Block v. North Dakota Ex Rel. Board of University and School Lands: A Restrictive Interpretation of the Quiet Title Act

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Since its inception, the American judicial system\(^1\) has provided the means for aggrieved individuals to bring their detractors before a bar of justice.\(^2\) Although the defendant in an action\(^3\) could be any private person, corporation, or other entity, the United States could not be designated a defendant without its consent.\(^4\) In the shadow of the doctrine of sovereign immunity,\(^5\) the United States has been reluctantly relinquishing its

\(^1\) The American colonists founded the United States government upon a "foundation of English liberty" that included a right of trial by jury. See J. Woodburn, The American Republic and Its Government 4-6 (1904); Formation of the Union of the American States, H.R. Doc. No. 398, 69th Cong., 1st Sess. 2 (1927) (Resolution of the Continental Congress (Oct. 14, 1774)) ("That our ancestors, who first settled these colonies, were at the time of their emigration from the mother country, entitled to all the rights, liberties, and immunities of free and natural born subjects within the realm of England.").

\(^2\) In his defense of the adoption of the United States Constitution, the influential pseudonymous writer "Publius" expounded the propriety of a civil justice system in the new American society. Notwithstanding therefore the doubts I have expressed as to the essentiality of trial by jury, in civil cases, to liberty, I admit that it is in most cases, under proper regulation, an excellent method of determining questions of property; and that on this account alone it would be entitled to a constitutional provision in its favor, if it were possible to fix the limits within which it ought to be comprehended. The Federalist No. 83, at 23, 24 (A. Hamilton) (J. Cooke ed. 1961).


\(^5\) See generally Comment, The American Doctrine of Sovereign Immunity: An Historical Analysis, 13 Vill. L. Rev. 583 (1968). The Supreme Court clearly articulated its position on sovereign immunity in Lynch v. United States, 292 U.S. 571 (1934). The Lynch Court stated that

\[\text{[l]he sovereign's immunity from suit exists whatever the character of the proceeding or the source of the right sought to be enforced. It applies alike to causes of action arising under acts of Congress . . . and to those arising from some violation of rights conferred upon the citizen by the Constitution . . . . The character of the cause of action—the fact that it is in contract as distinguished from tort—may be important in determining (as under the Tucker Act [24 Stat. 505]) whether consent to sue was given. Otherwise it is of no significance. For immunity from suit is an attribute of sovereignty which may not be bartered away.}\]

\(\text{Id. at 582.}\)
immunity from suits.\(^6\) By 1948 the United States had enacted legislation fully waiving its immunity in contract\(^7\) and tort\(^8\) actions involving both itself and its officers.\(^9\) Although the waiver in these areas allowed for some relief against the sovereign,\(^10\) the United States retained its immunity from suits involving disputes over title to land\(^11\) until the passage of the Quiet Title Act of 1972 (QTA).\(^12\)

The QTA provides that the United States can be named as a defendant in a civil action to quiet title to land in which it claims an interest.\(^13\) Along with the recognition of the necessity of including the United States in land title suits, Congress also delineated certain safeguards for the protection of the public interest.\(^14\) One of these safeguards is subsection (f) of the QTA. It provides a twelve-year statute of limitations that is designed primarily to protect the government against state claims.\(^15\)

Recently, a dispute has arisen regarding the intent of Congress in the

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\(^6\) See 28 U.S.C. § 1346 (1982). The statute, entitled United States as Defendant, gives the district court original jurisdiction, concurrent with the Claims Court, over actions against the United States. Some relevant provisions include § 2410, allowing suits to be maintained when the government's claim is in the nature of a security interest only; § 1347, providing for suits to partition property in which the United States is a joint tenant or tenant in common; § 1346(a)(2), the Tucker Act, granting the consent of the United States to be sued where the plaintiff alleges that his property has been taken in violation of the Constitution.

\(^7\) The Tucker Act, ch. 359, 24 Stat. 505 (1887).

\(^8\) The Federal Tort Claims Act, ch. 646, 62 Stat. 933 (1948).


\(^10\) See infra notes 42, 44.

\(^11\) Under the Tucker Act, the only remedy for the successful claimant is just compensation. The claimant cannot obtain an injunction prohibiting trespass by the government. 28 U.S.C. § 1346(a)(2) (1982).

\(^12\) Pub. L. No. 92-562, 86 Stat. 1176 (1972) (codified at 28 U.S.C. §§ 1346(f), 1402(d), 2409a (1982)).

\(^13\) See 28 U.S.C. § 2409a(a) (1982), which allows quiet title actions against the government to “adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights” (emphasis added). The section also exempts “trust or restricted Indian lands.” Id.

\(^14\) See 28 U.S.C. § 2409a(a), (b), (f) (1982). The safeguards include: (1) exclusion of Indian and trust lands from the scope of the Act; (2) payment of just compensation in cases where the surrender of property would disrupt ongoing federal programs involving the land; and (3) to avoid stale claims, a twelve-year statute of limitation on actions.

\(^15\) QTA subsection (f) provides that any civil action under this section shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim by the United States. 28 U.S.C. § 2409a(f) (1982).
application of the Act's twelve-year statute of limitations to land held in trust for the public. Specifically, the lower federal courts have held that the limitation on actions does not apply to states holding land in trust for the public. In contrast to this interpretation, the United States Supreme Court has ruled that the time bar provided by subsection (f) is applicable to state claimants as well as to private claimants.

In *Block v. North Dakota ex rel. Board of University and School Lands*, the United States Supreme Court addressed the issue of whether the subsection (f) limitation on QTA actions applies to states as well as to others who sue under the Act. The Court held that states are not exempt from the time limitation on QTA actions. It reasoned that the legislative history of the QTA does not provide evidence of congressional intent to exempt states from the time-bar of subsection (f). Furthermore, the Court reasoned that the statutory language of the Act does not provide an exception for civil actions by a state.

The State of North Dakota claimed title to the bed of a navigable stream under the constitutional equal footing doctrine. The doctrine endows new states with the same rights to submerged and submersible lands as the original thirteen states. Despite the state's contention, the United States claimed an interest in the same river bed. The federal government based its claim on a theory of adverse possession resulting from its continuous leasing of oil and gas rights along the stream and its connecting river. North Dakota sought relief in federal district court against the Secretary of

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16. The term "public trust lands" in this note refers to lands over which a state maintains its dominion and sovereignty. They are lands held in trust for the citizens of a state as opposed to lands held by a state in a proprietary capacity. See generally 73A C.J.S. Public Lands §§ 1-6 (1983).
19. Id. at 1814.
20. Id. at 1822.
22. Under the "equal footing doctrine," states newly admitted into the Union have the same rights, sovereignty and jurisdiction as the original states within their respective borders. See, e.g., *California ex rel. States Lands Comm'n v. United States*, 457 U.S. 273, 281 n.9 (1982); *Mobil Oil Corp. v. Coastal Petroleum Co.*, 671 F.2d 419, 422 (1982).
24. Id.
the Interior, and others, to quiet title to the lands. The court rejected the federal government's claim that under the QTA the subsection (f) statute of limitations had run against North Dakota. Instead, the court reasoned that the legislative history of the Act reveals that Congress did not intend to defeat a claim by a state to land it holds in trust for the public. The United States Court of Appeals for the Eighth Circuit affirmed, reasoning that a statute of limitations can only apply to a sovereign when the sovereign is expressly mentioned in the statute. The court further held that a statute of limitations can also be applied to the state if such a purpose can be derived from legislative intent. Because the court found the public interest in quieting title to these lands to be paramount, it rejected the government's claim that the QTA refers to "any" civil action and therefore must include state actions.

In an eight-to-one decision the United States Supreme Court reversed. The Court held that because the statutory language of the QTA makes no exception for civil actions by states, subsection (f) should be applied to any civil action including actions by states. Writing for the majority, Justice White maintained that the legislative history did not reflect congressional intent to exempt the states from the subsection (f) limitation. Moreover, he stated that the legislative history displayed a congressional intent designed to foreclose totally any suit that occurred beyond the limitations period of the QTA.

In her dissent, Justice O'Connor maintained that statutes of limitation are not applicable to a sovereign. She emphasized that an inquiry into congressional intent should not be restricted to the legislative history of subsection (f), but should take into consideration the policy that public rights must not be lost because of constraints on a sovereign.

