No. 17-

IN THE

Supreme Court of the United States

TOWN OF AQUINNAH, MASSACHUSETTS;
AQUINNAH/GAY HEAD COMMUNITY ASSOCIATION, INC.,
Petitioners,

v.

THE WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH);
THE WAMPANOAG TRIBAL COUNCIL OF GAY HEAD, INC.;
and THE AQUINNAH WAMPANOAG GAMING CORPORATION,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Indian Gaming Regulatory Act, a statute of general application, impliedly repealed other federal statutes that specifically subject Indian tribes to state restrictions on gaming, a question that has divided the courts of appeals.

PARTIES TO THE PROCEEDING

Petitioners are the Town of Aquinnah and the Aquinnah/Gay Head Community Association, Inc.

Respondents are the Wampanoag Tribe of Gay Head (Aquinnah), the Wampanoag Tribal Council of Gay Head, Inc., and the Aquinnah Wampanoag Gaming Corporation.

The Commonwealth of Massachusetts was an appellee in the proceeding below and is separately filing a petition for a writ of certiorari.

Maura T. Healey, Charles D. Baker, and Stephen P. Crosby were appellees in the proceeding below.

CORPORATE DISCLOSURE STATEMENT

Petitioner Aquinnah/Gay Head Community Association, Inc. is a non-profit corporation. It has no parent corporation and no publicly held corporation owns more than 10% of its stock.

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The Town of Aquinnah, Massachusetts, and the Aquinnah/Gay Head Community Association, Inc. ("AGHCA") respectfully petition for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the First Circuit.

OPINIONS BELOW

The court of appeals' opinion (App. 1a-19a) is published at 853 F.3d 618. The district court's opinion (App. 21a-68a) is published at 144 F. Supp. 3d 152.

JURISDICTION

The court of appeals entered judgment on April 10, 2017 (App. 1a) and denied rehearing on May 10, 2017 (App. 69a-70a). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Wampanoag Tribal Council of Gay Head, Inc., Indian Claims Settlement Act of 1987 is reproduced in the Appendix at 134a-151a. As relevant here, that statute provides:

> [T]he settlement lands and any other land that may now or hereafter be owned by or held in trust for any Indian tribe or entity in the town of Gay Head, Massachusetts, shall be subject to the civil and criminal laws, ordinances, and jurisdiction of the Commonwealth of Massachusetts and the town of Gay Head, Massachusetts (including those laws and regulations which prohibit or regulate the conduct of bingo or any other game of chance).

25 U.S.C. § 1771g. Relevant portions of the Indian Gaming Regulatory Act (App. 152a-163a) and the Ysleta del Sur Pueblo Restoration Act (App. 133a) are also reproduced in the Appendix.

INTRODUCTION

This Court has long applied an exceptionally strong presumption against implied repeal, directing lower courts confronted with two competing federal statutes to give full effect to both, absent an "irreconcilable conflict." That presumption honors important separation of powers principles: It imposes a duty on courts to follow the law as Congress enacts it, harmonizing statutes

rather than imposing their own views about which statute should apply in any given case. In the decision below, the First Circuit was presented with two statutes that balance the sovereign interests of States, local governments, and Indian tribes. Yet the First Circuit found an implied repeal without making any attempt to reconcile the statutes or pointing to any evidence that Congress intended that result. That decision departs from the important principles of implied repeal articulated by this Court, and in so doing deepens a conflict in the circuits as to how to harmonize overlapping federal statutes, particularly in the heavily-regulated area of Indian gaming law.

The earlier-enacted statute at issue in this case is the Wampanoag Tribal Council of Gay Head, Inc., Indian Claims Settlement Act of 1987 ("Settlement Act"). In that statute, Congress codified a settlement agreement negotiated by the Wampanoag Tribe of Gay Head (Aquinnah) ("Tribe") over 30 years ago. In the settlement agreement and through the Settlement Act, the Tribe received nearly 500 acres of land and, in exchange, agreed that the land would be subject to the laws of the Commonwealth of Massachusetts and the Town of Aquinnah—including the laws governing gaming. Congress codified the terms of the agreement, exercising its plenary power to legislate in Indian affairs. As enacted, the Settlement Act specifically provides that the Tribe's lands in the Town are subject to state and local "laws and regulations which prohibit or regulate the conduct of bingo or any other game of chance[]." 25 U.S.C. § 1771g. The Settlement Act, like the fourteen other settlement acts and numerous restoration and recognition acts Congress has implemented in other States, represents Congress's careful judg-

ment that the terms of the act were fair and in the best interests of the Tribe.

After reaping the benefits of its bargain for decades, the Tribe now seeks to renege on a cornerstone of the agreement by opening a gaming facility on the land it obtained in the settlement without complying with state and town laws. The Tribe's gaming plans undisputedly contravene the plain language of the Settlement Act, a fact the Tribe suggests is irrelevant because, in its view, the Settlement Act no longer applies. Specifically, the Tribe contends that the *same Congress* that enacted the gaming restrictions in the Settlement Act impliedly repealed those restrictions by enacting the Indian Gaming Regulatory Act ("IGRA") the following year. The district court rejected that argument, correctly concluding that Congress would have had to clearly convey in IGRA its intent to unravel the (now decades-old) bargain struck by the Settlement Act for a court to find a repeal by implication, and that Congress had not done so. But the First Circuit reversed, all but ignoring the exceptionally strong presumption against implied repeal that this Court has reaffirmed in countless cases. The result is exactly what this Court has repeatedly warned against: Rather than reconciling the two statutes, the First Circuit effectively cherrypicked which of the two it preferred to apply.

The First Circuit's decision finding an implied repeal raises important questions about the proper mode of analysis that courts should undertake when reviewing overlapping federal statutes. And it also entrenches a circuit split as to IGRA's effect on other statutes subjecting other tribes to state and local restrictions on gaming. For example, the Fifth Circuit has held that IGRA did *not* impliedly repeal a restoration act subjecting a Texas tribe to state gaming laws—a provision en-

acted by Congress on the same day as the Settlement Act. And the D.C. Circuit, reviewing the very Settlement Act at issue here, recognized that the Tribe is "excluded from IGRA" because the Settlement Act "specifically provide[s] for *exclusive state control over gambling*." These divergent interpretations of IGRA's effect on federal statutes subjecting tribal lands to state restrictions on gaming creates uncertainty and inconsistency in this heavily-regulated area of law.

This Court's review is warranted to realign the First Circuit's implied repeal jurisprudence with this Court's precedent; to resolve the conflict in the circuits; and to ensure that lower courts respect the delicate balance Congress has achieved among the sovereign interests of the States, local governments, and Indian tribes.

