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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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SOUTH DAKOTA *v.* YANKTON SIOUX TRIBE ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 96–1581. Argued December 8, 1997– Decided January 26, 1998

The Yankton Sioux Reservation in South Dakota was established pursuant to an 1858 Treaty between the United States and the Yankton Tribe. Congress subsequently retreated from the reservation concept and passed the 1887 Dawes Act, which permitted the Government to allot tracts of tribal land to individual Indians and, with tribal consent, to open the remaining holdings to non-Indian settlement. In accordance with the Dawes Act, members of the respondent Tribe received individual allotments and the Government then negotiated with the Tribe for the cession of the remaining, unallotted reservation lands. An agreement reached in 1892 provided that the Tribe would "cede, sell, relinquish, and convey to the United States" all of its unallotted lands; in return, the Government agreed to pay the Tribe $600,000. Article XVII of the agreement, a saving clause, stated that nothing in its terms "shall be construed to abrogate the [1858] treaty" and that "all provisions of the said treaty . . . shall be in full force and effect, the same as though this agreement had not been made." Congress ratified the agreement in an 1894 statute, and non-Indians rapidly acquired the ceded lands.

In this case, tribal, federal, and state officials disagree as to the environmental regulations applicable to a solid waste disposal facility that lies on unallotted, non-Indian fee land, but falls within the reservation's original 1858 boundaries. The Tribe and the Federal Government contend that the site remains part of the reservation and is therefore subject to federal environmental regulations, while petitioner State maintains that the 1894 divestiture of Indian property effected a diminishment of the Tribe's territory, such that the ceded lands no longer constitute "Indian country" under 18 U. S. C. §1151(a), and the State now has primary jurisdiction over them. The

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District Court declined to enjoin construction of the landfill but granted the Tribe a declaratory judgment that the 1894 Act did not alter the 1858 reservation boundaries, and consequently that the waste site lies within an Indian reservation where federal environmental regulations apply. The Eighth Circuit affirmed.

Held: The 1894 Act's operative language and the circumstances surrounding its passage demonstrate that Congress intended to diminish the Yankton Reservation. Pp. 11–27.

(a) States acquired primary jurisdiction over unallotted opened lands if the applicable surplus land Act freed those lands of their reservation status and thereby diminished the reservation boundaries, *Solem* v. *Bartlett*, 465 U. S. 463, 467, but the entire opened area remained Indian country if the Act simply offered non-Indians the opportunity to purchase land within established reservation boundaries, *id.*, at 470. The touchstone to determine whether a given statute diminished or retained reservation boundaries is congressional purpose, see *Rosebud Sioux Tribe* v. *Kneip*, 430 U. S. 584, 615, and Congress' intent to alter an Indian treaty's terms by diminishing a reservation must be "clear and plain," *United States* v. *Dion*, 476 U. S. 734, 738–739. The most probative evidence of congressional intent is the statutory language, but the Court will also consider the historical context surrounding the Act's passage, and, to a lesser extent, the subsequent treatment of the area in question and the pattern of settlement there. *Hagen* v. *Utah*, 510 U. S. 399, 411. Ambiguities must be resolved in favor of the Indians, and the Court will not lightly find diminishment. *Ibid.* Pp. 11–12.

(b) The plain language of the 1894 Act evinces congressional intent to diminish the reservation. Article I's "cession" language– the Tribe will "cede, sell, relinquish, and convey to the United States all their claim, right, title, and interest in and to all the unallotted lands"– and Article II's "sum certain" language– whereby the United States pledges a fixed payment of $600,000 in return– is "precisely suited" to terminating reservation status. See *DeCoteau* v. *District County Court for Tenth Judicial Dist.*, 420 U. S. 425, 445. Indeed, when a surplus land Act contains both explicit cession language, evidencing "the present and total surrender of all tribal interests," and a provision for a fixed-sum payment, representing "an unconditional commitment from Congress to compensate the Indian tribe for its opened land," a "nearly conclusive," or "almost insurmountable," presumption of diminishment arises. See *Solem*, *supra*, at 470; see also *Hagen*, *supra*, at 411. Pp. 13–14.

