

75 F.3d 784
United States Court of Appeals,
First Circuit.

PASSAMAQUODDY TRIBE, Plaintiff, Appellant,
v.

STATE OF MAINE, et al., Defendants, Appellees.

No. 95-1922. | Heard Jan. 10,
1996. | Decided Feb. 9, 1996.

Passamaquoddy Indian Tribe sought to force state of Maine to negotiate tribal state gaming compact under Indian Gaming Regulatory Act (IGRA). The United States District Court for the District of Maine, *Morton A. Brody, J.*, 897 F.Supp. 632, granted state's motion for judgment on the pleadings. Tribe appealed. The Court of Appeals, *Selya*, Circuit Judge, held that Congress did not make IGRA specifically applicable within Maine, as required by Maine Indian Claims Settlement Act of 1980, and Maine was therefore not subject to IGRA.

Affirmed.

West Headnotes (19)

[1] **Statutes**

🔑 Earlier and later statutes

Chief objective of statutory interpretation is to give effect to legislative will; to achieve this objective, court must take into account tacit assumptions underlying legislative enactment, including not only general policies but also preexisting statutory provisions.

6 Cases that cite this headnote

[2] **Statutes**

🔑 Contemporary and Historical

Circumstances

In interpreting statutes, courts must recognize that Congress does not legislate in a vacuum.

1 Cases that cite this headnote

[3] **Indians**

🔑 Preemption

Whether Maine was subject to Indian Gaming Regulatory Act (IGRA) depended on whether Congress had specifically made IGRA applicable within state of Maine, in light of subsection of Maine Indian Claims Settlement Act requiring future federal Indian legislation which would affect or preempt application of laws of state of Maine to make such provision specifically applicable within Maine. Maine Indian Claims Settlement Act of 1980, § 16(b), 25 U.S.C.A. § 1735(b); Indian Gaming Regulatory Act, § 2 et seq., 25 U.S.C.A. § 2701 et seq., 18 U.S.C.A. §§ 1166–1168; 17-A M.R.S.A. §§ 953, 954.

1 Cases that cite this headnote

[4]

Statutes

🔑 By inconsistent or repugnant statute

Where Congress enacts statute of general applicability with full knowledge that preexisting statute contains savings clause, warning pointedly that a specific reference or similarly clear expression of legislative intent will be required to alter status quo, the only reasonable conclusion that can be drawn from later Congress's decision to omit any such expression from text of new statute is that Congress did not desire to bring about such an alteration.

1 Cases that cite this headnote

[5]

Indians

🔑 Government of Indian Country,

Reservations, and Tribes in General

Indians

🔑 Preemption

Subsection of Maine Indian Claims Settlement Act, providing that future federal Indian laws which preempted application of laws of state of Maine were inapplicable absent provision making them specifically applicable within Maine, did not unconstitutionally bind successor Congress to predecessor's will, as subsequent Congress could apply new statute to Indian tribes in Maine through use of explicit language or

other patent indication of its intent to accomplish that result or by repealing subsection. Maine Indian Claims Settlement Act of 1980, § 16(b), [25 U.S.C.A. § 1735\(b\)](#).

[3 Cases that cite this headnote](#)

[6] Statutes

🔑 [Implied Repeal](#)

Implied repeals of federal statutes are disfavored.

[2 Cases that cite this headnote](#)

[7] Statutes

🔑 [Other Statutes](#)

General rule is that when two statutes are capable of coexistence, it is duty of courts, absent clearly expressed congressional intent to the contrary, to regard each as effective.

[8] Statutes

🔑 [By inconsistent or repugnant statute](#)

The only satisfactory basis for repealing a federal statute by implication, apart from clear expression of Congress' intent to repeal, is finding that earlier and later statutes are irreconcilable; if two acts are repugnant in any of their provisions, later act, without any repealing clause, operates to extent of the repugnancy as a repeal of the first.

[1 Cases that cite this headnote](#)

[9] Statutes

🔑 [By Statute Relating to Same Subject](#)

Statutes can be irreconcilable even short of outright repugnancy and, thus, repeal may be implied if later statute covers entire subject matter and embraces new provisions, plainly showing that it was intended as substitute for first act.

