands Exception was essential because it guaranteed that the United States could not be stripped of possession of property in trust for Indian Tribes without giving consent.¹⁰⁰ Finally, Justice Sotomayor asserted that Congress' restriction on the class of claimants entitled to relief impliedly forbade relief for the remainder.¹⁰¹ Therefore, Justice Sotomayor concluded that the QTA expressly precluded the relief Patchak sought, to divest the Federal Government of title to Indian trust land.¹⁰²

Turning to section 702 of the APA, which focuses on whether another statute explicitly or impliedly forbids the relief a claimant seeks, Justice Sotomayor concluded that the relief Patchak sought, to oust the Government of title to Indian trust land, was identical to the relief forbidden by the QTA.¹⁰³ She noted that it was highly implausible that Congress intended to retain the government's sovereign immunity against those asserting a constitutional real property interest while waiving the government's sovereign immunity against those who assert an aesthetic interest in land use.¹⁰⁴ Furthermore, Justice Sotomayor criticized the majority by pointing out that the QTA allows suits beyond quiet title actions including suits by

⁹⁸ *Id.* Justice Sotomayor quoted section 2409(a) of the QTA which reads, "[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." *Id.*

⁹⁹ *Id.* at 2213.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* In this case, judicial review of those without a "right, title, or interest" may be impliedly precluded because their interest is insufficient to warrant abrogation of the government's sovereign immunity. *Id.*

¹⁰² *Id.* at 2214.

¹⁰³ *Id.* at 2214–15.

¹⁰⁴ *Id.* at 2215.

claimants with easements, mineral rights, or some other lesser “right” or “interest.”¹⁰⁵ In addition, she noted, even if the QTA only expressly forbid quiet title actions, Patchak’s suit would still be impliedly forbidden.¹⁰⁶

Finally, Justice Sotomayor identified three consequences derivative from the majority’s opinion which Congress could not have intended when it enacted the QTA: (1) the QTA’s limitations are easily circumvented; (2), the Government’s ability to resolve real-property challenges expeditiously is frustrated; and (3), the creation of substantial uncertainty regarding which claimants are barred from bringing APA claims.¹⁰⁷ Justice Sotomayor concluded that the government should have retained sovereign immunity from Patchak’s suit because the QTA’s Indian Lands Exception barred the relief Patchak sought.¹⁰⁸ The dissenting opinion never reached the question of prudential standing.

IV. ANALYSIS

In *Match–E–Be–Nash–She–Wish Band of Pottawatomi Indians v. Patchak*, the United States Supreme Court held that the Indian Lands Exception to the QTA did not address the type of grievance Patchak advanced because Patchak was not an adverse claimant.¹⁰⁹ Based on this determination, the Court concluded that the APA’s general waiver of sovereign immunity applied to Patchak’s suit.¹¹⁰ The Court’s focus on the nature of Patchak’s action—injuries related to the use of the Bradley Property as a casino¹¹¹—was an unlikely result in light of the Court’s earlier interpretations of the QTA in *Block*¹¹² and

¹⁰⁵ *Id.* at 2216.

¹⁰⁶ *Id.* at 2216–17.

¹⁰⁷ *Id.* at 2217.

¹⁰⁸ *Id.* at 2218.

¹⁰⁹ *Id.* at 2207.

¹¹⁰ *Id.* at 2210.

¹¹¹ *Id.* at 2203.

¹¹² See *Block v. North Dakota*, 461 U.S. 273, 277 (1983) (holding “that the QTA forecloses the other bases for relief urged by the State, and that the limitations provision is as fully applicable to North Dakota as it is to all others who sue under the QTA”).

Mottaz.¹¹³ The Court's holding allows plaintiffs to oust the government of title to Indian land through an APA action, nullifying the Indian Lands Exception to the QTA. Instead of focusing on the nature of Patchak's action the Court should have focused on the effect of a successful challenge. This relief-focused approach would safeguard the United States' sovereign immunity from suits like Patchak's seeking to dispossess the government of Indian trust land.

