

PRELIMINARY ANALYSIS OF S. 1439 “INDIAN TRUST REFORM ACT OF 2005”

I. SUMMARY.

As more fully explained herein, enactment and implementation of S. 1439 would:

- Place settlement activities under the control of the Secretary of the **Treasury**, including determination of payments to individuals in the settlement.
- Not create any outside or independent oversight of the trustee’s performance.
- Not address any specific trust duties at all ... no appraisals, no trust standards, no administrative fees, or other provisions with the exception of a limited section on audits.
- Eliminate the Special Trustee and create an Under Secretary for Indian Affairs, who will report directly to the Secretary.

II. TITLES AND ISSUES.

- **TITLE I** - Settlement of *Cobell* Claims
- **TITLE II** - Creation of a “Policy Review Commission”
- **TITLE III** - Establishment of tribal trust asset management demonstration project
- **TITLE IV** - Creation of an expanded land consolidation program with incentives
- **TITLE V** – Creation of an Office of an Under Secretary for Indians
- **TITLE VI** - Requirement for annual audits and internal controls report

III. TITLE I – SETTLEMENT OF LITIGATION CLAIMS.

Litigation in this title is defined as the *Cobell* case. To resolve certain *Cobell* claims defined in the bill, this title would create a fund in an unspecified amount, but indicated in the double-digit billions of dollars, as an Individual Indian Accounting Claims Settlement Fund. Sec. 103 (a) (1). The Secretary of the Treasury would establish the fund in the Department of Treasury out the “judgment fund” appropriation, and shall appoint a Special Master to administer it.

A. Payments to "Claimants."

At least 80 per cent of the fund would be used for payments to "claimants" defined as "any beneficiary of an IIM account (including an heir of such a beneficiary) that was living on the date of enactment of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.)." In some cases, claimants may not be account holders or their heirs, but rather somebody or something else which qualifies as a beneficiary of an IIM account or the beneficiary's heir, though the bill doesn't specify who or what these claimants might be. Rather, the bill's definition of "claimant" may be intended to include "remainderman" interests or a life-estate holder of a single IIM account. The language could conceivably apply to the Red Cross or a scholarship fund if such an entity holds a future or contingent interest in an IIM account.

The Other 20%. Up to 12%, at the discretion of the Special Master, of the fund could be used to pay claimants who successfully challenge in court either the "method of distribution" or the Constitutionality of the payment scheme set forth in the bill.

An unspecified percentage of the fund can be used by the Treasury Secretary to administer the fund. An unspecified percentage of the fund can be used to pay the attorneys in the *Cobell* case. Assuming few will tap the 12% that could be used for challenges that will not be brought; basically 20% of the fund, minus whatever the Secretary uses for administration, is available for attorney fees. As more fully discussed below, this title also includes provisions governing a claimant's ability to challenge the settlement offer scheme.

B. Distribution Of Settlement Funds To Claimants.

The Secretary of the Treasury will take 80% of the fund and pay some unspecified amount of that 80% in per capita payments to the "claimants. Another unspecified amount of the 80% that is not paid out per capita will be determined to be each claimant's "additional share" of the 80% of the fund, according to a formula the Secretary of the Treasury will establish by regulation. Both these payments will be made "to each claimant" within 1 year of publishing the regulations on the formula. It cannot be discerned from the bill's language what portion of the 80% will be paid on a per capita basis or by formula.

- **The Formula.** The bill requires the Secretary of Treasury to promulgate regulations that establish the formula taking into consideration the amount of funds that have passed through the particular IIM account from 1980 to 2005 ... or such other period that the Treasury Secretary determines to be "appropriate." Nothing else is provided in the bill about the formula. Presumably, this formula is based on an assumption that those IIM accounts that have the most money go through them have lost the most, and the formula will reflect that. In any event, within a year of establishing the formula, the bill directs the Secretary to distribute 80% of the fund to "claimants."

- **To Obtain Payment.** In order for a “claimant” to get his/her/its money, a release of any claims for an accounting under the law must be executed. While the bill's language does not expressly provide, this requirement will have the effect of forfeiting a claimant's rights under the *Cobell* class action in seeking an accounting. Heirs of claimants are also defined as claimants, and will receive the same payment a claimant would have received. Multiple heirs of a “claimant” will share equally.

