IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EASTERN PEQUOT TRIBAL NATION :
PO Box 208
North Stonington, CT :

Plaintiffs, :

v. :

:

KENNETH SALAZAR, Secretary
of the Interior, and DENNIS ECHOHAWK :
Assistant Secretary for Indian Affairs, United
States DEPARTMENT OF INTERIOR :
1849 C Street, NW 20240

:

Defendants.
:

COMPLAINT

Introduction

1. This action is brought by the Eastern Pequot Tribal Nation (Eastern Pequots or Tribe) under the United States Constitution and the Administrative Procedure Act, 5 U.S.C § 554, 701-706, for review of the Order "Vacating and Remanding Final Determination", and on October 14, 2005, the Associate Deputy Secretary (ADS) gave that the Tribe did not satisfy all seven criteria for acknowledgment as an Indian Tribe.70 Fed. Reg. 198 (2005). The Final Determination reversed a previous Final Determination of June 24, 2002, as published in the Federal Register stating that the

Tribe had satisfied the regulatory criteria for Federal Acknowledgment. The Final Determination was arbitrary, capricious, an abuse of discretion, not in accordance with law and unwarranted by the facts in violation of the Administrative Procedure Act, and constitutes a denial of due process and equal protection. On January 13, 2006, the IBIA denied the plaintiffs request to reply or respond at any point since their original positive Final Determination, thus denying them fundamental due process of law.

PARTIES

2. The historic Eastern Pequot Tribe is located in southeastern Connecticut where they have a reservation which was granted by the government of the Colony of Connecticut in 1683 and have had continuous government to government relations with the Colony and later the State of Connecticut for over (nearly) 400 years – since the first sustained colonial contact with the tribe. The Tribe is one of five state-recognized tribes in Connecticut. The Eastern Pequot Tribe and its members have been continuously recognized by both Colonial Statutes and governmental authorities, and Connecticut State Statutes and State authorities, as a distinct Indian Tribe and sociopolitical government, entity and community since first sustained Colonial contact in the early 1600's.

The Defendant, Kenneth Salazar, is Secretary of the Interior. The Defendant Echohawk, is the Assistant Secretary for Indian Affairs, the highest ranking official in the Bureau of Indian Affairs ("BIA"), which has direct responsibility for administering the

acknowledgment procedures. Both defendants are officers or employees of the United States Department of Interior and have direct or delegated statutory duties for carrying out relations with Indian Tribes and the United States' trust obligations to tribes. 25 U.S.C. §§ 2, 9. Both are named here in their official capacities.

JURISDICTION

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. §1337 (congressional acts regulating commerce with Indian tribes), and 5 U.S.C. § 702 (Administrative Procedure Act).

VENUE

4. Venue in this action lies in this district, and in substantial part the events or omissions giving rise to the claim occurred in this district. 28 U.S.C. § 1391(e)

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

5. The historic Eastern Pequot Tribe has maintained its tribal relations since well before the 15th century, and was one of the initial tribes to encounter Europeans upon their incursion into the Americas.

6. Much of the Tribe was decimated in the massacre of 1638, however

government to government relations continued despite years of antagonism by the colonial government. In 1683, the colonial government formally established a "reservation" for the tribe on traditional and sacred lands and villages of the Eastern Pequots on Lantern Hill abutting the Western Pequot reservation which had been established in 1666. The initial establishment of this "reservation" set aside for the Eastern Pequots was prompted by agreements and informal treaties of nonaggression during the Narragansett or "King Phillip's" war between the Tribe, its leaders, and the colonial authorities. This "reservation" has been continuously occupied by the tribe since 1683, and prior thereto it was a part of its traditional aboriginal territory.

7. The Pequot reservations are the oldest continuously occupied reservations in the Americas, a fact cited by President Reagan in granting the 1983 federal recognition to our cousins the Western Pequots.

8. The Eastern Pequots of Connecticut filed a notice to seek federal recognition in 1978. A subsequent notice to petition was filed by the Paucatuck Eastern Pequots who were a subgroup of the significantly larger Eastern Pequot Tribe.