STATEMENT

A. The Tribe's Land Claims And The Settlement Agreement

The Town of Aquinnah (formerly known as Gay Head) is a small community on Martha's Vineyard in the Commonwealth of Massachusetts that has long been home to members of the Tribe.

In 1974, the Tribe filed a federal lawsuit claiming aboriginal title to 238 acres of land then owned by the Town. *Wampanoag Tribal Council of Gay Head, Inc.* v. *Town of Gay Head*, No. 74-5826 (D. Mass.). The Commonwealth of Massachusetts and the AGHCA (then known as the Taxpayers Association of Gay Head, Inc.), a group of private residents and taxpayers in the Town of Aquinnah, intervened in the litigation.

By 1977, the parties commenced settlement negotiations. *Indian Land Claims in the Town of Gay Head*,

MA: Hearing Before the S. Select Comm. on Indian Affairs, 99th Cong. 92 (1986) (statement of Tribe's leader Gladys Widdis) (App. 109a).[1] At that point, settlement had become increasingly desirable for all parties. As land values rose in the Town alongside Martha's Vineyard's popularity as a vacation destination, many of the Tribe's members had moved from the Town. App. 106a-108a. The Tribe hoped that a settlement would enable it to "meet [its] housing and economic development needs" and thus ensure that its members could continue living as an Indian community in the Town. App. 90a (testimony of Ms. Widdis). The Town and the AGHCA likewise favored a settlement, because the Tribe's land claim had created a cloud over all titles to property in the Town, including privately owned land. *E.g.*, App. 100a-101a (testimony of AGHCA President, Hannah L. Malkin).

By 1981, the parties had reached consensus on the basic principles of the settlement agreement. App. 109a-110a (statement of Ms. Widdis). Under the terms of the agreement, the Tribe's aboriginal land claims were extinguished, and the Tribe received title to approximately 485 acres of land in the Town, which included not just the lands owned by the Town but also privately-owned land that individual property owners agreed to contribute. App. 78a-80a ¶¶ 4-7; App. 81a ¶ 8(d). The federal government would provide the funds necessary to purchase the property from the pri-

[1] Given the difficulty in locating the legislative history related to the Settlement Act, excerpts from the congressional hearing on the Settlement Act referenced herein are included in the Appendix for ease of reference.

vate landowners at fair market value. *See* App. 81a ¶ 8(a)-(c).[2]

In exchange for the lands conveyed to the Tribe, the Commonwealth, the Town, and the AGHCA bargained for and obtained certain restrictions on the Tribe's use of these lands. Relevant here, the Tribe—which at that point had not yet received federal recognition as an Indian tribe—agreed that "[a]ll Federal, State and Town laws shall apply to the Settlement Lands … regardless of any federal recognition" the Tribe might obtain in the future. App. 83a ¶ 13. Accordingly, the Tribe would "hold the Settlement Lands, and any other land it may acquire, in the same manner, and subject to the same laws, as any other Massachusetts corporation." App. 77a-78a ¶ 3. These provisions guaranteed that Commonwealth and Town laws would continue to apply uniformly within their borders, notwithstanding the Tribe's potential future sovereign status.

The Tribe twice held a tribal referendum on the proposed settlement. App. 109a-112a (statement of Ms. Widdis). Both times, the Tribe's members overwhelmingly accepted the terms of the settlement agreement. App. 110a, 112a (voting for approval of settlement by a vote of 115 to 60 at first referendum and by a vote of 164 to 29 at second referendum). The parties signed the final agreement in November 1983, *see* App. 86a; C.A. App. 456, and the Commonwealth enacted implementing legislation in September 1985, *see* Mass. Stat. 1985, c. 277; App. 25a.

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[2] The Commonwealth later agreed to contribute half of the funds necessary to implement the settlement agreement. *See* 25 U.S.C. §§ 1771(6), 1771a(c), 1771d.

B. Enactment Of The Settlement Act

The settlement agreement required implementing legislation by Congress. In April 1986, the Senate Select Committee on Indian Affairs held a hearing on the proposed legislation. Representatives from the Tribe, the Town, and the AGHCA provided testimony detailing the extensive negotiations over the terms of the settlement agreement and strongly supporting the proposed bill.

At the hearing, the leader of the Tribe, Gladys Widdis, testified about the importance of the settlement to the Tribe's ability to maintain its community and to "develop economically and socially." App. 93a (testimony of Ms. Widdis). She left no doubt that the Tribe "realize[d] the limitations of the settlement," including the extent to which the agreement limited the Tribe's jurisdiction. *Id.* Specifically, Ms. Widdis acknowledged that the Tribe would not be able to conduct the type of gambling that had become increasingly popular on tribal lands throughout the 1980s: "Mr. Chairman, we recognize and accept that this bill will not empower our tribe to conduct high-stakes gaming on the public or private settlement lands provided for in this bill." *Id.* Her written statement is even clearer: "We recognize and accept that no gaming on our lands is now *or will in the future be possible*." App. 115a (emphasis added).

Congress also heard testimony from a dissenting faction of Tribe members, who highlighted that the Tribe was relinquishing tribal and individual Indian rights via the settlement; this faction expressly drew attention to the Tribe's agreement that "all state and local laws will apply to the so-called 'Indian lands.'" *E.g.*, App. 129a (statement of Robert C. Hahn); *see also*

App. 115a-120a (letter from Mr. Hahn). As Senator Kennedy explained at the hearing, those dissenting views had been "thoroughly reviewed" and considered during the settlement negotiations. App. 98a (testimony of Sen. Kennedy); *see also* App. 95a (testimony of Tribe member Luther T. Madison) (informing Congress that "any tribal member who is interested has complete knowledge of the terms of the settlement and is aware that, although not perfect, it achieves our basic tribal goals").

Representatives of the AGHCA testified that the proposed legislation would remove the cloud on titles to property in the Town by resolving the underlying land claim. Critically, the legislation would also cement a key condition on which the AGHCA had agreed to the settlement—namely, the "requirement that all of the laws, ordinances and regulations of the Commonwealth of Massachusetts apply to all of the lands in [the] town." App. 102a (testimony of Ms. Malkin). That provision was essential to the settlement agreement, the AGHCA testified, because property owners "bought their lands and homes on the understanding that they were moving into a community where the rules and regulations were the same as in other towns in Massachusetts." *Id.* Consistent with that expectation, the bill guaranteed "that none of the lands in [the] town will be exempt from generally applicable State regulation *against gambling* or other presently prohibited activities which would ruin [the] town." *Id.* (emphasis added).

