

The Burger Court Opinion Writing Database

Affiliated Ute Citizens of Utah v. United States

406 U.S. 128 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

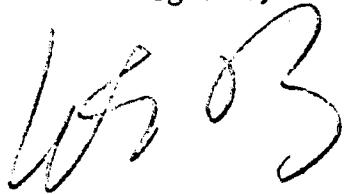
April 20, 1972

Re: No. 70-78 - Affiliated Ute Citizens of Utah v. U. S.

Dear Harry:

Please join me in your opinion.

Regards,



Mr. Justice Blackmun

cc: The Conference

31

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

4-10

Mr. Douglas, J.

No. 70-78

Affiliated Ute Citizens of the
State of Utah et al.,
Petitioners,
v.
United States et al.

On Writ of Certiorari to
the United States Court
of Appeals for the
Tenth Circuit.

[November 1, 1971]

Memorandum from MR. JUSTICE DOUGLAS.

Petitioners are an unincorporated association of mixed-blood Utes and individuals of that group. They sought damages, in the District Court, for fraudulent securities transactions, for negligence by agents of the Federal Government, and for the deprivation of statutory rights granted them by Congress. The District Court awarded damages on the first two claims, but dismissed the third for want of jurisdiction and for failure to state a claim. The Court of Appeals reversed the two damage awards and affirmed the dismissal of the third action. 431 F. 2d 1337, 1349 (CA10 1970).

In the Ute Termination Act of 1954, Congress sought "to provide for the partition and distribution of the assets of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah between the mixed-blood and full-blood members thereof; for the termination of Federal supervision over the trust, and restricted property, of the mixed-blood members of said tribe; and for a development program for the full-blood members thereof, to assist them in preparing for

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

TES: Douglass, J.

No. 70-78

Circulated:

Recirculation

Affiliated Ute Citizens of the State of Utah et al., Petitioners, v. United States et al. } On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

[April —, 1972]

MR. JUSTICE DOUGLAS, concurring in part and dissenting in part.

I Join in the Court's opinion and judgment as to the individual and corporate respondents. I would go further, however, and also hold that the United States has waived its sovereign immunity to petitioners' claims.

Petitioners are an unincorporated association of mixed-blood Utes and individuals of that group. They sought damages, in the District Court, for fraudulent securities transactions, for negligence by agents of the Federal Government, and for the deprivation of statutory rights granted them by Congress. The District Court awarded damages on the first two claims, but dismissed the third for want of jurisdiction and for failure to state a claim. The Court of Appeals reversed the two damage awards and affirmed the dismissal of the third action. 431 F. 2d 1337, 1349 (CA10 1970).

In the Ute Termination Act of 1954, Congress sought "to provide for the partition and distribution of the assets of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah between the mixed-blood and full-blood members thereof; for the termination of Federal supervision over the trust, and restricted property, of the mixed-blood members of said tribe; and for a development program for the full-blood

April 13, 1972

RE: No. 70-78 - Affiliated Ute Citizens v. United States

Dear Harry:

Attached is my "Join" to your fine opinion in the above. I think we've both now earned exemption from any further Ute assignments until everyone else has had a chance.

I don't recall "Unca Sam" in my effort but I am sure the family was involved. And how about the one just preceding the "Unca Sam": "Uncopahququunt."

Sincerely,

WJB

Mr. Justice Blackmun

Brown

Oct 11

3
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. April 13, 1972

RE: No. 70-78 - Affiliated Ute Citizens v.
United States

Dear Harry:

You certainly have done a fine job
for the Utes, and I am happy to join.

Sincerely,

Brennan

Mr. Justice Blackmun

cc: The Conference

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Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 11, 1972

No. 70-78, Affiliated Ute Citizens v. U.S.

