No. 07-526

IN THE
Supreme Court of the United States

DONALD L. CARCIERI,
Governor of Rhode Island, ET AL.,
Petitioners,
v.

DIRK KEMPTHORNE,
Secretary of the Interior, ET AL.,
Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The First Circuit

BRIEF FOR PETITIONER DONALD L. CARCIERI

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QUESTIONS PRESENTED

1. Whether the Indian Reorganization Act of 1934 authorizes the Secretary of the Interior to take land into trust on behalf of an Indian tribe that was neither federally recognized nor under federal jurisdiction at the time of the statute's enactment.

2. Whether the Rhode Island Indian Claims Settlement Act prohibits the Secretary of the Interior from taking land in Rhode Island into trust on behalf of an Indian tribe.

PARTIES TO THE PROCEEDING

In addition to the parties named in the caption, the State of Rhode Island and Providence Plantations, and the Town of Charlestown, Rhode Island, were plaintiffs-appellants below and are petitioners in this Court, and Franklin Keel, Eastern Area Director of the Bureau of Indian Affairs, was a defendant-appellee below and is a respondent in this Court.

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The opinion of the en banc court of appeals (Pet. App. 1-81) is published at 497 F.3d 15. The opinion of the district court (Pet. App. 84-136) is published at 290 F. Supp. 2d 167.

JURISDICTION

The judgment of the court of appeals was entered on July 20, 2007. The petition for a writ of certiorari was filed on October 18, 2007, and granted on February 25, 2008. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the Indian Reorganization Act of 1934 ("IRA"), 25 U.S.C. § 461 *et seq.*, and the Rhode Island Indian Claims Settlement Act ("Settlement Act"), 25 U.S.C. § 1701 *et seq.*, are reproduced in the appendix to this brief.

STATEMENT

Petitioners challenge the decision of the Secretary of the Interior to remove a 31-acre parcel of land in Charlestown, Rhode Island, from the State's civil and criminal jurisdiction by acquiring the land in trust for the Narragansett Indian Tribe ("Tribe"). There are two independent statutory provisions that prohibit the Secretary from using his trust authority to divest the State of jurisdiction over the 31-acre parcel and create sovereign Indian territory in Rhode Island for the first time since Statehood.

First, under Section 5 of the IRA, 25 U.S.C. § 465, the Secretary's authority to acquire land in

trust for Indian tribes is generally restricted to those tribes that were both federally recognized and under federal jurisdiction at the time of the IRA's enactment in 1934. It is undisputed that the Tribe meets neither of these eligibility requirements. Second, the Settlement Act, 25 U.S.C. § 1701 *et seq.*, extinguishes all claims—including claims to territorial sovereignty—regarding land that the Tribe has transferred to other landowners. Because the Tribe long ago transferred the 31-acre parcel that is the subject of its trust application, the Settlement Act prohibits the Secretary from granting the Tribe's claim to sovereignty over that land.

The First Circuit's decision upholding the Secretary's acquisition of the 31-acre parcel is at odds with the language, structure, and purpose of both of these federal statutes, and should be reversed.

A. Statutory And Historical Background

1. The federal government's Indian policy has undergone a number of substantial shifts during the past two centuries. The IRA is the product of one of those shifts. Its enactment in 1934 marked a significant break with the policies that the federal government had been pursuing under the General Allotment Act of 1887 ("Allotment Act"), ch. 119, 24 Stat. 388 (Feb. 8, 1887), which had vastly reduced the amount of reservation land set aside for Indian tribes and left a large number of Indians landless.

As the House sponsor of the IRA explained, Congress had intended that the Allotment Act assimilate Indians into broader American society by "substitut[ing] individual, private ownership of Indian land for tribal ownership." Congressional Debate on the Wheeler-Howard Bill 1961 (1934), in 3 *The American Indian and the United States* (Wilcomb E. Washburn

ed., 1973) (hereinafter IRA Legislative History) (statement of Rep. Howard); *see also County of Yakima v. Confederated Tribes & Bands of the Yakima Indian Nation*, 502 U.S. 251, 254 (1992) ("The objectives of allotment were simple and clear cut: to extinguish tribal sovereignty, erase reservation boundaries, and force the assimilation of Indians into the society at large."). To that end, the Allotment Act "provided for the parceling of the Indian reservations into small individual allotments." IRA Legislative History, *supra*, at 1961 (statement of Rep. Howard). The Allotment Act originally provided for the United States to hold these allotted lands in trust for the individual Indian allottees for a period of twenty-five years, at the conclusion of which the land would be transferred to the allottees in fee simple and become fully alienable. Allotment Act, 24 Stat. at 389. As the demand for Indian land grew, however, this restriction was relaxed through congressional measures that "authorized elimination of all trust restrictions if an allottee was deemed competent," which expedited the alienation of Indian land to non-Indians. Felix S. Cohen, *Handbook of Federal Indian Law* 133 (1982 ed.); *see also* Burke Act, ch. 2348, 34 Stat. 182 (May 8, 1906). The Allotment Act further authorized the United States to purchase "surplus" reservation land not allotted to individual Indians and to make that land available to non-Indian settlers. Cohen, *supra*, at 133.

As a direct result of the allotment policy, Indian landholdings were reduced from 137 million acres in 1887 to 47 million acres in 1934. IRA Legislative History, *supra*, at 1957-58; *see also id.* at 1962 (statement of Rep. Howard) ("Many reservations have in Indian ownership a mere fragment of the original land."). The number of landless Indians in-

creased during this period from 5,000 to 100,000. *Id.* at 1958.

The IRA ended this allotment policy by prohibiting further allotments of reservation land. 25 U.S.C. § 461. In order to provide land for those tribes and individual Indians that been rendered landless by the allotment policy, Section 5 of the IRA authorized the Secretary, "in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations . . . for the purpose of providing land for Indians." *Id.* § 465. "Title to [such] lands . . . [is] taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired." *Id.* Like other forms of "Indian country," land that the Secretary acquires in trust for a tribe or individual Indian under his Section 5 authority is not generally subject to state civil and criminal jurisdiction or to local zoning requirements. 25 C.F.R. § 1.4; *see also De Coteau v. Dist. County Court for Tenth Judicial Dist.*, 420 U.S. 425, 428 (1975).

Other provisions of the IRA were intended both to strengthen Indian tribes—by, for example, authorizing tribes to organize themselves as corporate entities (25 U.S.C. § 477)—and benefit individual Indians—including through a loan program to fund Indian education (*id.* § 471) and an employment preference for Indians seeking work with the Indian Office of the Department of the Interior. *Id.* § 472.

The IRA restricted its benefits to persons who met the statutory definition of "Indian," which encompasses

> all persons of Indian descent who are members of any recognized Indian tribe now un-

> der Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood.

25 U.S.C. § 479. As the House sponsor of the IRA explained, the definition "recognize[d] the status quo of the present reservation Indians and further include[d] all other persons of one-fourth or more Indian blood." IRA Legislative History, *supra*, at 1972 (statement of Rep. Howard).[1] This provision was designed to shield the federal government from "impossible financial burdens" by "prevent[ing] persons" without the requisite quantum of Indian blood "who are not already enrolled members of a tribe or descendants of such members living on a reservation from claiming the financial and other benefits of the act." *Id.* at 1973.

2. The Narragansett Tribe was not subject to the ill-conceived allotment policy because it did not possess a federal reservation during the late-nineteenth and early-twentieth centuries, and thus did not hold any property that could have been allotted by the federal government.

The Tribe has a documented history dating back to at least 1614. U.S. Dep't of the Interior, *Recommendation and Summary of Evidence for Proposed Finding for Federal Acknowledgment of the Narragansett Indian Tribe of Rhode Island* 1 (1982) (hereinafter Recommendation), *at* http://www.indianz.com/adc20/Nar%5CV001%5CD007.pdf. Al-

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[1] Congress changed the one-fourth Indian blood quantum to one-half before the IRA was enacted. *See* 25 U.S.C. § 479.

though it was at one time one of the most powerful tribes in New England, the Tribe declined in size and political influence during the mid-seventeenth century due to epidemics and conflicts with other tribes. *Id.* at 2. After suffering heavy losses in King Philip's War from 1675-76, much of the Tribe dispersed. *Id.* Some members joined other New England tribes, including a number who combined with a neighboring tribe, the Niantics, located in Charlestown, Rhode Island. *Id.*

From 1675 until 1880, the Tribe was subject to a form of guardianship under the colony and, later, the State of Rhode Island. Recommendation, *supra*, at 2-3. During this period, the Tribe lived among, and intermarried with, Rhode Island's non-Indian population. *Id.* at 2. Unlike tribes that possessed reservation land set aside for them by the federal government, the Narragansetts lived under the jurisdiction of the State, and the Tribe's land—like the land of the State's non-Indian inhabitants—was subject to the requirements of state law. *See In re Narragansett Indians*, 40 A. 347, 361-62 (R.I. 1898). In 1879, the Narragansett Tribal Council voted to sell nearly all of its remaining 927 acres of tribal land. Recommendation, *supra*, at 4. A year later, the Rhode Island General Assembly passed legislation abolishing tribal authority, declaring tribal members to be citizens of the State, and authorizing the sale of tribal land. *Id.* The proceeds of the land sale were distributed to individual members of the Tribe. *Id.*[2]

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[2] In order to distribute the money raised from the sale of tribal land to members of the Tribe, the State, in cooperation with the Tribal Council, prepared a list of approximately 324 tribal members. Recommendation, *supra*, at 4. The current requirement for membership in the Tribe is proof of lineal de-

After severing its guardianship relationship with the State, the Tribe sought to obtain economic support and other aid from the federal government. Between 1927 and 1937, the Tribe wrote a number of letters to the Department of the Interior seeking assistance. Each time, the Department refused on the ground "that there was no Federal responsibility for or jurisdiction over the group." Recommendation, *supra*, at 8. In those letters, the Department explained that the "Narragansett Indians have never been under the jurisdiction of the Federal Government and Congress has never provided any authority for the various departments to exercise the jurisdiction which is necessary to manage their affairs. They are under the jurisdiction of different States of New England." J.A. 22a; *see also id.* at 21a.

3. In 1975, the Tribe brought two lawsuits against the State of Rhode Island, the Town of Charlestown, and a number of Charlestown landowners to recover 3,200 acres of land to which it claimed to possess aboriginal title. *Narragansett Tribe of Indians v. R.I. Dir. of Envtl. Mgmt.*, No. 75-0005 (D.R.I. filed Jan. 8, 1975); *Narragansett Tribe of Indians v. S. R.I. Land Dev. Co.*, No. 75-0006 (D.R.I. filed Jan. 8, 1975). The Tribe alleged that its sale of this land was invalid because it was undertaken without congressional approval in violation of the Indian Trade and Intercourse Act of 1790, 25 U.S.C. § 177.

In 1978, the parties agreed to settle the lawsuits and executed a Joint Memorandum of Understand-

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[Footnote continued from previous page]

scent from that membership list, rather than satisfaction of a blood quantum requirement. *Id.* at 15.

ing ("JMOU") that was signed by the Tribe, the State, and the Town. In order to "settle[ ] . . . Indian land claims within the State of Rhode Island," the JMOU provided for the establishment of a state-chartered corporation that would "acquir[e], manag[e] and permanently hold[ ]" approximately 1,800 acres within the Tribe's former domain that were either donated by the State or acquired with $3.5 million in federal funds appropriated for the purpose. J.A. 25a, 26a. These so-called "Settlement Lands" were to be held in trust by the state-chartered corporation for the benefit of the Tribe (*id.* at 27a), but—unlike land held in trust for a tribe by the federal government—were to be subject to the "full force and effect" of state law. *Id.* at 28a; *see also id.* (authorizing the Tribe to enact its own hunting and fishing regulations on the Settlement Lands). In exchange, the Tribe agreed that federal legislation would be obtained that "eliminates all Indian claims of any kind, whether possessory, monetary or otherwise, involving land in Rhode Island." *Id.* at 27a. The Tribe agreed to dismiss its lawsuits with prejudice upon the effective date of that legislation. *Id.* at 30a.

