

# Rhode Island lawsuit casts doubt on Indian land trusts nationwide

BOSTON (AP)—Rhode Island authorities disputed Tuesday the federal government's ability to take Indian land into trust as part of a lawsuit that Indian rights advocates say could undermine the legal ownership of tribal land across the country.

The case, argued before the 1st U.S. Circuit Court of Appeals, centers on whether a 31-acre lot in Charlestown, R.I., should be subject to Rhode Island law—including a prohibition on casino gambling—or whether the land should be governed by federal and tribal law.

Plaintiffs including Rhode Island Gov. Don Carcieri have said allowing the Narragansetts to place land into a trust could bolster the tribe's effort to build a casino under federal law. Voters in November overwhelmingly rejected an amendment to the state constitution allowing the Narragansetts to operate a casino in West Warwick.

"This will open up the potential of Indian country not only on these 31 acres but anywhere

in Rhode Island," said attorney Joseph Larisa Jr., who represents Charlestown's town government, which opposes the transfer.

Tribal lawyers say the case is part of a widespread attack on the U.S. Department of the Interior's ability to hold Indian land in trust for tribes, a step state governments often fight because Indian lands are generally exempt from state law.

The case began in 1991, when a Narragansett housing authority purchased the 31-acre parcel, which is separated by a road from 1,800 acres granted to the tribe years earlier. While attempting to build a housing complex, the Narragansetts asked the federal government to take the land into trust.

Chief Sachem Matthew Thomas, who attended the hearing, said his tribe has no plans to build a casino on the lot.

"Our tribe needs housing, and they need it desperately," he said.

According to lawyers for the state, federal authorities can't take land into trust for tribes

that weren't organized or federally recognized before the 1934 Indian Reorganization Act took effect—requirements that they say exclude the Narragansetts. The tribe was recognized in 1983.

Congress enacted the 1934 law to help tribes that lost property during an earlier period of forced assimilation, when tribes were broken up and their lands sold, said Claire Richards, an attorney for Carcieri.

The Narragansetts are not one of those tribes, she said.

Richard Guest, an attorney for the Native American Rights Fund, said this week that Congress never intended to keep Indian tribes recognized after 1934 from placing their lands in federal trust. He said newer laws make clear that federal agencies can't discriminate against tribes based on how or when they were recognized.

A U.S. District Court and an earlier appeals panel rejected the state's argument. "In Congress' view, a tribe is a tribe is a tribe,"

Guest said. "It's a dangerous precedent for us to start to treat tribes differently when Congress says federal agencies are precluded from doing that."

If the state prevails, no one is certain how much tribal land could be cast into legal limbo. The Bureau of Indian Affairs has never provided lawyers for either side an accounting of the Indian lands it holds in trust. Neal said lawyers for the state aren't sure such a list even exists. A bureau spokesman said he couldn't immediately comment on the inventory.

Allowing the tribe to place land into trust could renew Rhode Island's casino gambling debate. The tribe agreed as part of a 1978 settlement that state law, including a ban on casino gambling, applies to Narragansett lands.

That agreement doesn't explicitly address whether additional land acquired by the Narragansetts could be placed into federal trust.

# University officials investigate online threats

CHAMPAIGN, Ill. (AP)—Officials of the University of Illinois said Wednesday they plan to talk to at least three students they believe may be behind threats against an American Indian student on a Web page about the school's mascot, Chief Illiniwek.

Disciplinary action is possible if the Web page's content violates the university's Student Code, depending on the writers' intent, said dean of students Bill Riley, who declined to identify the students. The university's assistant police Chief Jeff Christensen said his department is investigating the threats.

"The words are either indicative of his intention, or he's blowing smoke," Riley said, adding the target of the threats is concerned about returning to school for the spring semester.

Riley said university officials will also talk to the unidentified graduate student who was targeted by the threats.

Facebook is a social-networking Web site that requires its users to have an e-mail address from a university. Illinois administrators learned about the Facebook

page through an e-mail sent by a student who was concerned about the page's content.

Brenda Farnell, a professor in the university's Native American Studies program, says the woman who was threatened is a Sioux and has been active in her opposition to Chief Illiniwek. Farnell said the woman has been the recipient of hate speech before.

Administrators at some schools keep an eye on their students' online lives. But the University of Illinois doesn't monitor its 30,000-plus students' online postings, spokeswoman Robin Kaler said.