- **Payments for Claimant whose Location is "Unknown."** The bill directs the Secretary of Interior provide the Special Master any information and other assistance necessary to locate a claimant. After doing what he can, including sending out search parties under contract, the Special Master will set aside “for future distribution” in another account amounts for all claimants who are entitled to payment but cannot be located.

- **Payments not to affect other benefits.** The bill expressly provides that payments to claimants made under this title are not be subject to federal or state income taxes and cannot be used in determining eligibility for other benefit programs.

C. Claimants Who Decide To Challenge The Settlement Offer.

The bill contemplates several ways in which claimant might challenge the Special Master's settlement offer. Section 105 provides that any “claimant” who disagrees with the “amount” of payment offered under the per capita and the formula provisions can seek judicial review within 6 months of receiving notice that settlement payment offer in exchange for the claimant's release of accounting claims. This review will be in the federal district court of the district in which the claimant resides. All appeals from these federal district courts will be to the U.S. Court of Appeals for the District of Columbia.

For the opportunity to seek judicial review of the payment offer, any claimant who pursues such a court action will give up the basic per capita and formula payments provided in the bill. The relief sought under these challenges would be in lieu of any settlement offers made pursuant to the general payment scheme, and would be limited to payments relating to the “method of distribution” and Constitutionality challenge issues. It is unlikely that potential claimants challenging a proposed offer would understand the purpose or process for bringing these types of challenges. Therefore, few if any claimants are likely to bring these challenges, and any payments awarded will likely be *de minimus*.

Moreover, this section does not specifically address other issues in the litigation. For instance, the bill specifies the types of challenges that are barred from being a part of any class action, but does not prohibit the availability of class actions to seek redress for challenges not relating to methodology or constitutionality issues. With respect to the amounts of the offers, for instance, claimants who are aware of specific embezzlement that occurred by an agency (because someone pleaded guilty to doing it) could bring a class action to challenge the amount offered. Similarly, while the bill would require other challengers to forfeit their right to the basic payment offered, the language does not apply such a limitation on those claimants who challenge the “amount” of payment offered.

Section 106 provides that a “claimant” who challenges the “method of distribution” of a payment under the per capita and formula plans can seek judicial review of the proposed settlement offer. Filing any suit challenging the methodology of distribution will have the effect of forfeiting the basic payment that was offered to the claimant, and will leave the claimant in a nothing-at-all position in court. No claim under this section can be a class action, and presumably then, no such lawsuit can affect the other payments that are being made under the same “method” being attacked in court. In other words, it is extremely unlikely that claimants will individually pursue this type of challenge. If that does happen, though, such a challenge can only be brought in the U.S. Court of Federal Claims.

Section 107 addresses other claimants who seek to challenge the constitutionality of applying this payment/buyout scheme in reaching the settlement offer. This type of challenge cannot be part of a class action, and can only be brought in the Federal District Court for the District of Columbia where it will be heard only by a 3-judge panel. That panel is authorized to consolidate all such claims brought in the court, and might award [presumably each] claimant “such relief” as is appropriate, including “monetary compensation.”

However, the very next subsection provides that the only money that can be used to satisfy such a judgment is whatever the Special Master might have set aside in his discretion under the funding pots authorized by the bill. In other words, it again is unlikely that these types of challenges will be pursued and if so, the relief will be limited to discretionary amounts available in the fund. Again, any claimant bringing such a claim forfeits any right to the payment that was offered as part of the initial settlement offer. In summary, the challenge provisions in the bill will like have the effect of discouraging any claimant who may decide to challenge the proposed settlement scheme or actual offer.

D. Attorneys’ Fees.

The section on attorney fees contemplates a cap on the hourly rate that the Special Master will pay the *Cobell* attorneys for their costs and fees up to the date of enactment of this Act, provided they have not already been paid under court order. The bill provides the Special Master the authority to make this determination and this payment.

E. Residual or "Left-over" Money.

After paying successful challenges and paying attorney fees, the Special Master will distribute any remaining money that had been set aside for these purposes to the “claimants.”

F. Effect on *Cobell* Lawsuit.

This bill provides that the benefits of this settlement scheme are “in lieu” of any claims existing prior to passage of the bill for losses through accounting errors, mismanagement of funds, or interest associated with an IIM account. With the exception

of accounting claims relating to resources that never became money in an IIM account before the bill's enactment, this language will effectively bar any claimant from suing for an accounting in any court of law.