Congress approved and codified the parties' agreement in the Settlement Act. Tracking the terms of the JMOU, the Settlement Act required the State to enact legislation to form a state-chartered corporation that was "to acquire, perpetually manage, and hold the settlement lands" and that was to be governed by a board of directors selected by the Tribe and the State. 25 U.S.C. § 1706(a)(1), (2). Congress mandated that "the settlement lands shall be subject to the civil and criminal laws and jurisdiction of the State of Rhode Island." *Id.* § 1708(a). It also extinguished the Tribe's aboriginal title to land

that it had transferred to other landowners (*id.* § 1705(a)(2)) and extinguished the right of the Tribe to make any "claims" "based upon any interest in or right involving such land," "including . . . claims for use and occupancy." *Id.* § 1705(a)(3). Congress discharged the United States from any "further duties or liabilities under [the Settlement Act] with respect to the [Tribe], the State Corporation, or the settlement lands." *Id.* § 1707(c).

The Tribe did not receive federal recognition until 1983. 48 Fed. Reg. 6177 (Feb. 10, 1983). After the Tribe obtained recognition, the Rhode Island General Assembly terminated the state-chartered corporation created for the purpose of holding the Settlement Lands and transferred those lands to the Tribe. R.I. Gen. Laws §§ 37-18-12, -13, -14. In 1988, the Tribe, in turn, deeded the Settlement Lands to the United States to be held in trust on its behalf. Pet. App. 12. Although the United States accepted the Tribe's conveyance of the Settlement Lands, it did so subject to the continued "applicability of state law conferred by the Rhode Island Indian Land Claims Settlement Act." J.A. 42a.

B. Procedural Background

1. In 1997, the Tribe submitted an application to the Bureau of Indian Affairs ("BIA") requesting that the Secretary take into trust on its behalf a 31-acre parcel of land in Charlestown that it owned in fee simple. Pet. App. 12. Although this 31-acre parcel was part of the 3,200 acres that the Tribe claimed in its 1975 lawsuits, it was not part of the 1,800 acres that the Tribe received through the settlement of those suits. *Id.* The Tribe acquired the 31-acre parcel—which is separated from the Settlement Lands by a town road—on the open market in 1991. *Id.*

The Tribe claimed that it would use the 31-acre parcel to construct low-income housing for its members (*id.*)—a project that could have been completed without a trust acquisition.

On March 6, 1998, the BIA notified the Governor and the Town that the Secretary had approved the trust application and intended to take the parcel into trust for the Tribe pursuant to his authority under Section 5 of the IRA. J.A. 45a. Because the proposed trust acquisition would divest the State of civil and criminal jurisdiction over the parcel—and, for the first time since Statehood, create sovereign Indian territory in Rhode Island—the Governor and the Town appealed the trust acquisition decision to the Interior Board of Indian Appeals ("IBIA"). The IBIA affirmed the Secretary's decision. *Id.* at 71a.

2. Petitioners sought review of the IBIA's decision in the United States District Court for the District of Rhode Island. Petitioners argued that the Secretary lacked the authority to acquire trust property for the Tribe because the Narragansetts—who were not federally recognized until 1983—were not "a[ ] recognized Indian tribe *now* under Federal jurisdiction" within the meaning of Section 19 of the IRA. 25 U.S.C. § 479 (emphasis added). They further argued that the Settlement Act had conclusively resolved the Tribe's land claims in Rhode Island and therefore foreclosed the trust acquisition.

The district court rejected both of these arguments and granted summary judgment to respondents. Pet. App. 136.

3. The First Circuit affirmed the district court's decision in a unanimous panel opinion. *Carcieri v. Norton*, 398 F.3d 22 (1st Cir. 2005). After the State petitioned for rehearing, the three-judge panel with-

drew its opinion, and issued a new opinion that upheld the trust acquisition over a dissent from Judge Howard, who argued that the Settlement Act barred unrestricted trust acquisitions in Rhode Island. *Carcieri v. Norton*, 423 F.3d 35 (1st Cir. 2005).

The full court then reheard the case en banc and, in a 4-2 opinion, again upheld the Secretary's decision to take the 31-acre parcel into trust. Pet. App. 1. Although the en banc court acknowledged that "[o]ne might have an initial instinct to read the word 'now' in [Section 19 of the IRA] . . . to mean the date of enactment of the statute" (*id.* at 19)—which would exclude the Tribe from the IRA's scope—it concluded that "the word 'now' does not itself have a clear meaning" and could mean either at the time that the IRA was enacted or at the time that the Secretary invokes his trust authority. *Id.* at 20. In light of this perceived ambiguity, the court held that the Secretary's interpretation of Section 5 as authorizing trust acquisitions in favor of any tribe recognized and under federal jurisdiction at the time of the acquisition was entitled to deference under *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984), and should be upheld as "reasonable" and "consistent with the language and legislative history of the IRA." Pet. App. 29.

The en banc court split as to whether the Settlement Act prohibits the Secretary from acquiring land in unrestricted trust for the Tribe. A four-judge majority concluded that "[t]here is . . . nothing in the text of the Settlement Act . . . that accomplishes . . . a repeal or curtailment of the Secretary's trust authority." Pet. App. 37. The majority reasoned that the provision of the Settlement Act extinguishing "all claims" by the Tribe "based upon any interest in or right involving . . . land" that it had transferred to

other landowners was limited to "claims based on the purported invalidity of those transfers." *Id.* at 41. The majority further held that "[t]rust acquisition is not incompatible with the extinguishment of aboriginal title" in the Settlement Act because the extinguishment of aboriginal title merely eliminated one "form of title" and did not preclude the reestablishment of tribal sovereignty over land by "alternative means," such as the acquisition of land in trust under the IRA. *Id.* at 42, 43.

In dissent, Judges Howard and Selya rejected the majority's "narrow" reading of the Settlement Act. Pet. App. 78 (Selya, J., dissenting). They argued that, through the Settlement Act, "Congress (and the parties) intended to resolve all the Tribe's land claims in the state once and for all," including claims raised in trust applications. *Id.* at 74 (Howard, J., dissenting). "[A]sking to have land taken into trust by the BIA under the IRA to effect an ouster of state jurisdiction," the dissenting judges explained, "is a quintessential 'Indian' land claim" foreclosed by the Settlement Act. *Id.* at 74-75. In their view, it was not "logical . . . to find that Congress enacted legislation effectuating [a] carefully calibrated compromise between three sovereigns . . . which provided for a delicate balancing of the parties' interests, only to permit the legislation to be completely subverted by subsequent agency action." *Id.* at 75. They also pointed to the anomalous result yielded by the majority opinion: that on the Settlement Lands—the heart of the Tribe's ancestral home—Congress requires that the Tribe be subject to the State's civil and criminal laws and jurisdiction while allowing the Secretary to grant the Tribe full territorial sovereignty anywhere outside of those lands. *Id.* at 77. That result, Judge Howard explained, "would be an-

tithetical to Congress' intent" in enacting the Settlement Act. *Id.* at 76.

SUMMARY OF ARGUMENT

Both the IRA and the Settlement Act prohibit the Secretary from acquiring the 31-acre parcel in trust for the Tribe.

I. The IRA generally restricts the Secretary's trust authority to those tribes that were both federally recognized and under federal jurisdiction at the time of the IRA's enactment in 1934—requirements that the Narragansetts indisputably fail to meet.

A.1. Section 19 of the IRA provides three alternative definitions of the "Indians" entitled to the statute's benefits. The definition on which the Secretary relied when approving the Narragansetts' trust application encompasses "persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction." 25 U.S.C. § 479. Congress's use of the phrase "recognized Indian tribe *now* under Federal jurisdiction" unambiguously excludes persons who are members of tribes that, like the Narragansetts, were not federally recognized and under federal jurisdiction when the IRA was enacted in 1934.

Interpreting the word "now" to refer to the time that the IRA is applied, rather than to the time it was enacted, would not only distort the plain meaning of the word, but also render its presence in Section 19 completely superfluous. Moreover, Congress consistently used the word "now" in the IRA to refer to the time of enactment (*see* 25 U.S.C. § 465), while using the phrase "now or hereafter" to refer to post-enactment developments. *See id.* §§ 468, 472. Because Section 19 refers to a "recognized Indian tribe now under Federal jurisdiction"—and not to a "rec-

ognized Indian tribe now or hereafter under Federal jurisdiction"—it restricts the Secretary's trust authority to tribes that were federally recognized and under federal jurisdiction in 1934.

2. This conclusion is confirmed by this Court's repeated holding that Congress uses the word "now" in a statute to refer to the time of enactment, not to the time of the statute's application. *See Montana v. Kennedy*, 366 U.S. 308, 312 (1961); *Franklin v. United States*, 216 U.S. 559, 569 (1910). Indeed, the Court has already determined that this longstanding rule of construction applies to the IRA, recognizing in *United States v. John*, 437 U.S. 634 (1978), that the IRA "defined 'Indians' . . . as 'all persons of Indian descent who are members of any recognized *[in 1934]* tribe now under Federal jurisdiction.'" *Id.* at 650 (quoting 25 U.S.C. § 479) (brackets in original; emphasis added).

3. The First Circuit's grounds for finding ambiguity in Section 19 are unpersuasive. The court of appeals was not able to point to any decision from this Court interpreting a statute's use of the word "now" to mean anything other than the time of enactment, relying instead on a lone circuit court decision construing a readily distinguishable statutory provision. Moreover, the court of appeals' suggestion that the relevant statutory context is "equivocal" overlooks both the fact that Congress consistently used the term "now" to refer to the date of enactment in the IRA (*see* 25 U.S.C. § 465) and the well-established proposition that identical words used in different parts of the same statute are presumed to have the same meaning.

B. The court of appeals' finding of ambiguity in Section 19 also disregards the structure and purpose

of the IRA. The IRA was enacted to end the federal government's allotment policy. In order to address the loss of tribal land attributable to that policy, Congress authorized the Secretary to acquire property in trust for tribes and individual Indians. It also carefully restricted the IRA's benefits, however, to those persons who could satisfy one of the definitions of "Indian" set forth in Section 19 of the IRA. That provision provides that everyone of Indian descent who is a member of a tribe that was federally recognized and under federal jurisdiction at the time of the IRA's enactment is entitled to the statute's benefits, while imposing more stringent definitional criteria on persons who cannot meet that standard. This distinction between members of tribes that were federally recognized and under federal jurisdiction in 1934 and all other persons claiming Indian status makes eminent sense because only those tribes that were federally recognized and under federal jurisdiction at the time of the IRA's enactment would have been subject to the allotment policy that the IRA was intended to remedy.

Because the Narragansetts were neither federally recognized nor under federal jurisdiction in 1934 and have never claimed to satisfy any of the IRA's alternative definitions of "Indian," the IRA does not authorize the Secretary to acquire land in trust on their behalf.

II. The Settlement Act imposes a separate and independent prohibition on the Secretary's acquisition of land in trust for the Tribe.

A. The Settlement Act was enacted to resolve two lawsuits that the Tribe filed seeking to recover land in the Town of Charlestown to which it claimed aboriginal title. To settle those suits, the State,

Town, and Tribe entered into a Joint Memorandum of Understanding that provided for the Tribe to recover 1,800 acres of the land that it claimed. In exchange for this land, the Tribe agreed that state law would continue to apply to that land and that federal legislation would be obtained that would retroactively approve its transfers of land to other landowners and extinguish its aboriginal title to that transferred property.

The Settlement Act gives effect to each of these terms, and also extinguishes "all claims . . . based upon any interest in or right involving . . . land" that the Tribe has transferred to other landowners, including "claims for use and occupancy" of that land. 25 U.S.C. § 1705(a)(3). The Tribe's trust application raises a quintessential "claim[ ] . . . based upon an[ ] interest in or right involving . . . land" because the trust application asserts a claim to territorial sovereignty over the 31-acre parcel that would oust the jurisdiction of the State and Town over that land. The Settlement Act squarely forecloses the Tribe from asserting, and the Secretary from granting, such claims.

B. The Secretary's acquisition of the parcel in trust for the Tribe would also undermine the objectives of the Settlement Act, which embodied a careful compromise between the sovereign interests of the State and Tribe. The Settlement Act balanced the Tribe's need for a land base against the State's sovereign interests by providing for the application of state law to the land that the Tribe received under the settlement agreement, extinguishing the Tribe's aboriginal title to all land that it had transferred to other landowners, and foreclosing the Tribe from asserting claims based on an interest in such land. If the Secretary nevertheless took the 31-acre parcel

into trust on behalf of the Tribe—and thereby created sovereign Indian territory in Rhode Island for the first time since Statehood—he would obliterate this statutory compromise by divesting the State of the sovereign rights that the Settlement Act was intended to secure against subsequent Indian land claims.

