No. 17-56003

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Agua Caliente Band of Cahuilla Indians,
Plaintiff-Appellant,

v.

Riverside County, et al.,
Defendants-Appellees,

Desert Water Agency,
Intervenor-Defendant-Appellee.

United States District Court for the Central District of California
Hon. Dolly M. Gee, Department 8
Case No. 5:14-cv-00007-DMG-DTB

BRIEF OF AMICUS CURIAE NATIONAL INTERTRIBAL TAX ALLIANCE IN SUPPORT OF PLAINTIFF-APPELLANT

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CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rule of Appellate Procedure 26.1, amicus curiae National Intertribal Tax Alliance ("NITA") certifies that it is a not-for-profit corporation incorporated in 2001 under the Navajo Corporation Act. NITA is recognized by the Internal Revenue Service as tax-exempt under I.R.C. § 501(c)(4). It has no parent corporation, and no publicly held corporation owns 10 percent or more of its stock.

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INTEREST OF AMICUS CURIAE[1]

Amicus curiae NITA was formed in 2001. NITA is a nonprofit organization that enhances and strengthens tribal governments through education on federal, state, and tribal tax issues affecting Indian tribal governments, tribal enterprises, and tribal members. NITA's ten-member volunteer board of directors includes representatives from Indian tribes, and tax and legal professionals serving them from various regions within the United States. NITA is the foremost organization focusing on taxation issues affecting Indian country.

NITA has unique information and a unique perspective to offer the Court in this matter. NITA's primary purpose is to provide education on tribal taxation issues across the United States. Because the matter at bar is a tribal tax case, NITA is uniquely positioned to inform the Court of the broad, nationwide policy concerns implicated by this case—developments and concerns that the parties might overlook, since they are likely to be focused on their own interests related to this dispute.

[1] This brief is filed with the consent of the parties. Pursuant to Federal Rules of Appellate Procedure 29(c)(5), NITA hereby confirms that no counsel for a party authorized any part of this brief, no party or counsel for a party made a contribution intended to fund the preparation or submission of this brief, and no person or entity other than NITA, its members, or its counsel made a monetary contribution to its preparation.

SUMMARY OF ARGUMENT

For over a century, all lands held in fee by the federal government for the beneficial interest of Indian tribes and Indians (collectively, "Indian trust lands") have been immune from state and local taxation. This was the common law. Indian trust lands could not be taxed even when the federal government's policy was to assimilate Indians and privatize their land, a policy that ultimately resulted in massive land loss of Indian lands.

Eventually Congress sought to reverse the federal government's assimilation policies in Indian country. In 1934, Congress enacted the Indian Reorganization Act (the "IRA")[2], an act intended to support tribal governments and protect remaining Indian lands. Important here, the IRA codified the federal common-law immunity of Indian trust lands in Section 5, which expressly declared that such lands "shall be exempt from State and local taxation." 25 U.S.C. § 5108.[3] As President Roosevelt noted, the IRA was "a measure of justice long overdue"[4] recognizing that Congress designed the IRA to preserve and protect Indian trust lands and promote tribal sovereignty. These core principles of the IRA are achieved, in part, by immunizing Indian trust lands from state and local taxation.

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[2] IRA codified at 25 U.S.C. § 5101 *et seq.*

[3] Section 5 of the IRA was formerly codified at 25 U.S.C. § 465, but was recently transferred to 25 U.S.C. § 5108.

[4] Letter from Franklin D. Roosevelt to Committee on Indian Affairs (Apr. 28, 1934), in H.R. Rep. No. 1804, at 8 (1934).

Despite the long-held tax immunity of Indian trust lands and the IRA's unambiguous aims, the district court erroneously held that only a subset of Indian trust lands—lands acquired *after* 1934 under the IRA's authority—are exempt from state and local taxation. The district court's interpretation is irreconcilable with the text of the IRA, an act that expressly set out to protect and preserve Indian trust *lands that survived assimilation-era policies* of prior decades, lands the federal government held in trust before the IRA's passage in 1934.

The district court's interpretation also departs from the IRA's purpose, because the legislative record shows that Congress considered only whether to extend immunity to Indian lands that were no longer held in trust, not abrogate common law immunity for all others. Neither the text of the IRA nor its legislative history supports the district court's conclusion that the IRA eliminates or narrows tax immunity for Indian trust lands acquired before 1934.

Instead, the IRA's legislative history and other historical documents confirm that the IRA was intended to preserve the tax-exempt status of then-existing Indian trust lands, and afford similar protections for newly acquired Indian trust lands. Thus, the district court's decision, which interprets the IRA to eliminate tax immunity for Indian trust lands acquired before 1934, would be a radical departure from existing legal precedent and the purpose of the IRA. The district court's decision should be corrected.

ARGUMENT

NITA respectfully asks this Court to correct the district court's erroneous interpretation of Section 5 of the IRA, and instead confirm that the IRA expressly immunizes *all* Indian trust lands—irrespective of when those lands were acquired—from state and local taxation. The district court's holding should be corrected because it is irreconcilable with the text of the IRA, existing legal precedent, the IRA's legislative history, and its stated purpose.

I. Congress enacted the IRA to protect Indian trust lands that survived assimilation-era policies, and promote tribal self-governance.

