No. 11-

In The
Supreme Court of the United States

MATCH-E-BE-NASH-SHE-WISH
BAND OF POTTAWATOMI INDIANS,
Petitioner,

v.

DAVID PATCHAK, *ET AL.*

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the Quiet Title Act and its reservation of the United States' sovereign immunity in suits involving "trust or restricted Indian lands" apply to all suits concerning land in which the United States "claims an interest," 28 U.S.C. § 2409a(a), as the Seventh, Ninth, Tenth, and Eleventh Circuits have held, or whether they apply only when the plaintiff claims title to the land, as the D.C. Circuit held.

II. Whether prudential standing to sue under federal law can be based on either (i) the plaintiff's ability to "police" an agency's compliance with the law, as held by the D.C. Circuit but rejected by the Fifth, Sixth, Seventh, and Eighth Circuits, or (ii) interests protected by a different federal statute than the one on which suit is based, as held by the D.C. Circuit but rejected by the Federal Circuit.

PARTIES TO THE PROCEEDING

Petitioner Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians intervened as a defendant in the district court and was an appellee in the court of appeals.

The respondent, David Patchak, was the plaintiff in the district court and the appellant in the court of appeals.

Dirk Kempthorne, Secretary of the United States Department of the Interior, and Carl J. Artman, Assistant Secretary of the Department of the Interior for the Bureau of Indian Affairs, were originally named as defendants in their official capacities in the district court. Secretary of the Interior Kenneth Lee Salazar has since been substituted for Mr. Kempthorne, and George Skibine, followed by Larry Echo Hawk, were substituted for Mr. Artman. *See* Fed. R. Civ. P. 25(d). Messrs. Salazar and Echo Hawk were appellees in the court of appeals.

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Petitioner, the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-24a) is reported at 632 F.3d 702. The decision of

the district court (App., *infra*, 25a-37a) is reported at 646 F. Supp. 2d 72.

JURISDICTION

The court of appeals entered its judgment on January 21, 2011. App., *infra*, 1a. The court denied both petitioner's and the United States' petitions for rehearing and rehearing en banc on March 28, 2011. App., *infra*, 38a-41a. On June 15, 2011, Chief Justice Roberts extended the time for filing a petition for writ of certiorari to and including July 26, 2011, and, on July 18, 2011, the Chief Justice further extended the time for filing the petition to and including August 25, 2011. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant constitutional and statutory provisions are reproduced at App., *infra*, 42a-49a.

STATEMENT OF THE CASE

1. The Quiet Title Act ("QTA"), 28 U.S.C. § 2409a, provides generally that the "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." 28 U.S.C. § 2409a(a). Congress, however, expressly qualified that waiver of sovereign immunity, directing, *inter alia*, that "[t]his section does not apply to trust or restricted Indian lands." *Id.*

The Administrative Procedure Act ("APA") provides that the "United States may be named as a defendant" in an action "seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity." 5 U.S.C. § 702. But that provision does not "confer[] authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought." *Id.*

The Indian Reorganization Act ("Reorganization Act" or "IRA") provides that the "Secretary of the Interior is authorized, in his discretion, to acquire * * * any interest in lands, water rights, or surface rights to land, within or without existing reservations, including trust or otherwise restricted allotments, * * * for the purpose of providing land for Indians." 25 U.S.C. § 465.

2. Petitioner, the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, commonly known as the "Gun Lake Tribe," is a federally recognized Indian tribe situated near Kalamazoo, Michigan. *Michigan Gambling Opposition v. Kempthorne*, 525 F.3d 23, 26 (D.C. Cir. 2008) (per curiam). In 2001, petitioner, applied to the Secretary of the Interior to place a 147-acre parcel, known as the "Bradley Tract," into trust pursuant to the Reorganization Act, 25 U.S.C. § 465. Pet. C.A. Br. 7. The Bradley Tract consisted predominantly of an abandoned manufacturing facility, directly adjacent to a four-lane highway. *Id.* The land was zoned for light industrial and commercial use. *Id.* at 9.

Following a lengthy administrative review process, the Secretary announced his intention to place the land into trust following a 30-day waiting period to permit challenges to the decision to be made before the QTA barred suit. App., *infra*, 3a, 7a; *see* 25 C.F.R. § 151.12(b); 70 Fed. Reg. 25,596 (2005). Within that 30-day period, an organization called Michigan Gambling Opposition ("MichGO") sued the Secretary to prevent the trust acquisition as a violation of the National Environmental Policy Act, 42 U.S.C. §§ 4321–4370h, and the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701–2721, as well as an unconstitutional delegation of congressional power. *MichGO*, 525 F.3d at 26. MichGO's claims were rejected on the merits by both the district court and the court of appeals. *See id.* at 28-33; *Michigan Gambling Opposition v. Norton*, 477 F. Supp. 2d 1, 6-22 (D.D.C. 2007). After this Court denied MichGO's petition for a writ of certiorari, 129 S. Ct. 1002 (2009), the Secretary placed the land into trust, App., *infra*, 31a n.10. In April 2009, the Secretary approved, by operation of law, a gaming compact negotiated by the State of Michigan and petitioner. 74 Fed. Reg. 18,397-18,398 (2009).

On February 10, 2011, petitioner opened a gaming facility on a portion of the trust land that borders U.S. Highway 131. *MichGO*, 525 F.3d at 27. The business has since created more than 900 jobs and generated more than $2.5 million in revenue-sharing

funds for local schools and State and local governments.[1]

3. After MichGO lost its appeal, David Patchak filed suit against the Secretary of the Interior and the Assistant Secretary for the Bureau of Indian Affairs (collectively, "Secretary") under the APA challenging the Secretary's authority under the Reorganization Act to place the land into trust. He contended that petitioner was not a tribe under federal jurisdiction in 1934, and thus the Secretary lacked the authority to place the land into trust. Complaint at 7 ¶¶ 22-23. Patchak asserted as injuries that "he will be exposed to and injured by the negative effects of building and operating" a gaming facility, including changes in the alleged "rural character" of the area, "loss of aesthetic and environmental qualities," "increased property taxes," "weakening of the family atmosphere of the community," and "other aesthetic, socioeconomic, and environmental problems." *Id.* at 2 ¶¶ 6, 9. Patchak's complaint seeks, *inter alia*, an injunction "revers[ing] the decision to take the Property into trust" and divesting the United States of title. *Id*. at 9.