Dear Harry,

I am glad to join your opinion for
the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Blackmun

Copies to the Conference

8

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 17, 1972

Re: No. 70-78 - Affiliated Ute
Citizens of the State of Utah
v. United States

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 20, 1972

Re: No. 70-78 - Affiliated Ute Citizens v. U. S.

Dear Harry:

Please join me.

Sincerely,


T.M.

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

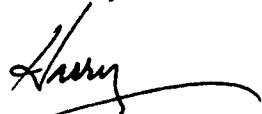
April 10, 1972

Re: No. 70-78 - Affiliated Ute Citizens of Utah v. U.S.
Reyos v. First Security Bank of Utah

Dear Bill:

In struggling with the Utes, my interest in their final membership rolls was whetted. The enclosed are copies of the last two pages of the full-blood group. Isn't that a wonderful family name that appears at the bottom of the first page?

Sincerely,



Mr. Justice Brennan

W. Brennan
Oct 11

Wednesday, April 5, 1956

FEDERAL REGISTER

Final roll No.	Name	Proposed roll No.	Degree of blood			Sex	Age	Date of birth	Final roll No.	Name	Proposed roll No.	Degree of blood			Sex	Age	Date of birth
			Ute	Other	Total							Ute	Other	Total			
1047	Sireech, Vincentia	1051	15/16		15/16	F	7	Aug. 14, 1948.	1125	Thompson, Delbert Lee	1128	15/16		15/16	M	15	June 15, 1940.
1048	Sireech, Vinita Loupita	1052	15/16		15/16	F	6	Feb. 16, 1950.	1126	Thompson, Barbara Ann	1129	15/16		15/16	F	13	Dec. 26, 1942.
1049	Sireech, Boots	1053	15/16		15/16	M	3	Sept. 27, 1952.	1127	Thompson, Leonard Lee	1130	15/16		15/16	M	6	Feb. 28, 1950.
1050	Sireech, Priscilla Irene	1054	15/16		15/16	F	1	Mar. 4, 1954.	1128	Thompson, Joellyn	1131	15/16		15/16	F	3	June 30, 1952.
1051	Sowsonicut, Tommy	1055	4/4		4/4	M	43	Aug. 1912.	1129	Thompson, Tommy	1132	4/4		4/4	M	45	May 18, 1910.
1052	Sowsonicut, Genna Johnson	1056	4/4		4/4	F	34	Apr. 2, 1921.	1130	Thompson, Lucille McCook	1133	4/4		4/4	F	30	Dec. 20, 1925.
1053	Sowsonicut, Imogene	1057	4/4		4/4	F	16	Sept. 23, 1939.	1131	Thompson, Willard	1134	4/4		4/4	M	8	May 20, 1947.
1054	Sowsonicut, Eunice	1058	4/4		4/4	F	10	Sept. 11, 1941.	1132	Thompson, Gloria Kay	1135	4/4		4/4	F	5	Apr. 2, 1950.