(c) The Court rejects the Tribe's argument that, because the 1894 Act's saving clause purported to conserve the 1858 Treaty, the existing reservation boundaries were maintained. Such a literal construc-

tion would eviscerate the 1892 agreement by impugning the entire sale. Rather, it seems most likely that the parties inserted Article XVIII, including both the general statement regarding the force of the 1858 Treaty and a particular provision ensuring that the "Yankton Indians shall continue to receive their annuities under [that Treaty]," for the limited purpose of assuaging the Tribe's concerns about their entitlement to annuities. Discussion of the annuities figured prominently in the negotiations that led to the 1892 agreement, but no mention was made of the preservation of the 1858 boundaries. Pp. 14–18.

(d) Neither the 1894 Act's clause reserving sections of each township for schools nor its prohibition on liquor within the ceded lands supports the Tribe's position. The Court agrees with the State that the school sections clause reinforces the view that Congress intended to extinguish the reservation status of the unallotted land. See, *e.g.*, *Rosebud*, *supra*, at 601; but see *Solem*, *supra*, at 474. Moreover, the most reasonable inference from the inclusion of the liquor prohibition is that Congress was aware that the opened, unallotted areas would henceforth not be "Indian country," where alcohol already had been banned. *Rosebud*, *supra*, at 613. Pp. 18–20.

(e) Although the Act's historical context and the area's subsequent treatment are not such compelling evidence that, standing alone, they would indicate diminishment, neither do they rebut the "almost insurmountable presumption" that arises from the statute's plain terms. The manner in which the Government negotiated the transaction with the Tribe and the tenor of the legislative reports presented to Congress reveal a contemporaneous understanding that the 1894 Act modified the reservation. See *Solem*, *supra*, at 471. The legislative history itself adds little because Congress considered several surplus land sale agreements at the same time, but the few relevant references from the floor debates support a finding of diminishment. In addition, the Presidential Proclamation opening the lands to settlement contains language indicating that the Nation's Chief Executive viewed the reservation boundaries as altered. See *Rosebud*, *supra*, at 602–603. Pp. 20–23.

(f) Despite the apparent contemporaneous understanding that the 1894 Act diminished the reservation, in the years since, both Congress and the Executive Branch have described the reservation in contradictory terms and treated the region in an inconsistent manner. The mixed record reveals no dominant approach, and it carries but little force in light of the strong textual and contemporaneous evidence of diminishment. *E.g.*, *Rosebud*, *supra*, at 605, n. 27. Pp. 23–25.

(g) Demographic factors also signify diminishment: The Yankton

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population in the region promptly and drastically declined after the 1894 Act, and the area remains predominantly populated by non-Indians with only a few surviving pockets of Indian allotments. *Solem*, 465 U. S., at 471, and n. 12. The Court's holding is further reinforced by the State's assumption of jurisdiction over the ceded territory almost immediately after the 1894 Act, and by the lack of evidence that the Tribe has attempted until recently to exercise jurisdiction over nontrust lands. *Id.*, at 1456. Finally, the Yankton Constitution, drafted in 1932 and amended in 1962, defines the Tribe's territory to include only those tribal lands within the 1858 boundaries "now owned" by the Tribe. Pp. 25–26.

(h) The conflicting understandings about the status of the reservation, together with the fact that the Tribe continues to own land in common, caution the Court to limit its holding to the narrow question presented: whether unallotted, ceded lands were severed from the reservation. The Court need not determine whether Congress disestablished the reservation altogether in order to resolve this case, and accordingly declines to do so. See, *e.g.*, *Hagen*, *supra*, at 421. P. 27.

99 F. 3d 1439, reversed and remanded.

O'CONNOR, J., delivered the opinion for a unanimous Court.