Petitioner intervened as a defendant in district court. App., *infra*, 4a. Petitioner and the Secretary then moved to dismiss for lack of prudential standing

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[1] *See, e.g.*, Ryan Lewis, *Wayland School, Township Win Big Casino Checks*, ALLEGAN COUNTY NEWS, July 27, 2011, http://www.allegannews.com/articles/2011/07/28/local_news/2.txt; Ursula Zerilli, *Gun Lake Casino Adds 200 Jobs to Payroll*, THE GRAND RAPIDS PRESS, March 22, 2011, http://www.mlive.com/business/west-michigan/index.ssf/2011/03/gun_lake_casino_adds_200_jobs.html.

on the ground that the interests Patchak asserted were not within the zone of interests protected by the Reorganization Act. App., *infra*, 30a. They also moved to dismiss the suit as barred by sovereign immunity under the QTA's "trust or restricted Indian lands" provision, 28 U.S.C. § 2409a(a).

The district court dismissed the complaint on prudential standing grounds. App., *infra*, 25a-36a. The court held that Patchak's "alleged injuries could not be further divorced from" the Reorganization Act's purposes of "tribal self-determination, self-government, and self-sufficiency." *Id.* at 34a. With respect to Patchak's "interest in ensuring that only qualified tribes receive benefits under the IRA," the court explained that "such an interest, if true, is indistinguishable from the general interest every citizen or taxpayer has in the government complying with the law." *Id* at 34a. "To find that plaintiff has prudential standing on this basis alone," the court concluded, "would make a mockery of the prudential standing doctrine altogether." *Id*. The court also held that Patchak's allegations of injuries arising from gaming "cannot save plaintiff's case" because there is "no evidence indicat[ing] that the IRA focuses on or otherwise seeks to protect the interests of the surrounding community or the environment." App., *infra*, 35a n.11.

Finally, the district court noted that its "continuing subject matter jurisdiction * * * [was] also seriously in doubt" under the QTA. *Id.* at 36a n.12.

4. The court of appeals reversed. App., *infra*, 1a-24a. The court first held that Patchak had prudential standing. The court acknowledged that Patchak was not an intended beneficiary of the Reorganization Act, like a tribe, *id.* at 10a-11a, but held that prudential standing devolves "not on those who Congress intended to benefit, but on those who in practice can be expected to police the interests that the statute protects," *id.* at 6a. The court also ruled that, although the suit challenged only the Secretary's trust decision, the prudential standing inquiry "must be evaluated in light of the intended use of the property" and the protections that a different statute, the Indian Gaming Regulatory Act, might provide for Patchak's asserted environmental and aesthetic injuries. The court then ruled that, because Patchak's injuries are "cognizable" and allegedly protected by another statute, he had prudential standing to sue under the Reorganization Act.

With respect to the QTA, the court of appeals held that the "trust or restricted Indian lands" exception does not bar the suit because, in the court's view, that exception applies only when "the plaintiff is claiming an interest in real property contrary to the government's claim of interest." App., *infra*, 18a. In so holding, the court "acknowledge[d]" the contrary "views of the Ninth, Tenth and Eleventh Circuits," but stated that it did not find those courts' rulings "convincing." *Id.* at 20a (citing *Florida Department of Business Regulation v. Department of Interior*, 768 F.2d 1248, 1253-1255 (11th Cir. 1985); *Neighbors for Rational Dev., Inc. v. Norton*, 379 F.3d 956, 961-963 (10th Cir. 2004); and *Metropolitan Water Dist. of S.*

Cal. v. United States, 830 F.2d 139, 143-144 (9th Cir. 1987)).

The court of appeals subsequently denied both petitioner's and the federal government's petitions for rehearing and rehearing en banc. App., *infra*, 38a-41a.

REASONS FOR GRANTING THE WRIT

In announced conflict with three other federal circuits (and unacknowledged conflict with a fourth circuit), the D.C. Circuit's decision has opened a substantial gap in the federal government's sovereign immunity from litigation challenging its title to trust or restricted Indian lands, as well as the Quiet Title Act's application to federal lands generally. Because of the D.C. Circuit's virtually universal jurisdiction over suits against the federal government, moreover, prospective plaintiffs will now be able to forum shop their way around the United States' sovereign immunity in disputes challenging the federal government's title to land, absent this Court's review.

The court of appeals' prudential standing decision compounds the need for review. The D.C. Circuit's ruling broadly expands the prudential standing doctrine by extending standing to any individual judicially deemed appropriate to "police" agency compliance with the law, even though the interests the plaintiff asserts are neither protected nor remediated by the statute the plaintiff seeks to enforce. In so ruling, the D.C. Circuit has taken its prudential standing law into conflict with the law of numerous other circuits.

Given the fundamental importance of the D.C. Circuit's decision denying the United States an immunity from suit that it enjoys in four other circuits; the court's broad expansion of the prudential standing doctrine in APA cases (the majority of which arise in the D.C. Circuit); and the exceptional disruption the decision causes to the affected Indian tribes, local governments, and businesses that rely critically on stability in the status of federal lands, there is a pressing need for this Court's review.

I. THE D.C. CIRCUIT'S DECISION CREATES AN ACKNOWLEDGED CIRCUIT CONFLICT ON THE SCOPE OF THE UNITED STATES' IMMUNITY FROM SUIT UNDER THE QUIET TITLE ACT

A. The Decision Admittedly Creates A Circuit Conflict

The Quiet Title Act expressly and unqualifiedly preserves the United States' sovereign immunity from suits involving "trust or restricted Indian lands" "in which the United States claims an interest." 28 U.S.C. § 2409a(a). The court of appeals nevertheless held that the statute does not mean what it says and that, instead, Congress's reservation of the United States' immunity should be further narrowed to apply only if the plaintiff is him- or herself asserting title to the land at issue. Because Patchak claims no title to the reservation lands at issue, the court held that the QTA did not "expressly" or even "impliedly forbid[] the relief which is sought," 5 U.S.C. § 702, and thus the lawsuit could proceed.

As the D.C. Circuit recognized, App., *infra*, 20a, its cramped reading of the scope of sovereign immunity protected by the QTA squarely conflicts with the rulings of numerous other circuits in factually indistinguishable cases.