ARGUMENT

I. THE SECRETARY MAY NOT TAKE LAND INTO TRUST ON BEHALF OF THE NARRAGANSETTS BECAUSE THEY WERE NEITHER FEDERALLY RECOGNIZED NOR UNDER FEDERAL JURISDICTION IN 1934.

The First Circuit held that the IRA affords the Secretary the authority to take land into trust on behalf of the Narragansetts, even though the Tribe was neither federally recognized nor under federal jurisdiction at the time of the IRA's enactment. That conclusion is at odds with the text, structure, and purpose of the IRA, which (subject to two narrow exceptions inapplicable here) authorized the Secretary to take land into trust only on behalf of those tribes that were subject to the ill-advised policies of the General Allotment Act—*i.e.*, those tribes that were both federally recognized and under federal jurisdiction in 1934.

A. The Text Of The IRA Unambiguously Establishes That The Secretary Lacks The Authority To Take Land Into Trust On Behalf Of The Narragansetts.

1. Section 5 of the IRA provides that the Secretary may "acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands . . . for the purpose of providing land *for Indians*." 25

U.S.C. § 465 (emphasis added). When the Secretary seeks to take land into trust on behalf of a tribe, he must therefore establish that the members of the tribe are "Indians" within the meaning of the IRA. Section 19 of the IRA provides that "[t]he term 'Indian' . . . shall include [1] all persons of Indian descent who are members of *any recognized Indian tribe now under Federal jurisdiction*, and [2] all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include [3] all other persons of one-half or more Indian blood." *Id.* § 479 (emphasis and numbering added).

When the Secretary relies upon tribal membership—rather than descent or blood quantum—to establish that trust beneficiaries are "Indians" under the IRA, the plain language of Section 19—which encompasses "any recognized Indian tribe *now* under federal jurisdiction"—restricts the Secretary's trust authority to property acquired for persons who are members of tribes that were both federally recognized and under federal jurisdiction at the time of the IRA's enactment in 1934. The Secretary may not—through the promulgation of a regulation, or otherwise—expand his trust authority beyond this statutorily imposed boundary. *See Sullivan v. Stroop*, 496 U.S. 478, 482 (1990) ("If the statute is clear and unambiguous that is the end of the matter, for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.") (internal quotation marks omitted); *see also Chevron U.S.A. Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 842-43 (1984).

Dictionaries published shortly before, or contemporaneously with, the enactment of the IRA establish

that "now" means "at the present time" or, synonymously, "at the time of speaking." *See Webster's New International Dictionary of the English Language* 1671 (2d ed. 1939) ("At the present time; at this moment; at the time of speaking"); 6 *A New English Dictionary on Historical Principles* pt. II, at 244-45 (James A.H. Murray ed., 1908) ("At the present time or moment"; "In the time directly following on the present moment; immediately, forthwith"; "At this time; at the time spoken of or referred to"). By incorporating the term "now" into the phrase "recognized Indian tribe now under federal jurisdiction," Congress therefore restricted Section 19 of the IRA—and the scope of the Secretary's trust authority—to persons of Indian descent who are members of tribes that were federally recognized and under federal jurisdiction "at the time" Congress was "speaking"—*i.e.*, at the time of the IRA's enactment.[3]

In contrast, interpreting the word "now" to refer to the time that the IRA is applied, rather than to the time it was enacted, would render the term utterly superfluous. In the absence of an indication to the contrary, it is presumed that statutory criteria are measured at the time that the statute is applied.

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[3] As this Court recognized in *United States v. John*, 437 U.S. 634 (1978), this plain language interpretation of "now" applies with equal force to both the federal jurisdiction and federal recognition components of Section 19. *Id.* at 650; *see also infra* pg. 25. Indeed, it would make little sense for Congress to have established a definitional framework where the federal jurisdiction requirement is measured from the time of the IRA's enactment and the federal recognition requirement is evaluated at the time that the statute is invoked by the Secretary. *See Gustafson v. Alloyd Co.*, 513 U.S. 561, 569 (1995) (a statute "is to be interpreted as a symmetrical and coherent regulatory scheme").

See De Lima v. Bidwell, 182 U.S. 1, 197 (1901). Thus, under the Secretary's reading of Section 19, the word "now" serves absolutely no function because, even if the word were removed from the statute, the statutory criteria would still be evaluated at the time of the statute's application—in direct contravention of the settled principle that statutes should be interpreted to give effect to each of their terms. *See Hibbs v. Winn*, 542 U.S. 88, 101 (2004).

The context in which the term "now" appears in Section 19 reinforces the conclusion that Congress intended for the definition of "Indian" to incorporate conditions at the time of the IRA's enactment. For example, one of the alternative definitions of "Indian" in Section 19 is persons who are "descendants of . . . members [of any recognized Indian tribe now under Federal jurisdiction] who were, on June 1, 1934, residing within the *present* boundaries of any Indian reservation." 25 U.S.C. § 479 (emphasis added). The "present boundaries" of an Indian reservation are the boundaries in place at the time of the IRA's enactment—not the boundaries at the time that the statute is invoked. *See Webster's New International Dictionary of the English Language*, *supra*, at 1955 (defining "present" as "now existing, . . . not past or future"). In light of Congress's pervasive focus in Section 19 on conditions at the time of the IRA's enactment—reflected in both the use of "present boundaries" and the June 1, 1934, limitation—it would be inconsistent with the immediate statutory context to interpret "any recognized Indian tribe now under Federal jurisdiction" to mean anything other than a tribe that was federally recognized and under federal jurisdiction at the time that the IRA was enacted.

The statutory provisions surrounding Section 19 of the IRA remove any conceivable doubt that Congress intended for its use of the term "now" to restrict the definition of "Indian"—and the Secretary's trust authority—to persons of Indian descent who are members of tribes federally recognized and under federal jurisdiction in 1934. Indeed, Congress used the term "now" in Section 5 itself—the provision that affords the Secretary his trust authority—to refer unambiguously to the time of the statute's enactment. *See* 25 U.S.C. § 465 ("*Provided*, That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona and New Mexico, in the event that the proposed Navajo boundary extension measures *now* pending in Congress and embodied in the bills (S. 2499 and H. R. 8927) . . . becomes law") (second emphasis added). Interpreting the use of "now" in Section 19 to mean anything other than the time of the statute's enactment would contradict the well-established presumption that "identical words used in different parts of the same act are intended to have the same meaning." *Sullivan*, 496 U.S. at 484 (internal quotation marks omitted).[4]

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[4] This conclusion is reinforced by a provision that was added to the IRA after its initial enactment, which—like Sections 5 and 19—unambiguously uses the term "now" to refer to the time of enactment. *See* 25 U.S.C. § 484 ("From and after the date of the approval of this Act, each grant of exchange assignment of tribal lands on the Cheyenne River Sioux Reservation and the Standing Rock Sioux Reservation shall have the same force and effect, and shall confer the same rights, including all timber, mineral, and water rights *now* vested in or held by the Cheyenne River Sioux Tribe or the Standing Rock Sioux Tribe, upon the holder or holders thereof, that are conveyed by a trust

Conversely, Congress used the phrase "now or hereafter" in the IRA when it intended to encompass post-enactment developments. *See* 25 U.S.C. § 468 ("Nothing contained in this Act shall be construed to relate to Indian holdings of allotments or homesteads upon the public domain outside of the geographic boundaries of any Indian reservation *now* existing or established *hereafter*.") (emphasis added); *id.* § 472 ("The Secretary of the Interior is directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed, without regard to civil-service laws, to the various positions maintained, *now or hereafter*, by the Indian Office, in the administration of functions or services affecting any Indian tribe.") (emphasis added); *cf. id.* ("Such qualified Indians shall *hereafter* have the preference to appointment to vacancies in any such positions") (emphasis added).[5]

Because Section 19 refers to a "recognized Indian tribe now under Federal jurisdiction"—rather than "a recognized Indian tribe now or hereafter under Federal jurisdiction"—the provision's text and context unambiguously restrict the Secretary's trust au-

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patent issued pursuant to section 5 of the Act of February 8, 1887 . . . .) (emphasis added).

[5] A later-enacted provision of the IRA confirms that the statute uses the "now or hereafter" formulation when referring to post-enactment developments. *See* 25 U.S.C. § 475a ("In all suits *now* pending in the Claims Court by an Indian tribe or band which have not been tried or submitted, and in any suit *hereafter* filed in the Claims Court by any such tribe or band, the Claims Court is hereby directed to consider and to offset against any amount found due the said tribe or band all sums expended gratuitously by the United States for the benefit of the said tribe or band . . . .") (emphases added).

thority to tribes that were both federally recognized and under federal jurisdiction at the time that the IRA was enacted. *See Duncan v. Walker*, 533 U.S. 167, 173 (2001) ("where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion") (internal quotation marks and alterations omitted).[6]

2. This reading of Section 19 is confirmed by this Court's repeated holding that when Congress uses the word "now" in a statute, it is referring to the time of enactment—not to the time at which the statute is invoked.

In *Montana v. Kennedy*, 366 U.S. 308 (1961), for example, the Court held that a statute conferring citizenship on "children of persons who now are, or have been, citizens of the United States" applied only to children born to persons who were U.S. citizens at

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[6] Indeed, Congress is well-aware of how to draft a definition of "Indian" that encompasses tribes recognized either at the time of the statute's enactment or at some point in the future. *See* 25 U.S.C. § 1603(c) (the "terms ['Indians' or 'Indian'] shall mean any individual who . . . is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups . . . recognized *now or in the future* by the State in which they reside") (emphasis added). Congress included no such language in the IRA. Rather, when Congress has intended for the IRA to apply to tribes that were not federally recognized and under federal jurisdiction in 1934, it has enacted legislation explicitly extending the IRA to such tribes. *See*, *e.g.*, 25 U.S.C. § 1300b-14(a) ("The Act of June 18, 1934 (48 Stat. 984), is hereby made applicable to the [Texas] Band [of Kickapoo Indians] . . . ."); *id.* § 1300i-8(a)(2) ("The Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461 *et seq*.), as amended, is hereby made applicable to the Yurok Tribe . . . .").

the time of the statute's enactment in 1802. *Id.* at 312; *see also* Rev. Stat. § 2172 (reenacting Act of Apr. 14, 1802, ch. 28, 2 Stat. 153, 155). The Court explained that the statute "had no prospective application" and therefore did not grant citizenship to someone born abroad to a U.S.-citizen mother who had not yet been born in 1802. *Montana*, 366 U.S. at 311.

The Court reached the same conclusion when construing the Assimilative Crimes Act in *Franklin v. United States*, 216 U.S. 559 (1910). At the time, that statute provided "[t]hat when any offense is committed in any place, jurisdiction over which has been retained by the United States . . . the punishment for which offense is not provided for by any law of the United States, the person committing such offense shall . . . be liable to and receive the same punishment as the laws of the State in which such place is situated *now* provide for the like offense when committed within the jurisdiction of such State." Act of July 7, 1898, ch. 576, 30 Stat. 717 (emphasis added). The Court concluded that, through its use of the term "now," Congress limited the Assimilative Crimes Act to those state laws that were in effect at the time of the statute's enactment. *Franklin*, 216 U.S. at 569; *see also United States v. Press Publ'g Co.*, 219 U.S. 1, 8 (1911) ("[T]he indictment was based on the Act of July 7, 1898, 30 Stat. 717, § 2. The effect of the act, as pointed out in *Franklin* v. *United States*, 216 U.S. 559, 568-569, was to incorporate the criminal laws of the several States in force on July 1, 1898, into the statute and to make such criminal laws to the extent of such incorporation laws of the United States.").[7]

[7] It is also probative that, in 1948, when Congress decided to amend the Assimilative Crimes Act to incorporate any state law

Consistent with this unbroken line of precedent, this Court has construed the definition of "Indian" in Section 19 of the IRA as limited to persons of Indian descent who are members of tribes that were federally recognized and under federal jurisdiction in 1934. In *United States v. John*, 437 U.S. 634 (1978), the Court concluded that the Choctaw Indians' Mississippi reservation satisfied the federal statutory definition of "Indian country" because the Choctaws possessed one-half or more Indian blood. *Id.* at 650. In so holding, the Court explained that "[t]he 1934 Act defined 'Indians' not only as 'all persons of Indian descent who are members of any recognized *[in 1934]* tribe now under Federal jurisdiction,' and their descendants who then were residing on any Indian reservation, but also as 'all other persons of one-half or more Indian blood.'" *Id.* (quoting 25 U.S.C. § 479) (alteration in original; emphasis added). The bracketed phrase "in 1934" that the Court inserted into