The IRA is a statute rooted in history. As this Court recently recognized, "understanding the historical context in which a statute was passed can help to elucidate the statute's purpose and the meaning of statutory terms and phrases." *Cty. of Amador v. U.S. Dep't. of Interior*, 872 F.3d 1012, 1022 (9th Cir. 2017) (citing *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 471 (2001)). Indeed, "Indian law and history are the opposite sides of the same coin." *Cohen's Handbook of Federal Indian Law* § 1.01 at 7 (2005) ("*Cohen's Handbook*").[5]

The historical context, of the IRA is clear and undisputed. Before 1934, federal policies resulted in the loss of millions of acres of Indian lands, an injustice that Congress sought to remedy through the IRA. Those policies in turn enabled

[5] *Cohen's Handbook* is one of the foremost authorities on Indian law in the United States.

state and local taxation of some Indian lands and contributed to the loss of those lands. The IRA, and specifically Section 5, must be interpreted through that lens.

NITA presents historical context below to illuminate how the taxation of Indian trust lands is irreconcilable with the IRA, and undermines the preservation of Indian lands and tribal sovereignty.

A. Separation and Removal (1776-1880): Indian lands were set aside and reserved by acts of Congress, treaties, and executive orders.

Until the late 19th century, federal Indian policy separated Indian tribes from United States citizens. This policy was effectuated by treaties with Indian tribes, along with federal trade and intercourse acts, which facilitated and implemented the treaties.[6] Treaties "typically included provisions fixing boundaries between tribes and the United States."[7]

In the early 1800s, "[t]he rapid growth of the nation created a demand for territorial expansion and new pressure to extinguish Indian title."[8] This prompted what has become known as the "removal era" when the federal government

[6] Robert T. Anderson et al., *American Indian Law Cases and Commentary*, at 44-46 (2d ed. 2008) (noting that the 1790 Trade and Intercourse Act "was the origin of important elements of modern Federal Indian Law" and highlighting that "Section 4 of the Act, prohibiting purchases of lands from the Indians or tribes except at public treaties held under the authority of the United States, has remained in effect, with minor modifications, to this day, 25 U.S.C. § 177").
[7] *Cohen's Handbook* § 1.03[1] at 27-28.
[8] *Cohen's Handbook* § 1.03[3] at 41.

removed many tribes from their aboriginal lands and forced them to relocate west of the Mississippi River, often to less desirable lands.[9]

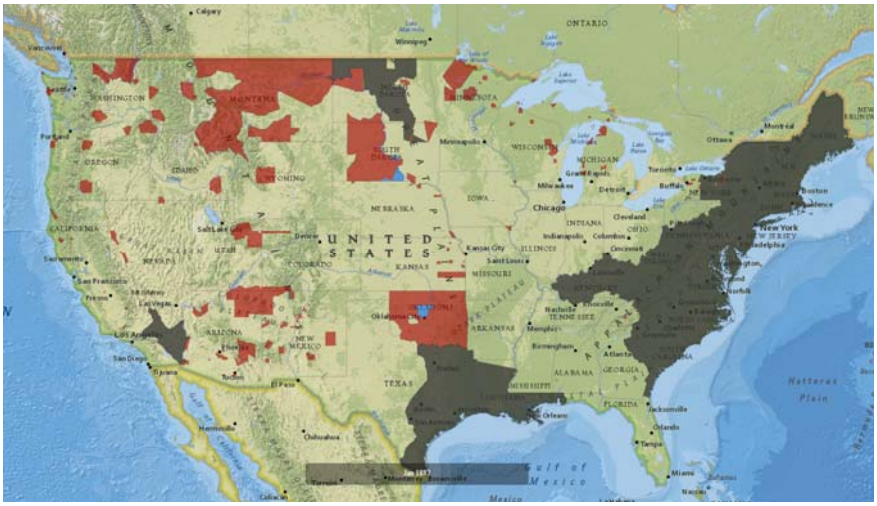
As American settlers expanded westward, the federal government relocated more Indian tribes and extinguished even more Indian title. Beginning in the 1840s, tribes were forced into territories reserved from their aboriginal territories, known as "reservations." Reservation boundaries were established through executive orders, acts of Congress, and, in some instances, treaties.

From 1776 to 1887, the federal government seized over 1.5 billion acres from America's indigenous people. The map below shows Indian territory (in blue) as of January 1776:[10]

[9] Anderson, *supra*, at 79.

[10] Rebecca Onion and Claudio Saunt, *Interactive Time-Lapse Map Shows How the U.S. Took More Than 1.5 Billion Acres from Native Americans*, Slate (June 17, 2014) http://www.slate.com/blogs/the_vault/2014/06/17/interactive_map_loss_of_indian_land.html (last visited Dec. 13, 2017).

The map below shows Indian territories (in red) in 1887:[11]



By the late 19th century, Indian tribes were left with a mere fraction of their aboriginal lands.

B. Assimilation Era (1871-1928): Allotment Act and Burke Act led to catastrophic loss of Indian lands.

The 1880s marked the fundamental shift in federal policy from separatism to assimilation. Rather than separate Indian tribes, federal policy now sought to "Americanize" Indians. In 1887, Capt. Richard H. Pratt infamously urged: "Kill the Indian in him, and save the man."[12] One of the primary ways of "killing the Indian" and promoting assimilation was to dismantle communal ownership of Indian lands. This policy was effectuated by the General Allotment Act of 1887,

[11] *Id.*

[12] *"Kill the Indian, and Save the Man": Capt. Richard H. Pratt on the Education of Native Americans*, http://historymatters.gmu.edu/d/4929/ (last visited Dec. 13, 2017).

commonly referred to as the Dawes Act.[13] Advocates of the Dawes Act held individualism in high regard, and believed that privatizing land would help "civilize" and assimilate Indians by encouraging them to depart from their culture of reliance on their tribal communities.[14]

The 1887 Dawes Act subdivided tribal lands and allotted them among individual Indians. These subdivided parcels are known as "allotments." The size of the allotment varied by the status of the individual. For example, the Dawes Act, allotted each head of family 160 acres but each single adult received only 80 acres.[15] The United States took title to each allotment "in trust" for the allottee. And because the United States held the fee interest, the allotments were immune from state and local taxation under federal common law, even though the government held the land in trust for the benefit of individual Indians. *See*

[13] General Allotment Act, ch. 119, 24 Stat. 388 (1887) (codified as amended at 25 U.S.C. §§ 331-389 (1976)).