[1 Cases that cite this headnote](#)

[10] Statutes

🔑 [By inconsistent or repugnant statute](#)

Irreconcilable conflict, as basis for repeal by implication, does not exist merely because application of later statute would produce differing results when applied, as that no more than states the problem.

[2 Cases that cite this headnote](#)

[11] Indians

🔑 [Constitutional and statutory provisions](#)

Indian Gaming Regulatory Act does not impliedly repeal subsection of Maine Indian Claims Settlement Act which bars application of subsequent federal Indian legislation that is not specifically made applicable within state of Maine and, thus, Settlement Act precludes operation of IGRA in Maine, given lack of any express indicium of contrary congressional intent, which is supported by legislative history of IGRA expressing specific intent of drafters that IGRA not supersede restriction in Maine Settlement Act, coupled with fact that the two laws are not in conflict. Maine Indian Claims Settlement Act of 1980, §§ 2 et seq., 16(b), [25 U.S.C.A. §§ 1721 et seq., 1735\(b\)](#); Indian Gaming Regulatory Act, § 2 et seq., [25 U.S.C.A. § 2701 et seq.](#)

[12] Indians

🔑 [Constitutional and statutory provisions](#)

Fact that Passamaquoddy Tribe satisfied general definitional requirement of Indian Gaming Regulatory Act (IGRA), namely, federal recognition and governmental power, did not make IGRA specifically applicable within Maine, within terms of Maine Indian Claims Settlement Act rendering future federal Indian laws inapplicable absent provisions making them specifically applicable within Maine. Maine Indian Claims Settlement Act of 1980, § 16(b), [25 U.S.C.A. § 1735\(b\)](#); Indian Gaming Regulatory Act, § 4(5), [25 U.S.C.A. § 2703\(5\)](#).

[4 Cases that cite this headnote](#)

[13] Indians

🔑 [Constitutional and statutory provisions](#)

Fact that Indian Gaming Regulatory Act (IGRA) is statute of general applicability that arguably constructs comprehensive regulatory regime for a defined subject does not constitute express indication that Congress meant to make IGRA specifically applicable within Maine, as required by subsection of Maine Indian Claims Settlement Act; no provision of IGRA will be rendered meaningless if it excludes Maine, IGRA is not “exclusive” of other potentially applicable legislation, and legislative history indicates rather that Congress deliberately chose not to make IGRA specifically applicable within Maine. Maine Indian Claims Settlement Act of 1980, § 16(b), [25 U.S.C.A. § 1735\(b\)](#); Indian Gaming Regulatory Act, § 2 et seq., [25 U.S.C.A. § 2701 et seq.](#)

[14] Indians

Constitutional and statutory provisions

Principle of preferential construction of ambiguous statutes in favor of Indians did not apply to determination of whether Indian Gaming Regulatory Act (IGRA) satisfied requirement of subsection of Maine Indian Claims Settlement Act barring application of subsequent federal Indian legislation not specifically applicable within state of Maine, as there was no ambiguity in relevant statutory provisions. Maine Indian Claims Settlement Act of 1980, § 16(b), [25 U.S.C.A. § 1735\(b\)](#); Indian Gaming Regulatory Act, § 2 et seq., [25 U.S.C.A. § 2701 et seq.](#)

[15] Indians

Purpose and construction

Rule of construction, reflecting strong federal interest in safeguarding Indian autonomy, which gives preference to Indian tribes in statutory interpretation is not triggered when there is no statutory ambiguity; when Congress has unambiguously expressed its intent through its choice of statutory language, courts must read relevant laws according to their unvarnished meaning, without any judicial embroidery.

[3 Cases that cite this headnote](#)

[16] Indians

Actions

District court was not required to defer to determination by chairman of National Indian Gaming Commission that Indian Gaming Regulatory Act (IGRA) applied in Maine, impliedly repealing provision of Maine Indian Claims Settlement Act requiring future federal Indian legislation to be specifically applicable within Maine; both Settlement Act requirement and IGRA's failure to mention Maine were clear and unambiguous expressions of Congressional intent that IGRA should not apply in Maine, and, although Commission chairman administered IGRA, administration of Settlement Act had not been delegated by Secretary of Interior to Gaming Commission, nor did chairman have special expertise in interpreting case law, upon which his jurisdictional analysis almost exclusively depended. Maine Indian Claims Settlement Act of 1980, § 16(b), [25 U.S.C.A. § 1735\(b\)](#); Indian Gaming Regulatory Act, §§ 2 et seq., 11(b), [25 U.S.C.A. §§ 2701 et seq., 2710\(b\)](#).