1055	Sowsonicut, Kenneth	1059	4/4		4/4	M	10	May 19, 1945.	1133	Thompson, Susie Ann	1136	4/4		4/4	F	1	July 3, 1954.
1056	Sowsonicut, Brant	1060	4/4		4/4	M	7	Apr. 11, 1948.	1134	Thompson, Thomas Kent	1137	4/4		4/4	M	3	Mar. 24, 1952.
1057	Sowsonicut, Vicki Marie	1061	4/4		4/4	F	5	Sept. 21, 1950.	1135	Thompson, Willis	1138	4/4		4/4	M	20	Feb. 28, 1955.
1058	Starr, Eugenia	1062	4/4		4/4	F	71	1885.	1136	Thompson, Rose Mary	1139	2/4	2/4	4/4	F	7	Feb. 10, 1919.
1059	Starr, James	1063	4/4		4/4	M	48	July 20, 1907.	1137	Tofpi, Etta Wash	1140	4/4		4/4	F	37	Mar. 13, 1918.
1060	Starr, Stella Bullethead	1064	4/4		4/4	F	52	1904.	1138	Tom, Archie Ray	1141	4/4		4/4	M	33	Aug. 1, 1922.
1061	Starr, Roland Alvin	1065	4/4		4/4	M	12	Sept. 2, 1943.	1139	Tom, Lucille Pargeets	1142	4/4		4/4	F	26	May 3, 1929.
1062	Starr, Joseph	1066	4/4		4/4	M	23	Apr. 12, 1932.	1140	Tom, Glenn	1143	4/4		4/4	M	25	May 23, 1930.
1063	Starr, Ruby	1067	4/4		4/4	F	19	Apr. 18, 1936.	1141	Tom, Mary Jane Ice	1144	4/4		4/4	F	24	Mar. 25, 1931.
1064	Starr, Rufus MacAfee	1068	4/4		4/4	M	14	Jan. 23, 1942.	1142	Tom, Roger Dean	1145	4/4		4/4	M	4	Dec. 9, 1951.
1065	Starr, Nathan	1069	4/4		4/4	M	42	Jan. 20, 1913.	1143	Tom, Ignacio	1146	4/4		4/4	M	65	1891.
1066	Starr, Scott L	1070	4/4		4/4	M	50	Sept. 5, 1905.	1144	Tom, Wilhelmina Wamioire	1147	4/4		4/4	F	45	Oct. 10, 1910.
1067	Steele, Leota Arrive	1071	4/4		4/4	F	34	Sept. 1, 1921.	1145	Tom, Lawrence	1148	4/4		4/4	M	31	Oct. 9, 1924.
1068	Steele, Edmond	1072	2/4	2/4	4/4	M	18	Aug. 7, 1937.	1146	Tom, Orson	1149	4/4		4/4	M	23	Sept. 28, 1932.
1069	Steele, Berbert Frank	1073	2/4	2/4	4/4	M	16	Feb. 8, 1940.	1147	Tom, Richard L	1150	4/4		4/4	F	29	Dec. 19, 1926.
1070	Steele, Ruby	1074	2/4	2/4	4/4	F	13	Apr. 12, 1942.	1148	Tom, Millie B. Tapoo	1151	4/4		4/4	F	42	Mar. 21, 1913.
1071	Stone, Joseph	1075	4/4		4/4	M	78	1976.	1149	Tom, Norma Jean	1152	4/4		4/4	F	2	Feb. 6, 1954.
1072	Summers, Arito Taveapont	1076	4/4		4/4	F	24	Jan. 18, 1932.	1150	Tonegats, Carter	1153	4/4		4/4	M	58	1898.
1073	Tabbee, Albert Wallace	1077	4/4		4/4	M	34	Mar. 18, 1921.	1151	Tonegats, Wilma Wopsock	1154	4/4		4/4	F	44	Feb. 25, 1912.
1074	Tabbee, Arlyne Myore	1078	4/4		4/4	F	38	June 23, 1917.	1152	Tonegats, Henry	1155	4/4		4/4	M	51	July 15, 1904.
