

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

Narragansett Indian Tribe of Rhode Island

Plaintiff,

vs.

CA 03 296S

The State of Rhode Island and Providence  
Plantations, Governor Donald L. Carcieri,  
State of Rhode Island, in his official  
capacity; Patrick C. Lynch Rhode Island  
Attorney General, in his official capacity;  
Rhode Island State Police, Colonel Steven  
M. Pare, in his official capacity; Justices of  
the Rhode Island District and Superior  
Courts; the Town of Charlestown; and the  
Charlestown Police Department

C.A. No. 03-

COMPLAINT  
FOR DECLARATORY RELIEF

Defendants.

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COMPLAINT

(Declaratory Judgment Sought)

JUL 15 2003  
U.S. DISTRICT COURT  
DISTRICT OF RHODE ISLAND

Plaintiffs in this Complaint allege:

INTRODUCTION

1. Plaintiff, Narragansett Indian Tribe [hereinafter "the Tribe"], seeks declaratory judgment against the State of Rhode Island and Providence plantation, the Governor of the State of Rhode Island, the Attorney General of the State of Rhode Island, the Rhode Island State Police and the justices of the Rhode Island Superior and District Courts on the grounds that (a) the Tribe's status under the Rhode Island Indian Land Claims Settlement, 25 U.S.C.

§1701 et seq., precludes the application of state cigarette distribution, licensing, sales and excise tax and administrative laws pursuant to the United State Supreme Court precedents in this area of law; (b) incidence of cigarette excise tax pursuant to R.I. Gen. Laws §44-20-12 falls on the tribe under Rhode Island Cigarette statute; (c) the Tribe's sovereign immunity bars the collection of excise taxes on the sale of cigarettes on Tribal trust lands; (d) the tribe's sovereign immunity bars the collection of cigarette excise taxes for sales to non-Indian members for damage action in any court; and, (e) the Rhode Island Indian Land Claims Settlement, 25 U.S.C. §1701 et seq does not grant authority to the State of Rhode Island to tax the federally recognized Narragansett Indian Tribe.

#### JURISDICTION AND VENUE

2. The Tribe seeks a determination of its rights, privileges, and immunities under 25 U.S.C §1701 et. seq. and a determination of the application of the State of Rhode Island excise tax on cigarettes and it accompanying administrative statutes and regulations. Plaintiff seeks this court to “declare the rights and legal relations” of the State of Rhode Island and the Narragansett Indian Tribe as there exists an actual controversy. 28 U.S.C. §§ 2201 and 2202. The Tribe also seeks relief under 25 U.S.C. § 177, 25 U.S.C. § 1701 et seq., under federal common law, and under R.I. G.L. 37-18 (1) – (15).
3. This Court has jurisdiction over this action under 25 U.S.C. § 1701 et seq., under 28 U.S.C. §§ 1331, 1337, 1362 and 1367, 25 U.S.C. § 177, and under federal common law.

4. This action seeks injunctive as well as declaratory relief, pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure, as there is an actual controversy between the parties sufficient to invoke the jurisdiction of this Court.
5. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c) in that a substantial part of the action giving rise to the claims occurred within the District and the Respondents are subject to personal jurisdiction within the District.

#### PARTIES

6. The Tribe is a federally recognized and acknowledged Indian tribe with sovereign reservation lands located near the Town of Charlestown, Rhode Island.
7. The governing body of the Tribe is Chief Sachem and the Narragansett Indian Tribal Council (hereinafter "Tribal Council").
8. Defendant State of Rhode Island is a sovereign state.
9. Defendant Donald Carcieri is the Governor of the State of Rhode Island
10. Defendant Patrick Lynch is the Attorney General of the State of Rhode Island
11. Defendant Colonel Steven M. Pare is the Superintendent of the Rhode Island State Police
12. Defendant Justices of the Rhode Island Superior and District Courts.
13. Defendants Town of Charlestown and the Charlestown Police Departments

### The Tribe's Sovereign Immunity

14. The Tribe's sovereign immunity has been established under the Rhode Island Land Claims Settlement act by seven (7) federal and state court decisions all finding that the Tribe retains its common law immunity from suit.