[4 Cases that cite this headnote](#)

[17] Administrative Law and Procedure

Plain, literal, or clear meaning; ambiguity

No deference is due administrative agency's interpretation of statute if Congress has spoken directly to question at issue.

[2 Cases that cite this headnote](#)

[18] Administrative Law and Procedure

Deference to agency in general

Deference to administrative agency's interpretation of statute is appropriate only when agency interprets statute that it administers.

[1 Cases that cite this headnote](#)

[19] Administrative Law and Procedure

Deference to agency in general

Judicial deference to administrative agency's interpretation of statute is inappropriate when agency's conclusion rests predominantly upon its reading of judicial decisions.

***787** Appeal from the United States District Court for the District of Maine; [Morton A. Brody](#), U.S. District Judge.

Attorneys and Law Firms

[Thomas N. Tureen](#), with whom [Gregory W. Sample](#), Portland, ME, Tureen & Sample, Richard B. Collins, [David Overlock Stewart](#), and Ropes & Gray were on brief, for appellant.

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Thomas D. Warren, Assistant Attorney General, with whom [Andrew Ketterer](#), Attorney General, and [Wayne Moss](#), Assistant Attorney General, were on brief, Augusta, ME, for appellees.

Before [SELYA](#), [BOUDIN](#) and [LYNCH](#), Circuit Judges.

Opinion

[SELYA](#), Circuit Judge.

The Passamaquoddy Tribe (the Tribe) sued to compel Maine and the governor of Maine (collectively, Maine or the State) to recognize its asserted right to avoid the prohibitions of Maine's criminal code, *see 17-A Me.Rev.Stat.Ann. §§ 953–954*, and conduct high-stakes casino gambling behind the shield of the Indian Gaming Regulatory Act, *25 U.S.C. §§ 2701–2721, 18 U.S.C. §§ 1166–1168* (the Gaming Act). The federal district court decided that the Gaming Act does not extend to Maine, and denied relief. *See Passamaquoddy Tribe v. Maine*, 897 F.Supp. 632 (D.Me.1995). We affirm.

I. THE STATUTORY FRAMEWORK

In order to put this appeal into perspective, it is necessary to juxtapose the Gaming Act and the Maine Indian Claims Settlement Act of 1980, *25 U.S.C. §§ 1721–1735* (the Settlement Act).

In the early 1970s, the Tribe began earnestly to pursue claims to nearly two-thirds of Maine's land mass. *See Joint*

Tribal Council of the Passamaquoddy Tribe v. Morton, 388 F.Supp. 649, 651–53, 667–69 (D.Me.) (reviewing dispute's history), *aff'd*, 528 F.2d 370 (1st Cir.1975). After years of strife, the Tribe and the State negotiated a settlement of the land claims under federal auspices. The arrangement was designed to transform the legal status of the Maine tribes (the Passamaquoddy Tribe and the Penobscot Nation), and to create a unique relationship between state and tribal authority. *See Penobscot Nation v. Stilphen*, 461 A.2d 478, 488–89 (Me.), *appeal dismissed*, 464 U.S. 923, 104 S.Ct. 323, 78 L.Ed.2d 296 (1983). The Passamaquoddies and the Penobscots ratified the provisional pact and Maine's legislature followed suit. *See P.L.1979, c. 732, codified at 30 Me.Rev.Stat.Ann. §§ 6201–6214*. In 1980, Congress cemented the terms of the accord by passing the Settlement Act. The federal statute incorporated the parties' agreement and established the ground rules that henceforth would govern matters of common political concern to the State and the two tribes.

Among other things, the Settlement Act rid the State of all Indian land claims and submitted the Passamaquoddies, the Penobscots, and their tribal lands to the State's jurisdiction. *See 25 U.S.C. §§ 1721(b)(4), 1723(b) & (c), 1725(a)*. In addition, section 16(b) of the Settlement Act gave the State a measure of security against future federal incursions upon these hard-won gains. It stated:

The provisions of any federal law enacted after October 10, 1980 [the effective date of the Settlement Act], for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, ... shall not apply within the State of Maine, *unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine*.