The Senate Select Committee on Indian Affairs recommended passing the bill, concluding that "the terms embodied in the settlement and implemented in [the bill] are fair to all concerned and in the best interests of the Wampanoag Gay Head Indian tribe."

S. Rep. No. 99-528, at 4 (1986). The bill passed by an overwhelming majority in both houses of Congress in October 1986, but Congress adjourned before the bill could gain final approval.

When the 100th Congress convened in January 1987, the two committees responsible for Indian affairs turned their attention in earnest to efforts to pass comprehensive Indian gaming legislation—efforts that culminated in the passage of IGRA. *See, e.g.*, S. 555, 100th Cong. (introduced Feb. 19, 1987, ultimately enacted as IGRA); *see generally infra* pp. 11-14.

In June 1987, Congress returned to the subject of the Settlement Act. The bill was re-introduced with two key modifications. As revised, the bill recognized that the Tribe had gained federal recognition the year before. Most importantly, it also responded to ongoing concerns about Indian gaming by *explicitly* addressing the possibility of gaming on the settlement lands. Consistent with the settlement agreement and the views previously expressed by the Tribe and the AGHCA, the bill guaranteed that the Tribe's lands in the Town (with two exceptions related to hunting and taxation) would be "subject to the civil and criminal laws, ordinances, and jurisdiction of the Commonwealth of Massachusetts and the town of Gay Head, Massachusetts (*including those laws and regulations which prohibit or regulate the conduct of bingo or any other game of chance*)." S. 1454, § 9, 100th Cong. (1987) (emphasis added); *see also* H.R. 2855, § 9, 100th Cong. (1987).

The bill was enacted by the 100th Congress in August 1987 with that gaming-specific language unchanged. With its passage, the Tribe "joined a growing number of Indian tribes that ha[d] reclaimed tribal lands after legislative settlements of aboriginal land

claims." *Narragansett Indian Tribe* v. *National Indian Gaming Comm'n*, 158 F.3d 1335, 1337 (D.C. Cir. 1998).[3]

C. The Indian Gaming Regulatory Act

As the Tribe's representative acknowledged in her written congressional testimony, App. 115a, gaming on tribal lands had grown increasingly prevalent throughout the 1980s, spurred by a series of lower court decisions holding that tribes could conduct gaming operations free of state regulation. H.R. Rep. No. 99-488, at 9-10 (1986); *see, e.g.*, *Seminole Tribe of Fla.* v. *Butterworth*, 658 F.2d 310 (5th Cir. 1981). While these activities provided a source of tribal revenue at a time of budget shortfalls, H.R. Rep. No. 99-488, at 10, they also "created a growing concern, both among the Indian tribes and in the surrounding non-Indian community," about the tribes' ability to protect against organized crime and corruption, 129 Cong. Rec. 34,184 (1983) (statement of Rep. Udall).

Throughout the early 1980s, Congress began developing Indian gaming legislation to address these concerns. Several competing bills were proposed during this period, all intended to "balance[] the concerns of the State for proper supervision of the games to pre-

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[3] Pursuant to its plenary authority to legislate in Indian affairs, Congress has enacted numerous federal acts settling Indian land claims as well as restoration and recognition acts, many of which also contain gaming restrictions. *See* Cohen, *Handbook on Federal Indian Law* §§ 3.02[8][c], 6.04[5][d] (2012); *see also, e.g.*, 25 U.S.C. §§ 1741-1749 (Florida Indian Land Claims Settlement Act of 1982); *id.* §§ 1772-1772g (Seminole Indian Land Claims Settlement Act of 1987); *id.* §§ 1300g-1300g-7 (Ysleta del Sur Pueblo Restoration Act); *id.* §§ 1751-1760 (Mashantucket Pequot Indian Claims Settlement Act).

vent criminal activity against the rights of sovereign tribes to regulate activities on their Indian reservation." 132 Cong. Rec. 8183 (1986) (statement of Rep. Strang).

In September 1986, the Senate Select Committee on Indian Affairs drafted a compromise bill that drew upon several competing proposals. The committee explained the state of the law at the time, noting that state laws are generally "not applicable to Indian tribes without the consent of Congress and the Federal government." S. Rep. No. 99-493, at 2 (1986). Because Congress had not authorized state jurisdiction over Indian gaming in most States, those gaming activities had been left unregulated in most of the country. Congress intended the bill to fill that regulatory gap and thereby "shield these gaming enterprises from organized crime and other corrupting influences and to assure both the players and the operators that the games are conducted fairly and honestly." *Id.* at 10.

Like the final version of IGRA, the bill under consideration by the 99th Congress provided that certain gaming activities, including bingo, would generally "remain within the jurisdiction of Indian tribes," as long as two conditions were satisfied: (1) the State in which the tribe was located allowed that type of gaming activity, and (2) the activity was "not otherwise prohibited by Federal law." S. Rep. No. 99-493, at 14. But the committee recognized an important exception to that general rule:

> It is the intention of the Committee that nothing in the provisions of this Section, or in this Act, will supersede any specific restrictions on gaming on Indian lands or any specific grants of Federal authority or jurisidiction [sic] to a

> State, which may be encompassed in another Federal statute. Examples of such statutes are the Rhode Island Claims Settlement Act (Act of September 30, 1978; 92 Stat. 813; P.L. 95-395) and the Maine Indian Claims Settlement Act (Act of October 10, 1980; 94 Stat. 1785; P.L. 96-420) in which specific provision was made for jurisdiction to be exercised by the States, the Tribe, and the United States.

Id. at 15.

Although the Senate Select Committee on Indian Affairs recommended passing the bill, the 99th Congress did not ultimately act on the legislation. When the 100th Congress convened, several new Indian gaming bills were introduced. Building on the committee bill from the previous session, Senator Inouye introduced S. 555—the bill eventually enacted as IGRA. As he explained, the bill was "the culmination of years of serious negotiations between gaming tribes, States, the gaming industry, the administration, and the Congress, in an effort to provide a system for the regulation of gaming on Indian lands." 133 Cong. Rec. 3736 (1987). Congress had the responsibility, "consistent with its plenary power over Indian affairs, to balance the competing policy interests." *Id.*

The Senate Select Committee on Indian Affairs ultimately reported a bill modeled on S. 555 out of committee in August 1988. The bill divided gaming activities into three classes. Class I gaming consists of traditional tribal games, which would remain exclusively within tribal jurisdiction. Class II gaming consists of bingo, lotto, and other similar games, which tribes could generally conduct (with federal oversight) unless such activity was prohibited in the State and/or by fed-

eral law. And Class III gaming consists of all other types of gaming, including slot machines and other casino games. In order to conduct Class III gaming on Indian lands, a tribe would have to enter into a tribal-State compact allocating jurisdiction between the tribe and the State with respect to the enforcement of criminal and civil law on the lands on which gaming was to be conducted.