25. Id. at 619. The defendants were: Cecil Andrus, Secretary of the Interior; Bob Bergland, Secretary of Agriculture; Frank Gregg, Director of the United States Bureau of Land Management; and John R. McGuire, Chief of the United States Forest Service.
26. Id. at 625.
28. Andrus, 671 F.2d at 274.
29. Id. at 274-75.
30. Id. at 275.
31. Block, 103 S. Ct. at 1811.
32. Id. at 1820.
33. Id. at 1820.
34. Id. at 1823 (O'Connor, J., dissenting).
35. Id.
36. Id. at 1824.
serted that the special nature of the river bed land[^37] made it "difficult to believe that Congress intended to deny States dominion over these lands by silently extinguishing their right to quiet title."[^38]

This Note will focus upon the *Block* decision and the contrasting interpretations of congressional intent in enacting the QTA. It will discuss the evolution of the doctrine of sovereign immunity and its application to limitations of actions and public trust lands. Employing Supreme Court decisions, this Note will attempt to illustrate the incompatibility of the *Block* decision with previous decisions of the Court in this area. Finally, this Note will conclude with a comment on the probable impact of *Block* on future cases involving limitations on actions by states holding land in trust for the public.

I. THE RELINQUISHMENT OF SOVEREIGN IMMUNITY BY THE UNITED STATES

In the absence of an express waiver by Congress, individual states and other entities are barred by the doctrine of sovereign immunity from suing the United States[^39]. Legislative yielding of the doctrine first appeared in the contract area with enactment of the Tucker Act.[^40] The Tucker Act allows a private claimant to seek a monetary remedy in a contract suit against the federal government.[^41] In the context of land disputes, the Act enables private claimants to assert a claim for monetary damages by showing that the property has been taken without formal eminent domain proceedings.[^42] Because the Tucker Act does not allow for recovery of the

[^37]: *Id.* at 1826. Justice O'Connor attributed the "special importance" of the lands to congressional recognition of the trust duty of the sovereign. Citing the Submerged Lands Act, she maintained that

[^38]: *Block*, 103 S. Ct. at 1826 & n.6 (citing 43 U.S.C. § 1311(a) (1976 & Supp. V 1981)).

[^39]: *Block*, 103 S. Ct. at 1826.

[^40]: See *supra* notes 5-6.

[^41]: See *supra* note 7 and accompanying text.

[^42]: See *supra* note 11.

property itself, the impact of its provisions are limited in land title disputes.

Another major inroad in the relinquishment of sovereign immunity occurred sixty-one years later with the passage of the Federal Tort Claims Act (FTCA).\textsuperscript{43} The FTCA was primarily designed to provide for damages when the United States was the wrongdoer in a tort action.\textsuperscript{44} Like the Tucker Act, the FTCA limited a claimant to monetary damages.\textsuperscript{45} Additionally, under its provisions, the claimant was similarly unable to obtain title to disputed land.\textsuperscript{46}

It was not until the passage of the Quiet Title Act (QTA)\textsuperscript{47} that Congress made a concerted effort to waive totally the doctrine of sovereign immunity in land title disputes involving the United States. Essentially, the QTA allows the quieting of title in disputes in which the government claims an interest in land. Unlike previous legislation involving land disputes with the sovereign, the QTA provides a remedy of possession to the prevailing party.\textsuperscript{48} The passage of the QTA signaled congressional recognition that the doctrine of sovereign immunity should not bar the judicial resolution of land title disputes between the United States and private citizens.\textsuperscript{49} It is undisputed that the statutory reform provided by the QTA was essential in providing an equitable solution to land disputes involving the federal government.\textsuperscript{50} An examination of the history of these disputes

\textsuperscript{43} See supra note 8.
\textsuperscript{44} The FTCA provides “money damages . . . for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the government while acting within the scope of his office or employment . . . .” 28 U.S.C. § 1346 (1982).
\textsuperscript{45} Id.
\textsuperscript{47} See supra note 12.
\textsuperscript{48} See supra notes 7, 11.
\textsuperscript{49} See Steadman, supra note 46, at 50-56. The author presents a pre-QTA analysis of the need for judicial reform in this area.
\textsuperscript{50} Id. at 50-51. (“One of the most firmly established principles in American jurisprudence is that where land is involved there is no substitute for the thing itself.”) See Roady, Lee, Land, Larson, and Malone — Sovereign Immunity Revisited, 43 TEX. L. REV. 1062 (1965). The author poetically delineated the abuse of the doctrine of sovereign immunity:

The importance of the exception cannot be ignored:
It is vital to all to have legal sword
With which owners can prevent constitutional abuse
Or a taking of property for an illegal use.
To dismiss every case at the Government’s word
In a constitutional democracy is patentely absurd.
\textit{Id.} at 1070; \textit{see infra} note 127 and accompanying text.
will illustrate that enactment of the QTA was long overdue.  

II. HISTORY OF SOVEREIGN IMMUNITY AND LAND TITLE DISPUTES

A. Early Supreme Court Interpretations of the Sovereign's Right to Immunity Against Suit

The doctrine of sovereign immunity was first applied in the area of claims of title to property held by an officer of the government. In an early case, United States v. Lee, the Supreme Court held that, except in instances of unconstitutional action, the United States can only be sued as a party defendant if the government consents to suit or Congress has provided for consent by statute. In Lee, a plot of land formerly owned by the descendants of General Robert E. Lee had come into the government's possession as a result of a default in the payment of property taxes. The descendants brought suit claiming wrongful possession because the taxes had not been accepted when tendered. At the time of the suit, the property was controlled by officers of the United States government. The government asserted that the taxes had been refused because of an earlier ruling that overdue taxes would be received only when tendered in person by property owners. Additionally, the government insisted that the doctrine of sovereign immunity precluded a judicial determination of the merits.

The trial court ruled against the government, holding that the tax sale certificate did not divest the Lees of their property. The judgment was

51. Although a thorough historical review of sovereign immunity and land title disputes is beyond the scope of this Note, the cases reviewed are considered by commentators to be fundamental to the development of the law in this area. See Steadman, supra note 46 and Roady, supra note 11.
52. 106 U.S. 196 (1882).
53. Id. at 204-06.
54. Id. at 197.
55. Id. at 196-97. To avoid a direct suit against the United States, the original suit was brought against named defendants Kaufman and Strong, who were federal officers in possession of the property under orders of the Secretary of War.
56. Id. at 197.
57. The United States designated the property as Arlington Cemetery. Id. at 198.
58. Id. at 249-51. The Court stated that the "defendants occupied the same only as such officers and agents in obedience to orders of the War Department of the United States, and making no claim of right to the title or possession except as such officers." Id. at 251.
59. Id. at 200-01. In Lee, the United States tax commissioners had established and followed a general rule whereby "they refused . . . [to accept taxes] on property . . . from any one but the owner." Id.
60. Id. at 198.
61. Id. at 198-99. The trial court noted that [the plaintiff offered evidence establishing title in himself, by the will of his grand-
upheld by the Circuit Court of the United States for the Eastern District of Virginia.62 On appeal, the Supreme Court rejected the government's plea of sovereign immunity. The Court held that by refusing to accept the tax payments the government had deprived the Lees of an important right.63 It reasoned that the deprivation of the right to pay taxes created a wrongful unconstitutional possession of the property held by the government.64 The Court concluded, therefore, that the doctrine of sovereign immunity will not protect an agent of the government from an action for specific relief when the agent is tortiously and wrongfully in possession of property owned by a claimant.65

More than half a century after Lee, allegations of an unlawful taking by the government were asserted again in Land v. Dollar.66 In Land, the plaintiff, Dollar, claimed to have pledged common stock to the United States Maritime Commission as collateral for a debt.67 The defendant Commission argued that the shares had not been pledged but transferred outright.68 The Commission subsequently offered the stock for sale to the public.69 Dollar brought suit based on a claim that the Commission unlawfully possessed and illegally withheld the stock.70 The trial court summarily dismissed the suit reasoning that it could not be brought against the sovereign.71

The United States Court of Appeals for the District of Columbia Circuit72 reversed and remanded for a hearing on the merits.73 Citing earlier cases,74 the court held that because the Commission had entered into a commercial field of activity, a restriction should be placed on its use of the

father, George Washington Parke Curtis, who devised the Arlington estate to his daughter, the wife of Gen. Robert E. Lee, for life, and after her death to the plaintiff. This, with the long possession under that title, made a prima facie right of recovery in plaintiff.

