

07-526 CARCIERI, GOV. OF RI V. KEMPTHORNE

DECISION BELOW:497 F3d 15

LOWER COURT CASE NUMBER: 03-2647

QUESTIONS PRESENTED:

The Indian Reorganization Act of 1934 permits the Secretary to take land into trust for certain Indian tribes, significantly impairing state jurisdiction. The Fifth Circuit held that the 1934 Act “positively dictates” that the only Indian tribes for whom land can be taken into trust are those that were “recognized” and “under federal jurisdiction” as of “June 1934.” This Court similarly concluded in that the 1934 Act contained a temporal “recognized [in 1934] tribe” limitation. *United States v. John*, 437 U.S. 634 (1978) (bracket by Court). The Ninth Circuit affirmed a district court decision to the same effect.

The Rhode Island Indian Land Claims Settlement Act provides land specifically for the later recognized Narragansett Indian Tribe and comprehensively disposes of all Indian land claims in Rhode Island. The Tribe received 1,800 acres of land for free. In exchange, Congress extinguished aboriginal title and all Indian interests in land in Rhode Island.

The questions presented are:

1. Whether the 1934 Act empowers the Secretary to take land into trust for Indian tribes that were not recognized and under federal jurisdiction in 1934.
2. Whether an act of Congress that extinguishes aboriginal title and all claims based on Indian rights and interests in land precludes the Secretary from creating Indian country there.
3. Whether providing land “for Indians” in the 1934 Act establishes a sufficiently intelligible principle upon which to delegate the power to take land into trust.

CERT. GRANTED 2/25/2008

LIMITED TO QUESTIONS 1 AND 2 PRESENTED BY THE PETITION