1075	Tabbee, John Albert	1079	4/4		4/4	M	14	July 7, 1941.	1153	Tonegats, Eva Bannocky	1156	4/4		4/4	F	43	July 15, 1912.
1076	Tabbee, Julianne	1080	4/4		4/4	F	13	Feb. 20, 1943.	1154	Tonegats, Alice	1157	4/4		4/4	M	18	Aug. 15, 1937.
1077	Tabbee, Willard	1081	4/4		4/4	M	9	Aug. 26, 1946.	1155	Tonegats, Henrietta**	1158	4/4		4/4	F	15	Jan. 17, 1941.
1078	Tabbee, Gloria Jean	1082	4/4		4/4	F	7	Jan. 23, 1949.	1156	Toney, Annie Ridley	1159	4/4		4/4	M	54	1902.
1079	Tabbee, Victoria	1083	4/4		4/4	F	8	Oct. 8, 1951.	1157	Toney, James	1160	4/4		4/4	F	32	Dec. 14, 1925.
1080	Tabbee, Lila	1084	4/4		4/4	F	3	Jan. 20, 1953.	1158	Toney, Alva Marie	1161	4/4		4/4	F	2	Apr. 23, 1953.
1081	Tabbee, John	1085	4/4		4/4	M	56	1900.	1159	Toney, Cy	1162	4/4		4/4	M	1	June 1, 1954.
1082	Tabbee, Tahra Queacut	1086	4/4		4/4	F	72	1884.	1160	Tonompicket, Lucille Kurip	1163	4/4		4/4	F	25	July 18, 1930.
1083	Tabbee, Mary Louise	1087	4/4		4/4	F	18	Sept. 16, 1937.	1161	Tonompicket, Letitia	1164	4/4		4/4	M	9	July 3, 1946.
1084	Tabbee, Katie Wyasket	1088	4/4		4/4	F	63	1903.	1162	Toponotes, LeRoy	1165	7/8	7/8	7/8	M	32	Oct. 10, 1923.
1085	Tabbee, Clyde	1089	4/4		4/4	M	19	Feb. 27, 1937.	1166	Toponotes, Florence Mary	1167	15/16		15/16	F	7	Apr. 8, 1928.
1086	Tabbee, Wilbur	1090	4/4		4/4	M	43	Feb. 5, 1913.	1168	Toponotes, LeRoy, Jr.	1169	4/4		4/4	M	5	Jan. 18, 1951.
1087	Tabbee, Alice Tuck	1091	4/4		4/4	F	41	Oct. 15, 1914.	1169	Toponotes, Charma	1170	4/4		4/4	F	15	June 5, 1953.
1088	Tabbee, Alvin	1092	4/4		4/4	M	16	Apr. 29, 1939.	1170	Toponotes, Rodericka Joyce	1171	4/4		4/4	F	15	Apr. 1, 1940.
1089	Tabbee, William	1093	4/4		4/4	F	52	1904.	1171	Tuck, Henry Qiyaga	1172	4/4		4/4	F	82	Aug. 13, 1928.
1090	Tabbee, Byrdie Queacut	1094	4/4		4/4	F	48	Feb. 10, 1908.	1172	Tuck, Ruhogit Utt	1173	4/4		4/4	F	82	July 18, 1930.
1091	Tabbee, Gertrude	1095	4/4		4/4	F	15	Jan. 5, 1941.	1173	Tuck, John Crow	1174	4/4		4/4	F	54	Dec. 25, 1946.
1092	Tabbee, Henderson	1096	4/4		4/4	M	13	Sept. 23, 1942.	1174	Tuck, Edna Wyasket	1175	4/4		4/4	F	59	Oct. 14, 1926.
1093	Tabbee, Nathaniel	1097	4/4		4/4	F	8	May 7, 1947.	1175	Twony, Julius	1176	4/4		4/4	M	54	Jan. 28, 1931.
1094	Tabbee, Shirleta	1098	4/4		4/4	F	5	Oct. 13, 1949.	1176	Twony, Coralie Lucy	1177	4/4		4/4	F	27	Aug. 13, 1928.