9. After decades of plodding through the recognition process, the review of the Eastern Pequot petition was joined with that of the Paucatuck Eastern Pequots by the BIA for purposes of determination based upon their well documented ties and the sharing of a common reservation, and having an overwhelmingly shared history and government despite periods of discourse.

10. On June 24, 2002, the Assistant Secretary issued the Final Determination

concluding that a single historical Eastern Pequot Tribe existed, represented by both petitioners who satisfied the regulatory criteria for Federal Acknowledgment.

11. On May 12, 2005, in an unprecedented decision, an Order was issued Vacating and Remanding Final Determination.

12. On October 14, 2005, the Associate Deputy Secretary (ADS) gave Notice that the Eastern Pequot Indians of Connecticut and the Paucatuck Eastern Pequots of Connecticut did not satisfy all seven criteria for acknowledgment as an Indian tribe.

13. On January 13, 2006 the IBIA court ruled that the Tribe had no administrative recourse to answer, rebut or otherwise reply to erroneous findings found on reconsideration, thereby denying the opportunity for the Eastern Pequot Tribe to participate in the process via an IBIA appeal of the negative Final Determination following its positive Final Determination in June, 2002.

14. The Tribe filed a Petition for Secretarial Review with the Defendant on October 13, 2011 and has heard no formal response in this regard.

FIRST CAUSE OF ACTION:

THE DEFENDANT'S DENIAL OF ANY OPPORTUNITY TO REPLY TO THE RECONSIDERATION REVERSING THE PRIOR POSITIVE DECISION WAS A DENIAL OF DUE PROCESS

15. The petitioners submitted overwhelming documentation in support of their position requesting federal recognition. In all, the Tribe presented an unprecedented 30,000 documents spanning a half a millennium. Most of these documents were in the domain of the State of Connecticut and its predecessor colonial government. A formal trust relationship between the State and the Tribe has existed since at least 1666 with the establishment of the Western Reservation and our Eastern Reserve in 1683.

16. The Tribe first initiated its federal recognition effort in 1978, and patiently complied with all mandated requirements. Separate petitions where submitted by two groups claiming entitlement to recognition, both collectively as with the Eastern Pequots, (pet #35), and individually as with the Paucatuck Eastern Pequots. (pet. #113)

17. On June 24, 2002, the Assistant Secretary issued a Final Determination that concluded that a single historical Eastern Pequot tribe existed represented by the two petitioners, and satisfied the regulatory criteria for federal recognition. Thus validating the position of petitioner #35 that all members of both petitioners were a single tribe known as the Historic Eastern Pequot Tribe as published in the Federal Register..

18. A Motion for Reconsideration was filed by supposed interested parties represented by the State of Connecticut and 20 local communities. The IBIA issued an

Order Vacating and Remanding Final Determination on May 12, 2005. The principal opponent to the Tribe's recognition was the State of Connecticut, who at all times remained the Tribe's "trustee" as a state-recognized Tribe , thereby having fiduciary duties to act in the best interest of the Tribe.

19. The other 20 interested parties were local communities that were overwhelmingly from the other part of the state, and who opposed mostly based upon their purported opposition to the expansion of gaming mostly by the other two non-gaming state-recognized tribes.

20. All of the opposing parties, both state and local, received and used funds obtained through distributions from the Pequot-Mohegan Fund which is funded by gaming proceeds and whose purpose provides for a gaming monopoly in exchange for limiting access to those tribes already engaged in gaming.

21. Since the initial positive Final Determination in June, 2002, the tribe was never given any opportunity to participate in the process by way of reply or rebuttal. The January 13, 2006 IBIA decision denying such recourse is a denial of fundamental due process . The Reconsideration based upon evidence of biased parties without allowing the petitioner to test the credibility and the probative sufficiency of the evidence relied upon in the final determination and the standard of proof utilized is a further denial of due process. Thus the decision by the IBIA and the regulations it relied upon in dismissing the Motion for reconsideration amount to an unconstitutional denial of the Tribe's due process right to a review of that final determination by the BIA.