Given the size of the estimated claimants whose whereabouts are unknown, this bill will not completely eliminate all aspects of the lawsuit. There are literally tens of thousands of "whereabouts unknown" account holders to constitute a sizeable "class" for a class action, even if every claimant who can be found signs up for his share of the settlement fund and signs the "waiver and release," as the bill calls it, or "opts out" of the *Cobell* case. Moreover, the bill provides that:

IN GENERAL. – Except as otherwise provided [for individual trust asset claims and tribal claims] in this title, no court shall have jurisdiction over a claim filed by an individual or group for the historical accounting of funds in an IIM account on or before the date of enactment of this Act, including any such claim that is pending on the date of enactment of this Act." Section 110(a) (3) (A).

Although this language is clearly intended to dispose of the historical accounting claim in *Cobell*, may not accomplish its intended result. There are a number of trust reform and contempt like issues (i.e., disconnection from the internet, notices to account holders, retaliation against employees, appraisal and resource management issues, etc.) that have consumed a considerable part of the litigation. Many of these issues are slated for future trial and will not be affected by making payments to claimants for accounting errors. Even if accepting payments has the effect of "opting out" of the *Cobell* class, there will remain a sizable "class" which falls under the court's class certification even after these payments have been made and accepted.

G. Acceptable Objectives of the Title.

This title would provide money payments to IIM account holders and their heirs, something the *Cobell* lawsuit does not promise at this point. In 1998, Judge Lamberth, with the plaintiffs' consent, struck from the complaint before him any language that suggested this lawsuit sought an "infusion of cash" into IIM accounts, and that issue has not been revisited by him nor has it been considered by the appeals court. The bill also provides some certainty in this resolving some of the issues in the lawsuit by disposing of potential setbacks. For instance, this bill puts money on the table without risking rejection by the Lamberth court; without being subject to court challenge by the Department of Justice; without risk of being reconsidered by the Department of Treasury or by an appeals court ruling that it lacks jurisdiction over the offer; and without having to establish a disbursement regime through the court that would be challenged at juncture by the Justice Department. The bill could be viewed as creating a payment regime that might just be acceptable to some claimants if the payments are reasonably generous.

Moreover, implementing a legislative settlement scheme within the Executive Branch may avoid rendering the bill vulnerable as "veto bait." It establishes a pot of

money from the judgment fund which will not be “scored “against Indian program money. While the bill does not turn that pot of money over to Judge Lamberth as proposed by the *Cobell* plaintiffs, it does not leave the money and decisions on disbursement with the Department of the Interior, either. It puts the money in the Department of Treasury, and directs the distribution among IIM account holders and their heirs and the plaintiffs’ attorneys. As explained above, there may be collateral payments to schools, churches, and charities who qualify as “beneficiaries” of claimants. In addition, creditors of Indians will likely get some of it as soon as it hits the Indians’ hands. At least, the Department of Treasury, is accustomed to handling large pots of money, and writing hundreds of thousands of checks, and has a time limit for doing it.

This bill does seem to divest Judge Lamberth of jurisdiction to order a historical accounting of all IIM accounts, an effort that is prohibitively expensive, impossible to achieve, and to date has been the catalyst for appropriations committees to meddle in the lawsuit and divert funds from Indian programs.

H. Outstanding Issues.

The bill does not provide the amount of money that will be part of the settlement fund. If the *Cobell* plaintiffs and Indian country accept the bill's approach which vests significant discretion in the Department of Treasury and the Special Master, this may leave the plaintiffs at the mercy of these officials who develop and implement the formula. On the other hand, rejecting a legislative approach may risk additional adverse policy and legal decisions to the unfriendly congressional appropriators and the Administration who will seek to cut off funding for the historical accounting.

There are other remaining issues relating to the reasons why the specific judicial review challenges were crafted. As explained above, the bill does not include an explanation of why lawsuits challenging “amounts” of settlement offers are vested in local district courts, while lawsuits challenging the “methodology” are limited to the Court of Federal Claims, and while other lawsuits challenging the constitutionality of the settlement scheme are limited to the D.C. District Court. Other issues not addressed specifically addressed or explained in the bill include the actual methodology that will be employed, language or the process that specifically ends to the lawsuit, and data security issues.