In approving this framework, the Senate Select Committee on Indian Affairs of the 100th Congress—like its predecessor in the 99th Congress—reiterated the "well-established principle of Federal-Indian law" that States do not enjoy jurisdiction over tribal lands "*unless* authorized by an act of Congress." S. Rep. No. 100-446, at 5 (1988) (emphasis added). In other words, tribal governments retain all rights *unless* those rights were expressly relinquished in treaties or other agreements, including congressional enactments. *Id.*

The committee again reaffirmed that tribes governed by settlement acts would continue to be subject to State jurisdiction. S. Rep. No. 100-446, at 12. Drawing on language from the previous report, the committee explained that the bill would not "supersede any specific restriction or specific grant of Federal authority or jurisdiction to a State which may be encompassed in another Federal statute, including the Rhode Island Claims Settlement Act … and the Ma[]ine Indian Claim Settlement Act[.]" *Id.*

The Senate and the House passed the bill in September 1988, and the President signed IGRA into law the following month.

D. Proceedings Below

The Settlement Act governed relations between the Tribe and the surrounding community for twenty-five years. In 2012, however, the Tribe announced its intention to open a gaming facility and adopted an ordinance purporting to authorize gaming on the Tribe's lands—including lands acquired in the settlement. C.A. App. 187. Even though Massachusetts law prohibits the operation of a gaming facility without a gaming license, Mass. Gen. Laws ch. 23K, §§ 2, 9, 25, the Tribe maintained that it did not need and would not seek Commonwealth or Town approval.

In 2013, the Commonwealth filed suit against the Tribe, alleging that the Tribe's gaming plans violated the settlement agreement. The AGHCA and the Town intervened in the litigation. The Tribe, in turn, sought a declaratory judgment that IGRA had superseded the settlement agreement and the implementing statute.

The district court concluded on summary judgment that the Tribe remained subject to state and local gaming restrictions, finding it implausible that the same Congress could have intended to impliedly repeal the Settlement Act when it enacted IGRA one year later. App. 66a-67a.[4] The district court began by correctly articulating this Court's implied repeal framework, observing that it had an obligation to give effect to both statutes as long as the statutes were "'capable of coexistence'" and that the plain language of the Settlement Act and IGRA enables them to coexist. App. 56a-60a. The district court invoked the strong presumption

[4] The district court also held that IGRA did not apply to the Tribe's settlement lands because the Tribe did not exercise sufficient governmental power over the lands. App. 46a-54a.

against implied repeal, noting that it "carries significant weight here, where the two statutes were moving through Congress simultaneously, and the same Congress that enacted the Massachusetts Settlement Act, passed IGRA fourteen months later." App. 62a-63a. Finally, the district court relied on the maxim that a specific statute will normally take priority over a general one. Because the Settlement Act "addresses gaming by one specifically named Indian tribe in one particular town," it controlled over IGRA's generally applicable provisions. App. 63a-64a.

The First Circuit reversed, concluding that IGRA effected a partial implied repeal of the Settlement Act. App. 2a. In reaching that decision, rather than attempting to harmonize the Settlement Act and IGRA, the First Circuit simply asked which of two prior circuit decisions this case more closely resembled: *Rhode Island* v. *Narragansett Indian Tribe*, 19 F.3d 685 (1st Cir. 1994), or *Passamaquoddy Tribe* v. *Maine*, 75 F.3d 784 (1st Cir. 1996). App. 14a. In the *Narragansett* decision (which Congress has since superseded), the First Circuit had held that IGRA impliedly repealed portions of the Rhode Island Indian Claims Settlement Act, which subjected that tribe's settlement lands to state laws and jurisdiction (though, unlike the Settlement Act here, the Rhode Island act did not expressly state that *gaming* laws would be applicable). 19 F.3d at 704-705. Two years later, in *Passamaquoddy*, the First Circuit had reached the opposite conclusion with respect to the Maine Indian Claims Settlement Act, which included a savings clause providing that no subsequently-enacted federal law benefiting Indian tribes would apply within Maine unless Congress "specifically made [it] applicable." 75 F.3d at 787-791.

After reviewing those precedents, the First Circuit concluded that "[b]ecause the present case is very close to *Narragansett*, and readily distinguished from *Passamaquoddy*, we find for the Tribe on [the implied repeal] issue." App. 14a. In doing so, the court placed substantial weight on the absence of any savings clause in the Settlement Act. App. 17a-18a. It did not make any attempt to harmonize IGRA and the Settlement Act, as the presumption against implied repeal requires. And it did not apply—or even reference—the canon that a statute of general application, like IGRA, will not nullify a more specific statute.

By concluding that IGRA effected an implied repeal of the Settlement Act notwithstanding its gaming-specific language, the First Circuit failed to apply the canon disfavoring implied repeals and ignored the agreement bargained for by the parties and adopted by Congress: that the lands the Tribe received in the Town would be subject to Commonwealth and Town laws and regulations, specifically including those related to gaming. *See* 25 U.S.C. § 1771g. The First Circuit denied rehearing *en banc* (App. 69a-70a) but stayed the mandate pending the outcome of this petition (App. 71a-72a).

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S PRECEDENTS ON IMPLIED REPEAL

There has long existed a strong presumption that one federal statute does not repeal another by implication. That presumption reflects sound assumptions about the legislative process: Repealing a federal statute requires Congress to "compromise or abandon[] … previously articulated policies, and we would normally

expect some expression by Congress that such results are intended." *United States* v. *United Cont'l Tuna Corp.*, 425 U.S. 164, 169 (1976). The decision below turns that assumption on its head. The First Circuit held that IGRA impliedly repealed a carefully negotiated settlement act despite the total absence of evidence that Congress intended that result. That departure from this Court's precedent, particularly in the exceptionally important and heavily-regulated area of federal Indian law, warrants this Court's review.