SECOND CAUSE OF ACTION:

THE DECISION TO REVERSE A POSITIVE FINAL DETERMINATION IS CONTRARY TO LAW

22. Congress has never authorized the Department of Interior, either expressly or impliedly, to withdraw recognition of an Indian Tribe once recognized, or to terminate a government to government relationship established by the Department in implementing Congressional acts. The Department has no such authority and erroneously and unlawfully withdrew the federal recognition in its Final Determination of June 24, 2002 which acknowledged the Historic Eastern Pequot Tribe as published in the Federal Register.

23. Congress has expressly prohibited the Department from withdrawing federal recognition from tribes and terminating tribal benefits and protections. The Federally Recognized Indian Tribe List Act of 1994 requires the Secretary to annually "publish in the Federal Register a list of all the Federal Register a list of all Indian Tribes which the Secretary recognizes to be eligible for special programs and services provided by the United States to Indians because of their status as Indians," 25 U.S.C. § 479a-1(a). The Act states that Congress has expressly repudiated the policy of terminating recognized Indian tribes, and has actively sought to restore recognition to tribes that previously have been terminated." 25 U.S.C. § 479a, note 6. This Court found that "[t]he Tribe List Act prohibits the Secretary from removing or omitting tribes once placed on the list and underscores that Congress has the sole authority to terminate the

relationship between a tribe and the Untied States." *Muwekma v. Babbitt,* 133 F. Supp.2d at 37-38.

24. The defendants unlawfully failed to continue to include the tribe on its annual list of recognized tribes and was thereby prohibited from removing the Tribe once recognized in the Federal Register on June 24, 2002. Any actions to derecognize or terminate are prohibited as a matter of law and the Secretary has abused and continues to abuse his discretion in denying the Tribe said recognition.

THIRD CAUSE OF ACTION:

THE DEFENDANTS' DECISION TO REVERSE THE RECOGNITION WAS ARBITRARY AND CAPRICIOUS BY FAILING TO APPLY THE PROPER EVIDENTIARY STANDARDS, BY MISINTERPRETATION OF THE LAW, AND BY FAILURE TO FOLLOW WELL-ESTABLISHED DEPARTMENTAL PRECEDENT IN OTHER RECOGNITION CASES, ESPECIALLY WITH RESPECT TO TRIBES SIMILARLY SITUATED

25. The acknowledgement regulations provide that a petitioning tribe "may" be denied recognition if certain criteria set out in 25 C.F.R § 83.7 are not satisfied. Here, the petitioner had already satisfied the criteria at the initial Final Determination on June 24, 2002. Further, the regulations established an evidentiary standard for evaluating petitions, which provides in pertinent part:

A criteria shall be considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relation to that criterion. Conclusive proof of the facts relating to a criterion shall not be required in order for the criterion to be considered met.

25 C.F.R. § 83.6(d). This standard, accounting for the absence of historical record

affecting many unrecognized tribes, is deliberately less demanding than a preponderance of the evidence.

26. The evidence submitted on behalf of the Tribe was both substantial and compelling. The sheer volume of documents submitted substantiating nearly four hundred years of sociopolitical continuity and statutory existence and legislative recognition by the Connecticut Colony and subsequently the State of Connecticut as an Indian tribe on a clearly defined reservation comprising Indian lands subject to the protection of the US government under the U.S. Constitution (article 1, Section 8 – the Indian Commerce Clause), the US Code (25 USC 177) and 25 CFR 1.4 pertaining to federal trust responsibilities to Indian tribes and lands clearly satisfies any sufficiency
requirement for any recognition effort with respect to the question of whether the Eastern Pequots are entitled to government to government relations and federal trust protection (especially from state interference) by the US government under the acknowledgment regulations. The absence of documentation for certain years or periods is due in part to the failure of the state to abide by its constructive trust obligations to keep and produce such records and hence any absence must be construed in favor of the tribe under the regulations.