### The State Has No Jurisdiction over Tribal Taxation under the Rhode Island Land Claims Settlement

15. Congress did not authorize Rhode Island to Tax the Narragansett Indian Tribe.
16. State taxing power over activities on Indian reservations or "Indian country"<sup>1</sup> must be consented to by Congress.
17. The Supreme Court has found that when Congress intends to grant taxation authority over tribes to states it must do so clearly and expressly.
18. The Supreme Court has also held, that State taxes on tribes are not permitted where the legal incidence of the tax rests upon the tribe or on tribal members living inside Indian country.
19. The legal incidence of tax falls on the Tribe in Rhode Island.
20. The Supreme Court has further held that tribal sovereign immunity bars a state suit against a tribe to recover taxes owed for sales to non-Indians at tribally owned stores.

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<sup>1</sup> "Indian Country" is the more precise term for determining jurisdictional questions in Indian law. *See* 18 U.S.C. § 1151 (2000) (defining the specific statutory characteristics of the lands in question). Section 1151 of Title 18 is a criminal statute but its definition has been made applicable to civil and regulatory jurisdiction as well. *See DeCoteau v. Dist. County Court*, 420 U.S. 425, 427 FN2 (1975).

21. The Rhode Island Indian Claims Settlement Act (25 U.S.C 1701 et. seq.) (Settlement Act) was enacted on September 30, 1978.
22. On February 10, 1983, the Department of the Interior issued a Final Determination acknowledging (recognizing) that the Narragansett Indian Tribe of Rhode Island was and still is an Indian Tribe. The Tribe is therefore a sovereign government, subject to the usual plenary power of Congress over Indian tribes.
23. On September 12, 1988, the Bureau of Indian Affairs, on behalf of the United States of America, accepted in trust the Settlement Lands for the Narragansett Indian Tribe.
24. The Settlement Act, among other things, identifies two separate entities. The first is the "Indian Corporation," which is a "non-business" political entity also known as the "Narragansett Tribe of Indians." The second is the "State Corporation" which the State of Rhode Island was required to charter to initially hold and manage certain Settlement lands.
25. The language of the Settlement Act shows Congress fully understood that the two entities were legally separate and distinct.
26. There are no provisions in the Settlement Act, or the 1980 amendment to the Act, that grant authority to the State to tax the Indian Corporation or a federally recognized Tribe.
27. Congress has never acted to remove the *Tribe's* tax-exempt status. In 1980, Congress amended the Settlement Act to shield the *State Corporation* from taxes.

28. Congress only intended for Section 1715 of the Settlement Act to apply to the “State Corporation” while it held the Settlement lands.
29. As a federally recognized Tribe, the Narragansett Indian Tribe, does not need a tax exemption to be tax exempt. After federal recognition, the State must have express approval from Congress to impose a tax on a Tribe. The State lacks such express Congressional approval to tax the Narragansett Indian Tribe.
30. Accordingly, the State of Rhode Island and its political subdivisions lack the authority to tax the Narragansett Indian Tribe.
31. On or about July 12, 2003 the Tribe commenced the sale of cigarettes at the Narragansett Indian Smoke Shop located upon the Tribe’s reservation, the Settlement Lands.
32. On or about July 12, 2003 the Rhode Island State Police secured a Search Warrant from the Superior or District Courts of the State of Rhode Island.
33. On July 14, 2003 the Rhode Island State Police illegally entered upon Tribal lands, executed the Search Warrant and seized property and merchandise of the Narragansett Indian Tribe.
34. On July 14, 2003, the Town of Charlestown, through the Charlestown Police Department assisted the Rhode Island State Police in the execution of the Search Warrant resulting in the illegally entry upon Tribal lands, executed the Search Warrant and seized property and merchandise of the Narragansett Indian Tribe.

35. In the course of executing the Warrant the Rhode Island State Police arrested six or more Tribal members including the Chief Sachem, the First Councilman, two additional Councilmen, a Tribal Law Enforcement Officer and a female member of the Tribe.
36. Various criminal charges against Tribal officials and Tribal members have been filed in the State of Rhode Island District Court in Washington County.

