UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

UPSTATE CITIZENS FOR EQUALITY, INC., DAVID VICKERS, SCOTT PETERMAN, RICHARD TALLCOT, AND DANIEL T. WARREN,

Plaintiffs,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

CIVIL ACTION NO.
5:08-cv-00633-LEK-DEP

UNITED STATES' REPLY
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendants United States of America; S.M.R. Jewell, Secretary, United States Department of the Interior ("Secretary"); Michael L. Connor, Deputy Secretary of the Interior; Elizabeth J. Klein, Associate Deputy Secretary of the Interior; and the United States Department of the Interior ("DOI" or "Department") (collectively, the "United States" or "Federal Defendants"), by undersigned counsel, submit this Reply in Support of Summary Judgment. For the reasons described below, and based upon the Administrative Record supporting DOI's determination to accept land into trust for the benefit of the Oneida Indian Nation of New York ("Oneidas" or "Nation"), this Court should grant summary judgment against Plaintiffs Upstate Citizens for Equality, et. al. ("UCE").

II. SUMMARY OF ARGUMENT

With its Constitutional claims dismissed, UCE now in effect seeks to revive them by arguing that the principles of Federalism incorporated in the Constitution make the Indian Reorganization Act ("IRA") unconstitutional. The only court to consider this meritless argument summarily rejected it, and this Court should as well. UCE, without citation to or support from legal precedent, opines that the Indian Commerce Clause should be construed restrictively to preclude federal authority to take land in trust. UCE's view of the Clause is not shared by the courts and is thus meritless. UCE also continues to assert that the Court should investigate whether the Nation's government is illegitimate, but offers no relevant precedent or facts to support its standing to raise such claim. Finally, UCE offers its own revisionist history of the Oneida Nation, one that does away with the Nation's Reservation. However, binding Second Circuit precedent holds that the Nation has a Reservation in New York that continues under

Federal supervision. In short, there is nothing of merit on offer in UCE's brief, and this case should be dismissed at summary judgment.

III. ARGUMENT

A. The IRA is not unconstitutional

1. Federalism is not offended by the IRA

Rather than bringing a specific Constitutional claim, UCE seems to invoke general principles of Federalism as a basis for urging this Court to strike down the IRA. Dkt. No. 80 at 7-9. In other words, UCE appears to argue that, even if trust acquisition does not entirely divest the State of authority, Nevada v. Hicks, 533 U.S. 353, 365 (2001), the scope of State authority is so diminished that the principles of federalism are offended. This fall-back argument has been raised and rejected before. In City of Roseville v. Norton, plaintiffs argued that "when the Constitution is read as a whole, the Court should find that the federal government does not have the authority to remove land from the sovereignty of a state absent the state's consent." 219 F. Supp. 2d 130, 152-3 (D.D.C. 2002). The court there – as this Court should too – rejected the argument. The court concluded that the Constitution is not implicated because "Supreme Court precedent clearly establishes that the creation of an Indian reservation does not negate state sovereignty." Id. at 153. The acquisition and setting aside of private lands within a State for the use of Indians by the United States is a long-established practice. See F. Cohen, Handbook of Federal Indian Law § 15.0[3][b], at 1009 (Newton ed., 2012) (explaining that acquisition of private lands through purchase or condemnation is a basic way by which Indian country has been constituted and citing federal statutes). It is, moreover, one approved by the Supreme Court. See City of Sherrill v. Oneida Indian Nation, 544 U.S. 197, 220-21 (2005).

Towards the end of the three page paragraph raising its "Federalism" argument, UCE invokes the Guarantee Clause of the Constitution, Art. IV, § 4, which states in part that the "United States shall guarantee to every State in this Union a Republican Form of Government." UCE fails to elaborate on this argument, but apparently UCE contends either that placing land in trust offends this Clause or the settlement agreement approved by this Court in the related case, New York v. Jewell, 6:08CV644 (LEK/DEP), Dkt. No. 341, offends it. Either way, this conclusory claim should be rejected because "[t]he 'government' of the Oneida Nation" to which UCE objects, Dkt. No. 80 at 9, does not govern either UCE or its members, so it is difficult to understand how the Guarantee Clause comes into play. See New York v. United States, 505 U.S. 144, 185 (1992) (declining to determine whether Guarantee Clause claim is justiciable where the acts at issue cannot "reasonably be said to deny any State a republican form of government").

2. The IRA was enacted pursuant to Congress's plenary power over Indians

It is well recognized that the Constitution grants Congress plenary authority over Indian affairs, including the power to enact legislation affecting Indians. United States v. Lara, 541 U.S. 193, 202 (2004) ("Congress, with this Court's approval, has interpreted the Constitution's 'plenary' grants of power as authorizing it to enact legislation that both restricts and, in turn, relaxes those restrictions on tribal sovereign authority.").[1] The Indian Commerce Clause has left States "divested of virtually all authority over Indian commerce and Indian tribes." Seminole

[1] UCE complains that it cannot understand the United States' position on tribal sovereignty, Dkt. No. 80 at 11, but does not couch this complaint in the context of any clear challenge to Interior's decision to accept land in trust. But as the citation from Lara above makes clear, the interrelation of tribal sovereign authority and Congress' plenary power over Indian affairs is not a mystery. See Lara, 541 U.S. at 202-203 (discussing interrelation of federal and tribal authority and noting that "[f]rom the Nation's beginning Congress' need for such legislative power would have seemed obvious."). In any event, UCE's complaint on this score is irrelevant to the merits.