A. Implied Repeals Are Strongly Disfavored

It is a "cardinal rule" of statutory construction that "repeals by implication are not favored." *Posadas* v. *National City Bank of N.Y.*, 296 U.S. 497, 503 (1936). An implied repeal therefore "will not be presumed unless the 'intention of the legislature to repeal is clear and manifest.'" *National Ass'n of Home Builders* v. *Defenders of Wildlife*, 551 U.S. 644, 662 (2007). If there is no "affirmative showing of an intention to repeal," an implied repeal can only be found if the two statutes are truly "irreconcilable." *Morton* v. *Mancari*, 417 U.S. 535, 550 (1974); *see also Carcieri* v. *Salazar*, 555 U.S. 379, 395 (2009). It is not enough to show that the two statutes "produce differing results when applied to the same factual situation, for that no more than states the problem." *Radzanower* v. *Touche Ross & Co.*, 426 U.S. 148, 155 (1976).

For two statutes to be in irreconcilable conflict, there must be a "positive repugnancy" between the two statutes; it must be impossible for them to coexist. *Radzanower*, 426 U.S. at 155. This requirement "flows from the basic principle that 'courts are not at liberty to pick and choose among congressional enactments[.]'" *American Bank & Trust Co.* v. *Dallas Cty.*, 463 U.S.

855, 868 (1983) (quoting *Mancari*, 417 U.S. at 551). Just the opposite, courts have an affirmative duty, "absent a clearly expressed congressional intention to the contrary, to regard [both federal statutes] as effective" so long as they "are capable of co-existence." *Traynor* v. *Turnage*, 485 U.S. 535, 548 (1988) (plurality opinion); *see also POM Wonderful LLC* v. *Coca-Cola Co.*, 134 S. Ct. 2228, 2238 (2014) ("When two statutes complement each other, it would show disregard for the congressional design to hold that Congress nonetheless intended one federal statute to preclude the operation of the other."); *Watt* v. *Alaska*, 451 U.S. 259, 267 (1981) ("We must read the statutes to give effect to each if we can do so while preserving their sense and purpose."); *Ex parte Yerger*, 75 U.S. (8 Wall.) 85, 105 (1868) ("Repeals by implication are … never [permitted] when the former act can stand together with the new act."). Thus, "this Court has not hesitated to give effect to two statutes that overlap, so long as each reaches some distinct cases." *J.E.M. Ag Supply, Inc.* v. *Pioneer Hi-Bred Int'l, Inc.*, 534 U.S. 124, 144 (2001).

As this Court's precedent makes clear, the presumption is grounded in important separation of powers principles—namely, "judicial respect for the ultimate authority of the legislature," rather than the courts, to make and repeal laws. Sutherland, *Statutes and Statutory Construction* § 23:10 (7th ed. 2016). The presumption against implied repeal serves that end by "constraining judicial discretion in the interpretation of the laws" and by encouraging courts to "harmoniz[e] different statutes" rather than selectively enforce whichever laws the courts favor. *Astoria Fed. Sav. & Loan Ass'n* v. *Solimino*, 501 U.S. 104, 109 (1991). This, in turn, promotes the rule of law by empowering courts to "build[] a coherent statutory web"—one that enables

citizens to know which laws govern their conduct at any given time. Tyler, *Continuity, Coherence, and the Canons*, 99 Nw. U. L. Rev. 1389, 1426-1428, 1460 (2005).

This Court has repeatedly invoked the presumption against implied repeal in the Indian law context. In *Carcieri*, this Court concluded that a provision of the Indian Land Consolidation Act that authorizes the federal government to take land into trust for Indian tribes did not impliedly repeal an earlier-enacted statute that restricted the government's trust authority. 555 U.S. at 395. In *County of Yakima* v. *Confederated Tribes & Bands of Yakima Indian Nation*, this Court rejected a tribe's argument that a statute permitting taxation of reservation land had been impliedly repealed by the Indian Reorganization Act. 502 U.S. 251, 259-260, 262 (1992). And in the foundational *Mancari* case, this Court determined that Congress had not impliedly repealed an employment preference for qualified Indians by enacting a generally applicable antidiscrimination law. 417 U.S. at 547-551. In each case, this Court respected, and discharged, the obligation to give effect to both statutes, without regard to whether applying one or the other would have been more beneficial to the tribes.

B. A Finding Of Implied Repeal Is Particularly Unwarranted Under These Circumstances

The presumption against implied repeal is rooted not just in separation of powers principles but also in certain normative judgments about the legislative process—most notably, that it is "appropriate to assume that our elected representatives, like other citizens, know the law." *Cannon* v. *University of Chi.*, 441 U.S. 677, 696-697 (1979). In keeping with that assumption, this Court has expressly recognized that the presump-

tion against implied repeal has special force in two circumstances, both of which are present here.

First, this Court has been especially reluctant to find an implied repeal where, as here, the *same Congress* enacted both statutes at issue. *See Traynor*, 485 U.S. at 547-548 (plurality opinion) (finding no implied repeal where both statutes at issue were enacted by 95th Congress); *Morf* v. *Bingaman*, 298 U.S. 407, 414 (1936) (implied repeals are not favored, "especially where the one act follows close upon the other"). Congress is especially likely to be aware of statutes passed just the previous year, and it therefore "defies common sense to believe that the same Congress … intended *sub silentio*" to repeal a statute one year after its enactment. *County of Wash.* v. *Gunther*, 452 U.S. 161, 188 (1981) (Rehnquist, J., dissenting).

Second, the presumption "carries special weight when [this Court is] urged to find that a specific statute has been repealed by a more general one." *United Cont'l Tuna*, 425 U.S. at 168-169; *see Radzanower*, 426 U.S. at 153 ("It is a basic principle of statutory construction that a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum …."). This, too, reflects a practical understanding of the legislative process: When Congress enacts sweeping legislation, it may not envision every possible statute that may be incidentally affected. It is "reasonable to presume that … had [Congress] recognized that a specific earlier law would be rendered meaningless by a new enactment, it would have expressly indicated its intent to repeal or amend." *Watt*, 451 U.S. at 280-281 (Stewart, J., dissenting); *see also Ex parte Crow Dog*, 109 U.S. 556, 570-571 (1883) ("'[T]he legislature having had its attention directed to a special subject, and having

observed all the circumstances of the case and provided for them, does not intend, by a general enactment afterwards, to derogate from its own act when it makes no special mention of its intention so to do.'"

Indeed, a general statute and a specific statute are among the most straightforward to reconcile: "To eliminate the contradiction, the specific provision is construed as an *exception* to the general one." *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U.S. 639, 645 (2012) (emphasis added); *see also* Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 183-185 (2012) ("[T]he specific provision is treated as an exception to the general rule."). Thus, the general law remains in force with respect to all cases other than those governed by the narrower, more specific statute. Because "'[r]epeal is to be regarded as implied only if necessary to make the (later enacted law) work,'" *Radzanower*, 426 U.S. at 155, a later-enacted, general law will rarely give rise to an implied repeal of an earlier, more specific statute.