[14] To illustrate, the Commissioner of Indian Affairs wrote, "A fundamental difference between barbarians and a civilized people is the difference between a herd and an individual." D.S. Otis, *The Dawes Act and the Allotment of Indian Lands* (Francis P. Prucha ed. 1973). *But see* minority report of the House Indian Affairs Committee in 1880: "The real aim of this bill is to get at the Indian lands and open them up to settlement. The provisions for the apparent benefit of the Indian are but the pretext to get at his lands and occupy them." H.R. Rep. No. 1578, at 10 (1880).

[15] The act was amended in 1891 to equalize the size of each allotment so that "each Indian" was entitled to 80 acres. Act of Feb. 28, 1891, ch. 383, § 1, 26 Stat. 794. The act was amended again in 1910; allotments of agricultural land remained at 80 acres, while allotments of grazing land were increased to 160 acres. Act of June 25, 1910, ch. 431, § 17, 36 Stat. 859 (1910).

McCurdy v. United States, 264 U.S. 484, 486 (1924); *United States v. Rickert*, 188 U.S. 432, 437-38 (1903).

Under the Dawes Act, the trust period of an allotment expired after a set term of 25 years.[16] At the end of the 25-year period, the land was removed from trust, and fee title was transferred to the individual Indian allottee.[17] This is commonly known as the issuance of a "fee patent."

The Burke Act of 1906 authorized the Secretary of Interior to prematurely terminate individual allotment trusts before the expiration of the 25-year trust period.[18] The trust period was open to early termination upon application and proof that the Indian allottee was "competent and capable of managing his or her affairs."[19] Upon termination of the trust, the Indian allottee was issued a fee patent, and title passed to the allottee.

Once a fee patent was issued, the United States no longer held fee title, the allotment was no longer federal land immune from taxation, and the allotment could be sold, encumbered and taxed—just like other privately-owned property.[20] The impact to Indian lands was immediate. By 1908, only two years after the

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[16] 25 U.S.C. § 348 (as amended).
[17] *Id.*
[18] Burke Act of 1906, 34 Stat. 182 (1906) (codified as amended at 25 U.S.C. § 349) (amending General Allotment Act § 6).
[19] *Id.*
[20] *Id.*; *Cty. of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 254 (1992).

passage of the Burke Act, more than 60 percent of Indians who had been issued fee patents had lost their land through tax foreclosures.[21]

The land losses grew exponentially as more fee patents were issued. These losses were exacerbated as the Commissioner of Indian Affairs liberalized the policy of issuing fee patents. For example, in 1913, the Commissioner created "competency commissions" that were "charged with roaming the reservations in search of allottees who could be issued premature patents."[22] Historical records show that many allottees were issued fee patents without having ever applied for them; fee patents were forced upon some Indians.[23] Surveys show that "90 percent or more of premature and forced-fee allottees lost their lands."[24] Also in this time frame, the 25-year trust periods for allotment created under the 1887 Dawes Act began to expire, and so even more fee patents were issued.

Usually the allotted land passed out of Indian ownership quickly after the allotments were transferred out of trust. Ultimately, "[t]housands of Indian owners disposed of their lands by voluntary or fraudulent sales; many others lost their lands at sheriffs' sales for nonpayment of taxes or other liens."[25] Of the allotted

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[21] Janet A. McDonnell, *The Dispossession of the American Indian, 1887-1934*, at 89 (1991).
[22] Judith V. Royster, *The Legacy of Allotment*, 27 Ariz. St. L.J. 1, 11 (1995).
[23] *Id*.
[24] *Id.* at 12.
[25] *Id*. (citing McDonnell, *supra*, at 100-01, 106-07).

lands that were transferred out of trust, only 3 percent remained in Indian ownership.[26] Approximately 27 million acres of allotted lands eventually passed into non-Indian ownership.[27]

Land loss caused by allotment happened in conjunction with the federal government's "surplus lands" program.[28] The surplus lands program was another feature of the Dawes Act that authorized the President to "open" to non-Indian settlement portions of reservations that remained after the lands had been allotted. In total, tribes lost approximately two-thirds of their Indian land base—90 million acres of Indian trust lands—between the onset of the allotment policy in 1887 and its official repudiation in 1934.[29]

C. New Deal Era (1920-1934): Congress passed the Indian Reorganization Act to mitigate consequences of the allotment era.