27. The ADS applied the wrong standard of proof and evidentiary review in assessing the historical, anthropological and genealogical information. His attempt to apply a standard greater than that required by the defendants' regulations was clearly erroneous and plain error, especially in light of the State's actions and their role as custodian of records and purported, constructive or implied tribal trustee. The decision-making of the ADS in his final determination (attempts to) improperly arbitrarily and capriciously applies an improper and

unreasonable and more stringent standard of conclusive fact finding rather the application of any defined evidentiary standard recognized at law. The arbitrary and capricious nature of the decision when viewed against the previously reviewed evidence in the original positive Final Determination constitutes bias and discrimination against the Eastern Pequots , especially when viewed in the context of the treatment by the BIA and the US government and Congress of socio-politically and culturally and historically related and similarly situated New England and New York tribes, including the Shinnecock Nation, the Mashpee Tribe of Gayhead, Massachusetts, the Mashantucket Pequots, the Narragansetts and the Mohegan Indian Tribe – all of whom are similarly situated and have a common and substantially shared history, including political relations and intermarriage, with the Eastern Pequots vis a vis the colonial authorities and later the state and federal authorities,

28. On information and belief, the Tribe's documentation was the most voluminous ever received and overwhelmingly were in the domain of the state as custodian and trustee of many of the 30,000 documents submitted. The ADS's decision showed not only a failure to apply the right evidentiary standard, apply the right regulations, or follow the right law, but also failed to grasp the substance , the sufficiency and the conclusive probity of the vast amount of subject matter evidence submitted. The ADS unreasonably, irrationally, arbitrarily and capriciously failed to properly apply the standard of proof to the salient and probative facts and evidence, and failed to construe that evidence in a light most favorable to the tribe) in the review of acknowledgment petitions particularly with respect to the question of whether or not substantially continuous identification and statutory recognition of the Indian tribe and its reservation from first sustained colonial contact to the present by the colony

and later the State of Connecticut constituted substantial and indisputably conclusive evidence that the tribe fully and absolutely met ALL of the criteria for establishing that it met all of the criteria for acknowledgment – and more particularly Criteria B and C of 25 CFR 83.7 as was the finding in the initial final determination challenged by the State of Connecticut and the various municipalities who opposed the legitimate acknowledgment of the Eastern Pequot Nation. The final determination by the ADS, who, moreover, does not have the authority or qualifications to reverse a prior final determination by the Secretary and/or to make such a determination under the regulations, was discriminatory, biased, politically motivated and corrupted by an inequitable and discriminatory application of the regulations in an unlawful and inequitable manner. As a matter of law pursuant to the US Constitution (Article 1, section 8), 25 USC 177 and more particularly and specifically 25 CFR 1.4, the Petitioner Eastern Pequot Nation is a tribe, descended from the historic tribe, inhabiting a reservation and Indian lands subject to a special and unique relationship, protection and government to government relations with the US government which has a duty to acknowledge and protect the tribe pursuant to Congressional enactments and federal regulations. The ADS final negative determination not only violates the regulations and policies of the BIA as set forth and delegated to it by the US Congress, but it is irrational, unreasonable, violative of and contrary to the United States Constitution , violative and contrary to the legislative intent and policies as set forth in the Non-intercourse Act and the Code of Federal Regulations (25 CFR 1.4) which strictly set forth the applicability of federal oversight, jurisdiction, protection and obligations to any tribes, individual Indians on Indian lands and Indian lands themselves which are protected or subject to restraints upon alienation imposed by the United States government. The ADS decision is completely contrary to all federal constitutional, statutory and regulatory law and policy.