Id.

62. Lee v. Kaufman, 15 F. Cas. 204 (C.C.E.D. Va. 1879) (No. 8192)).
63. 106 U.S. at 202.
64. Id. at 219-20.
65. The force of the judgment was to grant possession to Lee. The judgment, however, was not res judicata against the United States. It only settled the controversy over possession as between the Lees and the government agents. Id. at 222.
67. Id. at 734.
68. Id.
69. Id.
70. Id.
71. Id.
73. Id. at 313.
sovereign immunity plea. On appeal, the Supreme Court analogized the Land controversy to the situation in Lee. Specifically, the Court reasoned that Dollar was entitled to bring his suit because, as in Lee, assertions by government officials of their authority to act did not prevent an inquiry into the lawfulness of their actions. On this theme, the Court affirmed the appeals court's decision. It held that if the property is retained unlawfully, then the government official is in effect a tortfeasor who has illegally exceeded the bounds of his authority.

The first departure from the holdings of Lee and Land surfaced in Larson v. Domestic & Foreign Commerce Corp. In Larson, Domestic contracted for a quantity of coal from the War Assets Administration. The Administration later informed the company that the sale had been cancelled and subsequently entered into negotiations with another party for the sale of the coal. In an effort to stop the sale, Domestic filed for an injunction in the district court. The court dismissed the action ruling that it did not have jurisdiction over a suit against the United States. The United States Court of Appeals for the District of Columbia Circuit reversed and remanded in order to determine whether there had been an illegal interference with property rights. In accordance with Lee, the court reasoned that the lower court should inquire into whether there had been a valid contract of sale.

In a unique departure from the Lee decision, the Supreme Court reversed. The Court narrowed the Lee test for denying the government sovereign immunity. It required that in order to defeat the doctrine of sovereign immunity, not only must the government agent's holding of property be tortious and wrongful, the agent's act must also be statutorily

75. Dollar, 159 F.2d at 312.
76. Land, 330 U.S. at 736.
77. See supra notes 63-65 and accompanying text. In Lee the question involved the authority of the tax commissioner to refuse to accept tax payment from anyone but the owner of the subject property. In Land the question involved the authority of the Maritime Commission to take common stock to secure a contract debt. Id.
78. Land, 330 U.S. at 736.
79. Id. at 738.
80. For some time, Land was the last Supreme Court case to follow the Lee theme of judicial fairness. See, e.g., Steadman, supra note 46, at 55-56.
81. 337 U.S. 682 (1949).
82. Id. at 684.
83. Id. at 685.
84. Id. at 684-85.
86. Id. at 238. In effect, Larson upheld the judicial delimitation of the doctrine of sovereign immunity found in Lee. See supra note 65 and accompanying text.
87. 337 U.S. at 682.
or constitutionally prohibited. The Court noted that although Domestic had claimed that the Administration had acted illegally, Domestic had not alleged that this conduct had been unconstitutional. 88 It emphasized that the mere allegation of a cause of action did not defeat the doctrine of sovereign immunity. 89 Therefore, the Larson Court concluded that the withholding of the property was within the statutory powers of the War Assets Administration, and because the agent's act was not unconstitutional or restricted by statute, the Administration was protected by the immunity doctrine.

Although Lee appears to be the basis of authority for the decision in Larson, 90 it is generally held by commentators that Larson distorted the Lee and Land holdings. 91 Basically, the case reactivated the doctrine of sovereign immunity 92. Along with its progeny, Malone v. Bowdoin, 93 Larson made it difficult to bring suit against federal officials as a means of title dispute resolution. 94

Malone was a United States Forest Service officer in charge of and in possession of land acquired by the Government in 1936. 95 Bowdoin and others brought an action of ejectment against Malone claiming title to the land by a will executed in 1857. 96 Relying on Larson, the district court dismissed the case 97 because the government had not consented to be sued

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88. Id. at 691-93.
89. Id.
90. The Court noted that Congress has provided different methods of remedies but maintained that "[t]he differentiations as to remedy which the Congress has erected would be rendered nugatory if the basis on which they rest—the assumed immunity of the sovereign from suit in the absence of consent—were undermined by an unwarranted extension of the Lee doctrine." Id. at 705.
91. See generally Roady, supra note 50, at 1066.
94. Id. at 647. Like Larson, in Malone there were no allegations that a government official had exceeded his statutory powers. Moreover, there was no claim of an unconstitutional taking. Therefore, absent the two Larson exceptions the sovereign immunity doctrine was again upheld by the Court. The Larson exceptions provided that suits against officials are allowed only if: (1) the action is not within the official power of the officer or, (2) if the exercise of power is unconstitutional. Larson, 337 U.S. at 702.
95. Malone, 369 U.S. at 643-44.
96. Bowdoin claimed that one Martha A. Sanders had devised only a life interest to the United States and as successors to the interest of the remainderman, they (Bowdoin and others) were entitled to possession. Malone, 369 U. S. at 644 n.2.
nor had it waived its immunity from suit.98 The United States Court of Appeals for the Fifth Circuit reversed.99 Citing Lee, the court stated that the Supreme Court had never questioned the validity of ejectment actions seeking to remove government agents from wrongfully possessing land.100 Thus, the court reasoned that Malone’s tortious and illegal act of possession was not protected by the immunity asserted by the United States and could be subjected to the jurisdiction of the court.101 On appeal, the Supreme Court reversed,102 holding that because there had been no claim of an unconstitutional taking or an allegation that a government official had exceeded his statutory powers, Larson mandated dismissal.103

Prior to the 1972 enactment of the QTA, Malone was the “law of the land in title dispute cases.”104 Malone, like Larson, limited relief in suits against government officers to a very narrow class of cases.105 Moreover, neither the legislation of the Tucker Act nor the FTCA provided the claimant with title to disputed property.106 Therefore, the overall effect of Malone was to relegate the successful claimant to a remedy of just compensation as opposed to one of specific relief.107 In the ten years following

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98. Doe, 186 F. Supp. at 408.
100. Id. at 105.
101. Id.
102. 369 U.S. at 648. The Court granted certiorari specifically to review the doctrine of sovereign immunity within the category of suits against government agents that affect property in which the United States claims an interest. The Court noted that a number of cases had denied relief under similar circumstances on the ground of sovereign immunity. In reaching its decision, the Court relied heavily on the two Larson exceptions, see supra note 94, thereby establishing a general rule for the use of sovereign immunity in property disputes with the government. The Malone Court stated that

the Court expressly postulated the rule that the action of a federal officer affecting property claimed by a plaintiff can be made the basis of a suit for specific relief against the officer as an individual only if the officer’s action is “not within the officer’s statutory powers or, if within those powers, only if the powers, or their exercise in the particular case, are constitutionally void.


103. Malone, 369 U.S. at 648. See Jaffe, supra note 9, at 39. As stated by Jaffe, “in Malone the Court distinctly saves the authority of Lee [in cases] ‘where there is a claim’ of ‘an unconstitutional taking of property without just compensation.’” Id. at 38 (footnote omitted).
104. See Steadman, supra note 46, at 24.
105. See supra note 94 and accompanying text.
106. See supra notes 7, 8 and accompanying text.
107. 369 U.S. at 647. The Court noted that “[u]nlike the situation in the Lee case, there
Malone, the need for legislative reform was recognized and eventually acted upon with passage of the Quiet Title Act of 1972.

B. The Evolution of the Quiet Title Act (QTA) and The Legislative History of Subsection (f)

The QTA was enacted to enable private parties to bring actions to quiet title to property in which the United States claimed an interest. The original version of the QTA, bill S. 216, was introduced in the 92nd Congress by Senator Church of Idaho. His constituents had been affected by the federal government’s claim to land that had been fraudulently surveyed along the Snake River in Idaho. Senator Church proposed S. 216 primarily as a means of relief for his displaced constituents. The bill’s underlying purpose, however, was to eliminate the doctrine of sovereign immunity from a system of government “where the courts are established, not for the convenience of the sovereign, but to serve the people.”