In *Florida Department of Business Regulation v. United States Department of Interior*, 768 F.2d 1248 (11th Cir. 1985), the Secretary of the Interior placed land into trust for a tribe, *id*. at 1250. The plaintiffs subsequently brought suit under the APA seeking to reverse the decision to place the land in trust. *Id*. at 1251, 1253. The plaintiffs argued, as Patchak did here, that the QTA did not apply because they did "not seek to have title to the land quieted in them, nor d[id] they seek recognition of any property interest in the land." *Id*. at 1254.

Unlike the D.C. Circuit, however, the Eleventh Circuit rejected that argument, finding it dispositive that the relief sought in the case would "divest the United States of its title to the land." 768 F.2d at 1251. Because "[c]learly[] this relief would operate against the sovereign," the Eleventh Circuit ruled that the claim was barred. *Id*. "Congress sought" in the QTA, the Eleventh Circuit stressed, "to prohibit third parties from interfering with the responsibility of the United States to hold lands in trust for Indian tribes," and the plaintiffs' lack of a direct property interest in the land "d[id] not lessen the interference with the trust relationship a divestiture would cause." *Id*. at 1254.

The Eleventh Circuit further noted that the QTA plainly barred suit by anyone claiming legal title to

trust or restricted lands, and thus "[i]t would be anomalous to allow others" with lesser legal interests to bring suit where titleholders could not. 768 F.2d at 1254-1255. Accordingly, the court of appeals held that "Congress' decision to exempt Indian lands from the waiver of sovereign immunity impliedly forbids" relief under the APA that seeks "an order divesting the United States of its title to land held for the benefit of an Indian tribe." *Id.* at 1254.

That holding is flatly irreconcilable with the D.C. Circuit's decision in this case. The very distinction in the nature of the plaintiffs' interest—the absence of a title claim—that the Eleventh Circuit found legally insufficient to overcome immunity in *Florida Department*, 768 F.2d at 1254, was held by the D.C. Circuit to be legally dispositive in waiving immunity and allowing Patchak's suit to go forward. And the anomaly that influenced the Eleventh Circuit's decision, 768 F.2d at 1254-1255—reading the QTA to allow suits by plaintiffs with no direct interest in the land, while debarring suits by those with direct claims to title—did not trouble the D.C. Circuit, App., *infra*, 21a-23a.

The Tenth Circuit followed the Eleventh Circuit's lead in *Neighbors for Rational Development, Inc. v. Norton*, 379 F.3d 956 (10th Cir. 2004). Just like Patchak, the plaintiff in *Neighbors* sought to overturn the Secretary's decision to place land into trust so that the tribe could develop land that had been lying idle for commercial purposes. *Id.* at 959-960. As here, the plaintiff contended that the QTA did not apply because the plaintiff did not "claim any ownership interest in the property," and thus the suit

was not the "equivalent of a quiet title action." *Id*. at 961.

The Tenth Circuit disagreed, following the Eleventh Circuit and concluding that "the Indian trust land exemption applie[d] with equal force" even though the plaintiff was "not seeking to gain title" to the land. 379 F.3d at 962. The court emphasized that the APA bars suit where another statute "expressly or impliedly forbids the relief which is sought," and thus courts "must focus on the relief [a plaintiff] requests." *Id.* at 961. Because the suit "challenge[d] the United States' title to trust land," and sought relief declaring the United States' title "null and void," the court concluded that the lawsuit was "expressly or impliedly" forbidden by the QTA. *Id*. at 961-962.

The Tenth Circuit has repeatedly reaffirmed that position. *See Shivwits Band of Paiute Indians v. Utah*, 428 F.3d 966, 974-978 (10th Cir. 2005); *Governor of Kansas v. Kempthorne*, 516 F.3d 833, 842-843 (10th Cir. 2008); *Iowa Tribe of Kansas & Neb. v. Sac & Fox Nation of Mo.*, 607 F.3d 1225, 1230-1231 (10th Cir. 2010).

The Ninth Circuit also has foreclosed suits just like Patchak's. In *Metropolitan Water District of Southern California v. United States*, 830 F.2d 139 (9th Cir. 1987), *aff'd by equally divided Court*, *sub nom. California v. United States*, 490 U.S. 920 (1989), the court of appeals flatly rejected the argument that "the QTA does not apply" to an APA challenge to an Indian trust-lands decision just "because [the plaintiff] is not seeking to quiet title in itself," *id*. at

143. "Indian lands" immunity applies, the court explained, because the "effect of a successful challenge would be to quiet title in others than the Tribe," and "[t]o allow this suit would permit third parties to interfere with the Government's discharge of its responsibilities to Indian tribes in respect to the lands it holds in trust for them." *Id.* at 143-144; *accord Robinson v. United States*, 586 F.3d 683, 687-688 (9th Cir. 2009) ("[A] suit that actually challenges the federal government's title, however denominated, falls within the scope of the QTA regardless of the remedy sought."); *Alaska v. Babbitt*, 38 F.3d 1068, 1073 (9th Cir. 1994) ("[W]hen the United States has an interest in the disputed property, the waiver of sovereign immunity must be found, if at all, within the QTA.").

Finally, although not acknowledged by the D.C. Circuit, its decision cannot be reconciled with the law of the Seventh Circuit. That court specifically held in *Shawnee Trail Conservancy v. United States Department of Agriculture*, 222 F.3d 383 (7th Cir. 2000), that the QTA continues to apply even "in the context of claims that do not seek to quiet title in the party bringing the action," *id.* at 388. Underscoring the sweeping implications of the D.C. Circuit's decision in this case, *Shawnee Trail* involved a challenge to the United States' ownership of national forest lands, not trust or restricted Indian lands. Because the plaintiffs challenged the legitimacy of the United States' title, and thus impliedly argued that title belonged in a third party, the Seventh Circuit ruled that the claim was subject to the QTA and excluded from the APA's waiver of immunity. *Id.* at 387-388. Indeed, the court concluded that "'[i]t

would require the suspension of disbelief to ascribe to Congress the design to allow its careful and thorough remedial scheme [in the QTA] to be circumvented by artful pleading'" about the nature of the plaintiff's interest. *Id*. at 388 (quoting *Block v. North Dakota ex rel. Board of University and School Lands*, 461 U.S. 273, 285 (1983)).