COUNT I  
(DECLARATORY JUDGMENT)

35. Plaintiff realleges and incorporates by reference Paragraphs 1- 36 of its Complaint.
36. Plaintiff and Defendants are interested parties under the Rhode Island Indian Claims Settlement Act.
37. Plaintiff has a significant interest in the Settlement Act and in compelling Defendants to adhere to its terms.
38. Both Plaintiff and Defendant' rights and legal relationship are contained within the terms of the Settlement Act.
39. A controversy has arisen between the parties wherein Attorney General Lynch and Governor Carcieri in violation of federal law have wrongfully secured a Search Warrant from a Justice of the Rhode Island District Court and have instructed State Police to execute such a warrant.
40. Further, a controversy has arisen between the parties as to the Plaintiff's inherent sovereign power upon Tribal lands.
41. Plaintiff seeks a declaratory judgment pursuant to 28 U. S. C.

§ 2201 for the purpose of determining an actual controversy between the parties as alleged more fully herein.

42. Plaintiff seeks an affirmative declaration regarding the rights and legal obligations under federal law over matters pertaining to the Settlement Act and the Tribe's right to sell cigarette products on Tribal reservation lands free from State taxation.

WHEREFORE, Plaintiff prays for an affirmative declaration from this Court having the full force and effect of a final judgment, as follows:

- a. That the Narragansett Indian Tribe of Rhode Island, within its inherent sovereign power and as a matter of federal law, has authority to sell cigarette products free from state laws upon Tribal lands;
- b. That the Settlement Act does not subject the Tribe to State taxation for the sale of cigarette products, or any other products this Court deems just;
- c. That the Search Warrant of July 12, 2003 by declared vacated or otherwise held in violation of federal law and the Tribe's sovereign rights there under.
- d. That the arrests of Tribal officials and members be declared vacated or otherwise enjoined as violations of federal law and the Tribe's sovereign rights there under.
- e. That the Narragansett Indian Tribe of Rhode Island be awarded all costs and expenses including reasonable attorneys fees; and
- f. That the Court order such other and further relief as may be proper.


**COUNT II  
(INJUNCTIVE RELIEF)**

43. Plaintiff, realleges and incorporates by reference Paragraphs 1- 42 of its Complaint.
44. That a temporary, preliminary and permanent injunction enter ordering the Defendants to return all cigarette products and other materials seized from the Tribe on July 14, 2003, as required by federal law.
45. That a temporary, preliminary and permanent injunction enter ordering that the Search Warrant of July 12, 2003 by declared vacated or otherwise held in violation of federal law and the Tribe's sovereign rights there under.
46. That a temporary, preliminary and permanent injunction enter ordering that the arrests of Tribal officials and members be declared vacated or otherwise enjoined as violations of federal law and the Tribe's sovereign rights there under.
47. That if the Defendants are not so affirmatively enjoined the Narragansett Indian Tribe of Rhode Island, its governmental agencies and entities, along with Tribal members will suffer further irreparable harm for which there is no adequate remedy at law, namely by being deprived of revenues from its cigarette sales.
48. . That the balancing of the equities with regards to irreparable harm to the Narragansett Indian Tribe of Rhode Island, its governmental agencies and entities, along with Tribal members, as opposed to the Defendants and the community at large, does not compare.

WHEREFORE, the Plaintiff seek the following temporary, preliminary and permanent affirmative injunction relief:

- a. That the Narragansett Indian Tribe of Rhode Island, within its inherent sovereign power, has authority to sell cigarette products, and other products upon Tribal lands;
- b. That a temporary, preliminary and permanent injunction enter ordering the Defendants to affirmatively and diligently adhere to the terms and conditions of to return all cigarette products and other materials seized from the Tribe on July 14, 2003, as required by federal law.
- c. That a temporary, preliminary and permanent injunction enter ordering that the Search Warrant of July 12, 2003 by declared vacated or otherwise held in violation of federal law and the Tribe's sovereign rights there under.
- d. That a temporary, preliminary and permanent injunction enter ordering that the arrests of Tribal officials and members on July 14, 2003 by declared vacated or otherwise held in violation of federal law and the Tribe's sovereign rights there under.
- e. That the Defendants herein be enjoined and restrained from further acts in violations of federal law and the Tribe's sovereign rights there under, as this Court deems just.
- f. That the Narragansett Indian Tribe of Rhode Island be awarded all costs and expenses including reasonable attorneys fees; and
- g. That the Court order such other and further relief as may be proper.

RESPECTFULLY SUBMITTED BY THE  
NARRAGANSETT INDIAN TRIBE, BY  
AND THROUGH COUNSEL,



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Dated this 15th day of July, 2003.