C. The Decision Below Incorrectly Held That IGRA Impliedly Repealed The Settlement Act, Opening The Door To Other Incorrect Findings Of Implied Repeal

Had the First Circuit faithfully applied this Court's precedents, it would have found that Congress did not intend to repeal the gaming restrictions codified in the Settlement Act when it enacted IGRA, because all available evidence supports the conclusion that Congress intended the statutes to exist in harmony. The First Circuit's decision is fundamentally incorrect and opens the door to an erosion of the canon against implied repeal, raising serious separation of powers concerns.

1. As an initial matter, there is no clear and manifest intention in IGRA to repeal earlier-enacted statutes relating to specific tribes, like the Settlement Act. There is no general repeal clause anywhere in the statute. *See* 25 U.S.C. §§ 2701 *et seq.* On the contrary, Congress expressly directed that IGRA should be considered in light of other federal law. 25 U.S.C. §§ 2701, 2710(b).

Nor is there any "irreconcilable conflict" between IGRA and the Settlement Act. It is beyond serious dispute that the Settlement Act, which governs gaming by one tribe in one town, is a narrower and more specific enactment than IGRA, which governs gaming by all Indian tribes nationwide. Accordingly, there is an obvious way to reconcile the two statutes and give effect to both—to read the Settlement Act as an exception to IGRA's later-enacted, generally applicable rules on Indian gaming. *See RadLAX*, 566 U.S. at 645. That interpretation leaves IGRA entirely intact with respect to other Indian tribes nationwide; a contrary interpretation is thus by no means "'necessary to make [IGRA] work.'" *Radzanower*, 426 U.S. at 155.

Indeed, the legislative history demonstrates that this is *precisely* the relationship Congress envisioned between IGRA and federal statutes like the Settlement Act. In two separate Senate Reports, the committee responsible for IGRA reaffirmed that IGRA would *not* supersede settlement acts that imposed state restrictions on gaming and granted States jurisdiction over the settlement lands. *Supra* pp. 12-14. In the first report, addressing a predecessor bill to IGRA, the committee cited as specific "[e]xamples of such statutes" two other existing settlement acts then governing Eastern tribes: the Rhode Island Indian Claims Settlement Act and the Maine Indian Claims Settle-

ment Act. S. Rep. No. 99-493, at 15. The committee thus made clear that IGRA would leave undisturbed any settlement act—of which there were several—that authorized States to enforce their own gaming laws on Indian lands. The Settlement Act falls directly within that category.[5]

Other aspects of the legislative history likewise confirm that Congress considered IGRA's consequences for settlement acts and intended for them to remain in full force and effect. Senator Pell from Rhode Island testified at a committee hearing to ensure IGRA would not disturb the Rhode Island Indian Claims Settlement Act's guarantee that any gaming in Rhode Island would be subject to state and local law. *Gaming Activities on Indian Reservations and Lands: Hearing Before the S. Select Comm. on Indian Affairs*, 100th Cong. 472-476 (1987). In a later colloquy on the Senate floor, Senator Pell explained his understanding that the Rhode Island Indian Claims Settlement Act "clearly will remain in effect." 134 Cong. Rec. 24,023 (1988). One of IGRA's principal architects, Senator Inouye, "assure[d] him"

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[5] At the time of the first Senate committee report, the Settlement Act at issue here had not yet been enacted, unlike the Rhode Island and Maine settlement acts explicitly referenced in the report. The second Senate Report similarly stated that IGRA would not supersede federal statutes imposing state restrictions on tribal lands, and again listed the Rhode Island and Maine settlement acts as examples. S. Rep. No. 100-446, at 12. By that point, Congress had enacted the Settlement Act; the lack of a specific reference to the Settlement Act in that passage is likely a carry-over from the prior report, and in any event is immaterial, as the report simply provides two representative examples of settlement acts—not an exhaustive list. *See Federal Land Bank of St. Paul* v. *Bismarck Lumber Co.*, 314 U.S. 95, 100 (1941) ("the term 'including' is not one of all-embracing definition, but connotes simply an illustrative application of the general principle").

that was the case: "the Narragansett Indian Tribe clearly will remain subject to the civil, criminal, and regulatory laws of the State of Rhode Island." *Id.*; *see also id.* ("The chairman's statement makes it clear that any high stakes gaming, including bingo, in Rhode Island will remain subject to the civil, criminal, and regulatory laws of our State." (statement of Sen. Chafee)).

The legislative history thus forecloses any suggestion that Congress intended for IGRA to repeal settlement acts like Rhode Island's or the Settlement Act at issue here. Indeed, Congress's reaction to the First Circuit's contrary decision in *Narragansett* leaves no doubt on this score. In response to *Narragansett*, and to make clear that IGRA did *not* supersede the Rhode Island settlement act, Congress reaffirmed what it thought it had already done by enacting an amendment providing that IGRA does not apply to the Narragansett Tribe's settlement lands. *See* 25 U.S.C. § 1708(b) ("For purposes of [IGRA], settlement lands shall not be treated as Indian lands."). Senator Chafee's statements in connection with that enactment make clear that this amendment did nothing more than reiterate Congress's original understanding that IGRA would not disturb the settlement act, explaining "[i]t is our determined view that a deal is a deal." *Narragansett Indian Tribe: Oversight Hearing Before the H. Comm. on Resources*, 105th Cong. 14 (1997) (statement of Sen. Chafee).

Finally, the proximity between the enactment of the two statutes counsels even more strongly against finding implied repeal. The same Congress that enacted IGRA passed the Settlement Act just fourteen months earlier, specifically providing that the settlement lands in the Town would be subject to state and town "laws and regulations which prohibit or regulate the conduct of bingo or any other game of chance." *See*

supra pp. 10, 14. Indeed, not only were the laws enacted by the same Congress, there was also substantial overlap between the committees and key members of Congress involved in passing them.[6] This factor is also entitled to significant weight: It is simply implausible that the members of Congress who were heavily involved in enacting the Settlement Act—while *simultaneously* drafting the provisions of IGRA—intended their work to be undone by IGRA's enactment the following year.