Tribe of Fla. v. Fla., 517 U.S. 44, 62 (1996). UCE's argument that the Indian Commerce Clause cannot authorize Congress to pass statutes like the IRA rests upon Justice Thomas' lone concurrence in Adoptive Couple v. Baby Girl, 133 S. Ct. 2552 (2013), where he advocates a restrictive view of the reach of the Clause. However, Justice Thomas's view on this matter is not that of the Supreme Court, which has held that "the Indian Commerce Clause accomplishes a greater transfer of power from the States to the Federal Government than does the Interstate Commerce Clause." Seminole Tribe, 517 at U.S. 62. Accordingly, UCE has no legal basis for its cramped view of the Indian Commerce Clause or of Congress's plenary authority over Indians. See Roseville, 19 F. Supp.2d at 151-2 ("Congressional authority to take land in trust for Indians and to legislate on matters affecting tribes stems from both the Indian Commerce Clause and the United States' treaty obligations.").[2]

B. UCE lacks standing to challenge federal recognition of the Nation's leadership

UCE appears to assert standing to challenge federal recognition of the Nation's current leadership, explaining that where "the interests of others were impacted by 'internal tribal disputes,' the federal courts have seen fit to intervene." Dkt. No. 80 at 13. However, none of the cases cited by UCE concern tribal leadership disputes or involve challenges to the United States' decision to recognize and deal with a tribal government, much less a collateral challenge in the context of a suit brought under the Administrative Procedure Act to overturn the decision of a federal agency. Instead, the cases involve challenges to tribal authority to assert regulatory or adjudicatory authority over non-Indians or Indians not members of a tribe. In those cases, of

[2] UCE also argues that the Constitution's Property Clause provides no basis for federal ownership of land held in trust. Dkt. No. 80 at 10-11. This argument is polemical in nature and devoid of legal authority or argument and therefore needs no response.

course, the affected non-Indians would face a direct injury sufficient to establish Article III standing. See Plains Commerce Bank v. Long Family Land and Cattle Co., 554 U.S. 316 (2008) (appeal by bank of tribal court exercise of jurisdiction over it); A1 Contractors v. Strate, 520 U.S. 438 (1997) (action brought by non-member Indians challenging assertion of tribal court jurisdiction over them); Duro v. Reina, 495 U.S. 676 (1990) (action by tribal non-member challenging assertion of tribal court criminal jurisdiction over him); Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978) (action by non-Indian residents of reservation to challenge the assertion of tribal court criminal jurisdiction over them).[3] By contrast, in this case, neither the Nation, nor its courts nor its government are attempting to assert any kind of jurisdiction or authority over UCE or its members. Accordingly, UCE lacks standing to raise this claim.

UCE raised its objection to the Nation's leadership in comments lodged in the Administrative Record and addressed by Interior. AR010877-79 (UCE comment letter dated December 14, 2006 and Bureau of Indian Affairs response).[4] Interior explained in response that "Ray Halbritter is the federally recognized representative of the Oneida Indian Nation." Id. at AR010877. Interior's reliance upon its past decision to recognize Halbritter as the Nation's representative was proper here because land-into-trust proceedings are not the proper vehicle for a challenge to federal recognition of the Nation's leadership. Moreover, even if UCE had

[3] The exceptions are two cases cited by UCE that, while still dealing with the ability of Indians to regulate non-Indians within their Reservation, were not brought by non-Indians. See Brendale v. Yakima Indian Nation, 492 U.S. 408 (1989) (tribe brought the action to uphold its authority to zone non-Indian fee land within its reservation); Montana v. United States, 450 U.S. 544 (1981) (action brought by United States to resolve regulatory dispute between tribe and state). These cases, of course, provide no legal authority to suggest UCE has standing to challenge the Nation's leadership.

[4] The administrative record was filed with the Court on disks, as noted at Dkt. No. 54.

standing to challenge that decision, the time to challenge federal recognition of the Nation's government has long passed.

C. The Nation has a Federal Reservation in New York

Finally, UCE argues that there is no Oneida Reservation in New York under federal supervision. The Second Circuit disagrees. Oneida Indian Nation of New York v. Madision County, 665 F.3d 408, 443-44 (2d Cir. 2011) ("It remains the law of this Circuit that the Oneidas' reservation was not disestablished.") (internal quotations omitted).

IV. CONCLUSION

For the foregoing reasons, the Court should grant the federal defendants summary judgment and dismiss Plaintiffs' complaint.

DATED: April 7, 2014

Respectfully submitted,
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Certificate of Service

I, Steven Miskinis, hereby certify that on April 7, 2014, I served the United States' Memorandum of Law In Support of Motion for Summary Judgment upon all counsel in this action via the Court's electronic case filing system.

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