1095	Tahgapoots, Tom	1099	4/4		4/4	M	52	1904.	1177	Uncopahgugut, George Brock	1178	7/8	7/8	7/8	M	44	June 7, 1912.
1096	Taileather, Wanda Apporas	1100	4/4		4/4	F	31	Oct. 30, 1924.	1178	Uncas Sam, Bonnie Lee	1179	15/16		15/16	F	30	Apr. 19, 1922.
1097	Taileather, Elsworth Louis	1101	2/4	2/4	4/4	M	5	June 8, 1950.	1179	Uncas Sam, Flora Jean	1180	7/8	7/8	7/8	M	9	Dec. 25, 1946.
1098	Tapoof, Bert	1102	4/4		4/4	M	38	Dec. 1, 1917.	1180	Uncas Sam, Calvyn	1181	7/8	7/8	7/8	M	28	Oct. 14, 1926.
1099	Tapoof, Robert	1103	4/4		4/4	M	19	Apr. 20, 1936.	1181	Uncas Sam, Ida T. Santio	1182	7/8	7/8	7/8	M	24	June 28, 1931.
1100	Tapoof, Marion	1104	4/4		4/4	F	9	Dec. 23, 1946.	1182	Uncas Sam, Rodney Miles	1183	7/8	7/8	7/8	M	7	May 21, 1948.
1101	Tapoof, Adelbert	1105	4/4		4/4	M	11	Sept. 4, 1944.	1184	Uncas Sam, Colleen	1185	7/8	7/8	7/8	F	4	Jan. 22, 1952.
1102	Tapoof, Venita	1106	4/4		4/4	F	15	Mar. 20, 1940.	1186	Uncas Sam, Maxine	1187	15/16		15/16	F	5	Aug. 23, 1950.
1103	Tapoof, George	1107	4/4		4/4	M	12	Aug. 31, 1943.	1188	Uncas Sam, Caroline	1189	7/8	7/8	7/8	M	3	Jan. 11, 1954.
1104	Tapoof, Leo	1108	4/4		4/4	M	15	Sept. 27, 1940.	1190	Uncas Sam, Donacianna T.	1191	7/8	7/8	7/8	F	21	Feb. 7, 1935.
1105	Tapoof, Millie Clara	1109	4/4		4/4	F	17	Feb. 21, 1939.	1192	Uncas Sam, Mary W. Pootquos	1193	3/4	3/4	3/4	M	59	1897.
1106	Tahgav, Allen	1110	4/4		4/4	M	17	Apr. 4, 1938.	1194	Uncas Sam, Janet	1195	4/4		4/4	F	47	Aug. 20, 1908.
1107	Taveapont, Ray	1111	4/4		4/4	F	49	Dec. 1, 1906.	1196	Uncas Sam, Dorothea	1197	7/8	7/8	7/8	F	14	Feb. 13, 1942.
1108	Taveapont, Harriet Johnson	1112	4/4		4/4	F	15	June 1, 1906.	1198	Uncas Sam, Ardith	1199	7/8	7/8	7/8	F	10	Apr. 20, 1944.
1109	Taveapont, Beatrice	1113	4/4		4/4	F	15	Oct. 30, 1940.	1200	Uncas Sam, Margie	1201	7/8	7/8	7/8	F	8	Jan. 1, 1948.
1110	Taveapont, Frank Lee	1114	4/4		4/4	M	12	Mar. 17, 1943.	1202	Uncas Sam, Frank	1203	7/8	7/8	7/8	M	5	May 2, 1950.
1111	Taveapont, Patricia	1115	4/4		4/4	F	9	May 9, 1946.	1204	Uncas Sam, Edgar T.	1205	7/8	7/8	7/8	M	24	Mar. 3, 1931.
1112	Taveapont, Lynn Ray	1116	4/4		4/4	M	18	July 5, 1937.	1206	Uncas Sam, Edith Ida	1207	4/4		4/4	F	50	Sept. 15, 1905.
1113	Taveapont, Don Collard	1117	4/4		4/4	M	6	Jan. 2, 1950.	1208	Uncas Sam, Fred T.	1209</td						