2. Notwithstanding the foregoing, the First Circuit found that IGRA impliedly repealed the Settlement Act. The court recited the presumption against implied repeal (App. 13a), but mere lip service to a general legal principle cannot insulate a decision from this Court's review when the principle is not applied. Indeed, all the First Circuit did in this case was compare the Settlement Act to the statutes at issue in two prior circuit decisions that also addressed the interplay between IGRA and those other settlement acts. App. 14a-18a. It concluded—with little analysis—that the Settlement Act more closely resembled the Rhode Island Indian Claims Settlement Act, which the court had previously (though erroneously) held was impliedly repealed by IGRA. *Id.*; *Narragansett*, 19 F.3d at 704-705; *see also supra* pp. 16-17.

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[6] *See, e.g.*, H.R. Rep. No. 99-918 (1986) (report by House Committee on Interior and Insular Affairs regarding Settlement Act, submitted by Rep. Udall); H.R. Rep. No. 99-488 (report by same committee on IGRA predecessor bill); S. Rep. No. 99-528 (1986) (report by Senate Select Committee on Indian Affairs on Settlement Act, submitted by Sen. Andrews); S. Rep. No. 99-493 (report by same committee on IGRA predecessor bill).

Even though this Court has long directed lower courts to closely examine Congress's intent and to make every effort to reconcile two overlapping statutes, the First Circuit did neither. It did not discuss *any* of the relevant circumstances that illuminate legislative intent here—including the fact that the same Congress passed both IGRA and the Settlement Act, that the Settlement Act is more specific than IGRA, and that the committee reports expressly reveal that Congress meant for IGRA and the settlement acts to coexist.

Nor did the First Circuit make any meaningful attempt to harmonize the two statutes. On the contrary, the First Circuit placed outsized importance on the absence of an express savings clause in the Settlement Act, observing that the Settlement Act "says nothing about the effect of future laws." App. 17a. The *presence* of a savings clause is, of course, a relevant and even dispositive consideration in the implied repeal analysis, because it makes clear that two statutes can facially coexist. But the *absence* of a savings clause cannot be given dispositive weight. The First Circuit's rule overlooks the obvious fact that Congress has legislated against the backdrop of a strong presumption against implied repeal for centuries, and it is therefore unnecessary to specify the "effect of future laws" on any given statute. *Cf. Hunter* v. *FERC*, 711 F.3d 155, 160 (D.C. Cir. 2013) (noting that "the strong presumption against implied repeals" can make savings clauses "unnecessary").

Thus, even though this Court has instructed courts to reconcile statutes even when they facially conflict, *supra* pp. 18-19, the First Circuit has adopted a rule that deems statutes "irreconcilable" unless a savings clause enables them to facially coexist. That rule opens

the door to finding implied repeals of federal statutes in a wide array of contexts, notwithstanding the important values the presumption against implied repeal is meant to serve.

* * *

In sum, the First Circuit's decision gave short shrift to one of the most significant and longstanding canons of statutory construction. This Court's review is necessary to reaffirm the presumption's enduring significance, an issue of particular importance in the heavily-regulated area of Indian law.

II. THE DECISION BELOW ENTRENCHES A CIRCUIT SPLIT ABOUT WHETHER IGRA IMPLIEDLY REPEALED MORE SPECIFIC CONGRESSIONAL ENACTMENTS

The First Circuit's decision also entrenched a longstanding conflict among the circuits as to whether IGRA effects an implied repeal of congressional enactments that subject specific tribes to state and local restrictions on gaming. If allowed to stand, the decision below will mean that different rules apply in the First Circuit than in the Fifth or D.C. Circuits, where the Tribe would have been held to its bargain. This Court should grant review to guarantee uniformity in this important area of federal law. *See* S. Ct. R. 10(a).

1. The First Circuit's decision squarely conflicts with the Fifth Circuit's conclusion in *Ysleta del Sur Pueblo* v. *Texas*, 36 F.3d 1325, 1334-1335 (5th Cir. 1994), that IGRA did not impliedly repeal the Ysleta del Sur Pueblo Restoration Act ("Restoration Act"), 25 U.S.C. §§ 1300g-1300g-7.

The Restoration Act considered by the Fifth Circuit and the Settlement Act at issue here are remarka-

bly similar. Both statutes were enacted by the 100th Congress on the same day, approximately one year prior to IGRA's enactment. *See* Pub. L. No. 100-89, 101 Stat. 666 (1987) (Restoration Act; enacted by 100th Congress on August 18, 1987); Pub. L. No. 100-95, 101 Stat. 704 (1987) (Settlement Act; enacted by 100th Congress on August 18, 1987). And both statutes contain explicit gaming language. *Compare* 25 U.S.C. § 1771g (Settlement Act; subjecting Tribe to state and town "laws and regulations which prohibit or regulate the conduct of bingo or any other game of chance"), *with* 25 U.S.C. § 1300g-6 (Restoration Act; providing that "[a]ll gaming activities which are prohibited by the laws of the State of Texas are hereby prohibited on the reservation and on lands of the tribe").[7]

In direct contradiction to the First Circuit's decision, the Fifth Circuit held in *Ysleta* that IGRA did *not* impliedly repeal the Restoration Act. 36 F.3d at 1334-1335. The Fifth Circuit reasoned that the more specific Restoration Act could not be superseded by the more general IGRA. *Id.* at 1335 ("With regard to gaming, the Restoration Act clearly is a specific statute, whereas IGRA is a general one. The former applies to two specifically named Indian tribes located in one particular state, and the latter applies to all tribes nationwide."). Further, the Fifth Circuit noted that Congress expressly provided in IGRA that it "should be consid-

[7] Notwithstanding the fact that the Commonwealth, the Town, and the AGHCA cited to and discussed the Fifth Circuit's decision in *Ysleta* in briefing and argument, the First Circuit did not even mention *Ysleta* in its decision.

ered in light of other federal law," which included the Restoration Act. *Id.*[8]

The stark contrast between the First and Fifth Circuit decisions presents a conflict in the circuits and risks differential treatment of tribes, towns, and States among the circuits.

2. The First Circuit's decision also creates a conflict with the D.C. Circuit, which interpreted the very Settlement Act at issue here and reached a different result. In *Narragansett Indian Tribe* v. *National Indian Gaming Commission*, 158 F.3d 1335, 1339 (D.C. Cir. 1998), the D.C. Circuit considered whether the legislation that Congress passed in response to the First Circuit's erroneous *Narragansett* decision violated the equal protection guarantees of the Fifth Amendment's Due Process Clause. In its opinion, the D.C. Circuit explicitly noted in dicta that multiple tribes, including the Tribe, are "excluded from IGRA and subjected instead to state gaming law." *Id.* at 1341. Indeed, the D.C. Circuit expressly stated that the Settlement Act "specifically provide[s] for *exclusive state control over gambling*." *Id.* (citing 25 U.S.C. § 1771g) (emphasis added).