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in force at the time of the defendant's conduct—rather than merely those state laws that were in effect at the time of the statute's enactment—it did so by deleting the word "now" and replacing it with the phrase "laws thereof in force at the time of such act or omission"—language that unambiguously refers to a time *after* the statute's enactment. *See* 18 U.S.C. § 13(a) ("Whoever within or upon any of the places now existing or hereafter reserved or acquired . . . is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense . . . ."). Congress has made no comparable revision to the IRA to extend the Secretary's trust authority to tribes federally recognized and under federal jurisdiction at the time the Secretary invokes that authority.

the language of Section 19 reflects the Court's understanding that the word "now" restricts the operation of the IRA to tribes that were federally recognized and under federal jurisdiction at the time of enactment.[8]

Moreover, before the First Circuit's holding in the decision below, *every* other appellate court to have addressed the issue had reached the same conclusion. *See United States v. Miss. Tax Comm'n*, 505 F.2d 633, 642 (5th Cir. 1974) ("The language of Section 19 positively dictates that tribal status is to be determined as of June, 1934, as indicated by the words 'any recognized Indian tribe *now* under Federal jurisdiction' and the additional language to like effect.") (emphasis in original); *Kahawaiolaa v. Norton*, 386 F.3d 1271, 1280 (9th Cir. 2004) ("[B]y its terms, the [IRA] did not include any native Hawaiian group. There were no recognized Hawaiian Indian tribes under federal jurisdiction in 1934, nor were

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[8] The First Circuit dismissed this language in *John* as "fall[ing] short even of being dicta." Pet. App. 23. While the Court's holding in *John* did not turn upon whether it was necessary for the Choctaw Indians to be federally recognized and under federal jurisdiction in 1934 to qualify for the IRA's benefits, the Court clearly considered the fact that the Choctaws did not satisfy these conditions as part of its analysis. Indeed, the Fifth Circuit had relied upon that fact to hold that the Choctaws' reservation was not "Indian country." *See United States v. John*, 560 F.2d 1202, 1212 (5th Cir. 1977). Instead of reversing the Fifth Circuit's decision on the ground that the court of appeals erred by requiring the tribe to be federally recognized and under federal jurisdiction in 1934 to be subject to the IRA, the Court relied upon the alternative "half blood" definition to conclude that the tribe was covered by the IRA. The issue whether the IRA is limited to tribes that were federally recognized and under federal jurisdiction in 1934 was therefore squarely before the Court in *John*.

there any reservations in Hawaii."). The "strength of this consensus is enough to rule out any serious claim of ambiguity" regarding the definition of "now" in Section 19 of the IRA. *Gen. Dynamics Land Sys., Inc. v. Cline*, 540 U.S. 581, 594 (2004).

3. The First Circuit failed to provide a persuasive basis for its finding of ambiguity in Section 19.

The court of appeals suggested that Section 19 is ambiguous because "Congress sometimes uses the word 'now' to refer to a time other than the moment of enactment." Pet. App. 20. While the First Circuit is correct that Congress, on rare occasion, has used "now" to that effect in statutes other than the IRA, the lone federal decision that the court of appeals was able to muster in support of this proposition construed a statute in which it would have been nonsensical to read the term "now" as referring to the time of enactment. *See Difford v. Sec'y of Health & Human Servs.*, 910 F.2d 1316, 1320 (6th Cir. 1990) (construing the term "now" in 42 U.S.C. § 423(f), a Social Security procedural rule providing that benefits can be terminated at a hearing only where there is substantial evidence that "the individual is now able to engage in substantial gainful activity").[9] The text

[9] The court of appeals also cited two state court decisions interpreting provisions of state law. *See Pierce v. Pierce*, 287 N.W.2d 879, 882 (Iowa 1980) (construing a provision of Iowa law providing that, "[i]f a court of another state has made a custody decree, a court of this state shall not modify that decree unless it appears to the court of this state that the court which rendered the decree does not now have jurisdiction"); *Williams v. Ragland*, 567 So. 2d 63, 66 (La. 1990) (construing the term "now" in a state constitution to refer to other than the time of enactment because a constitution is "a continuing instrument of government, which must endure an indefinite future on a daily basis") (internal quotation marks omitted).

and context of Section 19, in contrast, leave no doubt that Congress used the term "now" to refer to the date on which the IRA was enacted.

The court of appeals further contended that the statutory context in which Section 19 appears is "equivocal." Pet. App. 20. Despite Congress's use of the "now or hereafter" formulation in other provisions of the IRA to encompass post-enactment developments, the court of appeals found ambiguity in the fact that Section 19 establishes "the date of 'June 1, 1934' as the relevant date for determining eligibility based on 'residing within the present boundaries of any Indian reservation.'" *Id.* Congress's use of a specific date in Section 19 suggested to the court of appeals that Congress might have used the specific date of the IRA's enactment, June 18, 1934, rather than the term "now," if it had wanted to restrict the definition of "Indian" to persons of Indian descent who were members of tribes that were federally recognized and under federal jurisdiction at the time of enactment. *Id.* at 20-21. But it is beyond dispute that, in at least one other section of the IRA, Congress used the term "now"—rather than "June 18, 1934"—to refer to the date of the statute's enactment. *See* 25 U.S.C. § 465 (referring to "measures now pending in Congress and embodied in the bills (S. 2499 and H. R. 8927)"). Because "identical words used in different parts of the same statute are generally presumed to have the same meaning" (*IBP, Inc. v. Alvarez*, 546 U.S. 21, 34 (2005)), there is no reason to think that Congress would have used a specific date in Section 19—rather than the term "now," as it did in other provisions of the IRA—to reference the date of enactment. Indeed, June 1, 1934—the date on which the First Circuit placed so much weight—is *not* the date on which the IRA was enacted, which

explains Congress's reference to that specific date rather than to the term "now" in defining the class of persons who can claim Indian status based on descent.[10]

B. The Structure And Purpose Of The IRA Confirm That The Secretary Cannot Take Land Into Trust On Behalf Of The Narragansetts.

The court of appeals deemed it "plausible" that, as the Secretary contends, "it would make no sense to distinguish among tribes based on the happenstance of their federal recognition status in 1934." Pet. App. 21. But, when viewed in light of the congressional objectives that animate the IRA and the statutory structure that Congress established to ac-

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[10] The First Circuit also cited 25 U.S.C. § 478, which imposed upon the Secretary the duty "within one year after June 18, 1934, to call" elections by existing reservation Indians on whether to opt out of the IRA's coverage. 25 U.S.C. § 478. As an initial matter, it would have been grammatically awkward for Congress to have used the term "now" instead of the date "June 18, 1934," in this provision. More importantly, Congress's failure to provide any means for later-recognized tribes to opt out of the IRA's coverage provides further indication that the IRA was intended to benefit only those Indians federally recognized at the time of passage. The First Circuit dismissed this consideration on the ground that "it is difficult to see why any tribe would opt out of a statute designed to benefit it." Pet. App. 28 n.7. The IRA was highly controversial, however, at the time it was enacted, and some tribes did indeed vote to opt out of its application. *See*, *e.g.*, *United States v. Anderson*, 625 F.2d 910, 916 (9th Cir. 1980). Congress was well aware of the controversial nature of the IRA (*see* IRA Legislative History, *supra*, at 1987), which makes it all the more improbable that, if the IRA applied to tribes that were not recognized and did not fall under federal jurisdiction until after its enactment, Congress would have restricted the opt-out right to tribes able to hold an election by June 1935.

complish those objectives, this distinction makes eminent sense.

1. The IRA was designed to "repudiate[ ] the practice of allotment" by putting an end to further individual allotments of tribes' reservation land and by providing land for those tribes and individual Indians that had lost their property under the General Allotment Act. *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 650 n.1 (2001); *see also* IRA Legislative History, *supra*, at 1916 (Letter from Commissioner Collier to Sen. Copeland) ("The enormous importance of the bill is for those Indians . . . who have been rendered landless by the allotment system."). The Secretary's authority to take land into trust "for the purpose of providing land for Indians" was a central component of Congress's effort to remedy the loss of land attributable to the allotment policy. 25 U.S.C. § 465; *see also* IRA Legislative History, *supra*, at 1960 (statement of Rep. Howard) ("The Indians now landless must be provided for. [Section 5] undertakes to do this gradually through an annual appropriation for the purchase of land.").

It was also necessary, however, that "the line . . . be drawn somewhere" in defining the class of beneficiaries entitled to have land taken into trust on their behalf. IRA Legislative History, *supra*, at 1973 (statement of Rep. Howard). In Section 19 of the IRA, Congress accomplished this line-drawing by establishing three classes of "Indians" entitled to the IRA's benefits. First, a person is an "Indian" within the meaning of the IRA if he is "of Indian descent"—regardless of his quantum of Indian blood—and is a member of a tribe that was federally recognized and under federal jurisdiction at the time of the IRA's enactment. Second, a person is an "Indian" if he was living on an Indian reservation on June 1, 1934, and

is a descendant of a person of Indian descent who was a member of a tribe that was federally recognized and under federal jurisdiction at the time of the IRA's enactment. Third, if a person is unable to demonstrate the requisite connection to a tribe that was federally recognized and under federal jurisdiction in 1934, he can still qualify for benefits under the IRA if he can establish that he is of "one-half or more Indian blood."

The IRA therefore provides that everyone of Indian descent who is a member of a tribe that was federally recognized and under federal jurisdiction at the time of the IRA's enactment is entitled to the statute's benefits, but imposes more stringent definitional criteria on persons who cannot make that showing—requiring that they demonstrate either that they are a descendant of such a person and were living on an Indian reservation on June 1, 1934, or that they possess one-half or more Indian blood. This definition of "Indian" makes perfect sense in light of Congress's intention that the IRA serve primarily as a remedy for the harm that tribes suffered under the allotment policy. The definition ensured that all persons who were members of tribes that lost land due to allotment could benefit from the IRA's provisions, while imposing a higher eligibility threshold on persons who were not members of such tribes.

Indeed, *only* those tribes that were federally recognized and under federal jurisdiction at the time of the IRA's enactment would have lost reservation land as a result of the allotment policy because only those tribes would have possessed federally recognized reservations subject to allotment by the federal government. If the federal government had ordered the allotment of a tribe's reservation land, then the

tribe would necessarily have been under federal jurisdiction. *See*, *e.g.*, Act of Mar. 3, 1921, ch. 135, 41 Stat. 1355, 1355 (providing for allotment of the Fort Belknap Reservation); Act of June 30, 1919, ch. 4, 41 Stat. 3, 16 (providing for allotment of the Blackfeet Indian Reservation). On the other hand, if a tribe was not under federal jurisdiction, then it could not have been subject to the policies of the General Allotment Act.

2. The legislative history of the IRA confirms that, subject to the two definitional exceptions not at issue in this case, Congress intended to restrict the statute's benefits to those tribes that were federally recognized and under federal jurisdiction at the time of the IRA's enactment.

An exchange between Senator Wheeler, the Senate sponsor of the IRA, and Commissioner of Indian Affairs John Collier during a hearing on the IRA confirms that the word "now" was added to the definition of "Indian" in Section 19 to limit the first of the three alternative definitions to persons who were members of tribes that were federally recognized and under federal jurisdiction at the time of the IRA's enactment. During the hearing, Senator Wheeler suggested that the benefits of the IRA should be restricted to persons who had a legitimate claim to Indian status. *See To Grant to Indians Living Under Federal Tutelage the Freedom to Organize for Purposes of Local Self-Government and Economic Enterprise: Hearing on S. 2755 and S. 3645 Before the S. Comm. on Indian Affairs*, 73d Cong. 266 (1934) (statement of Sen. Wheeler) ("I think you have to sooner or later eliminate those Indians who are at the present time—as I said the other day, you have a tribe of Indians here, for instance in northern California, several so-called 'tribes' there. They are no

more Indians than you or I, perhaps . . . . And yet they are under the supervision of the Government of the United States . . . .”). In response, Commissioner Collier suggested that the term “now” be inserted into the definition of “Indian,” explaining, “Would this not meet your thought, Senator: After the words ‘recognized Indian tribe’ in line 1 insert ‘now under Federal jurisdiction’? *That would limit the act to the Indians now under Federal jurisdiction*, except that other Indians of more than one-half Indian blood would get help.” *Id.* (emphasis added); *see also* IRA Legislative History, *supra*, at 1972 (statement of Rep. Howard) (the definition of “Indian” “recognizes the status quo of the present reservation Indians”).