In the late 1920s, it became apparent that the assimilation policies of the previous few decades were unsuccessful.[30] Even our Supreme Court eventually acknowledged that "[t]he policy of allotment of Indian lands quickly proved disastrous for the Indians." *Hodel v. Irving*, 481 U.S. 704, 707 (1987). "Although tribal governments were weakened and tribal territories broke up, many Indian

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[26] Am. Indian Pol'y Rev. Comm'n, 95th Cong., Final Rep. 309 (Comm. Print 1977).
[27] Royster, *supra*, at 12.
[28] *Id.* at 13 (citing *Cohen's Handbook*).
[29] *Id.*
[30] Anderson, *supra*, at 130.

people continued to resist full incorporation into the American mainstream."[31] In response to pressure about the living conditions of Indians, the Secretary of Interior commissioned the Institute for Government Research (since renamed the Brookings Institution) to research and report on the issue.[32]

In 1928, following two years of study, the Institute published its report: *The Problem of Indian Administration*.[33] The report is commonly known as the "Meriam Report" (named after its author, Lewis Meriam). "The report was a devastating critique of federal Indian policy and allotment."[34] In over 800 pages, the Meriam Report detailed the hardships faced by American Indians, including poverty, inadequate health care and education, and "legal aspects of the Indian problem."[35]

"The blame for this condition was laid squarely at the door of the United States."[36] The Meriam Report noted:

> Several past policies adopted by the government in dealing with the Indians have been of a type which, if long continued, would tend to pauperize any race . . . . When the government adopted the policy of individual ownership of the land on the reservations, the expectation

[31] Anderson, *supra*, at 130.
[32] *Id*.
[33] Lewis Meriam et al., *The Problem of Indian Administration* (Institute for Government Research, 1928). The Meriam Report is available here: https://www.narf.org/nill/resources/meriam.html (last accessed on Dec. 22, 2017).
[34] Anderson, *supra*, at 130.
[35] Meriam Report at xi-xxii, 849-72.
[36] Anderson, *supra*, at 130.

> was that the Indians would become farmers. . . . It almost seems as if the government assumed that some magic in individual ownership of property would in itself prove an educational civilizing factor, but unfortunately this policy has for the most part operated in the opposite direction.[37]

As part of this denunciation, the Meriam Report highlighted the catastrophic loss of Indian lands caused by the Dawes and Burke Acts, citing taxation of Indian fee patents as one of the causes of Indian land loss: "the effect of taxing Indian property is of course to force the Indians off their lands and to put the territory into the hands of whites . . . [because] the Indian is finding it difficult to pay taxes and make a living."[38]

The Meriam Report urged Congress to extend the tax immunity already afforded to Indian trust lands to lands purchased for Indians with revenue derived from the sale of allotted lands, even though those lands were held by Indians in fee rather than by the federal government in trust. In other words, the authors of the Meriam Report recognized and acknowledged that all Indian trust lands were immune from state and local taxation; the only issue was whether immunity should be extended to Indian lands that were not held in trust by the Federal Government.

Ultimately, the Meriam Report laid the foundation for one of the most drastic changes in federal Indian policy: a transition from assimilation to tribal

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[37] Meriam Report at 7.
[38] *Id*. at 96.

self-governance. The Meriam Report's recommendations pushed for policies and practices that would aid tribal governments and the welfare of Indians: "He who wants to remain an Indian and live according to his old culture should be aided in doing so."[39]

Congress responded. In 1934, with the support of President Roosevelt, Congress enacted the IRA. "For the first time, assimilation was not the goal of federal Indian services. Rather, tribal culture and organization were to be preserved while providing Indians with the tools to achieve economically and socially."[40]

As part of the abandonment of assimilation-era policies, the IRA put a halt to allotment. The IRA prioritized the preservation of Indian lands, and specifically Indian trust lands. Congress expressly sought to mitigate and remedy the consequences of allotment-era policies by protecting all remaining Indian trust lands, lands that had survived allotment-era policies. In an effort to protect and preserve Indian trust lands, Congress confirmed the long-standing tax immunity of Indian trust lands in Section 5 of the IRA (now codified at 25 U.S.C. § 5108).

[39] *Id.* at 88.
[40] *Cohen's Handbook* §22.1[1] at 1339.

II. The district court's interpretation of the IRA should be corrected.

The district court erred when it held that Section 5's tax immunity is limited to lands acquired after 1934 under the IRA. *See* District Court Order at 15.[41] Not only did the district court fail to consider whether there were any other plausible interpretations of Section 5, but its decision is also irreconcilable with the text of the IRA, its stated purpose, its legislative history, and existing case law.

A. The district court failed to consider whether there are other plausible interpretations of Section 5.

Section 5's tax immunity appears in the last sentence of 25 U.S.C. § 5108:

> Title to any lands or rights acquired pursuant to this Act or the Act of July 28, 1955 (69 Stat. 392), as amended 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.

The first clause of the sentence above describes how title will be taken and held for newly acquired lands: "in the name of the United States in trust for the Indian tribe or individual Indian[.]" *Id.* This description of title was necessary because earlier drafts of the IRA contemplated acquiring new lands and transferring title to Indian tribes and individual Indians. *See* Infra Section D. The second clause of the

[41] The district court held that Section 5 of the IRA "unambiguously restricts its tax exemption to those lands or rights that were placed in the United States' name in trust for the Indian's benefit under the IRA or the Act of July 28, 1955." District Court Order at 15.

sentence provides that "such lands or rights shall be exempt from State and local taxation." *Id*.