The D.C. Circuit's conclusion that the Commonwealth retains control over the Tribe's ability to engage in gaming, like the Fifth Circuit's decisions that a restoration act containing gaming-specific language is not superseded by IGRA, cannot be reconciled with the

[8] The Fifth Circuit has more recently applied its holding in *Ysleta* to another tribe in Texas. *Alabama Coushatta Tribe of Tex.* v. *Texas*, 66 F. App'x 525 (5th Cir. 2003) (per curiam). Relying on *Ysleta*, the Fifth Circuit concluded that the Alabama Coushatta Tribe of Texas was barred "from conducting all gaming activities prohibited by [state] law on tribal lands." *Id.*

First Circuit's decision that IGRA impliedly repealed the Settlement Act's gaming restrictions. This split in the circuits requires review by this Court to ensure consistency in the courts of appeals going forward.

III. This Petition Raises An Issue Of Exceptional Importance

This Court's review is warranted not only because the First Circuit's decision sharply departs from this Court's precedent and entrenches a conflict among the circuits, but also because this case raises an issue of great importance. The decision below eviscerates the provisions of a contract negotiated by several sovereigns as well as private individuals, undermines Congress's plenary power to legislate in Indian affairs, and has broad implications beyond this case.

First, the decision below upsets the longstanding recognition in federal Indian law that Indian tribes may, for various reasons, consent to the exercise of state jurisdiction over their lands. Cohen, *Handbook on Federal Indian Law* § 6.01[1] (2012). When they do, the tribes must be held to the terms of their bargain, as any other sovereign would be. As Senator Chafee stated in similar circumstances: "It is our determined view that a deal is a deal." *Narragansett Indian Tribe: Oversight Hearing Before the H. Comm. on Resources*, 105th Cong. 14 (1997) (statement of Sen. Chafee on why IGRA did not supersede the Rhode Island Indian Claims Settlement Act); *see also Ysleta*, 36 F.3d at 1335 (noting that the tribe in that case had "already made its 'compact' with the [S]tate of Texas, and the Restoration Act embodies that compact").

Here, the Tribe carefully negotiated a settlement agreement in which it gained hundreds of acres of pub-

licly and privately held lands—lands that, in the Tribe's considered judgment, provided the best hope for preserving its community on Martha's Vineyard. *Supra* pp. 6-7. In exchange for relinquishing these lands to the Tribe, the Commonwealth, the Town, and the AGHCA received the guarantee that the lands would be subject to state and local laws and regulations; indeed, that provision was essential to entering the settlement agreement. *Supra* p. 9. The Tribe overwhelmingly voted to accept those terms and thereby relinquished any right to conduct gaming unless it complied with state and local laws. *Supra* p. 7. Yet the First Circuit's decision eviscerates that cornerstone of the parties' deal, depriving the Town and the AGHCA of the benefit of their bargain and undoing the parties' long-settled expectations. *Cf. Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 255-256 (1994) ("settled expectations should not be lightly disrupted").

Second, the decision also raises an exceptionally important question of federal law because it implicates the scope of Congress's "plenary power … to legislate on behalf of federally recognized Indian tribes." *Mancari*, 417 U.S. at 551. In exercising that authority, this Court has long recognized that "Congress may alter tribal jurisdiction and allocate jurisdiction over particular matters expressly to the federal government, to states, or to be shared between the two." Cohen, *Handbook on Federal Indian Law* § 6.01[1]. Here, after the parties had reached their bargain, Congress independently made the informed judgment that the settlement agreement—including the provisions subjecting the Tribe to state and local restrictions on gaming—was a fair and balanced deal that "do[es] justice to" the Tribe. 133 Cong. Rec. 21,297 (1987) (statement of Rep. Udall); *see also* S. Rep. No. 99-528, at 4 (1986) (finding

the settlement is "fair to all concerned and in the best interests of the Wampanoag Gay Head Indian tribe"). That judgment warrants great deference in light of the "unique legal relationship between the Federal Government and tribal Indians." *Mancari*, 417 U.S. at 550.

Allowing the Tribe to renege on the agreement—which it signed and which Congress adopted—implicates the delicate balance of sovereign interests in the area of Indian gaming. The national importance of that issue has led this Court to repeatedly grant certiorari in cases raising questions about the proper interpretation and application of IGRA's provisions. *See, e.g.*, *Michigan* v. *Bay Mills Indian Cmty.*, 134 S. Ct. 2024 (2014); *Chickasaw Nation* v. *United States*, 534 U.S. 84 (2001); *Seminole Tribe of Fla.* v. *Florida*, 517 U.S. 44 (1996). This case is no different. As in those cases, whether IGRA applies here has concrete consequences for the Town, which will lose any control over gambling taking place within its sovereign territory if the First Circuit's decision is allowed to stand. As a consequence, the decision will "'seriously burden the administration of state and local governments,'" "adversely affect landowners neighboring the tribal patches," *City of Sherrill* v. *Oneida Indian Nation of N.Y.*, 544 U.S. 197, 219-220 (2005), and generate needless conflict among the Tribe, the Commonwealth, and the Town.[9]

Finally, this issue is not unique to Massachusetts. There are "several specific federal acts restoring or

[9] In fact, the Tribe has already expressed the view that its gaming facility need not comply with town building code requirements that exist to protect public safety. *See* Tribe Opp. to Mot. to Stay Issuance of Mandate, C.A. Dkt. 6093102, at 5-6 (May 18, 2017).

recognizing particular tribes [that] include language authorizing the state in question to enforce its gaming laws within the particular tribe's reservation." Cohen, *Handbook on Federal Indian Law* § 6.04[5][d]; *see also*, *e.g.*, 25 U.S.C. §§ 1741-1749 (Florida Indian Land Claims Settlement Act); *id.* §§ 1772-1772g (Seminole Indian Land Claims Settlement Act of 1987 (Florida)). And other settlement acts, even if they do not specifically mention gaming restrictions, subject tribes generally to state and local laws. *E.g.*, *id.* §§ 1751-1760 (Mashantucket Pequot Indian Claims Settlement Act (Connecticut)). If the First Circuit's approach is allowed to stand, all of those equally hard-fought bargains could also be undone. And the other agreements that tribes regularly make with state and local governments will likewise be in jeopardy. Nothing in IGRA's text or legislative history supports that result.

CONCLUSION

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

Respectfully submitted.

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