

BREYER, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 16–498

DAVID PATCHAK, PETITIONER *v.* RYAN ZINKE,
SECRETARY OF THE INTERIOR, ET AL.

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

[February 27, 2018]

JUSTICE BREYER, concurring.

The statutory context makes clear that this is not simply a case in which Congress has said, “In *Smith v. Jones*, Smith wins.” See *post*, at 1, 11–12 (ROBERTS, C. J., dissenting). In 2005, the Secretary of the Interior announced her decision to take the Bradley Property into trust for an Indian Tribe, the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians. See 70 Fed. Reg. 25596 (2005). The petitioner brought suit, claiming that the Secretary lacked the statutory authority to do so. See *Carcieri v. Salazar*, 555 U. S. 379, 382 (2009) (the Indian Reorganization Act gives the Secretary authority to take land into trust only for a tribe under federal jurisdiction in 1934).

Congress then enacted the law here at issue. Gun Lake Trust Land Reaffirmation Act, Pub. L. 113–179, 128 Stat. 1913. (I have placed the full text of that law in the Appendix, *infra*.) The first part “reaffirm[s],” “ratifie[s],” and “confirm[s]” the Secretary’s “actions in taking” the Bradley Property “into trust,” as well as the status of the Bradley Property “as trust land.” §2(a). The second part says that actions “relating to” the Bradley Property “shall not be filed or maintained in a Federal court and shall be promptly dismissed.” §2(b). Read together, Congress first made certain that federal statutes gave the Secretary the authority to take the Bradley Property into trust, and

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second tried to dot all the i's by adding that federal courts shall not hear cases challenging the land's trust status. The second part, the jurisdictional part, perhaps gilds the lily, perhaps simplifies judicial decisionmaking (the judge need only determine whether a lawsuit relates to the Bradley Property), but, read in context, it does no more than provide an alternative legal standard for courts to apply that seeks the same real-world result as does the first part: The Bradley Property shall remain in trust.

The petitioner does not argue that Congress acted unconstitutionally by ratifying the Secretary's actions and the land's trust status, and I am aware of no substantial argument to that effect. See *United States v. Heinszen & Co.*, 206 U. S. 370, 382–383, 387 (1907) (Congress may retroactively ratify Government action that was unauthorized when taken); Brief for Federal Courts and Federal Indian Law Scholars as *Amici Curiae* 6–11 (citing numerous examples of tribe-specific Indian-land bills). The jurisdictional part of the statute therefore need not be read to do more than eliminate the cost of litigating a lawsuit that will inevitably uphold the land's trust status.

This case is consequently unlike *United States v. Klein*, 13 Wall. 128 (1872), where this Court held unconstitutional a congressional effort to use its jurisdictional authority to reach a result (involving the pardon power) that it could not constitutionally reach directly. *Id.*, at 146; see *Bank Markazi v. Peterson*, 578 U. S. ___, ___, and n. 19 (2016) (slip op., at 15, and n. 19). And the plurality, in today's opinion, carefully distinguishes from the case before us other circumstances where Congress' use of its jurisdictional power could prove constitutionally objectionable. *Ante*, at 8, and n. 3, 14, n. 6. Here Congress has used its jurisdictional power to supplement, without altering, action that no one has challenged as unconstitutional. Under these circumstances, I find its use of that power unobjectionable. And, on this understanding, I join the plurality's opinion.

Appendix to opinion of BREYER, J.

APPENDIX

Public Law 113–179

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Gun Lake Trust Land Reaffirmation Act’.

“SEC. 2. REAFFIRMATION OF INDIAN TRUST LAND.

“(a) IN GENERAL.—The land taken into trust by the United States for the benefit of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians and described in the final Notice of Determination of the Department of the Interior (70 Fed. Reg. 25596 (May 13, 2005)) is reaffirmed as trust land, and the actions of the Secretary of the Interior in taking that land into trust are ratified and confirmed.

“(b) NO CLAIMS.—Notwithstanding any other provision of law, an action (including an action pending in a Federal court as of the date of enactment of this Act) relating to the land described in subsection (a) shall not be filed or maintained in a Federal court and shall be promptly dismissed.

“(c) RETENTION OF FUTURE RIGHTS.—Nothing in this Act alters or diminishes the right of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians from seeking to have any additional land taken into trust by the United States for the benefit of the Band.”