In light of this exchange regarding the origins of the word “now” in Section 19 of the IRA, it is beyond reasonable dispute that Congress added the word “now” to that provision to “limit the act to the Indians” under federal jurisdiction at the time of the statute’s enactment. The First Circuit nevertheless read this legislative history as creating the possibility that “the phrase ‘now under [F]ederal jurisdiction’ was intended to modify not ‘recognized Indian tribe,’ but rather ‘all persons of Indian descent’”—that is, that the word “now” was added “to grandfather in those individuals already receiving federal benefits.” Pet. App. 25-26 (emphasis omitted).

No party endorsed such a reading of the statutory language below—and with good reason. The phrase “now under Federal jurisdiction” directly follows “any recognized Indian tribe” in Section 19. The First Circuit’s suggestion that the phrase modifies anything other than the immediately preceding language is at odds with the “grammatical rule of the last antecedent, according to which a limiting clause or phrase . . . should ordinarily be read as modifying

only the noun or phrase that it immediately follows." *Jama v. Immigration & Customs Enforcement*, 543 U.S. 335, 343 (2005) (alteration in original; internal quotation marks omitted).

* * *

The Narragansett Tribe's members do not satisfy any of the three alternative definitions of "Indian" under Section 19 of the IRA. It is undisputed that the Narragansett Tribe was neither federally recognized nor under federal jurisdiction at the time of the IRA's enactment in 1934. J.A. 21a-23a; Recommendation, *supra*, at 8. Moreover, the Narragansetts have never claimed that they were living on a federal reservation on June 1, 1934, and are descendants of persons who were members of a tribe that was federally recognized and under federal jurisdiction in 1934, or that they are of one-half or more Indian blood. The Secretary therefore may not use his trust authority to take land into trust on behalf of the Narragansetts because that authority may be used only "for the purpose of providing land for Indians." 25 U.S.C. § 465.

Excluding the Narragansetts from the reach of the Secretary's trust authority is consistent with the congressional objectives that animate the IRA. The Narragansetts did not possess a federal reservation in Rhode Island at the time that the United States was allotting reservation land under the General Allotment Act. Because the Narragansetts did not lose land as a result of the allotment policy, Congress would not have intended for the Tribe to benefit from the trust authority that was delegated to the Secretary to provide land for Indians who had lost their property through allotment. There is accordingly no basis in the language or purpose of the IRA for the

Secretary to displace the State's criminal and civil jurisdiction over the 31-acre parcel by taking that property into trust on behalf of the Narragansetts.

II. THE SETTLEMENT ACT PROHIBITS THE SECRETARY FROM TAKING THE 31-ACRE PARCEL INTO TRUST ON BEHALF OF THE NARRAGANSETTS.

Even if the Secretary did possess authority under Section 5 of the IRA to take land into trust on behalf of a tribe that was neither federally recognized nor under federal jurisdiction at the time of the IRA's enactment, the Rhode Island Indian Claims Settlement Act would prohibit the Secretary from exercising that authority in connection with the 31-acre parcel claimed by the Narragansetts. The Settlement Act extinguishes all claims regarding land that the Tribe has transferred to other landowners—including claims to territorial sovereignty asserted through the trust process. Because the Tribe acknowledges that it transferred the 31-acre parcel more than a century ago, the Settlement Act forecloses the Secretary from granting the Tribe's claim to sovereignty over that land.

The First Circuit's contrary conclusion conflicts with the plain language of the Settlement Act and is fundamentally at odds with the careful balance between state and tribal sovereign interests negotiated by the parties to the JMOU and codified in the Settlement Act.

A. The Plain Language Of The Settlement Act Prohibits The Narragansetts From Asserting Claims To Sovereignty Over The 31-Acre Parcel.

1. In the 1975 lawsuits that gave raise to the Settlement Act, the Tribe claimed that, from "time immemorial," it had possessed aboriginal title to 3,200 acres of land in the Town of Charlestown. *S. R.I. Land Dev. Corp.* Compl. ¶ 1. The Tribe alleged that its transfer of that property to other landowners had not been approved by Congress and therefore violated the Indian Trade and Intercourse Act of 1790, 25 U.S.C. § 177. *S. R.I. Land Dev. Corp.* Compl. ¶¶ 12, 71. Through these suits, the Tribe sought to eject the non-Indian landowners from this property and recover monetary damages from the State, Town, and private defendants.

The parties resolved these two suits by entering into a Joint Memorandum of Understanding that was intended to "settle[ ] . . . Indian land claims within the State of Rhode Island." J.A. 25a. Under the terms of the JMOU, the Tribe recovered 1,800 of the 3,200 acres of land to which it claimed aboriginal title. *Id.* at 26a. The JMOU made clear that, subject to certain narrow exceptions for hunting and fishing regulations (*id.* at 28a), "all laws of the State of Rhode Island shall be in full force and effect on the Settlement Lands, including but not limited to state and local building, fire and safety codes." *Id.* In exchange for the recovery of this land, the Tribe agreed to retroactive congressional approval of every transaction in which it had transferred its aboriginal land to other landowners and to the extinguishment of any aboriginal title that it possessed to those transferred lands. *Id.* at 37a.

The Settlement Act gave effect to each of these conditions in order "to resolve once and for all the claims being asserted by the Narragansett Indians to lands in the Town of Charlestown." H.R. Rep. 95-1453, at 15 (1978), *reprinted in* 1978 U.S.C.C.A.N. 1948, 1958. In addition to facilitating the acquisition of the agreed-upon 1,800 acres and making clear that state law would continue to apply to that property (25 U.S.C. §§ 1707(a), 1708(a)), the Settlement Act provided congressional authorization for every transaction in which the Tribe had transferred its land. To that end, the Settlement Act provides that "any transfer of land or natural resources located anywhere within the United States from, by, or on behalf of the [Tribe] . . . shall be deemed to have been made in accordance with the Constitution and all laws of the United States." *Id.* § 1705(a)(1). The Settlement Act further states that, "to the extent that any [such] transfer of land or natural resources . . . may involve land or natural resources to which the [Tribe] . . . had aboriginal title, subsection (a) [of Section 1705] shall be regarded as an extinguishment of such aboriginal title as of the date of said transfer." *Id.* § 1705(a)(2). Finally, in order to foreclose all future claims regarding this transferred land, the Settlement Act provides that

> by virtue of the approval of a transfer of land or natural resources effected by this section, or an extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by the Indian Corporation or any other entity presently or at any time in the past known as the Narragansett Tribe of Indians, or any predecessor or successor in interest, member or stock-

> holder thereof, or any other Indian, Indian nation, or tribe of Indians, arising subsequent to the transfer and based upon any interest in or right involving such land or natural resources (including but not limited to claims for trespass damages or claims for use and occupancy) shall be regarded as extinguished as of the date of the transfer.

Id. § 1705(a)(3). Section 1712 of the Settlement Act extended these retroactive approval and extinguishment provisions to every other Indian tribe's transfer of land within Rhode Island. *Id.* § 1712(a); *see also id.* § 1705(a) (extinguishing other tribes' claims to land in Charlestown).

Together, these provisions provide retroactive congressional authorization for all Indian land transfers in Rhode Island, extinguish all aboriginal title to the transferred land, and foreclose tribes from asserting claims based upon transferred land. The resulting statutory framework embodies a careful compromise between the sovereign interests of the State and Tribe that provides the Tribe with a land base while ensuring that state law will continue to apply to all Indian lands in Rhode Island.

2. The claims extinguishment provision of the Settlement Act is an essential component of this statutorily embodied compromise and was designed to "eliminate[ ] all Indian claims of any kind, whether possessory, monetary or otherwise, involving land in Rhode Island." J.A. 27a; *see also* 25 U.S.C. § 1705(a)(3). That provision prohibits the Secretary from taking the 31-acre parcel into trust on behalf of the Tribe.

The claims extinguishment provision "extinguish[es] . . . all claims . . . based upon any interest

in or right involving . . . land" that the Tribe has transferred to other landowners. 25 U.S.C. § 1705(a)(3). It is undisputed that, before the European settlement of Rhode Island, the Tribe "owned, used, and occupied" the 31-acre parcel and that the Tribe thereafter transferred the parcel. *S. R.I. Land Dev. Corp.* Compl. ¶ 7; *see also id.* ¶ 69 (describing the parcel and seeking to eject the then-current landowners). The Tribe's request that the Secretary now take the 31-acre parcel into trust on its behalf is a quintessential "claim[ ] . . . based upon an[ ] interest in or right involving such land" because the Tribe's trust application asserts a claim to territorial sovereignty over the land that would divest the State and Town of their jurisdiction over the property. *See Black's Law Dictionary* 240 (7th ed. 1999) (defining "claim" as any "demand for money or property to which one asserts a right"); *see also De Coteau*, 420 U.S. at 428 ("Indian conduct occurring on the trust allotments is beyond the State's jurisdiction, being instead the proper concern of tribal or federal authorities"); 25 C.F.R. § 1.4. Indeed, the claims extinguishment provision expressly applies to "claims for use and occupancy" of land (25 U.S.C. § 1705(a)(3)), which necessarily encompass claims for sovereign use and occupancy. *See*, *e.g.*, *South Dakota v. Bourland*, 508 U.S. 679, 690 (1993) (a tribe's "right . . . of 'absolute and undisturbed use' . . . encompass[es] the right to exclude and to regulate"); *Montana v. United States*, 450 U.S. 544, 559 (1981) (where tribe possessed "absolute and undisturbed use and occupation" over land, it could exercise regulatory jurisdiction over that land) (emphasis omitted). Because the Tribe's claim to sovereign rights over the 31-acre parcel falls squarely within the terms of the Settlement Act's claims extinguishment

provision, the Secretary is prohibited from granting the Tribe's claim through the approval of its trust application.

The First Circuit misread the Settlement Act when it concluded that the statute did not extinguish the Tribe's claim to sovereignty over the 31-acre parcel. As an initial matter, the First Circuit was incorrect to suggest that petitioners' "argument . . . depends on finding that the Settlement Act *implicitly* repealed the IRA, at least in part." Pet. App. 38-39 (emphasis in original). The Settlement Act *explicitly* forecloses the Secretary from exercising that authority in connection with land that the Narragansetts have transferred to other landowners through its provision extinguishing tribal "claims . . . based upon an interest in or right involving . . . land," including "claims for use and occupancy." This Court's decisions restricting the circumstances in which a statute will be deemed to have been impliedly repealed are therefore wholly inapplicable to this case.

The First Circuit also suggested that petitioners' "interpretation of paragraph (3)" of Section 1705(a) as extinguishing the Tribe's claims based on transferred land "proves too much" because it would "prevent the Tribe from asserting any ownership interest over land it purchased" on the open market. Pet. App. 43, 44. The JMOU, however, expressly forecloses this reading of the Settlement Act. *See* J.A. 27a ("This legislation shall not purport to affect or eliminate the claim of any individual Indian which is pursued under any law generally applicable to non-Indians as well as Indians in Rhode Island."). Moreover, Congress explained at the time of the Settlement Act's enactment that "extinguishment of Indian land claims is limited to those claims raised by Indians qua Indians, and is not intended to affect or

eliminate the claim of any Indian under any law generally applicable to Indians as well as non-Indians." H.R. Rep. 95-1453, at 12, *reprinted in* 1978 U.S.C.C.A.N. at 1955. Indeed, it would be absurd to read the Settlement Act as precluding an Indian tribe that holds land in fee simple from bringing state-law trespass and property damage causes of action available to non-Indian landowners. *See Sheridan v. United States*, 487 U.S. 392, 402 n.7 (1988) ("courts should strive to avoid attributing absurd designs to Congress").

The First Circuit further contended that, even if the Settlement Act did impose restrictions on the Tribe's ability to assert claims regarding the 31-acre parcel, those restrictions are inapplicable to the Secretary. *See* Pet. App. 44 ("this entire line of argument by the State misses the point that what is at issue is not what the *Tribe* may do in the exercise of its rights, but what the *Secretary* may do") (emphases in original). But the provision of the Settlement Act extinguishing the Tribe's right to assert claims to territorial sovereignty over transferred land necessarily forecloses the Secretary from exercising his trust authority to grant such claims, just as it prohibits a court from awarding relief to the Tribe on a statutorily barred claim. If that were not the case, the provision would be an absolute nullity. Indeed, under the First Circuit's reasoning, the Secretary would still be able to acquire land in trust for the Tribe if the Settlement Act emphatically stated that "the Narragansett Tribe is prohibited from requesting that land be taken into trust on its behalf." Such excessive literalism defies common sense and undermines Congress's reasonable expectations when enacting the Settlement Act. *See Egelhoff v. Egelhoff*, 532 U.S. 141, 147 (2001) (cautioning against an

"uncritical literalism" in statutory interpretation) (internal quotation marks omitted).

