

**Opening Statement**  
**Ranking Member Edward J. Markey**  
**Legislative Hearing: H.R. 1291, 1234**  
**Subcommittee on Indian and Alaska Native**  
**Affairs**  
**July 12, 2011**

Thank you, Mr. Chairman. I'd like to welcome all our witnesses today, especially Mashpee Wampanoag Tribal Chairman Cromwell, whose people once occupied present day Provincetown, Massachusetts. The Mashpee people have shown great resiliency in the face of extreme hardship since first contact in the 1600s, and I look forward to hearing how the Carcieri

decision has impacted the Tribe's quest to provide a tribal homeland for its people.

The Supreme Court's *Carcieri* decision has created significant uncertainty for tribes trying to restore their tribal homelands. This uncertainty stems from the fact that the Supreme Court has essentially created two different classes of tribes -- those who were "under federal jurisdiction" as of 1934 and those who were not.

This has led to meritless challenges in courts across the country, unnecessarily pitting tribes against their Indian and non-Indian neighbors.

Treaty tribes, Executive Order tribes, Federal Acknowledgement tribes, and congressionally recognized tribes have all been hauled into court to defend their status so they can get the homeland back that was stolen from them centuries before. It is our responsibility as a country to make this right.

This two-class system goes against not only executive policy, but is contrary to current law that prohibits federal agencies from distinguishing between tribes based on how or when a tribe was federally recognized. Our country turned its back on policies that created second class citizens, like the Jim Crow laws of the South, a long time ago. We must not return to those days. While the Court majority, led by

Justice Thomas, effectively ruled otherwise, I believe that establishing second-class Indian tribes, like second-class citizenship, has no place in our society.

The major goal of any legislative fix to the Carcieri decision is to simply, *and cleanly*, reinstate the Secretary's statutory authority to take land into trust for Indian tribes, regardless of when they were federally recognized. Nothing more, nothing less.

Last Congress, the House moved a "clean" fix unanimously out of the Interior Appropriations Subcommittee, and included it in the continuing resolution that passed the House in December 2010. I voted for that measure and

so did many of my colleagues on the Natural Resources Committee -- on both sides of the aisle. And the Administration this year included the very same language reflected in Mr. Kildee's bill in its proposed FY 2012 budget.

Language unrelated to correcting the Carcieri decision is unwelcome in any remedial legislation. Last year's effort to pass a Carcieri fix failed in large part because of attempts to add other extraneous provisions to the legislation.

Let me be clear: the Carcieri legislative fix is not about off-reservation gaming or any other issue affecting Indian country. This bill is about getting tribes land on the high plains, not attracting more high rollers to blackjack tables.

The majority of land into trust applications are not for gaming purposes – they are for housing, health care clinics and Indian schools. And state and local governments have a voice in the land into trust process – the Department’s comprehensive regulations contain extensive procedures that guarantee that all interested parties are consulted before land is taken into trust.

Groups opposed to land into trust or that advocate for refining the land into trust process should look elsewhere for traction. If any changes are to be made in the land into trust process, it is not through Carcieri fix legislation.

Let's pass a clean fix to this judicially-created problem related to a centuries-old injustice, and stop playing politics with tribes' ancestral homelands.

I yield back.