A. Allowing Patchak to Avoid the Carefully Crafted Provisions of the Quiet Title Act was an Improbable Result After Block and Mottaz

In *Patchak*, the Supreme Court strayed from its strict observance of the conditions Congress attached to the QTA as seen in *Block* and *Mottaz*, rendering futile the government's time-honored commitment to tribal self-sufficiency. The Supreme Court permitted Patchak to circumvent the QTA's Indian Lands Exception by filing an action under the APA because it found Patchak was not an adverse claimant.¹¹⁴ The determination that Patchak was not an adverse claimant was important to the principle of *stare decisis* because in *Block* the Supreme Court held that "Congress intended the QTA to provide the exclusive means by which adverse claimants could challenge the United States' title to real property."¹¹⁵

The APA's general waiver of sovereign immunity was not intended to be the new supplemental remedy for plaintiffs involved in land use disputes with the United States government.¹¹⁶ Enacted only four years after the QTA, the APA specifically withholds authority to grant relief if "any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought."¹¹⁷ The Court in *Block* recognized that if a plaintiff could use an APA action to divest the government of title to Indian trust land, "all of the carefully crafted

¹¹³ See *United States v. Mottaz*, 476 U.S. 834, 836 (1986) (holding "that respondent's suit is an action 'to adjudicate a disputed title to real property in which the United States claims an interest' within the meaning of the Quiet Title Act of 1972").

¹¹⁴ *Id.* at 2207.

¹¹⁵ *Block*, 461 U.S. at 286.

¹¹⁶ *Id.* at 286 n.22.

¹¹⁷ 5 U.S.C. § 702 (1976).

provisions of the QTA deemed necessary for the protection of the national public interest could be averted ... [and] the Indian lands exception to the QTA would be rendered nugatory.”¹¹⁸ Twenty-nine years later, the Court did just that, allowing Patchak to bring suit against the Secretary to adjudicate a disputed title to real property in which the United States claimed an interest.

Although the majority in *Patchak* did not specifically overturn the opinion of *Block*, the *Patchak* decision did not adequately distinguish the two cases. The grievance Patchak asserted was no different from the plaintiffs in *Block* who attempted to avoid the QTA’s restrictions by bringing an officer’s suit, seeking relief because agency officials acted outside of their federal power.¹¹⁹ Patchak similarly claimed that the Secretary lacked authority under section 465 to take title to the Bradley property, but distinguished the suit from *Block* by claiming economic, environmental, and aesthetic harm would ensue from the casino’s operation.¹²⁰

However, in *Block*, the Court was not “detained long by North Dakota’s contention that it [could] avoid the QTA’s statute of limitations and other restrictions by the device of an officer’s suit.”¹²¹ The Court rejected the officer’s suit stating, “[i]t would require the suspension of disbelief to ascribe to Congress the design to allow its careful and thorough remedial scheme to be circumvented by artful pleading.”¹²² In contrast, the *Patchak* Court declined to follow the reasoning in *Block*, and instead narrowly defined adverse claimant as “plaintiffs who themselves assert a claim to property antagonistic to the Federal Government’s.”¹²³ Essentially, the Supreme Court distinguished Patchak and North Dakota’s suits based on the allegations in the plaintiff’s complaints.¹²⁴

¹¹⁸ *Block*, 461 U.S. at 284–85.

¹¹⁹ *Id.* at 278 n.3.

¹²⁰ *Match-E-Be-Nash-She-Wish- Band of Pottawatomi Indians v. Patchak*, 132 S. Ct. 2199, 2202–03 (2012).

¹²¹ *Block*, 461 U.S. at 284.

¹²² *Id.* at 285 (quoting *Brown v. Gen. Serv. Admin.*, 425 U.S. 820, 833 (1976)).

¹²³ *Patchak*, 132 S. Ct. at 2207.