25 U.S.C. § 1735(b) (emphasis supplied). The Tribe received fair consideration for its agreement: the Settlement Act confirmed its title to designated reservation lands, memorialized federal recognition of its tribal status, and opened the floodgate for the influx of millions of dollars in federal subsidies. *See 25 U.S.C. § 1733*.

Approximately eight years later, Congress enacted the Gaming Act. This statute establishes a three-tiered regulatory

paradigm in respect to gambling activities on Indian lands. We described these three layers in *Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685, 689–90 (1st Cir.), cert. denied, 513 U.S. 919, 115 S.Ct. 298, 130 L.Ed.2d 211 (1994), and it would be pleonastic to rehearse that description here. We focus instead on the third tier: Class III gaming (a category that encompasses casino gambling).

The Gaming Act provides that, unless a state imposes an outright ban on *all* Class III gaming (and Maine does not), it must, upon the request of a federally recognized and self-governing Indian tribe, negotiate a compact stipulating the terms and conditions under which the tribe can introduce Class III gaming on Indian lands. *See 25 U.S.C. § 2710(d)*. The statute contains a series of fail-safe mechanisms designed to ensure that states do not stall the negotiations or conduct them in bad faith. *See, e.g.*, *id. § 2710(d)(7)*.

The Settlement Act and the Gaming Act are vastly different in scope. From a geographic standpoint, the former is narrower in the sense that it applies only in Maine whereas the latter has national implications. From a political standpoint, however, the Settlement Act is broader in that it purports to cover virtually the entire field of relationships between the State and the Indian tribes based there whereas the Gaming Act concentrates exclusively on a particular kind of activity, i.e., gambling.

II. THE GENESIS OF THE APPEAL

Mindful of the meteoric success of other Indian-sponsored casinos, the Tribe decided in the early 1990s to climb aboard the bandwagon. It chose Calais, a Maine municipality located near the Canadian border, as the preferred site for its nascent enterprise. Because the Gaming Act requires Class III gaming to be conducted on “Indian lands,” *25 U.S.C. § 2710(d)(3) (A)*, the Tribe sought to add a designated parcel of real estate to its inventory of tribal lands. *See 30 Me.Rev.Stat.Ann. § 6205* (authorizing incremental land acquisitions). When formally apprised of the Tribe’s plans, the State concluded that the Gaming Act did not apply within Maine’s boundaries and scotched the proposed casino. As a lagniappe, the state legislature passed a bill that allowed tribal land in Calais to be used for such a purpose (1) if the Tribe secured the city’s blessing and the Governor of Maine thereafter agreed to negotiate a tribal-state compact under *25 U.S.C. § 2710(d)*, or (2) if a court of competent jurisdiction declared that the Gaming Act extended to Maine. *See* Me.Laws 1993, ch. 713, § 1, codified at *30 Me.Rev.Stat.Ann. § 6205(1)(C)*.

After some procedural maneuvering, not material here, the Tribe sued to compel the commencement of negotiations for a compact. The defendants moved for judgment on the pleadings, *Fed.R.Civ.P. 12(c)*, asserting that the Gaming Act did not hold sway within Maine. The Tribe opposed the motion. It contended among other things that the Gaming Act reached Maine, as elsewhere, because Congress had impliedly repealed the Settlement Act vis-a-vis gaming activities conducted by Indian tribes, and, in all events, had made the Gaming Act specifically applicable within Maine.

Unimpressed by the Tribe’s armada of arguments, the district court ruled that the Gaming Act lacked force in Maine and entered judgment in the defendants’ favor. *See Passamaquoddy Tribe*, 897 F.Supp. at 635. This appeal followed.

III. ANALYSIS

Our discussion of the issues proceeds in four parts.