The district court assumed, without analysis or discussion, that the phrase "such lands" referred only to lands acquired under the IRA rather than to all lands held by the United States in trust for Indian tribes or individual Indians. This narrow interpretation of the phrase "such lands" is not the only plausible interpretation. Interpreting "such lands" to refer to lands held in the manner described in the immediately preceding phrase (held in trust by the federal government for the beneficial interest of Indian tribes and individual Indians) is, as a matter of grammar, also plausible.[42]

Because there is more than one plausible interpretation of "such lands" in 25 U.S.C. § 5108, the scope of the tax immunity is ambiguous. *See Cty. of Amador*, 872 F.3d at 1021 (noting that another provision of the IRA was ambiguous because it was subject to two reasonable interpretations). As this Court has recently commanded, any such ambiguity should be resolved by giving due weight to "the IRA's text, structure, purpose, historical context, and drafting history." *Id.* at 1024. This Court should not rely on grammar alone to determine the scope of the tax

[42] The dictionary definition of "such" is "[o]f this or that kind" or "[t]hat or those; having just been mentioned." Black's Law Dictionary 1661 (10th ed. 2014). Under the definition, "such lands" refers to Indian trust lands—lands held in trust by the United States a for the beneficial use of Indian tribes or individual Indians—because those are the "kind" of lands that had "just been mentioned."

immunity conferred in Section 5 because "a strictly grammatical construction . . . cannot be reasonably maintained" unless it makes sense in light of the "intent and purpose" of the IRA as a whole. *See* 54 Interior Dec. 584, 585-6 (D.O.I.), 1934 WL 2240 (Aug. 17, 1934) (interpreted the meaning of "such member" in Section 4 of IRA).[43]

As shown below, when the proper factors are considered, it is evident that the tax immunity clause in Section 5 immunizes *all* Indian trust lands from state and local taxation. This is the only interpretation that comports with the IRA's text, structure, purpose, historical context, drafting history, and prior case law.

B. The IRA, as a whole, does not support affording preferential treatment to lands acquired after 1934.

Section 5 of the IRA should be construed and interpreted so that it is consistent with the IRA as a whole. *See Gustafson v. Alloyd Co.*, 513 U.S. 561, 568 (1995). In *Gustafson*, the Court interpreted a term in the Securities Act of 1933, by considering the statute as a whole, explaining that "the term should be construed, if possible, to give it a consistent meaning throughout the Act" and that the Court had a "duty to construe statutes, not isolated provisions." *Id.*; *see also*

[43] The Department of Interior opted for a statutory construction that was consistent with the IRA as a whole, and explained that "[g]rammatical rules . . . are not always religiously observed in the closing days of a Congressional session" and that Section 4 "is not the only instance in the statute where the word 'such' cannot be construed by simple application of the rules of grammar." *Id.* at 586-87.

FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 132 (2000) ("The meaning . . . of certain words or phrases may only become evident when placed in context."). When the term "such lands" is properly examined within the context of the IRA as a whole, it is evident that it refers to all Indian trust lands.

The text of the IRA does not support affording preferential treatment to lands acquired after 1934. One of the principal features of the IRA was to halt the loss of *then-existing* Indian trust lands. This was accomplished, in part, by Section 2 which extended and made permanent all "*existing* periods of trust placed upon *any* Indian lands." 25 U.S.C. § 5102 (emphasis added). This was critical to halting land loss because the General Allotment Act allowed the federal government to issue fee patents to individual allottees when the trust period expired. Title to the land thereafter transferred from the federal government to the individual Indians, which subjected the land to state and local taxation. As detailed above, the taxation of fee patent lands had resulted in significant loss of Indian lands—which is precisely what the IRA set out to reverse.

The broad applicability of the IRA to all Indian trust lands is also supported by the preamble, which declared an end to allotment of all Indian lands, including "land of any Indian reservation, created or set apart by treaty or agreement with the Indians, Act of Congress, Executive order, purchase, or otherwise." 25 U.S.C. § 5101.

If Congress had intended for state and local governments to collect taxes on existing Indian trust lands, as the district court's decision suggests, then Congress would have drafted the preamble and Section 2 very differently. Those key provisions would have prevented the allotment and issuance of fee patents only for after-acquired Indian trust lands. Yet Section 2 and the preamble, by their express terms, broadly apply to all Indian trust lands. The text of the IRA, as a whole, does not support the district court's decision to confer tax immunity on some Indian trust lands but not others.

C. The purpose of the IRA is effectuated only by interpreting Section 5 as applicable to all Indian trust lands.

The purpose of the IRA and the historical context under which the IRA was passed requires interpreting Section 5 to immunize all Indian trust lands from state and local taxation. The text of statutory provisions should be "interpreted in its statutory and historical context and with appreciation for its importance to the [statute] as a whole." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. at 471 (2001); *see also Abramski v. United States*, 134 S. Ct. 2259, 2267 (2014) ("[W]e must (as usual) interpret the relevant words [in a statute] not in a vacuum, but with reference to the statutory context, structure, history, and purpose.") (internal quotation marks and citation omitted).

This Court recently applied this principle of interpretation when determining the meaning of a different provision of the IRA. *See Cty. of Amador*, 872 F.3d 1012. In *County of Amador*, this Court interpreted the meaning of "recognized Indian tribe now under Federal jurisdiction" by looking to not only the contested statutory text, but also the "context" of the IRA:

> The IRA represented the culmination of a marked change in attitude toward Indian policy that began in the mid-1920s. The prior policy of allotment sought to extinguish tribal sovereignty, erase reservation boundaries, and force the assimilation of Indians into the society at large. The new policy, by contrast, reflected more tolerance and respect for traditional aspects of Indian culture, and rested on the assumption that the tribes not only would be in existence for an indefinite period, but that they *should* be. . . . To a large extent, the IRA was intended to undo the damage wrought by prior policies—to rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism.