Moreover, the claims extinguishment provision applies not only to the Tribe but also to any "successor in interest" to the Tribe. 25 U.S.C. § 1705(a)(3). Because the Secretary becomes the successor in fee title interest to the Tribe when he takes land into trust on its behalf, he is bound by the Settlement Act's extinguishment provision.[11]

B. The Secretary's Acquisition Of The 31-Acre Parcel In Trust For The Narragansetts Would Undermine The Objectives Of The Settlement Act.

The JMOU to which the State, Town, and Tribe agreed in order to settle the Tribe's two lawsuits provided that "Federal legislation shall be obtained that eliminates all Indian claims of any kind, whether possessory, monetary or otherwise, involving land in

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[11] The First Circuit also placed weight on the fact that, "[i]n other settlement acts, Congress has specifically described limits on the Secretary's trust authority," but did not explicitly reference that trust authority in the Settlement Act. Pet. App. 47. It was necessary, however, for Congress to make explicit reference to the Secretary's trust authority in the two settlement acts cited by the court of appeals because those acts preserved the Secretary's authority to acquire land in trust for the relevant tribes, subject to certain statutorily imposed restrictions. *See* Maine Indian Claims Settlement Act, 25 U.S.C. § 1724(e); Connecticut Indian Land Claims Settlement Act, *id.* § 1754(b)(8). The Rhode Island Settlement Act, in contrast, categorically precludes the Secretary from exercising his trust authority in connection with land transferred by the Tribe. *Id.* § 1705(a)(3). Unlike in the Maine and Connecticut acts, then, it was unnecessary for Congress to define the specific contours of the Secretary's trust authority in the Rhode Island act.

Rhode Island." J.A. 27a. It would be inconsistent with the intentions of the parties to the JMOU and the congressional objectives embodied in the Settlement Act—the "Federal legislation" for which the JMOU provided—to authorize the Secretary to use his trust authority to divest the State and Town of jurisdiction over the 31-acre parcel.

1. The Settlement Act establishes a compromise between the sovereign interests of the State and Tribe. This careful allocation of competing sovereign interests is evident in several provisions of the statute.

First, the Settlement Act balances the Tribe's need for a land base against the State's interest in maintaining sovereignty over its land by providing for the transfer of 1,800 acres of land to the Tribe, while making clear that, with several minor exceptions, "the settlement lands shall be subject to the civil and criminal laws and jurisdiction of the State." 25 U.S.C. § 1708(a).

Second, Congress foreclosed future tribal claims seeking to recover possession or sovereignty over previously alienated land by ratifying all transactions in which Indian tribes had transferred land within Rhode Island (25 U.S.C. §§ 1705(a)(1), 1712(a)(1)), and extinguishing any claims that the tribes may have "based upon any interest in or right involving such land." *Id.* §§ 1705(a)(3), 1712(a)(3).

Third, Congress extinguished all tribes' aboriginal title to land in Rhode Island that they had transferred to other landowners. The Settlement Act thereby ensures that no tribe may rely upon the sovereign rights associated with aboriginal title to restrict the State's jurisdiction over its land. *See*, *e.g.*, *City of Sherrill v. Oneida Indian Nation*, 544 U.S.

197, 213 (2005) (noting the argument of the United States and the Oneidas that the unification of fee title and aboriginal title permits the exercise of tribal "sovereign dominion").

The Secretary's acquisition of land in Rhode Island in trust for the Tribe—and the resulting ouster of state jurisdiction over that land—is incompatible with this statutory framework, which provides a land base for the Tribe, while preserving the State's sovereignty over the Tribe's territory. If the Secretary were able to exercise his trust authority in the State to create sovereign Indian territory, he would be able to alter and, ultimately, undermine the fundamental allocation of sovereignty that Congress established in the Settlement Act. *See Am. Paper Inst., Inc. v. Am. Elec. Power Serv. Corp.*, 461 U.S. 402, 421 (1983) (courts do not "imput[e] to Congress a purpose to paralyze with one hand what it sought to promote with the other") (internal quotation marks omitted).

Moreover, permitting the Secretary to acquire the 31-acre parcel in trust would prevent the State from applying its laws uniformly throughout its territory—a congressional objective reflected in the provision of the Settlement Act subjecting the Settlement Lands to state law. 25 U.S.C. § 1708(a). Indeed, creating enclaves of Indian country within the densely populated State would create significant administrative problems for the State and greatly complicate efforts to enforce its laws within its territorial boundaries.

Finally, reading the Settlement Act to permit the Secretary to take land into trust for the Tribe would mean that the Tribe would be free to exercise territorial sovereignty over land *anywhere* in the State, *except* on the Settlement Lands—which are the heart

of the Tribe's ancestral home. Neither Congress nor the parties to the JMOU could have intended such an anomalous result.

2. Congress's intent that the Settlement Act foreclose trust acquisitions in Rhode Island is confirmed by the fact that the statute was modeled on—and closely resembles—the Alaska Native Claims Settlement Act ("ANCSA"), 43 U.S.C. § 1601 *et seq.*; H.R. Rep. 95-1453, at 8, *reprinted in* 1978 U.S.C.C.A.N. at 1951, a measure that the United States itself acknowledges is a prohibition on subsequent trust acquisitions in Alaska. *See* U.S. Dep't of the Interior Solicitor Op. M-36975, at 107-08, 123 n.296 (Jan. 19, 1993) (concluding that "it would be an abuse of discretion for the Secretary to take lands in trust" in Alaska because ANCSA "contains a very complete address to the issue of land," which left "little or no room for tribes in Alaska to exercise governmental authority over land").

In ANCSA, Congress revoked the existing native land reserves in Alaska and transferred fee-simple title to approximately 44 million acres of Alaska land to state-chartered private business corporations comprised of Alaska Natives. *See Alaska v. Native Vill. of Venetie Tribal Gov't*, 522 U.S. 520, 524 (1998). This Court held in *Venetie* that land acquired under ANCSA did not constitute "Indian country" over which the Alaska Natives could exercise sovereignty. The Court found the following factors to be dispositive in reaching this conclusion:

* ANCSA was a comprehensive statute designed to settle all land claims by Alaska Natives. *Id.* at 523.

* In enacting ANCSA, "Congress sought to end the sort of federal supervision over Indian affairs

that had previously marked federal Indian policy." *Id.* at 523-24.

* ANCSA extinguished all aboriginal claims to land in Alaska. *Id.* at 524.

* Federal funds and land were transferred by the federal government to state-chartered private business corporations, formed pursuant to state statute. All of the shareholders of these corporations were Alaska Natives. *Id.*

* ANCSA corporations received title to these lands in fee simple, without the application of a federal restraint on alienation. *Id.*

* The state-chartered corporation at issue ultimately transferred title to fee land to the tribal government. *Id.*

The same factors that led this Court to conclude that Congress intended to disestablish Indian country in Alaska are present in the Rhode Island Settlement Act:

* The Settlement Act was a comprehensive measure designed to settle all tribal claims to land in Rhode Island. 25 U.S.C. § 1705(a)(2), (a)(3); *id.* § 1712(a)(2), (a)(3).

* In enacting the Rhode Island Settlement Act, Congress specifically provided that the Secretary would have no further land-based duties or liabilities to the Tribe. *Id.* § 1707(c).

* The Rhode Island Settlement Act extinguished all aboriginal claims to land in Rhode Island. *Id.* §§ 1705(a)(2), 1712(a)(2).

* The Settlement Lands were transferred to a state-chartered corporation formed pursuant to state statute. *Id.* § 1707(a). The majority of members of

the corporation's board were selected by the Tribe. *Id.* § 1706(a)(1), (a)(2).

* The corporation received the Settlement Lands in fee simple with no initial restraint on alienation. *Id.* § 1707(c).

* The corporation ultimately transferred the land to the Tribe itself. Pet. App. 11-12.

By providing the Tribe with a land base through a state-chartered corporation, extinguishing tribes' aboriginal title to, and claims based upon, any transferred land, and disavowing further federal duties or liabilities in connection with the Tribe, Congress established in Rhode Island precisely the allocation of sovereign powers between the State, federal government, and tribes that it created in Alaska. As with ANCSA, the Secretary's acquisition of land in trust in Rhode Island would be fundamentally inconsistent with Congress's carefully calibrated balance between state and tribal interests.

* * *

Sovereign Indian territory has never existed in the State of Rhode Island. Through its trust application, the Tribe nevertheless claims the right to exercise sovereignty over 31 acres of land in Charlestown and to divest the State and Town of jurisdiction over that property. The Secretary's decision to grant the Tribe's claim conflicts with the express limitations that the IRA imposes on his trust authority and obliterates the delicate compromise between state and tribal sovereign interests embodied in the Settlement Act. The Secretary may not disregard the congressionally imposed restrictions on his trust authority or assist the Tribe in evading the settlement

that provided a definitive resolution to all Indian land claims in Rhode Island.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

The Indian Reorganization Act of 1934, 25 U.S.C. § 461 *et seq.*, provides in relevant part:

§ 461. Allotment of land on Indian reservations

Hereafter, no land of any Indian reservation, created or set apart by treaty or agreement with the Indians, Act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian.

§ 462. Existing periods of trust and restrictions on alienation extended

The existing periods of trust placed upon any Indian lands and any restriction on alienation thereof are hereby extended and continued until otherwise directed by Congress.

§ 463. Restoration of lands to tribal ownership

(a) Protection of existing rights

The Secretary of the Interior, if he shall find it to be in the public interest, is hereby authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public-land laws of the United States: *Provided, however*, That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this Act: *Provided further*, That this section shall not apply to lands within any reclamation project heretofore authorized in any Indian reservation.

(b) Papago Indian; permits for easements, etc.

(1) [Repealed]

(2) [Repealed]

(3) Water reservoirs, charcos, water holes, springs, wells, or any other form of water development by the United States or the Papago Indians shall not be used for mining purposes under the terms of this Act, except under permit from the Secretary of the Interior approved by the Papago Indian Council: *Provided*, That nothing herein shall be construed as interfering with or affecting the validity of the water rights of the Indians of this reservation: *Provided further*, That the appropriation of living water heretofore or hereafter affected by the Papago Indians is hereby recognized and validated subject to all the laws applicable thereto.

(4) Nothing herein contained shall restrict the granting or use of permits for easements or rights-of-way; or ingress or egress over the lands for all proper and lawful purposes.

* * *

§ 464. Transfer of restricted Indian lands or shares in assets of Indian tribes and corporations; exchange of lands

Except as provided in this Act, no sale, devise, gift, exchange, or other transfer of restricted Indian lands or of shares in the assets of any Indian tribe or corporation organized under this Act shall be made or approved: *Provided, however,* That such lands or interests may, with the approval of the Secretary of the Interior, be sold, devised, or otherwise transferred to the Indian tribe in which the lands or

shares are located or from which the shares were derived, or to a successor corporation: *Provided further*, That, subject to section 8(b) of the American Indian Probate Reform Act of 2004 (Public Law 108-374; 25 U.S.C. 2201 note), lands and shares described in the preceding proviso shall descend or be devised to any member of an Indian tribe or corporation described in that proviso or to an heir or lineal descendant of such a member in accordance with the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.), including a tribal probate code approved, or regulations promulgated under, that Act: *Provided further*, That the Secretary of the Interior may authorize any voluntary exchanges of lands of equal value and the voluntary exchange of shares of equal value whenever such exchange, in the judgment of the Secretary, is expedient and beneficial for or compatible with the proper consolidation of Indian lands and for the benefit of cooperative organizations.

§ 465. Acquisition of lands, water rights or surface rights; appropriation; title to lands; tax exemption

The Secretary of the Interior is hereby authorized, in his discretion, to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not

to exceed $2,000,000 in any one fiscal year: *Provided*, That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona and New Mexico, in the event that the proposed Navajo boundary extension measures now pending in Congress and embodied in the bills (S. 2499 and H. R. 8927) to define the exterior boundaries of the Navajo Indian Reservation in Arizona, and for other purposes, and the bills (S. 2531 and H. R. 8982) to define the exterior boundaries of the Navajo Indian Reservation in New Mexico, and for other purposes, or similar legislation, becomes law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to this Act or the Act of July 28, 1955 (69 Stat. 392), as amended (25 U.S.C. 608 et seq.) shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

* * *

§ 466. Indian forestry units; rules and regulations

The Secretary of the Interior is directed to make rules and regulations for the operation and management of Indian forestry units on the principle of sustained-yield management, to restrict the number of livestock grazed on Indian range units to the estimated carrying capacity of such ranges, and to promulgate such other rules and regulations as may be necessary to protect the range from deterioration,

to prevent soil erosion, to assure full utilization of the range, and like purposes.