A

[1] [2] This case turns on a question of statutory interpretation. By its terms, the Gaming Act, if taken in isolation, applies to any federally recognized Indian tribe that possesses powers of self-governance. *See 25 U.S.C. § 2703(5)*. Consequently, if we were to start and stop with the Gaming Act, the Tribe—which is federally recognized and self-governing—would be home free. But this case cannot be confined within such narrow margins. The chief objective of statutory interpretation is to give effect to the legislative will. *See Negonsott v. Samuels*, 507 U.S. 99, 103–04, 113 S.Ct. 1119, 1122–23, 122 L.Ed.2d 457 (1993); *789 *Narragansett Indian Tribe*, 19 F.3d at 691. To achieve this objective a court must take into account the tacit assumptions that underlie a legislative enactment, including not only general policies but also preexisting statutory provisions. *See Ohio ex rel. Popovici v. Agler*, 280 U.S. 379, 383, 50 S.Ct. 154, 155, 74 L.Ed. 489 (1930); *Greenwood Trust Co. v. Massachusetts*, 971 F.2d 818, 827 (1st Cir.1992), cert. denied, 506 U.S. 1052, 113 S.Ct. 974, 122 L.Ed.2d 129 (1993). Put simply, courts must recognize that Congress does not legislate in a vacuum. *See Thinking Machines Corp. v. Mellon Fin. Servs. Corp. # 1 (In re Thinking Machines)*, 67 F.3d 1021, 1025 (1st Cir.1995).

[3] Taking this haploscopic view brings us immediately to section 16(b) of the Settlement Act, *25 U.S.C. § 1735(b)*,

quoted *supra* p. 787. At first glance, the conditions precedent to the applicability of section 16(b) are plainly satisfied. The Tribe does not dispute—nor could it—that the Gaming Act is a “federal law enacted after October 10, 1980, for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine.”¹ 25 U.S.C. § 1735(b). In such circumstances, section 16(b) provides that Maine will be exempt from such a statute *unless* Congress has “specifically made” the statute “applicable within the State of Maine.” In other words, section 16(b) is a savings clause that serves two related purposes. It acts as a warning signal to later Congresses to stop, look, and listen before weakening the foundation on which the settlement between Maine and the Tribe rests. At the same time, it signals courts that, if a later Congress enacts a law for the benefit of Indians and intends the law to have effect within Maine, that intent will be made manifest. In view of these dual purposes, we cannot decide the question of whether the Gaming Act extends to Maine without factoring section 16(b) into the decisional calculus.

[4] This realization gets the grease from the goose. The text of the Gaming Act contains not so much as a hint that Congress intended to make that Act specifically applicable within Maine. Where, as here, Congress enacts a statute of general applicability (e.g., the Gaming Act) with full knowledge that a preexisting statute (e.g., the Settlement Act) contains a savings clause warning pointedly that a specific reference or a similarly clear expression of legislative intent will be required to alter the status quo, the only reasonable conclusion that can be drawn from the later Congress's decision to omit any such expression from the text of the new statute is that Congress did not desire to bring about such an alteration. See *Narragansett Indian Tribe*, 19 F.3d at 704 n. 21 (observing that when an “enacting Congress is demonstrably aware of the earlier law at the time of the later law's enactment, there is no basis for indulging” any other presumption).

The Tribe's principal rejoinder is on constitutional grounds. It posits that giving effect to section 16(b) in this fashion is tantamount to binding a successor Congress to a predecessor's will, and therefore carens beyond the constitutional pale. See, e.g., *Glidden Co. v. Zdanok*, 370 U.S. 530, 534, 82 S.Ct. 1459, 1464, 8 L.Ed.2d 671 (1962); *Reichelderfer v. Quinn*, 287 U.S. 315, 318, 53 S.Ct. 177, 178, 77 L.Ed. 331 (1932); *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 135, 3 L.Ed. 162 (1810). We believe that this rejoinder distorts the reality of events.

[5] Section 16(b) does not prohibit a subsequent Congress from writing a new statute reflecting new policies and applying it to the Indian tribes in Maine. Congress could make such a statute fully effective in Maine through the use of explicit language, by otherwise offering a patent indication of its intent to accomplish that result, or, indeed, by first repealing section 16(b). Thus, section 16(b) is purely an interpretive aid; it serves both to limn the manner in which subsequently enacted statutes should be written to accomplish a particular goal and to color the way in which such statutes thereafter should be read. In fine, section 16(b) binds subsequent Congresses only to the extent that they choose to be bound.