Cty. of Amador, 872 F.3d at 1022-23 (internal punctuation, citations, and footnotes omitted).

The purpose of the IRA provides useful guidance on how to interpret the scope of the tax immunity conferred by Section 5. As this Court explained in *County of Amador*, the IRA was not merely a forward-looking act; it was meant to correct and mitigate "a century of oppression and paternalism" caused by the federal government's "prior policies." *Id.* at 1023 (internal quotation marks and citations omitted). Indeed, President Roosevelt, in urging Congress to finalize the

IRA, noted that the IRA was "a measure of justice that is long overdue." Letter from Franklin D. Roosevelt to Committee on Indian Affairs (Apr. 28, 1934), in H.R. Rep. No. 1804, at 8 (1934). Interpreting the IRA to confer tax immunity on all Indian trust lands is not a "retroactive" measure as suggested by the District Court Order (at 17). Instead, confirming tax immunity for all Indian trust lands serves the IRA's purpose to correct past policies and the consequences that derived from such policies in order to "rehabilitate the Indian's economic life" and allow Indian tribes to prosper.

The allotment system and trust termination provisions of the assimilation-era statutes resulted in massive Indian country land loss, in part arising from the loss of state and local tax immunity. Between 1908 (passage of the Burke Act) and 1934, approximately 30 million acres of allotted lands eventually passed into non-Indian ownership. The Meriam Report, which is widely regarded as responsible for prompting the IRA, cited taxation of Indian fee patents as one of the causes of Indian land loss: "The effect of taxing Indian property is of course to force the Indians off their lands and to put the territory into the hands of whites . . . [because] the Indian is finding it difficult to pay taxes and make a living." Meriam Report at 96. The Meriam Report noted further that "[a] few white people doubtless want the Indian taxed because that will give them a chance to get the Indian lands." *Id*. at 479.

It makes little sense, if any at all, to conclude that Indian trust lands acquired before 1934 are not subject to the same tax immunity as after-acquired Indian trust lands because one of the principal purposes and achievements of the IRA was to preserve and protect the Indian trust lands *that had survived* assimilation-era policies.[44] The district court's decision completely disregards the very purpose of the IRA, and the historical conditions that resulted in the very injustices that the IRA was enacted to correct. This Court should reverse the district court's decision, and confirm that the immunity conferred in 25 U.S.C. § 5108 applies to all Indian trust lands.

D. Legislative history of the IRA reveals that Congress considered expanding tax immunity, but nothing supports an intention to diminish or eliminate existing Indian trust land immunity.

The district court's interpretation of the IRA diminishes or eliminates a tax immunity that already existed under federal common law in 1934. Yet the legislative history shows no intention to eliminate or diminish the tax immunity already afforded to Indian trust lands.

To the contrary, early drafts of the IRA show that Congress first considered expanding the tax immunity afforded to Indian lands. Title I ("Indian Self-

[44] *See*, *e.g.*, Letter from Franklin D. Roosevelt to Committee on Indian Affairs (Apr. 28, 1934), *in* H.R. Rep. No. 1804, at 8 (1934) in which President Roosevelt called for Congress to address the loss of "more than two-thirds of [Indian] reservation lands" and noted that the IRA was "a measure of justice that is long overdue."

Government") of the original drafts of H.R. 7902 and S. 2755 (the "Predecessor Bills") authorized the creation of "Indian chartered communities." *See* H.R. Res. 7902, 73d Cong., tit. I, § 2 (1934); S. Res. 2755, 73d Cong., tit. I, § 2 (1934) (collectively, "Predecessor Bills"). The Predecessor Bills envisioned that the federal government would transfer certain responsibilities and functions to Indian chartered communities. *See id.* tit. I, § 4. As part of this move to empower Indian chartered communities, the Predecessor Bills authorized the Secretary of Interior to transfer title of then-existing trust lands and after-acquired trust lands from the United States to chartered Indian communities, much like the fee patents issued during the assimilation era. *See id.* tit. I, § 10; *id.* tit. III, § 7. Recall, however, that fee patents were subject to state and local taxation. With this in mind, the Predecessor Bills would have expanded existing tax immunity (which applied to lands held in fee by the federal government) to include lands held by Indian chartered communities. *See id.* tit. I, § 11 ("Nothing in this Act shall be construed as rendering the property of any Indian community or any member of such community subject to taxation by any State or subdivision thereof . . . ."); *id.* tit. III, § 16 ("such lands, so long as title to them is held by the United States or by an Indian tribe or community, shall not be subject to taxation.").[45] The *Mescalero*

[45] It appears that this clause from Title III, § 16 may have provided the basis for what is now the second clause of the last sentence of Section 5 of the IRA.

Court described these sections as "extensive provisions for tax immunity." *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 152, n.9 (1973).

Ultimately, Congress decided to eliminate the option of transferring title to chartered Indian communities. *See* SB 3645 (May 18, 1934); revised HB 7902 (May 28, 1934). In fact, the whole concept of chartered Indian communities was omitted from the IRA as enacted.[46] *Id*. As the Supreme Court noted in *Mescalero*, the corresponding "extensive provisions for tax immunity were discarded" as well. 411 U.S. at 152 n.9.

