Tanner-Brown v. Haaland, ___ F. Supp. 3d ___, 2022 WL 16528397 (D.D.C. Oct. 28, 2022)

- **Holding:** Motion to alter or amend a judgment dismissing a breach-of-trust claim by descendants of Cherokee Nation Freedmen was denied because Section 6 of the Act of May 27, 1908 did not create a right of accounting concerning alleged trust mismanagement.
- **Summary:** This putative class action was brought by a Cherokee Nation Freedmen descendant and an organization purporting to represent the like individuals' interests. Plaintiffs sought "an accounting relating to alleged breaches of fiduciary duties concerning land allotted to the minor children of former slaves of Native American tribes" and relied on Section of the Act of May 27, 1908, 35 Stat. 312, that, inter alia, (1) "'empowered'" the Secretary of the Interior to investigate the conduct of guardians or curators with responsibility for the estates of minor allottees of the Five Civilized Tribes; (2) report any mismanagement to a probate court of the State of Oklahoma; and (3) make "'full and complete reports to the Secretary'" concerning same. The district court dismissed the complaint for lack of standing. *Tanner-Brown v. Haaland*, No. 21-cv-565, 2022 WL 2643556 (D.D.C. July 8, 2022). The court reached this conclusion "because Plaintiffs failed to show that leases on [Plaintiff Tanner-Brown's grandfather's] land were mismanaged or that [the grandfather] would have received any royalties had the Secretary fulfilled her statutory duty" and because the Plaintiff organization "failed to show that any of [the organization's] members received allotments under the 1908 Act, let alone whether leases were placed on those allotments or those leases were mismanaged." Plaintiffs requested relief under Fed. R. Civ. P. 59(e) on the ground that "the injury that gives rise to their standing in this case is not the Secretary's 'alleged mismanagement of the trust,' but 'the [Secretary's] failure to provide the requested accounting.'"

  The court denied the motion on procedural grounds—i.e., skepticism "that Plaintiffs have met the bar for proving manifest injustice" required for Rule 59(e) relief—and on the merits. As to the latter, it gave two reasons. "*First*, the language of the statute suggests that the Secretary's duties are discretionary. The Secretary is 'empowered'—in other words, given the power—to appoint representatives to monitor the allottees' property interests, but nothing in the statute requires her to do so. ... [¶] *Second*, even if the statute imposes an affirmative obligation on the Secretary to oversee the minor allottees in some capacity, it does not create a trust relationship." On the second point, it reasoned:

  > [T]he 1908 Act makes no reference to any "trust" or "beneficiary," but instead refers to "guardians or curators" of the minors' estates. ... Specifically, the statute provides that the Oklahoma probate courts may "appoint any such representative of the Secretary of the Interior as guardian or curator for such minors" presumably to replace the existing ones who were negligent or wasteful. ... But as [*United States v. Jicarilla Apache Nation*, 564 U.S. 162, 178 (2011)] noted, "[a] guardianship is not a trust." ... If Congress wishes to create a trust relationship between the Secretary and Indian tribes and/or their members, it certainly knows how to do so. ... Congress could have amended the 1908 Act or passed new legislation to impose a similar trust relationship between the Secretary and the minor allotees, but it did not.
- **Relevant (2022) Deskbook Section:** 1:7 n.8