Thus, the law, holdings, and analyses in the Seventh, Ninth, Tenth, and Eleventh Circuits are diametrically opposed to that of the D.C. Circuit in this case. As a result, Patchak's case would have been dismissed and the United States' sovereign immunity preserved had this case arisen in any of those four circuits. The scope of the federal government's immunity from suit under the APA and the QTA, however, is an important and recurring question with substantial impact on the Indian tribes and the local governments and businesses that are affected by such litigation. It should not vary based on circuit borders.

The Seventh Circuit's decision in *Shawnee*, moreover, underscores that the impact of the D.C. Circuit's decision is not confined to disputes over Indian trust lands. The decision is a fundamental reconfiguration of the Quiet Title Act's operation with respect to any suit involving title to lands in which the United States "claims an interest," whether public lands, Indian lands, easements, or any other lands covered by the QTA's terms and its exceptions. 28 U.S.C. § 2409a(a). Approximately 99% of all public lands administered by the Bureau of Land Management fall within the geographical confines of the Seventh, Ninth, Tenth, and Eleventh Circuits.

See U.S. DEP'T OF INTERIOR, BUREAU OF LAND MGMT., PUBLIC LAND STATISTICS 13 (Table 1.4) (2010 ed.) ("Public Lands Under Exclusive Jurisdiction of the Bureau of Land Management, Fiscal Year 2010"). But the protections that those circuits have afforded the United States by requiring lawsuits involving those lands to proceed on the QTA's terms have now been erased, since plaintiffs within those jurisdictions can avoid the QTA and controlling circuit law altogether simply by filing their lawsuits in the District of Columbia. The resolution of questions pertaining to the United States' sovereign immunity in that broad category of cases should not vary based on circuit geography or where the plaintiff chooses to file suit.

The split, moreover, is entrenched. The D.C. Circuit refused to rehear the case en banc notwithstanding its acknowledged departure from the law of other circuits. Given the D.C. Circuit's virtually universal jurisdiction over APA actions, that circuit's rejection of sovereign immunity will likely become the *de facto* law of the land, leaving no realistic opportunity for further consideration of this issue or development in the law of the circuits.

B. The D.C. Circuit's Decision Is Wrong And Contrary To This Court's Precedent

The D.C. Circuit's decision further merits review because it is incorrect and contrary to this Court's consistent enforcement of the Quiet Title Act and its intersection with the APA. In *Block*, *supra*, North Dakota sought to quiet title to a riverbed on federal land over which the United States claimed

ownership, 461 U.S. at 277-278. North Dakota argued that it could avoid the QTA's statute of limitations because it was not bringing a traditional quiet title action, but instead was bringing an "officer's suit" alleging that "the federal officials charged with supervision of the disputed area" were unlawfully "interfering with the claimant's property rights." *Id.* at 281.

This Court ruled that the QTA's limitations on the federal government's waiver of sovereign immunity could not be avoided just by filing a case that did not fit the traditional quiet-title-suit model. "Congress intended the QTA to provide the exclusive means by which adverse claimants could challenge the United States' title to real property," 461 U.S. at 286, the Court explained, and thus the critical inquiry is whether the *United States*' title, not the plaintiff's title, is at issue in the suit. This Court further held that North Dakota's reliance on the APA's waiver of sovereign immunity failed because the QTA is an "other statute" that "forbids" relief when an action disputing the United States' title to land is brought after expiration of the limitations period. *Id.* at 286 n.22 (quoting 5 U.S.C. § 702).

In *United States v. Mottaz*, 476 U.S. 834 (1986), this Court extended *Block*'s reading of the QTA's waiver of sovereign immunity to the "Indian lands" exception. Reaffirming *Block*'s focus on whether the litigation challenges the United States' title to land, this Court explained that the exception "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." *Id.* at 842. "Thus,

when 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," leaving it intact. *Id.* at 843.

The D.C. Circuit's opinion has now resurrected the emphasis on the quiet-title-like form of the lawsuit that this Court rejected in *Block*, and has made the plaintiff's claim of title, not the question of the United States' title, an indispensable precondition to preserving sovereign immunity, contrary to both *Block* and *Mottaz*.

There is a reason, moreover, that four other circuits have come to the opposite conclusion from the D.C. Circuit. The plain text of the statute forecloses the D.C. Circuit's reading. To begin with, the Act's waiver of sovereign immunity must be construed narrowly. *See Block*, 461 U.S. at 287 (the QTA's "conditions must be strictly observed and exceptions thereto are not to be lightly implied").

Further, nothing in the operative statutory text conditions either the waiver of immunity or the statute's express reservation of sovereign immunity on whether the plaintiff files a formal quiet title suit. To the contrary, the Act applies to any "civil action * * * to adjudicate a disputed title to real property in which the United States claims an interest." 28 U.S.C. § 2409a(a). Thus, the requirement is that there be "a" disputed title. But the title under dispute can be that of the United States, the plaintiff, or both. There is no textual requirement making the nature of the plaintiff's claim dispositive of

immunity. And the exception, which unqualifiedly preserves full sovereign immunity for any case involving "trust or restricted Indian lands," necessarily shares that same scope.

The D.C. Circuit's decision also failed to give effect to the APA's express limitation on its own waiver of sovereign immunity. Section 702 preserves sovereign immunity for any claim where "any other statute" "expressly or impliedly forbids the relief which is sought." 5 U.S.C. § 702. Because the QTA expressly preserves the United States' sovereign immunity in civil actions disputing the federal government's title to trust or restricted Indian lands, that statute both expressly and impliedly forbids lawsuits seeking to divest the United States of its title.

After all, Congress enacted the QTA and its reservations of immunity "against the backdrop of sovereign immunity," with the understanding that "the statutory remedies" prescribed in that Act, including its limitations, would "be [the] exclusive" mechanism for adjudicating title to land in which the United States claims an interest. H.R. REP. NO. 1656, 94th Cong., 2d Sess. 27-28 (1976) (quoting letter from (then) Assistant Attorney General Antonin Scalia to the Senate). It is precisely because Congress would not have seen the need to include express retentions of immunity in preexisting statutes that the Justice Department requested, and Congress agreed, to add the "expressly or impliedly" limitation on the APA's own waiver of immunity. *See id.* That limitation ensured that prior "specific determinations" that immunity should be retained, like that in the QTA's Indian-lands exception, would

not be waived by Section 702's "general provision." *Id* at 28.