*790 The sockdolager is that the Court regularly has upheld and given effect to such provisions, *see, e.g.*, *Warden, Lewisburg Penit. v. Marrero*, 417 U.S. 653, 659–60 n. 10, 94 S.Ct. 2532, 2536 n. 10, 41 L.Ed.2d 383 (1974) (earlier statute barred repeal of certain penalties “unless the repealing Act shall so expressly provide”); *Shaughnessy v. Pedreiro*, 349 U.S. 48, 52, 75 S.Ct. 591, 594, 99 L.Ed. 868 (1955) (earlier statute directed that “[n]o subsequent legislation shall ... supersede or modify the provisions of [the earlier statute] except to the extent such legislation shall do so expressly”); *Posadas v. National City Bank*, 296 U.S. 497, 501, 56 S.Ct. 349, 351, 80 L.Ed. 351 (1936) (earlier statute directed that subsequent laws “shall not apply to the Philippine Islands, except when they specifically so provide”); *Great Northern Ry. Co. v. United States*, 208 U.S. 452, 456, 28 S.Ct. 313, 52 L.Ed. 567 (1908) (similar to *Marrero*); *United States v. Reisinger*, 128 U.S. 398, 401–02, 9 S.Ct. 99, 100–01, 32 L.Ed. 480 (1888) (similar to *Marrero*), and we see nothing that distinguishes this case from the mine-run. This means, of course, that we must read the Settlement Act and the Gaming Act in *pari passu*. Doing so, and giving effect to their plain meaning, we are led inexorably to the conclusion that the latter lacks force within Maine's boundaries.

B

The Tribe generates several other responses to our tentative conclusion that Congress did not intend to make the Gaming Act operative in Maine. Its most ferocious attack suggests that section 16(b) need not be considered at all because the Gaming Act impliedly repealed it insofar as gambling on tribal lands is concerned. The attack is easily repulsed.

[6] [7] [8] We are unequivocally committed to “the bedrock principle that implied repeals of federal statutes are disfavored.” *Narragansett Indian Tribe*, 19 F.3d at 703; *accord Rodriguez v. United States*, 480 U.S. 522, 524, 107 S.Ct. 1391, 1392, 94 L.Ed.2d 533 (1987); *TVA v. Hill*, 437 U.S. 153, 189, 98 S.Ct. 2279, 2299, 57 L.Ed.2d 117 (1978); *United States v. Borden Co.*, 308 U.S. 188, 198, 60 S.Ct. 182, 188, 84 L.Ed. 181 (1939). The general rule is that “when two statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed congressional intent to the contrary, to regard each as effective.” *Morton v. Mancari*, 417 U.S. 535, 551, 94 S.Ct. 2474, 2483, 41 L.Ed.2d 290 (1974). The only other satisfactory basis for a repeal by implication (apart from a clear expression of Congress’s intent to repeal) is a finding that the earlier and later statutes are irreconcilable. See *Hill*, 437 U.S. at 190, 98 S.Ct. at 2299; *Morton*, 417 U.S. at 550, 94 S.Ct. at 2482; *Narragansett Indian Tribe*, 19 F.3d at 703–04. “[I]f the two [acts] are repugnant in any of their provisions, the latter act, without any repealing clause, operates to the extent of the repugnancy as a repeal of the first.” *United States v. Tynen*, 78 U.S. (11 Wall.) 88, 92, 20 L.Ed. 153 (1870).

[9] [10] Of course, statutes can be irreconcilable even short of outright repugnancy. Thus, a repeal may be implied if a later statute covers the entire subject matter “and embraces new provisions, plainly showing that it was intended as a substitute for the first act.” *Id.*; see also *Posadas*, 296 U.S. at 503–04, 56 S.Ct. at 352–53; *Narragansett Indian Tribe*, 19 F.3d at 703–04. But an irreconcilable conflict does not exist merely because the application of a later statute would “produce differing results when applied ..., for that no more than states the problem.” *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 155, 96 S.Ct. 1989, 1993, 48 L.Ed.2d 540 (1976).

[11] These precepts fit without special tailoring in the Indian law context. See, e.g., *Narragansett Indian Tribe*, 19 F.3d at 704; *Blackfeet Indian Tribe v. Montana Power Co.*, 838 F.2d 1055, 1058 (9th Cir.), cert. denied, 488 U.S. 828, 109 S.Ct. 79, 102 L.Ed.2d 56 (1988). In this case, they defeat the Tribe’s attack. The Gaming Act contains no evidence of an intention to repeal section 16(b) of the Settlement Act, let alone a patent expression of any such design. Indeed, when the 100th Congress passed the Gaming Act it was fully cognizant of the Settlement Act and apparently contemplated that the *791 new statute would not in any way displace the old:

[I]t is the intention of the Committee that nothing in ... [the Gaming Act]

will supersede any specific restriction or specific grant of Federal authority or jurisdiction to a State which may be encompassed in another Federal statute, including the ... [Maine] Indian Claim[s] Settlement Act.