29. 25 C.F.R. § 83.6(e) provides " evaluations of petitions shall take into account historical situations and time periods for which evidence is demonstrably limited or not available". Furthermore, again, the acknowledgement regulations provide that

" A criteria shall be considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relation to that criterion. Conclusive proof of the facts relating to a criterion shall not be required in order for the criterion to be considered met." 25 C.F.R. § 83.6(d)

The attempted application of a conclusive and improperly stringent standard of evidence by the ADS under all of these circumstances was clearly erroneous, unlawful, unreasonable, capricious, biased, discriminatory and affected by improper, unlawful and undue influence and was an abuse of discretion.

FOURTH CAUSE OF ACTION;

THE DEFENDANTS' ALLOWANCE OF BIASED INTERESTED PARTIES IN RECONSIDERATION PROCESS WAS UNLAWFUL, ARBITRARY, CAPRICIOUS, DISCIMINATORY, AN ABUSE OF DISCRETION AND CONSTITUTES A CORRUPTION OF THE AKNOWLEDGEMENT PROCESS AND AN ANTITRUST VIOLATION

30. Following the initial positive Final Determination on June 24, 2002, a Reconsideration was filed with the IBIA. The interested parties included the State of Connecticut and 20 local communities that opposed on the basis of an opposition to an expansion of gaming into their communities by petitioner, as well as the other two non-

gaming state-recognized tribes.

31. All of the interested parties that opposed the tribes recognition on reconsideration received funds annually from the Pequot-Mohegan fund that distributes gaming revenues to the state and all of the named communities. These monies are in exchange for allowing the two existing tribal gaming operations to have a monopoly on operations within the state. The use of these monies for the express purpose of opposing gaming by petitioning tribes constitutes bias. They are evidence of a conspiracy to systematically impede other tribes from obtaining federal recognition and possibly engaging in gaming activity. Since its inception less than 20 years ago, over 5 billion dollars in gaming revenue has went to the "interested parties" to perpetuate the status quo. All of the non-tribal interested parties who participated in the Reconsideration efforts have engaged in unlawful anti-trust activity. The allowance of such biased parties to intervene and claim a right as interested parties to intervene and oppose the tribe's petition constitutes a gross abuse of discretion, especially given the IBIA's failure to provide any administrative recourse to test credibility and bias. Furthermore, because the State of Connecticut has at the very least a constructive trust obligation to protect the tribe's lands and interests (subordinate to the tribe's on reservation rights and the federal trust obligations of the US government) its intervention as a party opponent of the Tribe's petition should have been barred or estopped and the failure of the BIA and the IBIA to prevent such intervenor status when clearly the State of Connecticut acknowledged the existence of the tribe by statute, was clearly erroneous, plain error, an abuse of discretion on the part of the BIA and the IBIA and arbitrary and capricious due to the enormous political and financial stakes at play improperly

influencing the BIA's decision making process and influencing US government authorities and individuals in and outside the federal government who had and still have an interest in negatively influencing the outcome so as to improperly deny the Eastern Pequot Tribe's petition for federal status and acknowledgement of that status .

FIFTH CAUSE OF ACTION:

THE DEFENDANTS WITHDRAWAL OF RECOGNITION TO THE HISTORIC EASTERN PEQUOT TRIBE VIOLATES EQUAL PROTECTION OF THE LAWS

32. In the positive Final Determination of June 24, 2002, bestowed upon the Tribe federal recognition that had been granted to two other Connecticut tribes, the Mashantucket Western Pequots in 1983 and the Mohegans in 1996. The Eastern Pequots like the others are state recognized tribes in Connecticut. The State's five tribes have maintained a government to government relationship dating back to the 1600's. The State and colonial governments have maintained their trustee relationship which included the custodian of records throughout this history. The state has asserted statutory trust authority over Indian lands belonging to the Eastern Pequot Tribe and over aboriginal lands and the tribe itself in what amounts to a constructive or statutory trust under state law which is subordinate to the tribe's sovereign rights and to the Federal Government's Trust obligations under the US Constitution, the US Code (Title 25) and the Code of Federal Regulations (particularly 25 CFR 1.4). It is the position of the Eastern Pequots that the State of Connecticut has repeatedly violated its obligations under said constructive and statutory trust (such violation includes its opposition to the tribe's Petition for Federal acknowledgement) and that its

opposition to the tribe's petition is a violation of the state's trust obligations and moreover it violates the Equal Protection Clause and should be estopped.