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 10, 1972

MEMORANDUM TO THE CONFERENCE

Re: No. 70-78 - Affiliated Ute Citizens of Utah v. U.S.
Reyos v. First Security Bank of Utah

I have the following comments about the enclosure:

1. There may not be very much to this case, but, as I worked on it, it appeared to be full of complexity.

2. I regret the length of the memorandum. Perhaps I may take comfort in the fact that the District Court's findings were themselves 115 pages long.

3. I have taken a very liberal approach to Rule 10b-5. This may represent a step beyond any point the Court has heretofore reached. This undoubtedly is the most important aspect of the case and I urge your close attention to it.

4. Initially, my reaction was that the controversy here as to per share value of the UDC stock was a matter better resolved by the District Court and the Court of Appeals, and that we should do little other than comment generally on the issue of value. I feel, however, that Judge Christensen, in the face of a mass of evidence, came up with a sensible determination and one that finds general support in the record although nothing by way of comparable sales. I have concluded, therefore, to express agreement with the District Court. If we were to send the case back on this issue, I doubt if there is much to be presented that has not already been presented. You may disagree.

5. I have several cartons of exhibits, legal spindles, memoranda and the like, all of which are available to those who wish to delve deeply.

46 A.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Powell
Mr. Justice Rehnquist

From: Blackmun, J.

1st DRAFT

Circulated: 4/10/72

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 70-78

Affiliated Ute Citizens of the
State of Utah et al.,
Petitioners,
v.
United States et al. } On Writ of Certiorari to
the United States Court
of Appeals for the
Tenth Circuit.

[April —, 1972]

Memorandum from MR. JUSTICE BLACKMUN.

These two consolidated cases center in the Ute Partition Act of August 27, 1954, Pub. L. 83-671, 68 Stat. 868, as amended, 70 Stat. 936 and 76 Stat. 597, 25 U. S. C. §§ 677-677aa; the Securities Exchange Act of 1934, as amended, §§ 3 (a)(4) and (5), 10 (b) and 15 (c)(1), 15 U. S. C. §§ 78c (a)(4) and (5), 78j (b) and 78o (c)(1); the emergence of Affiliated Ute Citizens of the State of Utah (AUC), an unincorporated association, and of Ute Development Corporation (UDC), a Utah corporation; and the alleged victimization of Indian shareholders in their sales of UDC shares.

I

Background

The Ute Partition Act¹ pertained to the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah.

¹ The Act was one of a series of termination statutes enacted primarily in the years 1954-1956. See, for example, the Menominee Act of June 17, 1954, 68 Stat. 250, 25 U. S. C. § 891 *et seq.*; the Klamath Act of August 13, 1954, 68 Stat. 718, 25 U. S. C. § 564 *et seq.*; the Western Oregon Act of August 13, 1954, 68 Stat. 724, 25 U. S. C. § 691 *et seq.*; the Alabama and Coushatta Act of Au-

pp. 1,25

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

No. 70-78

Recirculated: 4/19/72

Affiliated Ute Citizens of the
State of Utah et al.,
Petitioners,
v.
United States et al.
Reyos
v.
First Security Bank of Utah.

On Writ of Certiorari to
the United States Court
of Appeals for the
Tenth Circuit.

[April —, 1972]

MR. JUSTICE BLACKMUN delivered the opinion of the
Court.

These two consolidated cases center in the Ute Partition Act of August 27, 1954, Pub. L. 83-671, 68 Stat. 868, as amended, 70 Stat. 936 and 76 Stat. 597, 25 U. S. C. §§ 677-677aa; the Securities Exchange Act of 1934, as amended, §§ 3 (a)(4) and (5), 10 (b) and 15 (c)(1), 15 U. S. C. §§ 78c (a)(4) and (5), 78j (b) and 78o (c)(1); the emergence of Affiliated Ute Citizens of the State of Utah (AUC), an unincorporated association, and of Ute Development Corporation (UDC), a Utah corporation; and the alleged victimization of Indian shareholders in their sales of UDC shares.

I

Background

The Ute Partition Act¹ pertained to the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah.

¹ The Act was one of a series of termination statutes enacted primarily in the years 1954-1956. See, for example, the Menominee Act of June 17, 1954, 68 Stat. 250, 25 U. S. C. § 891 *et seq.*; the