The D.C. Circuit's decision, however, empties Section 702's limitation of its intended force. Prior to the APA's enactment, the QTA fully preserved the United States' immunity from any civil suit challenging title to trust or restricted Indian lands. The whole purpose of the APA limitation was to leave such calibrated reservations of sovereign immunity intact.

The court of appeals' decision not only unravels that protection, but also creates an anomalous statutory scheme under which "a plaintiff claiming title to land [cannot] challenge the United States' title," while "a plaintiff with no claimed property rights" at all can hale the United States into court. *Neighbors*, 379 F.3d at 962. It is "highly unlikely" that Congress would have legislated such an upside-down prioritization of the right to bring suit under the QTA or the APA. *Id*.

C. This Court's Prompt Review Is Needed

This substantial split of authority requires the Court's immediate attention because it involves the United States' sovereign immunity from suit in the broad class of cases subject to the Quiet Title Act. This Court has a longstanding practice of resolving sovereign immunity questions at the outset of litigation. Indeed, the Court has twice granted certiorari in cases dealing with the United States' interests in land in precisely the same procedural posture.

In *Malone v. Bowdoin*, 369 U.S. 643 (1962), the plaintiffs sued to eject a federal official from disputed land. As here, the district court granted the defendant's motion to dismiss on sovereign immunity grounds, but the appeals court reversed and reinstated the lawsuit. *Id.* at 644-645. This Court promptly "granted certiorari to consider the scope of sovereign immunity in suits of this kind." *Id.* at 645. Similarly, in *Mottaz*, after the appeals court rejected the government's threshold claim of sovereign immunity, this Court "granted certiorari to consider whether respondent's claim was barred under * * * the limitations provision governing Quiet Title Act claims." 476 U.S. at 840-841.

More generally, the Court has repeatedly granted review at the early stages of litigation to resolve questions of sovereign immunity, whether to spare the dignity of a sovereign, *see*, *e.g.*, *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 142-147 (1993) (state sovereign immunity); *Republic of Iraq v. Beaty*, 129 S. Ct. 2183, 2188-2189 (2009) (foreign sovereign immunity); or to protect government officials from potentially disruptive and unnecessary litigation, *see*, *e.g.*, *Idaho v. Couer d'Alene Tribe of Idaho*, 521 U.S. 261, 265-266 (1997) (reviewing interlocutory decision allowing quiet title claim to land to proceed under *Ex parte Young*, 209 U.S. 123 (1908)).

Given the D.C. Circuit's sweeping jurisdiction over suits against the federal government and the large number of cases arising each year concerning the United States' interests in Indian trust and restricted lands, as well in public lands like those in

Shawnee, the sovereign immunity principles at stake here equally merit prompt review. Indeed, whether the law of the D.C. Circuit is right or wrong, suits in the D.C., Seventh, Ninth, Tenth, and Eleventh Circuits should proceed on even-handed terms and the rule of sovereign immunity should be the same.

These types of claims, moreover, present an even stronger case for interlocutory review. Congress enacted the Indian lands exception to prevent third-party litigation from impairing the government's "solemn obligations" to Indian tribes, many of which are protected by treaty. H.R. REP. NO. 1559, 92d Cong., 2d Sess. 13 (1972) (letter from Mitchell Melich, Solicitor for the Dep't of the Interior). In so doing, Congress sought to avoid the exceptional disruption that post hoc litigation divesting the United States' title to land would cause not just to the tribes, but also to state and local governments and communities that have arranged their political and economic relationships in reliance on the federal government's title to and control over the land. *See* fn. 1, *supra*. Because court rulings calling the United States' title into question have sweeping consequences for multiple inter-governmental relationships and impose practical hardships on affected communities, the sovereign immunity question presented here has distinctively far-reaching public consequences that warrant this Court's immediate review.

II. THE D.C. CIRCUIT'S DECISION CONFLICTS WITH THE PRUDENTIAL STANDING LAW OF OTHER CIRCUITS AND OF THIS COURT

Before denying the United States' sovereign immunity from suit, the D.C. Circuit ruled that Patchak has prudential standing because his alleged interests positioned him to "police" the Secretary's compliance with the law and because he asserted injuries cognizable under a different federal law that he is *not* suing to enforce. That holding contradicts the law of multiple circuits in two respects, and fundamentally undermines prudential standing principles laid down by this Court.

In addition to the constitutional requirements for standing under Article III, "the federal judiciary has also adhered to a set of prudential principles that bear on the question of standing." *Bennett v. Spear*, 520 U.S. 154, 162 (1997). Central to those prudential principles is the requirement "that a plaintiff's grievance must arguably fall within the zone of interests protected or regulated *by the statutory provision * * * invoked in the suit*." *Bennett*, 520 U.S. at 162 (emphasis added). The prudential-standing analysis thus focuses on the plaintiff's interests under the "particular provision of law upon which the plaintiff relies," not the "overall purpose" of legislation. *Id.* at 175-176. *See National Credit Union Admin. v. First Nat'l Bank & Trust Co.*, 522 U.S. 479, 492 (1998) ("the plaintiff's interests" must be "among" the "interests arguably * * * to be protected by the statutory provision at issue"). Inversely, prudential standing is not recognized if a

plaintiff's interests in the suit are "inconsistent with the purposes implicit in the statute." *Thompson v. North American Stainless, LP*, 131 S. Ct. 863, 870 (2011). The D.C. Circuit's decision runs afoul of that limitation.

A. The D.C. Circuit's Conferral Of Prudential Standing Based On The Plaintiff's Interest In "Polic[ing]" Agency Compliance Is Contrary To The Law Of Other Circuits And Of This Court

As this Court has repeatedly recognized, "[t]he intent and purpose of the Reorganization Act was 'to rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism.'" *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 152 (1973) (quoting H.R. REP. NO. 1804, 73d Cong., 2d Sess. 6 (1934)); *accord New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 335 n.17 (1983). "'The program of self-support and of business and civic experience in the management of their own affairs, combined with the program of education, will permit increasing numbers of Indians to enter the white world on a footing of equal competition.'" *Mescalero Apache*, 411 U.S. at 152 (quoting 78 Cong. Rec. 11,732 (June 15, 1934) (Rep. Howard)); *see Fisher v. District Court of Sixteenth Judicial Dist.*, 424 U.S. 382, 387 (1976) (Reorganization Act is "specifically intended to encourage Indian tribes to revitalize their self-government").