33. All five of Connecticut's state recognized tribes are equal in stature and entitlement, with the state having a certain statutory and constructive de facto trust responsibility . All five have applied for federal recognition with only the two aforementioned tribes receiving recognition prior to the positive finding of the Eastern Pequots in 2002, only to have it reversed in 2005. It should be noted that 11 of the 22 IBIA decisions have involved the three state-recognized non-gaming tribes. In all of the 11 IBIA decisions, opposition parties all received substantial resources from the Pequot-Mohegan Fund which was received for limiting the expansion of gaming within in the state and further perpetuation of the monopoloy maintained by the state's two federally recognized tribes.

34. The federal recognition process at the BIA has evolved since its inception and has required tribes to meet an ever-changing and more stringent standard. On information and belief, the 30, 000 documents submitted in the Eastern Pequot petition was among the most extensive ever reviewed for federal recognition. By contrast the documentation necessitated by either of the other two federally recognized tribes was but a fraction of those submitted in support of the Plaintiff's petition. Further, the Eastern Pequots are related 100% by blood and marriage to the Western Pequots, and the Narragansetts of neighboring Rhode Island who were also federally recognized in 1983. The failure of the Defendants to grant the Tribe federal recognition when giving such to similarly situated local tribes has prejudiced the Eastern Pequot Tribe and is a denial of

Equal Protection as provided for in the U.S. Constitution. Furthermore, there is no statutory or regulatory provision which permits the ADS or the BIA or the Secretary to remove or withdraw recognition once it has been determined that the tribe meets the criteria for acknowledgment and is therefore is subject to federal protection, services and special rights. The withdrawal of such acknowledgment, especially given the status of the similarly situated tribes in Connecticut, Rhode Island, Massachusetts and New York who have all been federally acknowledged either via the BIA process or by Congress, compounds the inequity and harm caused by this unconstitutional deprivation of equal protection and due process.

SIXTH CAUSE OF ACTION

THE DEFENDANT'S FAILURE TO ESTOPP THE STATE FROM OPPOSING THE TRIBE'S FEDERAL RECOGNITION IS AN ABUSE OF DISCRETION AND CONSTITUTES BIAS

35. The Petitioners went before the BIA as a state recognized tribe with several hundred years of history with inter-governmental relations with State and tribal governments. The tribal community has existed with the reservation providing the core of its community. As a trustee, the State and colonial government assumed all duties and responsibilities over the Tribe and its members. Since the 1683 establishment of the reservation, the Connecticut government dictated all external policies and carried out its trust mandates as it saw fit. As trustee, the State effectuated the illegal sale of the reservation land for the mining interests in 1873 in contravention of the 1790 Non-Intercourse Act. Proceeds were mandated to be paid to the tribal members during the

125 year silica mining operation. Neither the State as actual trustee, or the Federal government as implied trustee, acted in the appropriate fiduciary capacity to protect the tribal interests, even as *Cobell* was recently decided squarely on related issues.

36. The federal government has a long history in deferring status to the states in the cases of tribes whose existence precedes the formation of the United States. This is particularly true of the Northeastern tribes. In Connecticut, the statutory recognition of all five of its tribes is per se a satisfaction of the federal criteria for acknowledgment under 83.7 b and c de jure and de facto and must be recognized by the federal government barring extraordinary circumstances (such as the termination of the tribe by Congressional act). The mere accumulation and submission to the BIA of tens of thousands of documents establishing continuous statutory recognition of the tribe and its tribal rights, the political authority of its leaders and the sociopolitical continuity of their Tribe from first sustained colonial contact to the present day, activity and influence of tribal leaders and elders, distinct cultural, political and spiritual values and activities related to their land and community and social relations and tribal control by their leaders and members over the reservation continuously since 1683 is persuasive on the issue of recognition, requiring at a minimum, that any ambiguity be construed to the benefit of the Tribe pursuant to the acknowledgment regulations and the policies set forth in Title 25 of the US Code and BIA regulations - 25 CFR.