IV. TITLE II – INDIAN TRUST ASSET POLICY REVIEW COMMISSION.

Title II creates a 12-member commission to review the laws, regulations, and Interior Department practices regarding trust asset administration and requires the Commission to make a report to the Secretary of Interior and to Congress. Four of these members would be appointed by the President, four by the majority leaders of Congress, and four by the minority leaders. One member would be the “beneficial owner of an IIM account.” Members of the Commission may also be federal employees. Six members must represent Tribes with trust resources, and four must have some knowledge or expertise about Indian trust resources, financial asset management, investments, and

Indian law and policy. The members will choose their own chairperson, and seven will constitute a quorum.

The bill empowers the Commission to hire staff, hold hearings, and requires that it consult with the Department of the Interior. The Commission will have access to federal employees and records. The Commission will hold its first meeting within five months of the bill's enactment, and requires that it consult with Tribes, Interior Secretary, and organizations of individual Indian owners (but not specifically tribal organizations). The bill directs the Commission to develop recommendations for making changes to the laws and practices of Indian trust asset management, and to propose "standards" for administering trust assets "consistent with the law that is applicable." The Commission is required to issue its final report within two years of its first meeting.

The Commission lacks substantively independent enforcement authority demanded by Indian Country, and from a plain reading of the language, will not directly provide the trust reform priorities identified by ITMA. On the other hand, we should keep in mind that Congress created a Policy Review Commission 40 years ago, we should be mindful that this Commission brought forth a report that led to the Indian Finance Act, the Indian Health Care Improvements Act, the Indian Elementary and Secondary Education Act, and the Indian Self-Determination and Education Assistance Act -- the model for self-governance today.

V. TITLE III – INDIAN TRUST ASSET MANAGEMENT DEMONSTRATION PROJECT ACT.

This title would create a demonstration project for Tribes on a first-come, first-served basis. This project would last 8 years from date of enactment of the bill. Interested Tribes would have to formally make an application to the Secretary of the Interior meeting specific criteria set forth in the bill. Tribes selected by the Secretary for participation in the project would be required to enter into an agreement with the Department on a plan for tribal management of those Indian trust assets identified in the plan, both monetary and non-monetary. A Tribe contracting or compacting under the Self-Determination/Self-Governance laws could develop systems, practices, and procedures that are different than those used by the government so long as they meet certain enumerated laws, standards, and responsibilities, including "good faith and loyalty to the beneficial owner of the trust asset."

The bill would require the Secretary to make a determination that a Tribe's plan is "consistent with the trust responsibility of the United States to the Indian Tribe and individual Indians," before approving it. This title recites that nothing in the Act or any plan shall increase, decrease, "or otherwise affect the liability of the United States or an Indian Tribe participating in the Project for any loss resulting from the management of an Indian trust asset under an Indian trust asset management plan." Similarly, nothing in this title would affect the applicability of any treaty, statute, Executive Order, or court decision

to the management of Indian trust assets. And, finally nothing “diminishes or otherwise affects the trust responsibility of the United States to Indian Tribes and individual Indians.”

Most of this title deals with the administrative processes involved in applying for participation and timelines for entering into management plan agreements, and deals little with the substance of the plans except that they must comply with federal laws and other applicable and relevant authorities, including tribal laws. This title does not authorize individual Indian land owners any redress against tribal management decisions.

VI. TITLE IV – FRACTIONAL INTEREST PURCHASE AND CONSOLIDATION PROGRAM.

This title would add amendments to the Indian Land Consolidation Act and, among other things, provide a line of credit for the Secretary from the Treasury to purchase fractionated interests in trust land. It also provides for basically a land condemnation program for individual interests in land.

If the Secretary determines that a tract of land has fewer than 20 owners, he can offer any one of them a bonus of up to \$350 over “fair market value” as an incentive to sell. If any individual offers to sell all his trust interests to the Secretary, then the Secretary can add up to \$2,000 to the “fair market value” offer for all the individual’s interests to reflect the savings to the government from having to put the purchased interests through probate.