But there was no discussion or mention of eliminating tax immunity for existing trust land. To the contrary, even under the district court's construction, the IRA expressly confirmed that trust land acquired under the IRA would not be subject to state and local taxation. And when the IRA passed, lands held in fee by the United States were already immune from state and local taxation. *See, e.g.*, *Chase v. McMasters*, 573 F.2d 1011 (8th Cir. 1978); *Santa Rosa Band of Indians v. Kings Cty.*, 532 F.2d 655 (9th Cir. 1975).

[46] Nothing in the legislative history documents, including the Reports issued by the House and Senate's respective committees on Indian Affairs, explained why the concept of Indian chartered communities was omitted, nor do the documents explain why the revised drafts did not authorize transfer of title to Indian chartered communities. *See* S. Rep. No. 1080, 73d Cong., 2d Sess. (May 10 (calendar day, May 22), 1934); HR 7902 [Report No. 1804], 73d Cong., 2d Sess. (May 28, 1934).

With no support in the legislative history for the notion that the IRA was intended to restrict or eliminate that existing, well-established tax immunity, the more plausible construction of IRA Section 5 is that when it confirmed tax immunity for all "such lands," the reference was to all lands held in trust for the benefit of Indian tribes and individual Indians.

E. Case law has already interpreted tax immunity as protecting lands not acquired under Section 5.

Finally, the district court's interpretation of the IRA cannot be reconciled with the Supreme Court's decision in *Mescalero*, in which the Court invalidated a use tax on permanent improvements under the authority of Section 5 of the IRA even though the lands (on which the permanent improvements were attached) had *not* been acquired under Section 5 of the IRA. *Mescalero*, 411 U.S. at 155-59 & n.11.

The *Mescalero* Court held that the IRA "did not strip Indian tribes and their reservation lands of their historic immunity from state and local control." 411 U.S. at 152. Rather, the Court confirmed, Section 5 "[on] its face . . . exempts land and rights in land" from state and local taxation. *Id.* at 155; *see also id.* at 152 n.9 ("We do not read this legislative history [removing provisions for chartered communities and associated expansion of tax immunity], however, as suggesting that Congress intended to remove the traditional tax immunity that Indian tribes

had enjoyed on their reservations."). In *Mescalero*, the land at issue was forest land leased to the tribe; it was neither pre-IRA trust land nor land "acquired" by the federal government for the tribe under the IRA. Nonetheless, based on the IRA's purpose and policies, the Court held that personality permanently affixed to the land was immune from state and local taxation. The outcome in *Mescalero* would have been different if the Court had restricted Section 5 tax immunity to land acquired under the authority of the IRA. For this reason, the district court's decision cannot stand because it is inconsistent with existing case law.

Finally, NITA is unaware of any court that has ever before treated Indian trust lands differently depending on the date of acquisition. For example, the Seventh Circuit recently confirmed that "trust land, in contrast [to fee land], may not be taxed by either state or local governments." *Oneida Tribe of Indians of Wis. v. Vill. of Hobart, Wis.*, 732 F.3d 837, 838 (7th Cir. 2013) (relying on Section 5 of IRA). Critically, the land at issue in *Village of Hobart* comprised Indian trust lands that were acquired both before the IRA was passed and after 1934. *See* Brief in Opposition to Cert filed in *Vill. of Hobart, Wis. v. Oneida Tribe of Indians of Wis.*, No. 13-847, 2014 WL 1603327 (U.S.), at 2 (Apr. 18, 2014).[47] The Oneida

[47] The Brief in Opposition to Cert explained, "The Tribe is federally recognized and occupies a reservation established by the Treaty of February 3, 1838, 7 Stat. 566. There are 148 parcels of land, totaling approximately 1400 acres that are the subject of this matter, which parcels are located within the reservation and held in

Tribe of Indians of Wisconsin's reservation was established well before the IRA, in 1838, and much like the case at bar, the Tribe's reservation resembled a "checkerboard" in that some lands were held in fee by non-Indians and Indians, while other parcels were held in trust by the United States for the beneficial interest of the Tribe and for individual Indians. Yet the Seventh Circuit did not consider the date of acquisition or method of acquisition to be legally relevant. Instead, the Seventh Circuit held that *all* Indian trust land is immune from state and local taxation under the IRA. This Court should hold the same.

CONCLUSION

NITA respectfully urges this Court to confirm that 25 U.S.C. § 5108 confers tax immunity on *all* Indian trust lands, irrespective of when or how those Indian trust lands were acquired. For over a century, courts have considered one inquiry dispositive: are the lands held in trust by the federal government for the beneficial interest of an Indian tribe or individual Indian? If the answer is in the affirmative, then the lands are immune from state and local taxation. This Court should not diverge from existing legal precedent, especially when doing so would plainly contravene the very purpose of the IRA.

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trust by the United States for the Tribe. JSA 122. All these parcels were either *already held* or placed into trust between 1937 and 2007. *Id.*" *Id.* (footnotes omitted) (emphasis added).

RESPECTFULLY SUBMITTED this 28th day of December, 2017.

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CERTIFICATE OF COMPLIANCE

In accordance with Rule 32 of the Federal Rules of Appellate Procedure, which establishes the form of briefs, and Ninth Circuit Rule 29, which governs the form of briefs submitted by amici curiae, I hereby certify that this brief:

1. complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) and Ninth Circuit Rule 29(d), which provides that the length of an amicus brief may be half the maximum length of a principal brief, or 7,000 words, because it contains 6558 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii); and
2. complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in proportionately spaced typeface, using Microsoft Word 2010, in 14-point Times New Roman font.