The Senate and House reports on S. 216 both reveal that Congress has been at all relevant times a tribunal where the respondents could seek just compensation for the taking of their land by the United States. That tribunal is the Court of Claims.”

108. S. 216 was entitled “A bill to permit suits to be brought against the United States to adjudicate disputed land titles.” See Dispute of Titles on Public Lands: Hearing Before the Subcomm. on Public Lands of the Comm. on Interior and Insular Affairs on S. 216, S. 579, S. 721, 92d Cong., 1st Sess. (1971) [hereinafter cited as Senate Hearings on S. 216]. The passage of S. 216 was prefaced by a series of legislative enactments and proposals affecting persons who adversely possessed government owned lands located along the Snake River in Idaho.

109. 117 CONG. REC. 549 (1971) (statement of Sen. Church). It should be noted that lower federal courts were taking the same view towards land title disputes with the sovereign as that of Senator Church. See, e.g., County of Bonner, State of Idaho v. Anderson, 439 F.2d 764 (9th Cir. 1971). (“As a matter of policy, it seems a shame that the County of Bonner cannot find a forum or a proper party to sue to test its claim to the land in question.”); Gardner v. Harris, 391 F.2d 885 (5th Cir. 1968). The Gardner case stated that the persistence with which the Government successfully asserts immunity as to property claims gives rise to several reactions. Not only does the result appear unusual to many, but the fact that Congress does not ameliorate these hardships appears even more unusual. The immunity is, however, very much alive.

110. See supra note 108.

111. 117 CONG. REC. 549 (1971).


ggress intended to relax the doctrine of sovereign immunity as it applies to private claimants in land title disputes with the government.\textsuperscript{115} Notwithstanding the overall clarity of the Act with respect to private citizens, the legislative history of the Act and subsection (f) in particular imparts little information that answers directly whether Congress intended to grant immunity to states holding land in trust for the public.\textsuperscript{116}

As originally drafted, S. 216 succinctly provided that "[t]he United States [could] be named a party in any civil action brought by any person to quiet title to lands claimed by the United States."\textsuperscript{117} At hearings on S. 216, the Executive Branch expressed concern that the bill did not include sufficient "safeguards for the protection of the public interest" and proposed a more elaborate version of the bill.\textsuperscript{118} The Executive proposal, submitted by the Department of Justice (DOJ), included several limitations on

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\textsuperscript{115} See, e.g., House Report 1559, supra note 113, at 6, where the House noted that S. 216 provides a solution to the executive branch observation "that the main objection in the past to waiving sovereign immunity in [the property dispute] area has been that should a citizen . . . prove . . . title to . . . land, it might be possible to force the United States from possession . . . ." Id. (emphasis added). See also Senate Hearings on S. 216, supra note 108, at 19, (statement of Mitchell Melich, Solicitor, Dep't of the Interior) ("S.216 . . . [is] aimed at a . . . problem which is to allow private landowners to bring suit against the Federal Government to quiet title to their land.") (emphasis added)).

\textsuperscript{116} See supra note 15. In Block, the United States Supreme Court based its interpretation of subsection (f) in part on statutory language that states that "any civil action" will be time barred by the statute of limitations. 103 S. Ct. at 1820.

\textsuperscript{117} The original version of subsection (f) proposed by the Senate provided that: [a]ny civil action under this section shall be barred unless the action began within six years after the claim for relief first accrues or within two years after the effective date of this Act, whichever is later. The claim for relief shall be deemed to have accrued upon actual knowledge of the claim of the United States.

\textsuperscript{118} See Senate Hearing on S. 216, supra note 108, at 21 (statement of Shiro Kashiwa, Ass't Atty. Gen.). In addition to S. 216, the Subcommittee heard testimony on S. 579 and S. 721. These bills were vigorously opposed by a number of cabinet level departments that were asked to review the impending legislation. For example, in one Senate requested report it was found that

S.579 would create a right of adverse possession against the United States by prohibiting the United States from making an entry on or bringing any action to recover public lands which have been held under a claim of title for a continuous
the waiver of sovereign immunity. First, in an effort to avoid an unnecessarily burdensome workload, the DOJ suggested that the Act have only a prospective effect. Second, to avoid the possibility of the United States having to defend against stale claims, the proposal included a twelve-year statute of limitations. Third, the bill proposed by the DOJ further excluded lands held in trust for Indians and Indian restricted lands. Fourth, in cases where the government did not prevail on the merits, the proposal allowed the United States a choice of paying money damages or returning property to the claimants if the latter would "disrupt costly ongoing Federal programs."

The Senate passed S. 216 with all of the provisions suggested by the

period of not less than 20 years . . . . The doctrine of adverse possession has never been applicable to lands owned by the Federal Government.

Id. at 4 (letter from Mitchell Melich, Solicitor, Dep't of the Interior, to Sen. Jackson (Sept. 29, 1971)). In another Senate requested report, bill S. 579 was again rejected because "[i]f S.579 were enacted, the additional costs which should be incurred by the Federal landholding agencies to protect the interests of the public . . . would be substantial . . . . S.597 would lead to unjust enrichment of individuals at the expense of the people of the United States generally." Id. at 5 (letter from J. Phil Campbell, Under Secretary, Dep't of Agriculture, to Sen. Jackson (Sept. 30, 1971)). Further rejection of the bill came from the Executive Office of the President. Id. at 3 (letter from Wilfred H. Rommel, Assistant Director for Legislative Reference, Office of Management and Budget (Sept. 30, 1971)).

119. See HOUSE REPORT 1559, supra note 113, at 7 (letter from Ralph E. Erickson, Deputy Attorney General, Dep't of Justice, to Rep. Harold D. Donohue, Chairman, Subcomm. No. 2 Comm. on the Judiciary, House of Representatives (Sept. 20, 1972)). The Department of Justice asserted that the Act shall not be applied to claims that accrued prior to the date of enactment so that the government would be relieved of the administrative burden of giving notice of its claims to interests in lands to those individuals who also claim an interest in the same land. Id.

120. See HOUSE REPORT 1559, supra note 113, at 4, 7 (letter from Ralph E. Erickson, Deputy Attorney General, Dep't of Justice, to Rep. Donohue (Sept. 20, 1972)). The Department proposal specifically addressed the issues of retroactivity and the statute of limitations. The Senate version, which began the limitations period on the date the United States obtained actual knowledge of the property, made the bill fully retroactive. The Department proposal made the bill retroactive for twelve years. Additionally, the Department suggested that "the statute of limitation be extended from six to twelve years for quiet title actions." The purpose was to "give claimants to land in which the United States also claims an interest ample time to bring suits without necessitating the United States having to defend against stale claims." Id.

121. See HOUSE REPORT 1559, supra note 113, at 10 (executive communication from the Dep't of Justice to the Speaker of the House of Representatives (Oct. 6, 1971)). The purpose of a waiving of immunity in the area of Indian lands was to maintain all previous commitments made through Indian treaties and agreements. This position was supported by the United States Department of the Interior when it noted that President Nixon had pledged his administration against abridging the "historic relationship between the Federal government and the Indians." SENATE HEARINGS ON S. 216, supra note 108, at 19 (statement of Mitchell Melich, Solicitor, Department of the Interior).

122. See SENATE HEARINGS ON S. 216, supra note 108, at 19.
DOJ except the provision governing the bill's prospective effect. The Senate-approved bill contained a grandfather clause allowing the assertion of old claims for a period of two years after the bill became law. The DOJ subsequently voiced its opposition to the Senate version of the bill. It objected to the grandfather clause, arguing that it would result in a "flood of litigation on old claims." In an effort to persuade Congress to eliminate this clause, the DOJ abandoned its support for prospective relief. Instead, it suggested a "reasonable[ twelve-year] period of retroactive application of the bill."