If the Secretary determines that a tract has more than 200 owners, he is authorized to make an offer of up to four times the “fair market value” of all the interests. In this case, the Secretary will include a rejection form with the offer and advise the individual receiving the offer that it will be considered “accepted,” unless a rejection is put in the mail within three months. Further, this title provides that the law, once this bill is enacted, will consider the offer to be accepted unless it is rejected in writing within 90 days. Any person accepting an offer, or deemed by law to have accepted an offer, will be given written notice that the offer received has been accepted and an additional 30 days to withdraw the acceptance.

Any person who receives an offer may also make an administrative appeal regarding the number of co-owners, or the “fair market value” determined by the Secretary, or the effective dates relating to the conclusive presumption of an agreement to sell. The title does not provide for a challenge to the presumptions themselves.

The Secretary can have access to the U.S. Treasury to make these types of purchases for Tribes and will be required to keep a separate set of books to account for the retirement of the debt associated with any particular purchase or tract. Payments received by any individual will not be taxable, and will not count as offsets to eligibility for any federal assistance program.

Under this title, the Secretary of the Interior will also be authorized to make settlements to an individual (but not to a Tribe) of any claim arising from trust land, except with respect to claims for a historical accounting. The bill does not address the source of funds to make these settlements and, therefore, money for these settlements presumably will come from Interior appropriations and not from the judgment fund. In order to accept such a settlement of a known claim (otherwise it would not have been claimed), an individual will have to sign a release of all claims, known and unknown.

- ***What this Title does.*** This title authorizes the Secretary of the Interior to settle claims of individuals arising from their trust lands. It authorizes payment for land consolidation purchases above the traditional “appraised value,” to reflect something of the value to the purchaser, thereby providing greater incentive and fairness to sellers. It also authorizes credit access to the Department of Treasury for land consolidation purchases, subject to some unspecified cap on the credit line. It further insulates individuals from having federal assistance eligibility threatened by accepting proceeds from selling their fractionated interests back to the government. And, finally, it authorizes forced sales of individual interests in trust lands.

- ***What this Title does not do.*** This title does not correct the wasteful practice of requiring the Secretary to keep a separate set of books to reflect the repayment schedule of land purchases. Continuation of this practice takes time away from Indian trust administration for unnecessary government bookkeeping, and ensures that formerly fractionated lands will remain uneconomic parcels and will continue to be a drain on federal budgets even after they are purchased because they are a drain on the federal budget. This title does not identify a source of funds for the Secretary of the Interior to make settlements for claims arising from individual lands. There is no principled reason for not permitting such settlements arising from tribal lands as well. If such settlements come from Indian program appropriations, then Indians are paying themselves for the government’s failures. These funds, too, should come from the judgment fund. If the Justice Department has a problem with that, the Committees need to stand up and be counted here.

- ***Other Equitable Policy Considerations.*** Authorizing the Secretary of Interior to settle claims arising from individual Indian lands is a good thing. However, forcing individuals to execute a release of all unknown claims in order to accept a settlement of known claims is problematic. Consider the following as an analogy: The National Park Service would like to acquire land neighboring national parks and owned by non-Indians. A proposed federal law would authorize the Park Service to issue offers to buy the land that will be enforceable as a contract of sale unless it is rejected within a specified time on a specified piece of paper. This scenario would certainly be considered a threat to individual property rights and would not be tolerated on any level. There is no policy or equitable difference in principle between that scenario and what is proposed here for individual Indians. No one in this country should be deprived of a birthright simply by virtue of someone else’s making an offer for it. This is a proposal that would not be tolerated for non Indians, and it should not be suggested as “good enough for Indians.”

VII. TITLE V – RESTRUCTURING BUREAU OF INDIAN AFFAIRS AND OFFICE OF SPECIAL TRUSTEE.

This title creates a new position within Interior of an Under Secretary for Indian Affairs who would report directly to the Secretary and carry out “any activity relating to trust fund accounts and trust resource management of the Bureau, except for those activities carried out by the Special Trustee before the Office of the Special Trustee is eliminated on December 31, 2008.”

The Under Secretary would be a Presidential appointee, subject to the advice and consent of the Senate, and would have direct authority over Indian trust issues, including those under the jurisdiction of the Bureau of Land Management, the Minerals Management Service, and the Bureau of Reclamation. The Under Secretary would be directed over the next three years to coordinate with the Special Trustee to prepare for assuming all the functions of OST in 2009.