Universities considering disciplining students for online speech should ensure the language "rises to the level of being a threat in a legal sense," or students might refrain from online discussion, said Ed Yohnka, director of communications for the American Civil Liberties Union of Illinois.

The ACLU is not involved in the current situation at the university, he said. Chief Illiniwek, portrayed by a student, has performed at Illini sports events since 1926.

# Civil rights group protests high schools' mascots

FRANKFORT, Ky. (AP)—A civil rights group protested outside the state Board of Education meeting on Wednesday, upset that some Kentucky high schools still have mascots referencing the Confederacy or American Indians.

The Rev. Louis Coleman, head of the Louisville-based Justice Resource Center, gave the board a letter asking for help in replacing such mascots.

Coleman said he also sent letters to select state lawmakers seeking help with the matter and urged schools not to compete against other

schools with such mascots.

"This issue is still going on, and it's still prevalent in the state of Kentucky," Coleman said. "It has not disappeared, and we're going to encourage schools throughout the state not to participate against schools that have these negative mascots and characters."

Currently, more than a dozen high schools use mascots that are "offensive" to American Indians and people of "other cultures and heritages," Coleman said. Mascots such as "Rebels," "Indians" or "Braves" can be offensive and insulting to pupils who have to attend or visit the schools that use them,

Coleman said.

"This issue should have been eliminated a long time ago," he said.

Lisa Gross, a spokeswoman for the Kentucky Department of Education, said state education officials don't have the authority to order local schools to change their mascots.

Gross, however, said the board in 1995 encouraged schools and districts to "take into consideration the beliefs and feelings of other cultures and groups of people that might be offended by mascots and symbols."

# Court hears challenge to N.M. school funding

WASHINGTON (AP)—Two northwestern New Mexico school districts that primarily serve American Indian students have told the U.S. Supreme Court that the Department of Education is depriving them of \$20 million a year by deliberately using the wrong public school funding formula.

The Zuni school district, on Zuni Pueblo, and the adjacent Gallup-McKinley County district, which includes a large amount of Navajo land, contend the federal government has failed to follow a funding formula providing aid for districts where there is a large federal presence, such as a military base or Indian reservation, that makes it difficult to raise local tax dollars.

The districts said Congress was clear in a 1994 statute, and they are owed millions of dollars. The state of New Mexico and the federal government disagreed.

During the hour-long hearing Wednesday, justices argued between themselves about how to interpret statutes and joked about fumbling with statistics as they wrestled with whether Congress wanted to send certain school districts more money by revising the formula.

Justice John Paul Stevens summed up the case: "One way, the money goes to the districts, and the other way it goes to the state."

The two districts argue that when Congress revised the

school funding statute in 1994, it rejected a formula the agency had developed in 1976. But the department has refused to follow the 1994 language, saying Congress could not have intended it to change the formula.

The federal government, the state and 54 of the state's 89 school districts oppose the districts' claim, contending that an adjustment would disrupt funding equity statewide.

Last year, the 10th U.S. Circuit Court of Appeals upheld a U.S. administrative law judge's decision in favor of the federal government in the lawsuit.

Justices appeared split Wednesday, mostly along ideological lines. Liberal-leaning justices Ruth Bader Ginsburg and Stephen Breyer repeatedly asked why Congress would not defer to the Education Department on such a technical issue.

Breyer asked what Congress meant by "percentile" when it instructed the department how to determine the disparity between districts. When the districts' attorney struggled to answer, Breyer snapped, "If you don't know, I've never seen a case better fitted to rely on the views of an agency."

But conservative justices Antonin Scalia and John Roberts seemed to side with the districts, grilling the department's attorney, Sri Srinivasan, assistant to the solicitor general.

The education secretary "could have copied the regulations ... and just put them in the

statute, could he not?" Scalia asked, wondering why the secretary would have allowed Congress to leave out the 1976 formula, since the secretary was directly involved in writing the 1994 legislation.

Stevens asked the department's attorney: "What if I'm convinced your opponent's is the only fair reading of the statute, but I'm not convinced Congress meant it should be?"

"Either way, you should rule in our favor," Srinivasan answered, drawing laughs from the court and the audience. A decision is expected before the end of July. The case is Zuni Public School District No. 89 v. Department of Education, 05-1508.

# E-mail change

The Spilyay Tymoo now has a different e-mail address. The new address is: [spilyay@wstribes.org](mailto:spilyay@wstribes.org).



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