The final version of S. 216 passed by the House included the compromise provision recommended by the DOJ. The Senate concurred with those recommendations and S. 216 became law. The examination of events and issues leading to the passage of the QTA reveals that Congress primarily intended to provide private claimants with a means of relief in quiet title actions against the sovereign. Additionally, that means of relief was specifically limited by the twelve-year limitation period. Despite this, neither the Act itself nor the record leading to its passage contains any indication of whether Congress intended to apply the limitation on actions to the states. The answer to that question, therefore, can only be gleaned from case law dealing with the issue of immunity and the sovereign.

C. The Federal Court Application of Limitations Against the Sovereign: An Awareness of Public Policy

The rule that the statute of limitations does not run against a sovereign government was established in a very early land dispute case, Lindsey v. Lessee of Miller. In Lindsey, the Supreme Court was asked to settle a title dispute where the validity of a title issued by the Commonwealth of Virginia was offered as paramount over one issued by the United States. The plaintiffs, on behalf of the United States government, brought an action of ejectment to recover property occupied by Lindsey and others. The plaintiffs proffered that true title had been derived from a patent issued by the Commonwealth in 1824. The defendants claimed title to the land pursuant to a patent issued thirty-five years earlier by the Commonwealth and

124. See House Report 1559, supra note 113, at 7 (letter of Ralph E. Erickson, Deputy Att'y Gen.).
125. Id.
129. Id. at 672-73.
130. Id. at 672.
also offered proof that the land had been occupied continually for upwards of thirty years. At trial, the plaintiffs prevailed under the theory that neither the defendants' title, which was found to be void, nor the defendant's uninterrupted possession barred the plaintiffs' right to recover. The Circuit Court for the District of Ohio upheld the trial decision.

On appeal, the Supreme Court addressed the defendants' claim that the continuous possession barred any recovery based on a United States patent. Recognizing the underlying claim as one against a sovereign, the Court stated that "[i]t is a well settled principle that the statute of limitations does not run against a state." In reaching its decision, the Court reasoned that by imposing a statute of limitations upon the government, "the public domain would soon be appropriated by adventurers." It therefore concluded that the "wisdom and propriety" of the immunity doctrine made it necessary to affirm the lower court's decision.

Over a century after its decision in Lindsey the Supreme Court, in Guaranty Trust Co. v. United States, once again held that statutes of limitation are not applicable to a sovereign. In Guaranty, the United States brought suit on behalf of the Russian government against the Guaranty Trust Company to recover bank deposits made by the foreign government. Following a trial court dismissal based on the running of a six-year statute of limitations, the case was appealed to the United States Court of Appeals for the Second Circuit. The court of appeals addressed whether a foreign government could be barred by a statute of limitations. While conceding there was no direct authority on that point, the court held that it was "settled law" that the statute of limitations did

131. Id. at 668.
132. Id.
133. Miller v. Lindsey, 17 F. Cas. 331 (C.C.D. Ohio 1829) (No. 9580).
135. Id. at 673. The Court articulated that "the possession of the defendants does not bar the plaintiff's action, is a point too clear to admit of much controversy." Id.
136. Id.
137. Id. The Court used the following scenario to reinforce the propriety of the rule that the statute never operates against the government. It stated that "[i]f a contrary rule were sanctioned, it would only be necessary for intruders upon public lands to maintain their possessions, until the statute of limitations shall run; and then they would become invested with the title against the government, and all persons claiming under it." Id.
138. Id.
139. 304 U.S. 126 (1938).
140. Id. at 132.
141. Id. at 129.
142. 91 F.2d 898 (2d Cir. 1937).
143. Id. at 899.
not bar a sovereign.\textsuperscript{144}

The Supreme Court reversed that part of the appeals court ruling which held that a foreign government’s claim is not barred by the statute of limitations.\textsuperscript{145} However, it was steadfast in upholding the lower court decision regarding sovereign immunity and domestic governments. The \textit{Guaranty} Court reasoned that the doctrine of sovereign immunity was founded upon the “great public policy” of preserving the right of the public and its property from loss attributable to the negligence of public officers.\textsuperscript{146} The Court further noted that the right of immunity was created for the “public benefit” and was “equally applicable to all government.”\textsuperscript{147}

The theme developed in \textit{Lindsey} and \textit{Guaranty} has been maintained in several recent cases decided by the Court. In \textit{Wilson v. Omaha Indian Tribe},\textsuperscript{148} a case that involved title litigation with Indians,\textsuperscript{149} the Court held that in order for a statute to affect a sovereign the statutory language must expressly include the sovereign.\textsuperscript{150} The \textit{Wilson} Court emphasized that this is particularly applicable “where the statute imposes a burden or limitation, as distinguished from conferring a benefit or advantage.”\textsuperscript{151} With respect to the issue of protecting public lands, \textit{Wilson} demonstrates that the Court will not implant its own interpretation upon statutes that do not specifically mandate the application of a statute of limitations upon a sovereign.\textsuperscript{152} A similar conclusion was reached less than two years later in \textit{Montana v. United States}.\textsuperscript{153}

In \textit{Montana}, the United States, on behalf of an Indian tribe, sought to quiet title to the river bed and the banks of the Big Horn River in Montana. The Court addressed the issue of whether the ownership of land

\begin{itemize}
\item \textsuperscript{144} \textit{Id.} (citing Davis v. Corona Coal Co., 265 U.S. 219 (1924)).
\item \textsuperscript{145} 304 U.S. at 141.
\item \textsuperscript{146} \textit{Id.} at 132.
\item \textsuperscript{147} \textit{Id.}
\item \textsuperscript{148} 442 U.S. 653 (1979).
\item \textsuperscript{149} \textit{Id.} at 657. In \textit{Wilson}, an Indian Tribe and the United States sued to quiet title to land that had been affected by movement of a river that served as an interstate boundary. \textit{Id.}
\item \textsuperscript{150} \textit{Id.} at 667.
\item \textsuperscript{151} \textit{Id.}; see United States v. Knight, 39 U.S. (14 Pet.) 301, 315 (1840) (“a statute which proposes only to regulate the mode of proceeding in suits, does not divest the public of any right . . . .”).
\item \textsuperscript{152} \textit{Wilson}, 442 U.S. at 666-67. The \textit{Wilson} Court refused to accept a broad definition of terms as an aid to statutory construction. The Court held that if “[i]n common usage, [a term] does not include the sovereign, statutes employing the [term] are ordinarily construed to exclude [the sovereign].” \textit{Id.} at 667 (quoting United States v. Cooper Corp., 312 U.S. 600, 604 (1941)).
\item \textsuperscript{153} 450 U.S. 544 (1981).
\end{itemize}
under navigable waters is an incident of sovereignty. In framing its decision, the Court reiterated a policy of trust land preservation established in case law over one hundred years earlier. It found that the prevailing ownership of land under navigable waters “is an incident of sovereignty” founded upon the equal footing doctrine. The Court emphasized that unless congressional intentions were “definitely declared or otherwise made plain,” it would not act to convey the sovereign’s land.

For over one hundred and twenty-five years the courts and Congress have given great deference to the sovereign holding land in trust for the public. Without explicit congressional direction to the contrary, subsequent decisions arguably should have followed the precedent set forth in the cases reviewed. The Supreme Court, however, reached a contrary decision in Block v. North Dakota ex rel. Board of University and School Lands.