37. To allow the same State, through its chief legal officer and elected representatives to challenge the Tribes recognition efforts is a clear breach of trust duties and is illegal on its face. The Defendants should have estopped the State from acting in

violation of its trust duties. It is the duty of the federal government through its Constitutionally required and statutorily mandated trust obligations to obviate or otherwise supersede the state's breach of trust, and act in the best interests of the tribe by preventing the State of Connecticut from violating its own statutorily mandated and/or constructive trust obligations. The failure of the BIA and any other federal authority to prevent the State from acting contrary to its own laws and trust obligations and from violating federal laws and the rights of the Eastern Pequots would be and is a breach of that Constitutionally mandated , statutorily mandated and regulatory mandated obligation of the United States to protect the tribe from such State actions. The primary purpose and legislative intent of these provisions of federal law is to PREVENT states from taking any action contrary to the interests of the federal government by unlawfully interfering with, attempting to influence, treat , negotiate or improperly engage with Indian tribes and their members in violation of Congress's exclusive authority to do so under the Indian Commerce Clause (Article 1, Sect 8) of the US Constitution. The State of Connecticut should be estopped from further opposing the tribe's petition by claiming that it is not a tribe when in fact the state statutes have continually recognized it as such by statute and Colonial enactment and Acts and engagement with the tribe and its leaders since the first colonial encroachment onto Pequot territory and the State STILL delineates that the state RECOGNIZES the special rights of the Eastern Pequot tribe as it has done statutorily throughout its history.

38. At the time of the Western Pequot federal recognition, President Reagan cited the fact that the Western Pequots had continuously occupied their reservation to be compelling on the issue of federal recognition. With the Plaintiff Eastern Pequots, the state opposition to a tribe with who it has had a trust relationship for centuries along with

a continuously occupied reservation is a gross breach of its fiduciary responsibilities to protect the best interests of the tribe. The defendants' failure to estopp the State's opposition to the tribe's petition and to allow the state of Connecticut and other petitioner municipalities (subsidiaries of the State of Connecticut) to intervene and submit evidence as parties opposing the tribe's petition constitutes an abuse of discretion and is a clear violation of the Federal government's obligation to protect the tribe from unlawful state interference and action – especially where the state's and the subsidiary municipality's position is directly contrary to the actual laws of the state of Connecticut with respect to the fact that as a matter of fact and law the State of Connecticut RECOGNIZES the Eastern Pequot Tribe and has always recognized it both de facto and de jure and also it recognizes and statutorily identifies Indian lands belonging to the tribe and recognizes by statute that the tribe and its members have special rights related to these lands. From colonial times continuously to the present the tribe has existed connected to or residing on that reservation and maintaining their rights to control and remain on it, and the State of Connecticut has continuously recognized this right since the State's inception and prior to that the Colony of Connecticut did as well. Hence to permit the State to claim or assert that this is NOT so and argue that the tribe does not exist or have any rights is inequitable, unjust, improper and violative of the statutory obligations and policies of the State itself as well as federal law and regulation

SEVENTH CAUSE OF ACTION

POLITICAL AND CONTRACTOR INTERFERENCE HAVE BIASED PLAINTIFFS' FEDERAL RECOGNITION EFFORTS

39. Throughout the recognition process, varied political and financial entities have interceded in the efforts by the Tribe to obtain its federal recognition. The effects of the Indian Gaming Act have also had a profound effect on the environment. The advent of class III gaming has created an environment which has had an extraordinary impact on the Tribe's ability to fairly compete and participate in the federal recognition process.