¹²⁴ *Id.*

The Supreme Court inadequately distinguished the claims because both plaintiffs sought injunctive relief, directing the United States to cease and desist from exercising ownership over the land in question. As stated by the majority in *Patchak*, “[a]ll parties agree that the suit now effectively seeks to divest the Federal Government of title to the [Indian trust] land.”¹²⁵ This type of relief was specifically addressed in *United States v. Mottaz* as relief forbidden under the QTA; “[s]ection 2409a(a) ... [] operates solely to retain the United States’ immunity from suit by third parties challenging the United States’ title to land held in trust for Indians.”¹²⁶ Therefore, the Supreme Court’s decision in *Patchak* was an unlikely result of the decisions in *Block* and *Mottaz*.

*B. The Supreme Court Erred by Focusing on the
Nature of Patchak’s Action*

Patchak was able to circumvent the Indian Lands Exception through artful pleading, which is now likely to be the favored strategy for plaintiffs seeking to adjudicate a disputed title to real property in which the United States claims an interest. In order to avoid the QTA, Patchak merely categorized his suit as aesthetic, a suit not to contend his ownership of the Bradley property, but instead to strip the United States of title to Indian trust land based on economic, environmental, and aesthetic harms.¹²⁷ Allowing plaintiffs to use a garden variety APA claim to challenge a decision by the Secretary to take Indian land into trust adversely implicates the Indian Lands Exception by opening up the Courts to non-adverse claimants like Patchak, who have the most remote injuries and indirect interests in the land.¹²⁸

The Supreme Court’s focus on the nature of Patchak’s action will open the floodgates to litigation based on a small misidentification of the QTA’s operative language. The Supreme Court incorrectly defined the QTA to authorize a particular type of action; “a suit by a plaintiff asserting a ‘right, title, or interest’ in real property that

¹²⁵ *Id.* at 2204.

¹²⁶ *United States v. Mottaz*, 476 U.S. 834, 842 (1986).

¹²⁷ *Patchak*, 132 S. Ct. at 2207.

¹²⁸ *Id.* at 2209.

conflicts with a ‘right, title, or interest’ the United States claims.”¹²⁹ However, that language comes from 28 U.S.C. section 2409a(d), which merely states the parameters for a complaint under the QTA.¹³⁰

The Supreme Court should have focused on the QTA’s operative language in 28 U.S.C. section 2409a(a), which reads: “[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* . . . [t]his section does not apply to trust or restricted Indian lands.”¹³¹ Section 2409a(a) reflects Congress’s intent that the United States’ real property interest define a QTA action, not the plaintiff’s interest. Based on the language of section 2409a(a), the United States should retain full immunity from suits seeking to challenge its title to Indian trust land. Patchak’s suit contests the government’s title to the Bradley property held in trust for the Band, and therefore, should have been barred by the government’s sovereign immunity with respect to Indian trust lands under the QTA.

The majority opinion will severely hinder the judicial system and the executive branch because until the *Patchak* decision, parties seeking to challenge agency action had only a thirty-day review period to seek judicial review.¹³² APA claims, however, generally have a six-year statute of limitations, which will hinder all American Indian Tribe’s ability to develop land until the APA’s six-year statute of limitations has lapsed.¹³³ This result cannot be squared with the

¹²⁹ *Id.* at 2205. This narrow definition essentially limits quiet title actions to “suits in which a plaintiff not only challenges someone else’s claim, but also asserts his own right to disputed property.” *Id.* at 2206.

¹³⁰ See Quiet Title Act, 28 U.S.C. § 2409a(d) (1986) (stating “[t]he complaint shall set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, the circumstances under which it was acquired, and the right, title, or interest claimed by the United States.”).

¹³¹ Quiet Title Act, 28 U.S.C. § 2409a(a) (1986). This clause has been interpreted to mean that “[w]hen the United States claims an interest in real property based on that property’s status as trust or restricted Indian lands, the Quiet Title Act does not waive the government’s immunity.” 65 AM. JUR. 2D *Quieting Title* § 86 (2013). See also Martin M. Heit, , *supra* note 77, at 645 (“With regard to the Quiet Title Act Indian lands exception generally, as long as the United States has a colorable claim to a property interest based on that property’s status as trust or restricted Indian lands, the QTA renders the government immune from suit.”).