III. Block v. North Dakota ex rel. Board of University and School Lands

A. Statutory Construction: Literal Interpretation or Rational Process?

In Block v. North Dakota, ex rel. Board of University and School Lands, the United States Supreme Court acknowledged the propriety of an action under the QTA as the sole remedy available to North Dakota to assert title to lands within her borders. Additionally, it recognized that the sovereign is normally exempt from operation of generally worded statutes of limitation. Despite this, the Court failed to adhere to this judicially created rule. Justice White, writing for the majority, determined

154. Id. at 551. See generally supra notes 21-22 and accompanying text.
155. See Pollard’s Lessee v. Hagan, 44 U.S. (3 How.) 212 (1845) (judicial recognition of the need for control of trust land to be in the hands of the sovereign); see also Montana, 450 U.S. at 551-52; cf. Pollard, 44 U.S. (3 How) at 230. In Pollard, the Court found that a state that is holding trust land shall be on an “equal footing” with the government. Id. at 222-24; see supra note 22. The Pollard Court reasoned that the taking of such land would be “repuognant” to the Constitution and contrary to Congressional intent. 44 U.S. (3 How.) at 224.
156. Montana, 450 U.S. at 551; see supra note 22 and accompanying text.
157. Montana, 450 U.S. at 552.
158. See supra note 51.
159. 103 S. Ct. 1811 (1983).
160. Id.
161. Id. at 1819.
162. Id. at 1821.
163. Id. The Block majority relied on Guaranty Trust Co. v. New York, 304 U.S. 126 at 132 (1938), to support the proposition that, “[t]he judicially-created rule that a sovereign is normally exempt from the operation of a generally-worded statute of limitations has retained its vigor because it serves the public policy of preserving the public rights, revenues,
that the statute of limitations period, provided by subsection (f) of the QTA, was applicable to both private and state claimants.\textsuperscript{164} Thus, the Court held that the state's claim was barred if it was filed more than twelve years after the action became legally enforceable.\textsuperscript{165}

In addressing North Dakota's initial claim to title under an officer's suit theory, Justice White stated that in enacting the QTA, Congress intended to provide a new and exclusive means for challenging title to United States property.\textsuperscript{166} Thus, the Court held that an officer's suit could not be used as an alternative means to challenge government title.\textsuperscript{167} It reasoned that if such suits were still permitted, both the Indian lands exception and the Federal land payments provision would be "rendered nugatory."\textsuperscript{168} Because an officer's suit would allow the claimant to proceed against federal officials in charge of the land rather than against the government itself,\textsuperscript{169} the Court asserted that the QTA's twelve-year statute of limitation.\textsuperscript{170} It further reasoned that the circumvention of the QTA would be contrary to Congress' intention to protect the "national public interest" through the provisions of the Act.\textsuperscript{171}

\textit{and property from injury and loss, by the negligence of public officers."} \textit{Block}, 103 S. Ct. at 1821.

\textsuperscript{164} \textit{Block}, 103 S. Ct. at 1821-22.

\textsuperscript{165} \textit{Id.} at 1823.

\textsuperscript{166} \textit{Id.} at 1819.

\textsuperscript{167} \textit{Id.} at 1818. "As the jurisdictional basis for its suit, North Dakota invoked 28 U.S.C. \S\S 1331 (federal question); 28 U.S.C. \S 1361 (mandamus); 28 U.S.C. \S\S 2201-2202 (declaratory judgment and further relief); and 5 U.S.C. \S\S 701-706 (the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. \S\S 551 et. seq.)." \textit{Id.} at 1815.

\textsuperscript{168} \textit{Id.} at 1818.

\textsuperscript{169} \textit{Id.} at 1817. The \textit{Block} majority noted that "[t]he predominant view [was] that citizens asserting title to or the right to possession of lands claimed by the United States were 'without benefit of a recourse to the courts,' because of the doctrine of sovereign immunity." \textit{Id.} Prior to the passage of the Tucker Act in 1887 and the Federal Tort Claims Act in 1946, the "officer's suit" allowed the claimant to "indulge in the fiction that the doctrine [of sovereign immunity]" was not applicable in a limited number of cases where suit was brought against agents of the government rather than the United States. \textit{Senate Hearing on S. 216, supra} note 108 at 64 (statement of John M. Steadman, Prof. of Law, University of Pennsylvania). \textit{See generally} Malone v. Bowdoin, 369 U.S. 643 (1962) (narrowing the use of officer suits to cases involving specific activities by government agents); Larson v. Domestic \& Foreign Corp., 337 U.S. 682 (1949); United States v. Lee, 106 U.S. 196 (1882); Meigs v. M'Clung's Lessee, 13 U.S. (9 Cranch) 11, (1815) (accepting the "officer's suit" as a means of avoiding the doctrine of sovereign immunity); Steadman, \textit{supra} note 46.

\textsuperscript{170} \textit{Block}, 103 S. Ct. at 1818-19.

\textsuperscript{171} \textit{Id.} at 1818. The national public interest position was deemed by Justice White to be the underlying purpose of the "carefully-crafted provisions of the QTA." \textit{Id.} In response to North Dakota's position that an officer's suit was an alternative means of relief, Justice White quoted \textit{Brown v. GSA}: "It would require the suspension of disbelief to ascribe to Congress the design to allow its careful and thorough remedial scheme to be circumvented by artful pleading." \textit{Id.} at 1818 (quoting \textit{Brown v. GSA}, 425 U.S. 820, 833 (1976)).
The Block Court then examined North Dakota’s position that as a state it was not subject to the QTA’s subsection (f) statute of limitation. The Court maintained that under the doctrine of federal sovereign immunity, the United States could not be sued without the express consent of Congress. Moreover, it asserted that when conditions such as limitations provisions are attached to legislation waiving government immunity, those provisions must be “strictly observed.” Consequently, the Court reasoned that for it to find that Congress intended to exempt North Dakota from the subsection (f) provision of the QTA, there must be “some clear indication of such an intention.” In applying this rationale to the QTA’s limitation provisions, the Court examined both the language of the statute and its legislative history. It determined first that the language of subsection (f) did not expressly provide an exemption for state civil actions. Secondly, it determined that despite North Dakota’s position that congressional silence is evidence of an intent to exempt the state, the legislative history did not yield any indication that Congress intended to exempt the states from the strictures of subsection (f).

Justice White also found it apparent from the legislative history of the Act that subsection (f) was designed to protect “congressionally recognized national public interests.” He reasoned that a suit by a state affects the national public interest to the same extent as does a suit by a private party. Justice White concluded that although Congress created a generally worded statute not expressly limiting state actions against the United States, the interests of citizens of a particular state must yield when it is

172. Id. at 1819-20 (citing cases).
173. Id. at 1820.
174. Id. The majority found that a “necessary corollary” to the rule that the United States cannot be sued without consent is that when Congress waives sovereign immunity, exceptions to the waiver are not to be lightly implied. Id. Justice O’Connor vigorously opposed this concept on the basis that “mere observation that a statute waives sovereign immunity . . . , cannot resolve questions of construction.” Id. at 1823.
175. Id. at 1820.
176. Id. Justice White noted that like the dissent, the court below relied on congressional silence. He acknowledged language in the House Report pertaining to “persons,” “citizens,” and “individual citizens” but stated that “such general language [had little] relevance at all.” Id. at 1820 n.24.
177. Id. at 1820.
178. Id. at 1821. See supra note 171 and accompanying text.
179. Block, 103 S. Ct. at 1821.
180. Id. The Block majority recognized the importance of the rule exempting a sovereign from the operation of generally worded statutes. Justice White maintained that this rule was necessary to promote the policy of protecting public property and revenue from the “negligence of state officials [who fail] to comply with [an] otherwise applicable statute of limitations.” Id. at 1821. See Guaranty Trust Co. v. New York, 304 U.S. at 132 (stating that where the state or national government is not expressly mentioned in a statute, they are
determined that Congress intended to protect broader national interests.\textsuperscript{181} The Court thus held that because a state's claim included the type of "mischief" Congress intended to remedy,\textsuperscript{182} the state must also adhere to the requirements of subsection (f) when suing the federal government.