§ 467. New Indian reservations

The Secretary of the Interior is hereby authorized to proclaim new Indian reservations on lands acquired pursuant to any authority conferred by this Act, or to add such lands to existing reservations: *Provided*, That lands added to existing reservations shall be designated for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservations.

§ 468. Allotments or holdings outside of reservations

Nothing contained in this Act shall be construed to relate to Indian holdings of allotments or homesteads upon the public domain outside of the geographic boundaries of any Indian reservation now existing or established hereafter.

§ 469. Indian corporations; appropriation for organizing

There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, such sums as may be necessary, but not to exceed $250,000 in any fiscal year, to be expended at the order of the Secretary of the Interior, in defraying the expenses of organizing Indian chartered corporations or other organizations created under this Act.

§ 470. Revolving fund; appropriation for loans

There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the sum of $20,000,000 to be established

as a revolving fund from which the Secretary of the Interior, under such rules and regulations as he may prescribe, may make loans to Indian chartered corporations for the purpose of promoting the economic development of such tribes and of their members, and may defray the expenses of administering such loans. Repayment of amounts loaned under this authorization shall be credited to the revolving fund and shall be available for the purposes for which the fund is established.

* * *

§ 471. Vocational and trade schools; appropriation for tuition

There is hereby authorized to be appropriated, out of any funds in the United States Treasury not otherwise appropriated, a sum not to exceed $250,000 annually, together with any unexpended balances of previous appropriations made pursuant to this section, for loans to Indians for the payment of tuition and other expenses in recognized vocational and trade schools: *Provided*, That not more than $50,000 of such sum shall be available for loans to Indian students in high schools and colleges. Such loans shall be reimbursable under rules established by the Commissioner of Indian Affairs.

§ 472. Standards for Indians appointed to Indian Office

The Secretary of the Interior is directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed, without regard to civil-service laws, to the various positions maintained, now or hereafter, by the Indian Office, in the administration of functions or services affecting any Indian tribe. Such qualified

Indians shall hereafter have the preference to appointment to vacancies in any such positions.

* * *

§ 473. Application generally

The provisions of this Act shall not apply to any of the Territories, colonies, or insular possessions of the United States, except that sections 9, 10, 11, 12, and 16 [25 USCS §§ 469, 470, 471, 472, and 476], shall apply to the Territory of Alaska: *Provided*, That sections 4, 7, 16, 17, and 18 of this Act [25 USCS §§ 464, 467, 476, 477, and 478] shall not apply to the following-named Indian tribes, the members of such Indian tribes, together with members of other tribes affiliated with such named tribes located in the State of Oklahoma, as follows: Cheyenne, Arapaho, Apache, Comanche, Kiowa, Caddo, Delaware, Wichita, Osage, Kaw, Otoe, Tonkawa, Pawanee, Ponca, Shawnee, Ottawa, Quapaw, Seneca, Wyandotte, Iowa, Sac and Fox, Kickapoo, Pottawatomi, Cherokee, Chickasaw, Choctaw, Creek, and Seminole. Section 4 of this Act [25 USCS § 464] shall not apply to the Indians of the Klamath Reservation in Oregon.

* * *

§ 474. Continuance of allowances

The Secretary of the Interior is hereby directed to continue the allowance of the articles enumerated in section 17 of the Act of March 2, 1889 (23 Stat. L. 894), or their commuted cash value under the Act of June 10, 1896 (29 Stat. L. 334), to all Sioux Indians who would be eligible, but for the provisions of this Act, to receive allotments of lands in severalty under section 19 of the Act of May 29, 1908 (25 Stat. L. 451), or under any prior Act, and who have the pre-

scribed status of the head of a family or single person over the age of eighteen years, and his approval shall be final and conclusive, claims therefor to be paid as formerly from the permanent appropriation made by said section 17 and carried on the books of the Treasury for this purpose. No person shall receive in his own right more than one allowance of the benefits, and application must be made and approved during the lifetime of the allottee or the right shall lapse. Such benefits shall continue to be paid upon such reservation until such time as the lands available therein for allotment at the time of the passage of this Act [enacted June 18, 1934] would have been exhausted by the award to each person receiving such benefits of an allotment of eighty acres of such land.

§ 475. Claims or suits of Indian tribes against United States; rights unimpaired

Nothing in this Act shall be construed to impair or prejudice any claim or suit of any Indian tribe against the United States. It is hereby declared to be the intent of Congress that no expenditures for the benefit of Indians made out of appropriations authorized by this Act shall be considered as offsets in any suit brought to recover upon any claim of such Indians against the United States.

§ 475a. Offsets of gratuities

In all suits now pending in the Claims Court [Court of Federal Claims] by an Indian tribe or band which have not been tried or submitted, and in any suit hereafter filed in the Claims Court [Court of Federal Claims] by any such tribe or band, the Claims Court [Court of Federal Claims] is hereby directed to consider and to offset against any amount found due the said tribe or band all sums expended

gratuitously by the United States for the benefit of the said tribe or band; and in all cases now pending or hereafter filed in the Claims Court [Court of Federal Claims] in which an Indian tribe or band is party plaintiff, wherein the duty of the court is merely to report its findings of fact and conclusions to Congress, the said Claims Court [Court of Federal Claims] is hereby directed to include in its report a statement of the amount of money which has been expended by the United States gratuitously for the benefit of the said tribe or band: *Provided,* That expenditures made prior to the date of the law, treaty, agreement, or Executive order under which the claims arise shall not be offset against the claims or claim asserted; and expenditures under the Act of June 18, 1934 (48 Stat. L. 984), except expenditures under appropriations made pursuant to section 5 of such Act [25 USCS § 465], shall not be charged as offsets against any claim on behalf of an Indian tribe or tribes now pending in the Claims Court [Court of Federal Claims] or hereafter filed: *Provided further,* That funds appropriated and expended from tribal funds shall not be construed as gratuities; and this section shall not be deemed to amend or affect the various Acts granting jurisdiction to the Claims Court [Court of Federal Claims] to hear and determine the claims listed on page 678 of the hearings before the subcommittee of the House Committee on Appropriations on the second deficiency appropriation bill for the fiscal year 1935: *And provided further*, That no expenditure under any emergency appropriation or allotment made subsequently to March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas, relief from distress caused by unemployment and conditions resulting therefrom, the prosecution

of public works and public projects for the relief of unemployment or to increase employment, and for work relief (including the civil-works program) shall be considered in connection with the operation of this section.

§ 476. Organization of Indian tribes; constitution and by-laws and amendment thereof; special election

(a) Adoption; effective date

Any Indian tribe shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, and any amendments thereto, which shall become effective when—

(1) ratified by a majority vote of the adult members of the tribe or tribes at a special election authorized and called by the Secretary under such rules and regulations as the Secretary may prescribe; and

(2) approved by the Secretary pursuant to subsection (d) of this section.

(b) Revocation

Any constitution or bylaws ratified and approved by the Secretary shall be revocable by an election open to the same voters and conducted in the same manner as provided in subsection (a) for the adoption of a constitution or bylaws.

(c) Election procedure; technical assistance; review of proposals; notification of contrary-to-applicable law findings

(1) The Secretary shall call and hold an election as required by subsection (a)—

(A) within one hundred and eighty days after the receipt of a tribal request for an election to ratify a proposed constitution and bylaws, or to revoke such constitution and bylaws; or

(B) within ninety days after receipt of a tribal request for election to ratify an amendment to the constitution and bylaws.

(2) During the time periods established by paragraph (1), the Secretary shall—

(A) provide such technical advice and assistance as may be requested by the tribe or as the Secretary determines may be needed; and

(B) review the final draft of the constitution and bylaws, or amendments thereto to determine if any provision therein is contrary to applicable laws.

(3) After the review provided in paragraph (2) and at least thirty days prior to the calling of the election, the Secretary shall notify the tribe, in writing, whether and in what manner the Secretary has found the proposed constitution and bylaws or amendments thereto to be contrary to applicable laws.

(d) Approval or disapproval by Secretary; enforcement

(1) If an election called under subsection (a) results in the adoption by the tribe of the proposed constitution and bylaws or amendments thereto, the Secretary shall approve the constitution and bylaws or amendments thereto within forty-five days after the election unless the Secretary finds that the proposed constitution and bylaws or any amendments are contrary to applicable laws.

(2) If the Secretary does not approve or disapprove the constitution and bylaws or amendments within the forty-five days, the Secretary's approval shall be considered as given. Actions to enforce the provisions of this section may be brought in the appropriate Federal district court.

(e) Vested rights and powers; advisement of presubmitted budget estimates

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local governments. The Secretary shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Office of Management and Budget and the Congress.

(f) Privileges and immunities of Indian tribes; prohibition on new regulations

Departments or agencies of the United States shall not promulgate any regulation or make any decision or determination pursuant to the Act of June 18, 1934 (25 U.S.C. 461 et seq., 48 Stat. 984) as amended, or any other Act of Congress, with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.

(g) Privileges and immunities of Indian tribes; existing regulations

Any regulation or administrative decision or determination of a department or agency of the United States that is in existence or effect on the date of enactment of this Act [enacted May 31, 1994] and that classifies, enhances, or diminishes the privileges and immunities available to a federally recognized Indian tribe relative to the privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes shall have no force or effect.

(h) Tribal sovereignty

Notwithstanding any other provision of this Act—

(1) each Indian tribe shall retain inherent sovereign power to adopt governing documents under procedures other than those specified in this section; and

(2) nothing in this Act invalidates any constitution or other governing document adopted by an Indian tribe after June 18, 1934, in accordance with the authority described in paragraph (1).

§ 477. Incorporation of Indian tribes; charter; ratification by election

The Secretary of the Interior may, upon petition by any tribe, issue a charter of incorporation to such tribe: *Provided*, That such charter shall not become operative until ratified by the governing body of such tribe. Such charter may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and per-

sonal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law, but no authority shall be granted to sell, mortgage, or lease for a period exceeding twenty-five years any trust or restricted lands included in the limits of the reservation. Any charter so issued shall not be revoked or surrendered except by Act of Congress.

§ 478. Acceptance optional

This Act shall not apply to any reservation wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application. It shall be the duty of the Secretary of the Interior, within one year after the passage and approval of this Act, to call such an election, which election shall be held by secret ballot upon thirty days' notice.

* * *

§ 479. Definitions

The term "Indian" as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians. The term "tribe" wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation. The words

"adult Indians" wherever used in this Act shall be construed to refer to Indians who have attained the age of twenty-one years.

* * *

The Rhode Island Indian Claims Settlement Act, 25 U.S.C. § 1701 *et seq.*, provides:

§ 1701. Congressional findings and declaration of policy

Congress finds and declares that—

(a) there are pending before the United States District Court for the District of Rhode Island two consolidated actions that involve Indian claims to certain public and private lands within the town of Charlestown, Rhode Island;

(b) the pendency of these lawsuits has resulted in severe economic hardships for the residents of the town of Charlestown by clouding the titles to much of the land in the town, including lands not involved in the lawsuits;

(c) the Congress shares with the State of Rhode Island and the parties to the lawsuits a desire to remove all clouds on titles resulting from such Indian land claims within the State of Rhode Island; and

(d) the parties to the lawsuits and others interested in the settlement of Indian land claims within the State of Rhode Island have executed a Settlement Agreement which requires implementing legislation by the Congress of the United States and the legislature of the State of Rhode Island.