40. Since the advent of gaming in Connecticut, the Western (Mashantucket) Pequots and the Mohegans have generated over 20 billion dollars in income and compensated the State of Connecticut and its cities and towns, over 5 billion dollars, which has been used to thwart tribal efforts at federal recognition. Efforts to obtain federal recognition long proceeded the advent of gaming and was never the Tribe's principal objective for pursuing federal recognition. The Pequot-Mohegan fund proceeds are disbursed to the State and all 169 cities and towns, often financing their opposition efforts to the Tribe along with the other two non-federally recognized state tribes. The only entities not to receive any financial benefit in the State's distribution scheme were the three state recognized, non-gaming tribes. Legislative efforts to assist our receipt of resources were blocked, thus requiring us to seek independent financing for the Tribe's federal recognition support.

41. This most lucrative gaming environment attracted gaming interests in high and low places. Accordingly, some tribal contractors the were driven by profit and greed with little or no benefit to the tribe. The Tribe, through these interests have currently incurred a staggering debt approaching 80 million dollars, for which it has

nothing to show but a modest longhouse. Further, the full extent of the interests are still unknown with the participation of conficted, corrupt players like Abramoff and Scanlon, that exerted undue influence in this arena. Outside influences have shown a propensity to exert enormous influences in pursuant of their economic and political objectives. Their have been and continue to be RICO Act violations by known and unknown co-conspirators who have thwarted tribal efforts at federal recognition and economic self-sufficiency.

42. The participation of elected officials in the recognition process has been devastating to the Tribe. The public threats made to then- Secretary Norton by a congressman from Virginia had a chilling effect at the BIA and caused irreparable harm to the Tribe's efforts. To think that such an environment could foster fair and impartial decision-making within the Agency is fool-hearty. Undue, improper and illegal political and financial considerations and influence tainted the final determination by the ADS causing irreparable harm and aggrievement to the tribe and its members.

43. The governor of Connecticut during the relevant recognition period, was an longtime supporter and beneficiary of the process that handsomely rewarded the State to perpetuate to two tribe monopoly, and oppose efforts of the other three state recognized, non-gaming tribes. Governor Rowland was convicted of contractor improprieties while in office.

44. The Attorney General, Richard Blumanthal, was similarly rewarded

financially and politically for his support of the existing monopoly and opposition to the tribe's recognition efforts which would enable it to engage in tribal gaming. The Attorney General's lead role in opposition efforts is particularly biased in light of his trust responsibilities owed to the Tribe.

45. The lead counsel for the interested parties in the reconsideration efforts was a governor in a gaming jurisdiction. Haley Barbour, and his lobbying firm, were the recipients of funds derived from the communities receiving money that supported the monopoly created by the Pequot-Mohegan Fund and whose objective was to stymie efforts at federal recognition and thereby limiting any further expansion by the other state tribes to lawfully participate in the process.

46. The improper and unlawful exertion of political and contractor undue influence has irreparably harmed and otherwise biased the Tribe's efforts in the federal recognition process.

PRAYER FOR RELIEF

WHEREFORE, for the afore-mentioned reasons, and those which may come before the Court, the Plaintiff historic Eastern Pequot Tribe respectfully submits that it has been and continues to be irreparably harmed and aggrieved by the unlawful, arbitrary, capricious and discriminatory negative final determination of its federal acknowledgement petition and the denial of the review of this determination by the IBIA, that the actions of the defendants were,

moreover, an abuse of discretion and therefore prays for a judgment granting it the following relief:

1. Reverse the Final Determination of October 14, 2005, and reinstate the Plaintiff's original Final Determination of June 24, 2002, ordering that the Eastern Pequot Tribe be reinstated on the list of Federally Recognized Tribes published in the Federal Register and that the historic Eastern Pequot Tribe retain its status of an Indian Tribe recognized by the United States;

2. Enjoin the defendants from withholding from the Tribe the benefits, services and protection the Department provides other federally recognized tribes and directing the Defendants to place the Plaintiff Tribe on the Department's list of federally recognized tribes published in the Federal Register;

3. Ordering such other relief as is necessary to protect the rights declared by this Court.

Respectfully submitted,

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Dated this 12th day of January, 2012.