The authority of the United States to place land into trust for tribes under the Reorganization Act

promotes those goals by protecting land against alienation and according the land a federally protected status that provides a more stable footing for economic and political development. *See* F. COHEN, HANDBOOK OF FEDERAL INDIAN LAW § 15.07[1][a]–[b] (2005 ed.). Because those trust decisions can have an impact on the regulatory authority of state and local governments, however, regulations permit those "affected * * * [by] any administrative determination to take land into trust" to file suit within 30 days of the Secretary's trust determination. 61 Fed. Reg. 18082; *see* 25 C.F.R. §151.12(b).

Patchak did not file suit within 30 days, and his complaint alleges neither that the decision to place the land into trust under the Reorganization Act itself has caused him any injury, nor that he has any individual stake in the goals of tribal development or self-government that the Act's land-into-trust process promotes. His concerns with the aesthetic and environmental impact of gaming, Complaint at 3 ¶ 9, are unhinged from the Reorganization Act's trust process because the Secretary's decision to place land into trust does not turn on any particular use of the land (gaming or otherwise). *See* 25 U.S.C. § 465 ("The Secretary of the Interior is authorized, in his discretion, to acquire * * * any interest in lands * * * for the purpose of providing land for Indians.").

Indeed, the overwhelming majority of land held in trust by the United States under the IRA is used for non-gaming tribal, governmental, and developmental purposes. Here, while Patchak seeks to take the entire 147-acre tract out of trust, only roughly a

quarter of that land (27%) is used for the gaming facility. Admin. Rec. 000027. The vast majority of the land serves additional tribal development goals.

Patchak's alleged injuries thus arise not from the Secretary's land-into-trust decision under the Reorganization Act, but from separate decisions by the Department of Interior and the National Indian Gaming Commission to authorize gaming on the land and to approve Michigan's gaming compact with petitioner. But those decisions were made pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701–2721, and state law, not the Reorganization Act. Patchak, however, never filed suit under those laws to challenge the Commission's approval of the gaming ordinance, Michigan's adoption of the Compact, or the Secretary's approval of the Compact.[2]

Nor does Patchak represent a state or local regulatory authority whose governmental interests have been affected by the trust decision. To the contrary, many local governmental agencies and businesses have supported the trust decision, and the State of Michigan entered into a gaming compact with petitioner.[3]

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[2] It was MichGO that unsuccessfully claimed that the Secretary's decision violated the Indian Gaming Regulatory Act. *See MichGO,* 525 F.3d at 28-33.

[3] *See* Pet. C.A. Br. 9-10; Joint Amicus Curiae Brief of Wayland Twp., Deputy Sheriff's Ass'n of Mich., Barry Cty. Chamber of Commerce, and Friends of the Gun Lake Indians, *MichGO* (D.D.C.), *supra*, 2006 WL 644928; *accord* Motion of the

The D.C. Circuit nevertheless conferred prudential standing on Patchak on the ground that his opposition to gaming motivated him "to police the interests that the [Reorganization Act] protects." App., *infra*, 6a. That expansive conception of prudential standing effectively licenses all "concerned bystanders" with a claimed Article III injury to "vindicate [their] value interests," *Diamond v. Charles*, 476 U.S. 54, 62, 66 (1986), no matter how disconnected their claimed injuries are from the statute under which they are suing, in direct contradiction to the prudential standing law of four other circuits and this Court.

1. The Decision Conflicts with the Law of the Fifth, Sixth, Seventh and Eighth Circuits.

In *Rosebud Sioux Tribe v. McDivitt*, 286 F.3d 1031 (8th Cir. 2002), the Eighth Circuit rejected a prudential standing claim virtually identical to Patchak's. A private business (Sun Prairie) filed suit under the APA to nullify the Secretary of Interior's decision to void a lease agreement with an Indian tribe. *Id.* at 1035. Sun Prairie had been slated to operate a production facility for the tribe under that lease, and had lost $5 million as a result of the Secretary's action. *Id.* at 1034-1035. Sun Prairie

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Kalamazoo Regional Chamber of Commerce for Leave to Join Wayland Twp., *et al.,* Motion for Leave to File an Amicus Curiae Brief, *MichGO* (D.D.C.), *supra* (adopting arguments in Wayland Township amicus brief); Motion for Leave to Join Wayland Twp.'s, *et al.* Motion for Leave to File an Amicus Curiae Brief, *MichGO*, (D.D.C.), *supra* (same motion by Allegan Chamber of Commerce).

asserted standing based on "statutes involving the relationship between Indian tribes and the federal government," including 25 U.S.C. § 81 and § 415, which regulate contracts and leases involving Indian lands. *Rosebud Sioux*, 286 F.3d at 1036. However, those statutes, like the Reorganization Act's land-into-trust provision, "are intended to protect only Native American interests." *Id.* at 1036-1037. The Eighth Circuit accordingly held that Sun Prairie's "asserted interests, while considerable, are not arguably within the zone of interests to be protected or regulated" by the statutes on which the plaintiff relied, and indeed the plaintiff's interests "conflict with the tribes' interests." *Id.* at 1037.

Sun Prairie's injuries as a third-party beneficiary of the lease at issue certainly gave it as much motivation and interest to "police" the Secretary's compliance with the law, App., *infra*, 6a, as Patchak claims, and thus would have sustained prudential standing under the D.C. Circuit's legal standard. The different outcome in the two circuits is explainable only by the fact that the Eighth Circuit's prudential standing law, unlike that of the D.C. Circuit, requires that the plaintiff's interest be consistent with, or at least not "inconsistent with the purposes implicit in the statute" being enforced. *Thompson*, 131 S. Ct. at 870.