¹³² 25 C.F.R. § 151.12 (2011).

¹³³ *Patchak*, 132 S. Ct. at 2217. (Sotomayor, J., dissenting).

Department of the Interior's investment in the economic development of Tribes and will severely impede the Secretary from acquiring properties "for the purpose of providing land [to the] Indians."¹³⁴

C. The Supreme Court Should Have Created a Relief-Centered Approach to Determine Whether an Action Falls Under the QTA

The proper test for whether the QTA applies is an effects test based on the relief requested by the plaintiff. Any suit seeking to divest the government of title to Indian trust land would be barred by the Indian Lands Exception to the QTA. This test would apply to suits for purposes other than to quiet title, prohibiting third parties from interfering with the responsibility of the United States to hold land in trust for Indian tribes.

An effects test was effective when applied in the Eleventh Circuit Court of Appeals. In *State of Florida, Dep't of Bus. Regulation v. United States Dep't of Interior*, the Eleventh Circuit found Congress' decision to exempt Indian lands from the waiver of sovereign immunity impliedly forbid the relief sought by the plaintiffs.¹³⁵ Because the result of a successful suit would have interfered with the trust relationship between the Tribe and the government, the court lacked jurisdiction; the lawsuit was barred by United States sovereign immunity.¹³⁶

The effects test, or relief-centered approach, is consistent with the solemn commitments between American Indian Tribes and the United States Government in regards to Indian trust lands. As stated in a Senate Report regarding the QTA;

"[t]he Federal Government has over the years made specific commitments to the Indian people through written treaties and through informal and formal agreements. The Indians, for their part, have often surrendered claims to vast tracts of land. President Nixon has pledged his administration against

¹³⁴ 25 U.S.C. § 465 (1988).

¹³⁵ 768 F.2d 1248, 1254 (11th Cir. 1985).

¹³⁶ *Id.* at 1257.

abridging the historic relationship between the Federal Government and the Indians without the consent of the Indians.”¹³⁷

An effects test would effectively safeguard the historic relationship between the federal government and American Indians by keeping the government from being subject to burdensome, expensive litigation, potentially resulting in unjust loss of federal trust properties.¹³⁸

This relief-centered approach is also consistent with the language of the APA. The APA's general waiver of the federal government's immunity from suit does not apply “if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought” by the plaintiff.¹³⁹ The APA focuses on the *relief which is sought*. This is consistent with the QTA, which focuses on suits where the relief sought by the plaintiff would challenge the United States interest in real property. In addition, using an effects test would allow for uniformity among similar suits. In *Patchak*, *Block*, and *Mottaz*, the effect of a successful challenge was to divest the United States of title to Indian trust land. Under the effects test, all three suits would be barred by United States sovereign immunity. In conclusion, the Supreme Court's focus on the nature of Patchak's action was incorrect; when a plaintiff's suit has the effect of dispossessing the government of Indian trust land, the Indian Lands Exception to the QTA should apply.

V. CONCLUSION

In *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, Patchak's artful characterization of his suit permitted the Court to strip the United States of title to the Bradley Property, relief expressly and impliedly forbidden by the QTA.¹⁴⁰ The Supreme Court should have focused on the effect of a successful challenge to the Secretary of the Interior's actions, which was to divest the federal government of title to Indian trust land.¹⁴¹ Instead, the Court allowed

¹³⁷ S. REP. NO. 92-575, at 4 (1971).

¹³⁸ *Id.*

¹³⁹ 5 U.S.C. § 702 (1976).

¹⁴⁰ See *supra* Part IV.A.

¹⁴¹ See *supra* Part IV.C.

Patchak to avoid the carefully crafted provisions of the QTA deemed necessary for the protection of the national public interest and interests of American Indian Tribes.¹⁴²

¹⁴² See *supra* Part IV.B.