life and limb, and when the city does so pursuant to a state law that anticipates such an emergency and authorizes the use of summary procedure to respond to it, the remedy for any wrong, absent conscience shocking behavior, must come from the remedies the state itself supplies rather than from a federal suit premised on the federal Constitution's Due Process Clause.

***South Commons Condominium Association v. Charlie Arment Trucking Inc.,* Nos. 13-2244, 13-2248 (1st Cir. Dec. 23, 2014)**

Native Americans: Tribes "Recognized" by the Federal Government as Recently as 2002 Qualify to Receive Casino Lands

In a classic battle (featuring 9 plaintiffs and 14 defendants) by gaming businesses against a potential new entrant, a Washington D.C. federal court has applied *Chevron* analysis to uphold an Interior Department decision to take Washington State land into trust for an Indian tribe which intends to develop a casino complex.

The Cowlitz Indian Tribe (Cowlitz) of southwestern Washington has been without land since President Lincoln signed a proclamation in 1863 that opened Cowlitz lands to non-Indian settlement. In 2002, the Interior Department acknowledged the Cowlitz, finding that the tribe had existed as an Indian entity on a "substantially continuous basis" since at least 1878. The Cowlitz, numbering some 3,000 members, immediately requested that the Interior Secretary take into trust 152 acres of land in Clark County, Washington (Parcel) and declare it the Tribe's "initial reservation" under the Indian Reorganization Act of 1934 (IRA). The Secretary complied.

The Cowlitz claimed their purpose was to "create a federally-protected land base on which the Cowlitz Indian Tribe can establish and operate a tribal government headquarters to provide housing, health care, education and other governmental services to its members, and conduct the economic development necessary to fund these tribal government programs, provide employment opportunities for its members, and allow the Tribe to become economically self-sufficient." To further that goal, the tribe produced a plan to develop the Parcel with 20,000 square feet of tribal offices, sixteen elder housing units, a 12,000 square foot cultural center and a 600,000 square foot casino-resort-convention center complex with a 250-room hotel.

Plaintiffs, including tribes with existing casinos in the area, other gaming-related businesses and community groups, came together to challenge the Secretary. Their action arose under a matrix of federal laws: the IRA, the Administrative Procedure Act (APA), the Indian Gaming Regulatory Act (IGRA), and the National Environmental Policy Act (NEPA). Their key argument was that, under applicable law, the Cowlitz had to have been formally "recognized" by the federal government since 1934. The Secretary argued that the statutory language was ambiguous and that recognition was only necessary as of the date the land was taken into trust.

HELD: The Secretary's interpretation of the applicable statutes is reasonable, and under *Chevron* must be given deference.

DISCUSSION: The IRA authorizes the Secretary to acquire land in trust for "Indians," which include, *inter alia,* "members of any recognized Indian tribe now under Federal jurisdiction." While the Supreme Court had determined that the word "now" was used by Congress to mean 1934, when the IRA was enacted (*Carcieri v. Salazar,* 555 U.S. 379 (2009)), it was not clear that "now" applied to "recognized" as well as "under Federal jurisdiction."

It was this ambiguity that the Secretary construed. The Secretary reasoned that the term "recognized" had historically been used in two distinct senses: (1) the "cognitive" or "quasi-anthropological" sense, under which an official "simply knew or realized that an Indian tribe existed," and (2) "the more formal or `jurisdictional' sense to connote that a tribe is a governmental entity comprised of Indians and that the entity has a unique relationship with the United States." The formal or jurisdictional sense of recognition, the Secretary explained, evolved into the modern notion of "federal recognition" or "federal acknowledgment" in the 1970s, and eventually regulations established procedures pursuant to which an entity could demonstrate its status as an Indian tribe.

The Secretary reasoned that "whatever the precise meaning of the term recognized tribe,' the date of federal recognition does not affect the Secretary's authority under the IRA" because "the IRA imposes no time limit upon recognition," and "the tribe need only be `recognized' as of the time the Department acquires the land into trust."

The Secretary concluded that the Cowlitz tribe had been "recognized" since at least 2002, when it received federal acknowledgment, and therefore it satisfied the recognition requirement.

Although plaintiffs countered that the only plausible interpretation of the IRA was that the Cowlitz had to be "recognized" and "under Federal jurisdiction" in 1934, the court disagreed. It found significant ambiguity in the IRA and its legislative history regarding the issue.

This opened the door to the *Chevron* standard of review for evaluating an agency's interpretation of a law it administers. *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984). Where, as in the Cowlitz case, the statute is "silent or ambiguous with respect to the specific issue,"the court must determine whether the agency's response to the question at issue is reasonable and based on a permissible construction of the statute." If the agency's interpretation is reasonable, the court must defer. The agency's interpretation need not be "the only possible interpretation, nor even the interpretation deemed most reasonable by the courts."

The court is "principally concerned with ensuring that [the Agency] has examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a rational

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