§ 1702. Definitions

For the purposes of this Act [25 USCS §§ 1701 et seq.], the term—

(a) "Indian Corporation" means the Rhode Island nonbusiness corporation known as the "Narragansett Tribe of Indians";

(b) "land or natural resources" means any real property or natural resources, or any interest in or right involving any real property or natural resource, including but not limited to, minerals and mineral rights, timber and timber rights, water and water rights, and rights to hunt and fish;

(c) "lawsuits" means the actions entitled "Narragansett Tribe of Indians v. Southern Rhode Island Land Development Co., et al., C. A. No. 75-0006 (D.R.I.)" and "Narragansett Tribe of Indians v. Rhode Island Director of Environmental Management, C. A. No. 75-0005 (D.R.I.)";

(d) "private settlement lands" means approximately nine hundred acres of privately held land outlined in red in the map marked "Exhibit A" attached to the Settlement Agreement that are to be acquired by the Secretary from certain private landowners pursuant to sections 5 and 8 of this Act [25 USCS §§ 1704 and 1707];

(e) "public settlement lands" means the lands described in paragraph 2 of the Settlement Agreement that are to be conveyed by the State of Rhode Island to the State Corporation pursuant to legislation as described in section 7 of this Act [25 USCS § 1706];

(f) "settlement lands" means those lands defined in subsections (d) and (e) of this section;

(g) "Secretary" means the Secretary of the Interior;

(h) "settlement agreement" means the document entitled "Joint Memorandum of Understanding Concerning Settlement of the Rhode Island Indian Land Claims", executed as of February 28, 1978, by representatives of the State of Rhode Island, of the town of Charlestown, and of the parties to the lawsuits, as filed with the Secretary of the State of Rhode Island;

(i) "State Corporation" means the corporation created or to be created by legislation enacted by the State of Rhode Island as described in section 7 of this Act [25 USCS § 1706]; and

(j) "transfer" includes but is not limited to any sale, grant, lease, allotment, partition, or conveyance, any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance, or any event or events that resulted in a change of possession or control of land or natural resources.

§ 1703. Rhode Island Indian Claims Settlement Fund; establishment

There is hereby established in the United States Treasury a fund to be known as the Rhode Island Indian Claims Settlement Fund into which $3,500,000 shall be deposited following the appropriation authorized by section 11 of this Act [25 USCS § 1710].

§ 1704. Option agreements to purchase private settlement lands

(a) Acceptance of option agreement assignments; reasonableness of terms and conditions

The Secretary shall accept assignment of reasonable two-year option agreements negotiated by the Governor of the State of Rhode Island or his designee

for the purchase of the private settlement lands: *Provided*, That the terms and conditions specified in such options are reasonable and that the total price for the acquisition of such lands, including reasonable costs of acquisition, will not exceed the amount specified in section 4 [25 USCS § 1703]. If the Secretary does not determine that any such option agreement is unreasonable within sixty days of its submission, the Secretary will be deemed to have accepted the assignment of the option.

(b) Amount of payment

Payment for any option entered into pursuant to subsection (a) shall be in the amount of 5 per centum of the fair market value of the land or natural resources as of the date of the agreement and shall be paid from the fund established by section 4 of this Act [25 USCS § 1703].

(c) Limitation on option fees

The total amount of the option fees paid pursuant to subsection (b) shall not exceed $175,000.

(d) Application of option fee

The option fee for each option agreement shall be applied to the agreed purchase price in the agreement if the purchase of the defendant's land or natural resources is completed in accordance with the terms of the option agreement.

(e) Retention of option payment

The payment for each option may be retained by the party granting the option if the property transfer contemplated by the option agreement is not completed in accordance with the terms of the option agreement.

§ 1705. Publication of findings

(a) Prerequisites; consequences

If the Secretary finds that the State of Rhode Island has satisfied the conditions set forth in section 7 of this Act [25 USCS § 1706], he shall publish such findings in the Federal Register and upon such publication—

(1) any transfer of land or natural resources located anywhere within the United States from, by, or on behalf of the Indian Corporation or any other entity presently or at any time in the past known as the Narragansett Tribe of Indians, or any predecessor or successor in interest, member or stockholder thereof, and any transfer of land or natural resources located anywhere within the town of Charlestown, Rhode Island, by, from, or on behalf of any Indian, Indian nation, or tribe of Indians, including but not limited to a transfer pursuant to any statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of land or natural resources from, by, or on behalf of any Indian, Indian nation or tribe of Indians (including but not limited to the Trade and Intercourse Act of 1790, Act of July 22, 1790, ch. 33, sec. 4, 1 Stat. 137, [unclassified] and all amendments thereto and all subsequent versions thereof), and Congress does hereby approve any such transfer effective as of the date of said transfer;

(2) to the extent that any transfer of land or natural resources described in subsection (a) may involve land or natural resources to which the Indian Corporation or any other entity presently or at any time in the past known as the Narragansett Tribe of Indians, or any predecessor or successor in interest,

member or stockholder thereof, or any other Indian, Indian nation, or tribe of Indians, had aboriginal title, subsection (a) shall be regarded as an extinguishment of such aboriginal title as of the date of said transfer; and

(3) by virtue of the approval of a transfer of land or natural resources effected by this section, or an extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by the Indian Corporation or any other entity presently or at any time in the past known as the Narragansett Tribe of Indians, or any predecessor or successor in interest, member or stockholder thereof, or any other Indian, Indian nation, or tribe of Indians, arising subsequent to the transfer and based upon any interest in or right involving such land or natural resources (including but not limited to claims for trespass damages or claims for use and occupancy) shall be regarded as extinguished as of the date of the transfer.

(b) Maintenance of action; remedy

Any Indian, Indian nation, or tribe of Indians (other than the Indian Corporation or any other entity presently or at any time in the past known as the Narragansett Tribe of Indians, or any predecessor or successor in interest, member or stockholder thereof) whose transfer of land or natural resources was approved or whose aboriginal title or claims were extinguished by subsection (a) of this section may, within a period of one hundred and eighty days after publication of the Secretary's findings pursuant to section 6 [this section], bring an action against the State Corporation in lieu of an action against any other person against whom a cause may have existed

in the absence of this section. In any such action, the remedy shall be limited to a right of possession of the settlement lands.

§ 1706. Findings by Secretary

Section 6 of this Act [25 USCS § 1705] shall not take effect until the Secretary finds—

(a) that the State of Rhode Island has enacted legislation creating or authorizing the creation of a State chartered corporation satisfying the following criteria:

(1) the corporation shall be authorized to acquire, perpetually manage, and hold the settlement lands;

(2) the corporation shall be controlled by a board of directors, the majority of the members of which shall be selected by the Indian Corporation or its successor, and the remaining members of which shall be selected by the State of Rhode Island; and

(3) the corporation shall be authorized, after consultation with appropriate State officials, to establish its own regulations concerning hunting and fishing on the settlement lands, which need not comply with regulations of the State of Rhode Island but which shall establish minimum standards for the safety of persons and protection of wildlife and fish stock; and

(b) that State of Rhode Island has enacted legislation authorizing the conveyance to the State Corporation of land and natural resources that substantially conform to the public settlement lands as described in paragraph 2 of the Settlement Agreement.

§ 1707. Purchase and transfer of private settlement lands

(a) Determination by Secretary; assignment of settlement lands to State Corporation

When the Secretary determines that the State Corporation described in section 7(a) [25 USCS § 1706(a)] has been created and will accept the settlement lands, the Secretary shall exercise within sixty days the options entered into pursuant to section 5 of this Act [25 USCS § 1704] and assign the private settlement lands thereby purchased to the State Corporation.

(b) Moneys remaining in fund

Any moneys remaining in the fund established by section 4 of this Act [25 USCS § 1703] after the purchase described in subsection (a) shall be returned to the general Treasury of the United States.

(c) Duties and liabilities of United States upon discharge of Secretary's duties; restriction on conveyance of settlement lands; affect on easements for public or private purposes

Upon the discharge of the Secretary's duties under sections 5, 6, 7, and 8 of this Act [25 USCS §§ 1704-1706 and this section], the United States shall have no further duties or liabilities under the Act [25 USCS §§ 1701 et seq.] with respect to the Indian Corporation or its successor, the State Corporation, or the settlement lands: Provided, however, That if the Secretary subsequently acknowledges the existence of the Narragansett Tribe of Indians, then the settlement lands may not be sold, granted, or otherwise conveyed or leased to anyone other than the Indian Corporation, and no such disposition of the settlement lands shall be of any validity in law or

equity, unless the same is approved by the Secretary pursuant to regulations adopted by him for that purpose: Provided, however, That nothing in this Act [25 USCS §§ 1701 et seq.] shall affect or otherwise impair the ability of the State Corporation to grant or otherwise convey (including any involuntary conveyance by means of eminent domain or condemnation proceedings) any easement for public or private purposes pursuant to the laws of the State of Rhode Island.

§ 1708. Applicability of State law; treatment of settlement lands under the Indian Gaming Regulatory Act

(a) In general. Except as otherwise provided in this Act [25 USCS §§ 1701 et seq.], the settlement lands shall be subject to the civil and criminal laws and jurisdiction of the State of Rhode Island.

(b) Treatment of settlement lands under the Indian Gaming Regulatory Act. For purposes of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), settlement lands shall not be treated as Indian lands.

§ 1709. Preservation of Federal benefits

Nothing contained in this Act [25 USCS §§ 1701 et seq.] or in any legislation enacted by the State of Rhode Island as described in section 7 of this Act [25 USCS § 1706] shall affect or otherwise impair in any adverse manner any benefits received by the State of Rhode Island under the Federal Aid in Wildlife Restoration Act of September 2, 1937 (16 U.S.C. 669-669(i)), or the Federal Aid in Fish Restoration Act of August 9, 1950 (16 U.S.C. 777-777(k)).

§ 1710. Authorization of appropriations

There is hereby authorized to be appropriated $3,500,000 to carry out the purposes of this Act [25 USCS §§ 1701 et seq.].

§ 1711. Limitation of actions; jurisdiction

Notwithstanding any other provision of law, any action to contest the constitutionality of this Act [25 USCS §§ 1701 et seq.] shall be barred unless the complaint is filed within one hundred and eighty days of the date of enactment of this Act [enacted Sept. 30, 1978]. Exclusive jurisdiction over any such action is hereby vested in the United States District Court for the District of Rhode Island.

§ 1712. Approval of prior transfers and extinguishment of claims and aboriginal title outside town of Charlestown, Rhode Island and involving other Indians in Rhode Island

(a) Scope of applicability

Except as provided in subsection (b)—

(1) any transfer of land or natural resources located anywhere within the State of Rhode Island outside the town of Charlestown from, by, or on behalf of any Indian, Indian nation, or tribe of Indians (other than transfers included in and approved by section 6 of this Act [25 USCS § 1705]), including but not limited to a transfer pursuant to any statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of land or natural resources from, by, or on behalf of any Indian, Indian nation, or tribe of Indians (including but not limited to the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, 1

Stat. 137) [unclassified], and all amendments thereto and all subsequent versions thereof), and Congress does hereby approve any such transfer effective as of the date of said transfer;

(2) to the extent that any transfer of land or natural resources described in paragraph (1) may involve land or natural resources to which such Indian, Indian nation, or tribe of Indians had aboriginal title, paragraph (1) shall be regarded as an extinguishment of such aboriginal title as of the date of said transfer; and

(3) by virtue of the approval of such transfers of land or natural resources effected by this subsection or an extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by any such Indian, Indian nation, or tribe of Indians, arising subsequent to the transfer and based upon any interest in or rights involving such land or natural resources (including but not limited to claims for trespass damages or claims for use and occupancy), shall be regarded as extinguished as of the date of the transfer.

(b) Exceptions

This section shall not apply to any claim, right, or title of any Indian, Indian nation, or tribe of Indians that is asserted in an action commenced in a court of competent jurisdiction within one hundred and eighty days of the date of enactment of this Act [enacted Sept. 30, 1978]: Provided, That the plaintiff in any such action shall cause notice of the action to be served upon the Secretary and the Governor of the State of Rhode Island.

§ 1715. Exemption from taxation

(a) General exemption

Except as otherwise provided in subsections (b) and (c), the settlement lands received by the State Corporation shall not be subject to any form of Federal, State, or local taxation while held by the State Corporation.

(b) Income-producing activities

The exemption provided in subsection (a) shall not apply to any income-producing activities occurring on the settlement lands.

(c) Payments in lieu of taxes

Nothing in this Act [25 USCS §§ 1701 et seq.] shall prevent the making of payments in lieu of taxes by the State Corporation for services provided in connection with the settlement lands.

§ 1716. Deferral of capital gains

For purposes of the Internal Revenue Code of 1954 [Internal Revenue Code of 1986] [26 USCS §§ 1 et seq.], any sale or disposition of private settlement lands pursuant to the terms and conditions of the settlement agreement shall be treated as an involuntary conversion within the meaning of section 1033 of the Internal Revenue Code of 1954 [1986] [26 USCS § 1033].