Likewise, the Sixth Circuit has twice dismissed claims for lack of prudential standing where the plaintiffs' interests were not consistent with the purposes of the statute under which suit was brought. In *Courtney v. Smith*, 297 F.3d 455 (6th Cir. 2002), the Sixth Circuit held that federal employees

lacked prudential standing under federal procurement statutes to bring an APA suit challenging the private outsourcing of work that, up to that point, had been done on military bases by the plaintiffs, *id.* at 463-464. The court in *Courtney* reasoned that the procurement statutes were designed to maximize cost-effective procurement by private industry, while the plaintiffs' asserted interests were in maximizing their work as government employees. *Id.*

In so ruling, the Sixth Circuit rejected the exact theory of prudential standing embraced by the D.C. Circuit here. The court held that the employees' interest in "ensuring that the government conforms to the applicable laws in making outsourcing decisions" did not support prudential standing because that interest in policing agency compliance with the law is a "generalized grievance, which presumably would be shared by all citizens." *Courtney*, 297 F.3d at 461; *see Jonida Trucking, Inc. v. Hunt*, 124 F.3d 739, 742 (6th Cir. 1997) (employer lacked prudential standing to withdraw its employee's black lung benefits claim because the withdrawal statute protected "the best interests of the claimant" and the plaintiff's "interests are at odds with the concerns of the provision in issue").

The Seventh Circuit's decision in *American Federation of Government Employees v. Cohen*, 171 F.3d 460 (7th Cir. 1999), analyzed the same government-employee claim at issue in *Courtney* and likewise held that the plaintiffs lacked prudential standing because "the interests of federal employment, and the goal of private procurement are

inconsistent," *id*. at 471. And again, in contrast to the D.C. Circuit's focus on whether the plaintiff "can be expected to police" compliance with the law, App., *infra*, 6a, the Seventh Circuit flatly rejected the plaintiffs' claim that "their interest in a realistic and fair contracting process" supported prudential standing, *id*. at 470.

Finally, in *Bonds v. Tandy*, 457 F.3d 409 (5th Cir. 2006), the Fifth Circuit ruled that a plaintiff lacked prudential standing to challenge the Drug Enforcement Agency's refusal to allow his employment as a pharmacist because of a prior controlled substance conviction, *id*. at 411. The court of appeals held that the plaintiff could not sue under the Controlled Substances Act, 21 U.S.C. §§ 801-971, because that statute was intended to protect "the public's interest in the legitimate use of controlled substances and to inhibit the pernicious consequences to the public's health and safety of illegitimate use" by preventing "the diversion of drugs from legitimate channels to illegitimate channels." *Id.* at 414-415. Because the plaintiff's criminal history indicated a risk of such diversion, his interest in employment as a pharmacist "conflict[ed] with the CSA's zone of interests." *Id*.[4]

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[4] Similarly, the D.C. Circuit's "policing" rationale would have led to the opposite result in *Stewart Park & Reserve Coalition, Inc. v. Slater*, 352 F.3d 545 (2d Cir. 2003), in which the Second Circuit dismissed a claim by environmental and recreational groups that highway construction should be enjoined under the Federal-Aid Highway Act, 23 U.S.C. § 111. The court reasoned that the plaintiffs' interest in enjoying

In short, while the factual scenarios in the cases vary, the conflict in the legal standards applied to determine prudential standing is stark. The D.C. Circuit grants prudential standing based on the alleged existence of an Article III injury that, in the court's view, invests the plaintiff with an interest in policing agency compliance with the law. The Fifth, Sixth, Seventh, and Eighth Circuits have specifically rejected that same formula for prudential standing.

2. The D.C. Circuit's Decision is Wrong and Contrary to this Court's Precedent

The D.C. Circuit's decision also runs afoul of this Court's prudential standing principles. This Court has long required an "unmistakable link" between the purpose of the statutory provision being enforced—the Reorganization Act's land-into-trust provision—and the interests advanced by the plaintiff. *National Credit Union*, 522 U.S. at 936 n.7. Patchak's claimed aesthetic and environmental injuries from gaming have no linkage to the operation of the Reorganization Act or its land-into-trust provision. The D.C. Circuit, however, bypassed that problem by holding that Patchak's mere allegation of gaming injuries made him an

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parklands threatened by the construction did not fall within the zone of interests protected by that statute, which was enacted to promote interstate and local commerce and defense. *Id.* at 561. In the D.C. Circuit, though, the *Stewart* plaintiffs would have had prudential standing, because their alleged injuries positioned them to police the manner in which highway construction went forward.

appropriate claimant to "police" the agency's compliance with the law. App., *infra*, 6a.

But this Court has held time and again that a plaintiff's interest in ensuring that the law is complied with is not a cognizable injury even for Article III purposes, because it does not differentiate the plaintiff from every citizen's interest in ensuring that the law is obeyed and properly executed. *See*, *e.g., Arizona Christian School Tuition Org. v. Winn*, 131 S. Ct. 1436, 1441-1442 (2011); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573-574 (1992). If such an interest is not even cognizable for purposes of Article III, it should not carry sufficient heft to bring plaintiffs across the prudential-standing threshold.

Furthermore, whether or not the existence of asserted injuries outside the statute's zone of interests invest a plaintiff with a distinct motive to police the statute's operation, "the essence of standing is not a question of motivation but of possession of the requisite * * * interest." *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 486 n.21 (1982). And, for prudential standing purposes, that requisite interest must lie within the zone of interests of the statute being enforced.

B. In Conferring Prudential Standing Based On Interests Protected By Other Statutes, The D.C. Circuit's Decision Conflicts With The Law Of The Federal Circuit And Of This Court

Because Patchak's asserted injuries fall outside the zone of interests of the Reorganization Act's land-into-trust provision, the D.C. Circuit refused to "view[] the IRA provisions in isolation," App., *infra*, 9a, but instead invoked interests protected by other federal statutes. By looking outside "the statute whose violation is the gravamen of the complaint," *Lujan*, 497 U.S. at 886, however, the D.C. Circuit put its law into conflict with that of the Federal Circuit. In *Animal Legal Defense Fund v. Quigg*, 932 F.2d 920 (Fed. Cir. 1991), an animal-rights group sued under the APA, alleging that the patenting of "non-naturally occurring, non-human multicellular organisms" violated the patent laws. *Id.* at 922. Recognizing that its suit did not fall within the zone of interests protected by the patent statute, 35 U.S.C. § 101, the plaintiff invoked procedural interests protected by the APA. *Id.* at 937. Quoting *Lujan*'s requirement that prudential standing be evaluated with respect to "'the statute whose violation is the gravamen of the complaint,'" the Federal Circuit refused to look to a different statute (the APA) to support prudential standing under the patent laws. *Id.* "The patent statute, not section 706(2)(C) nor 553 of the APA, is the 'relevant statute' under section 702, and appellants have not alleged facts which place them within the 'zone of interests' addressed by the patent laws." *Id.* Were courts to open the door to prudential standing based on interests protected by

another statute that is not the "gravamen" of the complaint, the Federal Circuit ruled, "the 'zone of interest' limitation" could easily "be rendered nugatory." *Id*. at 937, 938.