The bill recites that this title “is to ensure” more effective and accountable discharge of the Secretary’s duties for providing services to Indians. In addition to assuming responsibility for all the functions of the current Assistant Secretary, the Under Secretary would be directed to “develop and maintain an inventory of Indian trust assets and resources,” including data security.

Most of this title is devoted to the administrative protocol for transferring budget authority, personnel, and furniture, fixtures and equipment to the Under Secretary. Job positions and salary levels of current personnel in OST and the Assistant Secretary’s staff are given limited protection for one year after being transferred to the Under Secretary. One of the Under Secretary’s first duties would be to recommend within six months legislation to clean up the statute books on the personnel positions and lines of authority associated with administering Indian affairs within the Department.

- ***What this Title does.*** It creates by statute another Presidential appointee in the Department (besides the Secretary herself) who would have authority for a very large portion of Indian affairs administration within the Department. It transfers the assistant secretary’s functions, puts a date certain on phasing out the Office of Special Trustee, and puts the functions of that office in another office outside the Bureau of Indian Affairs. It devotes several pages to administrative and other types of bureaucratic provisions. It also provides for Indian preference in any hiring under the authority of the Under Secretary.

- ***What this Title does not do.*** It does not provide any statutory direction to the administration of Indian trust functions besides requiring an inventory of assets and resources. Nor does it provide any strict fiduciary standards for Indian trust administration. It does not expressly vest the Under Secretary with the same authority over the Fish and Wildlife Service or the Office of Surface Mining and Enforcement that he has over other

agencies with respect to Indian trust issues. It does not provide for Indian preference in hiring at OST or anywhere else it has been eliminated until the year 2009.

VIII. TITLE VI – AUDIT OF INDIAN TRUST FUNDS.

This title would require the Secretary of Interior to prepare financial statements for individual Indian, Indian tribal, and other Indian trust accounts in accordance with generally accepted accounting principles of the Federal Government. Concurrently, the title would require the Secretary of Treasury to prepare an internal control report which sets forth his responsibility for (i) establishing and maintaining an adequate internal control structure and procedures for financial reporting, and, (ii) assessing the effectiveness of said internal control structure and procedures for financial reporting during the preceding fiscal year.

This title would also require the Comptroller General of the U.S. to contract for an audit following generally accepted auditing standards for the federal government and the federal financial audit manual. The auditor would also be engaged to grade the Secretary's paper on the self-examination on internal controls through an attestation report. The Department of the Interior would be required to pay for the audit engagement entered into by the Government Accountability Office (formerly the Government Accounting Office), headed by the Comptroller General of the United States.

- ***What this Title does.*** This title requires that the annual audit will be made public, and requires disclosure of the internal controls report. It requires that the outside auditor be hired by someone other than the Department of the Interior.

- ***What this Title does not do.*** This title does not appear to substantively add any significant audit requirements in the 1994 Act. To the extent that the duties enumerated here regarding audits are less expansive than those in the 1994 Act, this title might even relax current audit requirements. Except for the internal controls report, this title does not appear to add anything along the lines recently adopted by the government for auditing public companies. Furthermore, this title does not address audit rotation, does not make public the communications between the auditor and the agencies being audited, and does not require, or even encourage, more extensive audit coverage than is presently provided by existing law, regulation or other requirements.

IX. RECOMMENDATIONS.

Given the scope and impact of this bill, as described herein, ITMA may want to consider pursuing the following recommendations:

- **Reexamine ITMA's draft proposal (*Reference: ITMA's Draft Trust Reform Section-by-Section*) to find common ground and areas to propose as**

alternative language or approaches to S. 1439: Identify and focus on the primary goals and objectives to achieve in trust reform legislation.

- **Continue to be engaged and make sure that both the Senate and House authorizing Committees are willing to make changes to address ITMA concerns and priorities.**
- **Reconnect with former Congressional allies and be prepared to mobilize these forces.**
- **Be flexible in the Tribal demand for the entire packages of “principles” offered by the workgroup, i.e., pick and choose important principles to be enacted now, and not put off.**
- **Make the Commission a statutory creature as proposed in the ITMA draft bill.**
- **Support a comprehensive resolution of the *Cobell* lawsuit in a manner that is fair, equitable and provides justice to the IIM account holders.**
- **Be respectful of individuals’ concerns.**
- **Be mindful of the various interests at play among the Administration, the Congress and the Indian stakeholders.**