Finally, the \textit{Block} majority addressed North Dakota's contention that even if Congress intended to apply subsection (f) to the states, its application would be unconstitutional under both the equal footing doctrine and the tenth amendment, because subsection (f) attempts to bar claims to lands that are constitutionally vested in the state.\textsuperscript{183} The Court disagreed with North Dakota's arguments for finding subsection (f) unconstitutional. Nevertheless, it conceded that under the fifth amendment a taking of constitutionally vested state land would be unconstitutional without just compensation.\textsuperscript{184} The Court held, however, that subsection (f) was not enacted to deprive a state or any other claimant of property rights.\textsuperscript{185} It reasoned that the subsection was designed to limit only the time period in which a title suit could be filed. Furthermore, the majority noted that subsection (f) did not affect the claimant's title in the same manner as an action for adverse possession where establishing possession could deprive a party of title rights.\textsuperscript{186} The Court reasoned that even if the statutory period had lapsed, a state would still retain title. Therefore, the \textit{Block} Court maintained that North Dakota could continue to assert its right to title "in hope of inducing the United States to file its own quiet title suit."\textsuperscript{187}

It is generally held that the judiciary should declare the express intent of the legislature even if such intentions appear injudicious to the court.\textsuperscript{188}

\textsuperscript{181} \textit{Block}, 103 S. Ct. at 1821.
\textsuperscript{182} \textit{Id.} at 1821-22 (quoting Weber v. Board of State Harbor Commissioners, 85 U.S. (18 Wall.) 57, 70 (1873)).
\textsuperscript{183} \textit{Id.} at 1822.
\textsuperscript{184} \textit{Id.}
\textsuperscript{185} \textit{Id.}
\textsuperscript{186} \textit{Id.}
\textsuperscript{187} \textit{Id.}
\textsuperscript{188} \textit{See, e.g., River Wear Comm’rs v. Adamson}, 2 App. Cas. 743, 764-65 (H.L. 1877). Viewing the Judge's role in statutory construction, the \textit{River Wear} court stated, "[b]ut it is to be borne in mind that the office of the Judges is not to legislate, but to declare the expressed intention of the Legislature, even if that intention appears to the Court injudicious; and I believe that it is not disputed that . . . we are to take the whole statute together, and construe it all together, giving the words their ordinary signification, unless when so applied they produce an inconsistency, or an absurdity or inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary signification and to justify the Court in putting on them some other signification, which, though less proper, is one which the Court thinks the words will bear."
As the sole dissenter in *Block*, Justice O'Connor approached the question of congressional intent by rejecting the majority's language-based interpretation. Justice O'Connor observed that the majority had relied solely on principles of statutory construction in determining congressional intent.\(^{189}\) Although she acknowledged the value of this approach, Justice O'Connor asserted that statutory construction alone could not "grant the Court the authority to narrow judicially" that which was intended by Congress.\(^{190}\)

Justice O'Connor agreed with the Court's position that Congress had enacted the QTA as a sole remedy in title actions against the United States.\(^{191}\) Unlike the majority, Justice O'Connor supported the rule that statutes of limitation do not bar a sovereign. She approached the issue of whether Congress intended the statute of limitations to bar state action by rejecting the majority's position that waivers of sovereign immunity are to be strictly construed.\(^{192}\) Moreover, Justice O'Connor maintained that the mere observation that a statute waives sovereign immunity can only aid in determining congressional intent in "close case[s]."\(^{193}\) She asserted that the Court cannot judicially narrow waivers of sovereign immunity without first considering "all [the] indicia of congressional intent."\(^{194}\) Justice O'Connor noted that Congress had expressed its desire to exclude states from the statute of limitations found in subsection (f) by its declaration of intent to protect title to lands held in trust for the public. She emphasized that the common law principle that "neither laches nor statutes of limitation will bar the sovereign"\(^{195}\) and the overriding public policy of "preserving public rights and property from injury and loss" resulting from the

\(^{189}\) *Block*, 103 S. Ct. at 1823.
\(^{190}\) *Id.* (citing *United States v. Kubrick*, 444 U.S. 111, 118 (1979); *Indian Towing Co. v. United States*, 350 U.S. 61, 69 (1955)).
\(^{191}\) *Id.* at 1823.
\(^{192}\) *Id.* Justice O'Connor noted that the majority did not decide whether the action would be barred by sovereign immunity if there were no QTA. She maintained that if in fact the QTA was not a waiver, then North Dakota's claim would not "present the predicate" that would allow the "application of the principle that waivers are construed narrowly." Therefore, Justice O'Connor found the principle of strict construction informative but not controlling. *Id.* at 1823 n.1.
\(^{193}\) *Id.* at 1823.
\(^{194}\) *Id.*
negligence of public officials precluded a finding that the states are barred by subsection (f).\textsuperscript{196} She further reasoned that in cases of lands held in trust for the public, “these policies reach their apex” because the public interest is placed in jeopardy by any “constraints on the sovereign.”\textsuperscript{197} She concluded that a Court should show extreme reluctance to reject the usual rule that a sovereign is not barred by time.\textsuperscript{198}

Justice O’Connor noted that the Court had dismissed the rule because the action was between two sovereigns.\textsuperscript{199} She asserted that an early case cited by the Court had failed to specifically address the issue at hand and had involved a claim for damages rather than an action to quiet title.\textsuperscript{200} Justice O’Connor also rejected the application of a later Supreme Court holding cited by the majority in which the United States had failed to waive its immunity in a suit by a state in state court.\textsuperscript{201} She maintained that because there was no general rule allowing states to bring suits in any chosen forum, the holding construing the waiver of sovereign immunity narrowly against the state was justified. She indicated that this was nothing more than the Court’s usual reluctance to broadly construe waivers of sovereign immunity in the absence of any indication of congressional intent to do otherwise.\textsuperscript{202} Therefore, she concluded that the precedents cited failed to alter the principle that in conflicts between sovereigns, time is not a bar.\textsuperscript{203}

\begin{itemize}
  \item[196] \textit{Block}, 103 S. Ct. at 1824.
  \item[197] \textit{See}, e.g., \textit{supra} notes 128-137 and accompanying text. The dissent distinguished trust lands from those held by a state for other purposes. It reasoned that time may run against the sovereign, for example, when the state holds land in a “proprietary capacity.” \textit{Block} at 1824 n.2 (citing Weber v. Board of State Harbor Comm’rs, 85 U.S. (18 Wall) 57, 68 (1873)).
  \item[198] \textit{Block}, 103 S. Ct. at 1824.
  \item[199] \textit{Id.} at 1825. The majority maintained that it had never recognized the sovereignty of other governments as a bar to claims of the federal government. \textit{Id.} at 1821 n.25. Yet, in Rhode Island v. Massachusetts, 40 U.S. (15 Pet.) 233 (1841), as noted by Justice O’Connor, the Rhode Island Court stated, “it would be impossible with any semblance of justice to adopt such a rule of limitation in the case before us. For here two political communities are concerned, who cannot act with the same promptness as individuals . . . .” \textit{Id.} Rhode Island, 40 U.S. (15 Pet.) at 273 (quoted in \textit{Block}, 103 S. Ct. at 1825); \textit{see} New Orleans v. United States, U.S. (10 Pet.) 662 (1836) (where, because public trust lands were involved, the Court decided to estop the city from asserting title to public trust lands).
  \item[200] \textit{Block}, 103 S. Ct. at 1824. The majority relied upon United States v. Louisiana, 127 U.S. 182 (1888), to support the position that “a general statute of limitations, one that did not expressly mention States, barred a State’s claim against the Federal Government.” \textit{Id.} at 1820-21.
  \item[201] \textit{Id.} at 1824. In the cited case, Minnesota v. United States, 305 U.S. 382 (1939), the Federal Government had waived its immunity to suit only in federal courts and, thus, the Court dismissed the state’s suit for lack of jurisdiction.
  \item[202] \textit{Block}, 103 S. Ct. at 1824.
  \item[203] \textit{Id.} at 1824-25.
\end{itemize}
The dissent also considered the legislative history of the QTA. It emphasized that Congress had acknowledged an awareness of the rule that statutes must expressly include a sovereign to affect a sovereign.\textsuperscript{204} Justice O'Connor noted that notwithstanding this principle of "general background," the particular incident that had prompted Congress to enact the QTA involved a "dispute between private landowners and the Federal Government.\textsuperscript{205} She observed that on several occasions the legislators referred to the claims of "private citizens\textsuperscript{206} and "private landowners.\textsuperscript{207} Additionally, she emphasized that in the House Report the legislators had referred to the purpose of subsection (f) as a means of giving "persons' a certain amount of time to sue.\textsuperscript{208} Justice O'Connor further asserted that the language of the statutory history that refers to private citizens could be distinguished from that of the statute itself which refers to "any" quiet title actions.\textsuperscript{209} She emphasized that the Court had already applied the provisions of the QTA to the "special requirements of litigation involving States\textsuperscript{210} in an earlier case, \textit{California v. Arizona.}\textsuperscript{211} The dissent noted that despite the QTA's language that "all" quiet title actions are tried in district court, the \textit{California} Court had refused to relinquish its original jurisdiction over the state defendant even though the QTA required that the United States, a codefendant, be sued in district court. Thus, despite the general language of "all quiet title actions," Justice O'Connor asserted that the Court did not apply the statute with exacting literalism.\textsuperscript{212} Based on \textit{California} and the QTA's legislative history, Justice O'Connor maintained that while Congress intended that states be allowed to bring quiet title actions, it did not intend to have procedural provisions designed for private citizens "applied with slavish literalness to States."\textsuperscript{213}

Finally, the dissent inferred that the Court's position was insensitive to the importance and special nature of the lands.\textsuperscript{214} It asserted that prior to \textit{Block}, the Court had recognized the "strongest presumption" that Con-
gress preferred to preserve land for states rather than conveying them. Moreover, Justice O'Connor suggested that under the equal footing doctrine, beds of navigable waters passed to the states which in turn hold them in trust for their citizens. Therefore, she concluded that it was difficult to conceive that Congress intended to relieve the state of its responsibility over the lands by denying its right to quiet title.