I declare under penalty of perjury that the foregoing is true and correct, and that this certificate is executed on December 28, 2017.

SIGNED in Seattle, Washington, on this 28th day of December, 2017.

s/Brie Coyle Jones
Name

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2017, I electronically filed the foregoing brief of amicus curiae National Intertribal Tax Alliance in support of Plaintiff-Appellant with the Clerk of the Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: 12/28/17

s/Donna Cauthorn
Donna Cauthorn

ADDENDUM

INDIAN REORGANIZATION ACT
Public Law 73-383, 48 Stat. 984 (June 18, 1934)
S. 3645

AN ACT To conserve and develop Indian lands and resources; to extend to Indians the right to form business and other organizations; to establish a credit system for Indians; to grant certain rights of home rule to Indians; to provide for vocational education for Indians; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That 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.

SEC. 2. 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.

SEC. 3. 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: *Provided further,* That the order of the Department of the Interior signed, dated, and approved by Honorable Ray Lyman Wilbur, as Secretary of the Interior, on October 28, 1932, temporarily withdrawing lands of the Papago Indian Reservation in Arizona from all forms of mineral entry or claim under the public land mining laws, is hereby revoked and rescinded, and the lands of the Papago Indian Reservation are hereby restored to exploration and location, under the existing mining laws of the United States, in accordance with the express terms and provisions declared and set forth in the Executive orders establishing said Papago Indian Reservation: *Provided further,* That damages shall be paid to the Papago Tribe for loss of any improvements on any land located for mining in such a sum as may be determined by the Secretary of the Interior but not to exceed the cost of said improvements: *Provided further,* That a yearly rental not to exceed five cents per acre shall be paid to the Papago Tribe for loss of the use or occupancy of any land withdrawn by the requirements of mining operations, and payments derived from damages or rentals shall be deposited in the Treasury of the United States to the credit of the Papago Tribe: *Provided further,* That in the event any person or persons, partnership, corporation, or association desires a mineral patent, according to the mining laws of the United States, he or they shall first deposit in the Treasury of the United States to the credit of the Papago Tribe the sum of $1.00 per acre in lieu of annual rental, as hereinbefore provided, to compensate for the loss of occupancy of the lands withdrawn by the requirements of mining operations: *Provided further,* That patentee shall also pay into the Treasury of the United States to the credit of the Papago Tribe damages for the loss of improvements not heretofore paid in such a sum as may be determined by the Secretary of the Interior, but not to exceed to cost thereof; the payment of $1.00 per acre for surface use to be refunded to patentee in the event that patent is not acquired.

Nothing herein 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; and nothing contained herein, except as expressly provided, shall be construed as authority for the Secretary of the Interior, or any other person, to issue or promulgate a rule or regulation in conflict with the Executive order of February 1, 1917, creating the Papago Indian Reservation in Arizona or the Act of February 21, 1931 (46 Stat. 1202).

SEC. 4. Except as herein provided, 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 hereunder, 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; and in all instances such lands or interests shall descend or be devised, in accordance with the then existing laws of State, or Federal laws where applicable, in which said lands are located or which the subject matter of the corporation is located to any member of such tribe or of such corporation or any heirs of such member: *Provided further,* That the Secretary of the Interior may authorize voluntary exchanges of lands of equal value and the voluntary exchange of shares of equal value whenever such exchange, in his judgment, is expedient and beneficial for or compatible with the proper consolidation of Indian lands and for the benefit of cooperative organizations.

SEC. 5. 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, become 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 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.

SEC. 6. 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.

SEC. 7. The Secretary of Interior is hereby authorized to proclaim new Indian reservation 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 exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservations.

SEC. 8. 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 ow existing or established hereafter.

SEC. 9. 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.

SEC. 10. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the sum of $10,000,000 to be established as a revolving fund from which the Secretary of 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. A report shall be made annually to Congress of transactions under this authorization.

SEC. 11. 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.

SEC. 12. 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.

SEC. 13. 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, shall apply to the Territory of Alaska: Provided, That Sections 2, 4, 1 16, 17, and 18 of this Act 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, Pawnee, Ponca, Shawnee, Ottawa, Quapaw, Seneca, Wyandotte, Iowa, Sac and Fox, Kickapoo, Pottawatomi, Cherokee, Chickasaw, Choctaw, Creek, and Seminole. Section 4 of this Act shall not apply to the Indians of the Klamath Reservation in Oregon.

SEC. 14. 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 prescribed 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 would have been exhausted by the award to each person receiving such benefits of an allotment of eighty acres of such land.

SEC. 15. 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.

SEC. 16. Any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and bylaws when ratified as aforesaid and approved by the Secretary of the Interior shall be revocable by an election open to the same voters and conducted in the same manner as hereinabove provided. Amendments to the constitution and bylaws may be ratified and approved by the Secretary in the same manner as the original constitution and bylaws.

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, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior 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 of the Interior 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 Bureau of the Budget and the Congress.

SEC. 17. The Secretary of the Interior may, upon petition by at least one-third of the adult Indian, issue a charter of incorporation to such tribe: *Provided*, That such charter shall not become operative until ratified at a special election by a majority vote of the adult Indians living on the reservation. Such cha.rt.er 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 personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interest' 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 ten years any of the land included in the limits of the reservation. Any charter so issued shall not be revoked or surrendered except by Act of Congress.

SEC. 18. 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.

SEC. 19. 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 m this Act shall be construed to refer to Indians who have attained the age of twenty-one years.

Approved, June 18, 1934.