The D.C. Circuit's rule also would have led to a different result in *Kyles v. J.K. Guardian Securities Services, Inc.*, 222 F.3d 289 (7th Cir. 2000). There, the court of appeals held that employment discrimination "testers" (*i.e.*, individuals who apply for jobs as an experiment to determine whether an employer is discriminating) had standing to sue under Title VII, 42 U.S.C. § 2000e, but did not fall within the "zone of interests" of 42 U.S.C. § 1981 because the testers never intended to form employment contracts with the employers. 222 F.3d at 301-304. In the D.C. Circuit, however, the *Kyles* plaintiffs would have been able to "borrow" the interests from Title VII to give themselves standing under Section 1981, just as the D.C. Circuit allowed Patchak to rely on interests protected by the Indian Gaming Regulatory Act to establish prudential standing to enforce the Reorganization Act.

The Federal Circuit's rule, while irreconcilable with the D.C. Circuit's decision here, closely hews to this Court's precedent. This Court has consistently defined the "zone of interests" test in terms of the *particular provision* of the *particular statute* under which the plaintiff is suing. *See, e.g.*, *Bennett*, 520 U.S. at 162, 176 ("[A] plaintiff's grievance must arguably fall within the zone of interests * * * sought to be protected by the statutory provision whose violation forms the legal basis for his complaint."); *accord Thompson*, 131 S. Ct. at 870 (same); *Air*

Courier Conference of America v. American Postal Workers Union, 498 U.S. 517, 523-524 (1991) ("[T]he plaintiff must establish that the injury he complains of (*his* aggrievement, or the adverse effect *upon him*) falls within the 'zone of interests' sought to be protected by the statutory provision whose violation forms the legal basis for his complaint.").

To be sure, the Court has allowed a plaintiff suing under one statutory provision to invoke prudential standing based on the interests served by another provision *of the same statute*, *see Clarke v. Securities Indus. Ass'n*, 479 U.S. 388, 401 (1987), but even then only if the two provisions have an "integral relationship," *Air Courier*, 498 U.S. at 529-530.

Confining a plaintiff's standing to the statute being enforced, moreover, is critical to ensuring that the prudential standing doctrine performs its essential filtering function. Focus on the statute being enforced ensures the close relevance of the plaintiff's claims to the issues at stake in the litigation, thereby promoting the concrete adverseness and personalized stake *in the claim being adjudicated* that standing principles require. *See Warth v. Seldin*, 422 U.S. 490, 500 (1975) (prudential standing inquiry tests whether "statutory provision on which the claim rests properly can be understood as granting persons in the plaintiff's position a right to judicial relief"); *Clarke*, 479 U.S. at 397 ("[T]he 'zone of interest' inquiry * * * seeks to exclude those plaintiffs whose suits are more likely to frustrate than to further statutory objectives.").

Limiting prudential standing to those whose interests are directly affected by the statute being enforced also ensures that the plaintiff's interests are distinct from citizens' general interest in ensuring governmental compliance with the law. *See Warth*, 422 U.S. at 500 (prudential limitations prevent courts from "be[ing] called upon to decide abstract questions of wide public significance even though other governmental institutions may be more competent to address the questions"); *Fairchild v. Hughes*, 258 U.S. 126, 129-130 (1922) ("Plaintiff has only the right, possessed by every citizen, to require that the government be administered according to law," but "[o]bviously this general right does not entitle a private citizen to institute in the federal courts a suit.").

Finally, a tight nexus between the plaintiff's asserted injuries and the statute being enforced ensures that the court's resolution of the questions raised and relief ordered will, in fact, directly remediate the injury alleged. For example, enjoining the procurement decisions at issue in *American Federation*, *supra*, and *Courtney*, *supra*, might not have guaranteed the particular plaintiffs themselves further employment. Similarly, enjoining the DEA rule in *Bonds*, *supra*, might not have provided the plaintiff a pharmacy job. Because the statute sued under in each of those cases was not designed to remediate the particular interest asserted by each plaintiff, there was an inherent risk that a judicial decision would not have been able to redress an interest arising outside the statute's zone of interests.

Likewise here, taking the entire 147 acres out of trust under the IRA would not itself determine whether gaming could go forward. Lots of private gaming facilities (virtually all, if not all, of Las Vegas, for example) operate on non-trust land. Gaming on private land held in fee simple (whether by tribes or anyone else) is determined by state law, not federal law. Insisting that the plaintiff's alleged injuries fall within the zone of interests of the federal statute actually being litigated thus reinforces the Article III requirement that the judicial relief ordered under that federal law be independently capable of redressing the injury alleged. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998) ("Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court; that is the very essence of the redressability requirement.").

C. This Court's Immediate Review Is Needed To Resolve Those Circuit Splits

Much as it has in the context of immunity questions, this Court has granted certiorari at the interlocutory stages of litigation to resolve important questions of standing to bring suit. The procedural history in *Valley Forge*, for example, mirrored that in this case: the district court dismissed the suit for lack of standing and the court of appeals reversed and remanded. 454 U.S. at 469-470. Rather than waiting for resolution on the merits, this Court granted certiorari "[b]ecause of the unusually broad and novel view of standing to litigate a substantive question in the federal courts adopted by the Court of Appeals." *Id.* at 470. *See Lujan*, 497 U.S. at 881 (granting certiorari immediately after court of

appeals had reversed district court's dismissal for lack of standing); *Allen v. Wright*, 468 U.S. 737, 748-750 (1984) (same). Because the D.C. Circuit's decision is an unprecedented expansion of the prudential standing doctrine in a manner specifically rejected by five other circuits, immediate review is equally appropriate in this case.

That is particularly true because prudential standing, like the Quiet Title Act sovereign immunity question, is a threshold issue. Because such sovereign immunity questions are routinely granted review on an interlocutory basis, disposing of both threshold issues at once would best promote judicial economy. In addition, because both the prudential standing inquiry and sovereign immunity analyses have important implications for the volume of litigation against federal agencies generally, review of both questions simultaneously will allow the Court to comprehensively evaluate the D.C. Circuit's holding and its unique impact, given the D.C. Circuit's broad jurisdiction over suits against the federal government.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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