**B. The Possible Deprivation of Public Rights to Trust Land Held by a Sovereign**

The Block majority and the dissent agreed that the sole remedy available to North Dakota was an action under the QTA. In deciding to bar a state claim if it is asserted beyond the subsection (f) limitation period of the Act, the majority chose not to apply the canon of statutory construction that statutes of limitation do not bar a sovereign absent express legislative inclusion. It chose instead to focus on the basic rule of federal sovereign immunity and its corollary that waivers are to be strictly construed. The majority's focus on the rule and its corollary, however, belies the complexity of the question.

As the dissent asserted, a strict construction of waivers of sovereign immunity is only a means to ascertain Congress' intent. Although the majority claimed to have scrutinized the legislative history to glean the intent of a statute not expressly exempting the states, it failed to consider all the evidence before it. In construing the Act, the Block majority utilized a two step process. First, following a basic tenet of statutory construction, the Court examined the statutory language in an attempt to ascertain any exception for civil action by states. Second, failing to find one, the Court properly turned to the legislative history of the Act. It did not, however, fully explore all possible indicia of congressional intent. For example, the

215. Block, 103 S. Ct. at 1826 (O'Connor, J., dissenting) (citing Montana v. United States, 450 U.S. 544, 552 (1981)). In Montana, the Court held that, "because control over the property underlying navigable waters is so strongly identified with the sovereign power of government...it will not be held that the United States has conveyed such land except because of 'some international duty or public exigency.'" Montana, 450 U.S. at 552 (citing United States v. Oregon, 295 U.S. 1, 14 (1934); United States v. Holt State Bank, 270 U.S. 49, 55 (1925)).
216. See supra notes 21-22 and accompanying text.
217. Block, 103 S. Ct. at 1826.
218. Id.
219. See supra note 150 and accompanying text.
220. See supra note 174 and accompanying text.
221. See supra note 192-94 and accompanying text.
222. Block, 103 S. Ct. at 1823.
223. See supra note 176 and accompanying text.
Court overlooked the fact that legislation leading to the passage of the QTA was introduced as a means of resolving disputes between private citizens and the federal government. Additionally, it overlooked repeated references in the legislative history to the rights of private citizens and landowners. At the hearings before the Subcommittee on Public Lands, the statements of both the legislators and invited speakers focused on the private citizen's inability to sue the government. Finally, as the dissent noted, the final House Report interprets the subsection (f) limitation as designed to give "persons" a limited time period in which to sue.

In its interpretation of the legislative history, however, the Block Court did not deem this documentation sufficient to illustrate that Congress enacted the QTA with private citizens in mind. Although the Court's method of statutory construction would be valid in some instances, here it falls short of being compatible with congressional intent. The Court's emphasis upon the general statutory language of "any quiet title action" is misplaced given the improbability that the Act would run counter to positions advanced in the legislative history. Thus, in searching for express

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224. See supra notes 109-11 and accompanying text.
225. See supra note 115 and accompanying text.
226. See, e.g., Senate Hearings on S. 216, supra note 108, at 20-21. The concept of providing for the private claimant is best illustrated in the Senate hearings on S. 216 which include statements by Senator Frank Church, Chairman of the Subcommittee on Public Lands and Shiro Kashiwa, Assistant Attorney General, Land and Natural Resources Division, Department of Justice:

Mr. Kashiwa. There is obviously a problem for the private claimant. . . .

In our view, the provisions of the bill are too broad and sweeping in scope . . . to protect the public interest. . . .

Senator Church. [The Justice Department's proposal] may give us a key to do something that has long needed doing, giving people the right to go into court to clear title when there is a disputed title and the Government is involved.

Id.
227. Block, 103 S. Ct. at 1825.
228. Id. at 1820. The Block majority stated:

Recognizing that no express legislative history supports its position, North Dakota relies on congressional silence. As did the Court of Appeals . . . North Dakota notes the references in the House Committee report . . . to "persons," "citizens," and "individual citizens," and the absence of any references to "states." However, to the extent that such general language has any relevance at all, the report also refers to "plaintiff[s]," "owners of adjacent property," "land owner[s]," and "claimants" — all terms that can easily encompass States.

Id. at 1820 n.24.
229. Id. at 1823. O'Connor felt that "[i]n a close case, [construing waivers of sovereign immunity strictly] may help the Court choose between two equally plausible constructions."
congressional intent to exclude the states, the *Block* Court arguably has ignored the substantive evidence of both language and purpose that focuses on the protection of private interests.

The Court also failed to apply the longstanding canon of statutory construction that "statutes of limitation are not . . . held to embrace the State, unless she is expressly designated."230 Instead, it pointed to the contrary holding of United States v. Louisiana231 to support its contention that in fashioning the statute, Congress was free to expressly exempt the state.232 Although the Louisiana Court specifically stated that a general statute of limitation that did not mention the state barred the state's claim against the federal government, the Court's application of this holding to North Dakota's claim is questionable. As the dissent recognized, the facts of Louisiana did not involve a dispute over title to trust lands, but rather one involving a claim for money. Additionally, the litigants in Louisiana never argued that the rule that time does not bar the sovereign should be applied. The *Block* Court's disregard of these significant distinguishing factors weakens its reliance upon Louisiana.

In another weak attempt to justify its position, the Court distinguished the interests of state citizens from those of the congressionally-recognized "national public interest."233 It maintained that state actions affect the national public interest to the same extent as private actions. It is an established principle, however, that a sovereign is normally exempt from generally worded statutes of limitation because this policy preserves public rights from loss by negligent public officials.234 As the dissent noted, this policy reaches its "apex" in cases involving public trust lands.235 Because the "national public" is comprised of state residents, the majority's attempt to distinguish the two arguably is illogical.

Finally, the majority maintained that if a claimant has title he retains it even if his suit is barred. This assertion provides little consolation to the state claimants who seek possession. Furthermore, under this standard the public is likely to lose its rights due to the Court's application of constraints on the sovereign. The rights referred to are the use and enjoyment of the land. The right to assert title becomes illusory when it depends on

231. 127 U.S. 182 (1888).
233. See *supra* note 171 and accompanying text.
235. *Block*, 103 S. Ct. at 1824.
the success of inducing the United States to file its own quiet title suit.\footnote{See \textit{id.} at 1822.}

IV. Conclusion

In \textit{Block v. North Dakota ex rel. Board of University and School Lands}, the Supreme Court held that when a state brings suit to challenge title to public lands in which the federal government also claims an interest, the state, like other claimants, must adhere to all statutory limitation periods. The \textit{Block} Court grounded its decision on a literal interpretation of the limitation provision of the QTA. In so doing the Court arguably ignored precedent in its determination of congressional intent. Moreover, it failed to recognize documented evidence that facilitated the task of determining such intent. The dissent, on the other hand, employed an interpretation technique that considered not only past judicial decisions and record evidence, but also applied a sense of fairness towards public policy that accurately reflects the legislative meaning of the QTA.

It is likely that the Court’s ruling will, in many instances, deprive the American public of its rights to valuable public trust lands in those instances where a sovereign’s right to assert title to those lands is barred by the Act’s limitation period. In sum, \textit{Block} will require states to submit to a statute that was drafted to affect only private claimants. It is now up to Congress to rectify the inequities created by \textit{Block}. Additionally, it is incumbent upon the legislature to provide, through amendment, clear and explicit language that better reflects its intention to preserve public trust lands.

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