S.Rep. No. 446, 100th Congress, 2d Sess. 12 (1988), reprinted in 1988 U.S.C.C.A.N. 3071, 3082.² The absence of any suggestive guideposts in the Gaming Act, coupled with the easy integration of the two laws, effectively dispatches the argument for implied repeal.

Our opinion in *Narragansett Indian Tribe* is not to the contrary. There, we concluded that Congress, in passing the Gaming Act, had impliedly repealed the Rhode Island Indian Claims Settlement Act of 1978, 25 U.S.C. §§ 1701–1716, to the extent that it touched upon gambling activities. See *Narragansett Indian Tribe*, 19 F.3d at 704–05. But the Rhode Island Act contained no provision comparable to section 16(b); therefore, the literal terms of the two statutes created incoherence by subjecting Indian gaming to two mutually exclusive regulatory environments. Because we could find no feasible way to give full effect to both acts, we concluded that an implied repeal had transpired. See *id.*

Here, in contradistinction to the situation that obtained in Rhode Island, section 16(b) satisfactorily harmonizes the Settlement Act and the Gaming Act, and prevents any incoherence. The Settlement Act governs the State’s relationship with the Tribe and will continue to do so without dilution unless and until Congress, by later enactment, makes a new law touching upon the same subject matter in one or more particulars specifically applicable within Maine. As the Gaming Act does not meet this benchmark, the Settlement Act remains inviolate and precludes the operation of the Gaming Act in Maine. See *Ysleta del Sur Pueblo v. Texas*, 36 F.3d 1325, 1335 (5th Cir.1994) (holding that the Gaming Act did not impliedly repeal a federal statute granting Texas jurisdiction over Indian gaming because Congress never indicated in the Gaming Act that it intended to rescind the previous grant of jurisdiction), cert. denied, 514 U.S. 1016, 115 S.Ct. 1358, 131 L.Ed.2d 215 (1995).

To sum up, we do not find it surprising that the lack of any express indicium of a contrary congressional intent in the text of the Gaming Act means different things in different settings. Without a savings clause like section 16(b), this omission may indicate an intent to apply the Act across the board

—especially if, as in *Narragansett Indian Tribe*, Congress weighed, and decided to discard, a specific exemption. But when a savings clause is in play, as in this case, the omission can only mean that Congress desired the terms of the earlier statute to prevail. In the final analysis, the differing outcomes in the two New England states bear witness to the truism that, “[i]n the game of statutory interpretation, statutory language is the ultimate trump card.” *Narragansett Indian Tribe*, 19 F.3d at 699.

C

[12] The Tribe has a fallback position. It maintains that, even if we give full force and effect to section 16(b), the Gaming Act controls because it is “specifically made applicable” within Maine. In its most primitive form, this thesis embodies a contention that because the Tribe satisfies the Gaming Act’s general definitional requirement—federal recognition and governmental power—a court can infer Congress’s intent to bestow the benefices of the Gaming Act upon the *792 Tribe. The problem with this contention is that it entirely ignores the Settlement Act. Once that flaw is revealed, it becomes readily apparent that the Tribe’s contention is no more than a back-door effort to reintroduce the notion of implied repeal. Consequently, we reject it.

[13] In a related vein, the Tribe postulates that the very comprehensiveness of the Gaming Act is itself enough to meet the demands of section 16(b). This asseveration depends heavily upon the correctness of the proposition that the rule of *Marcello v. Bonds*, 349 U.S. 302, 75 S.Ct. 757, 99 L.Ed. 1107 (1955), permits minimal particularity of expression to satisfy savings clauses like section 16(b). We do not believe that the proposition withstands scrutiny.

In *Marcello*, a provision of the Administrative Procedure Act (APA) stipulated that statutes which purport either to supersede or modify the APA’s judicial review modalities must do so “expressly.” See *id.* at 305, 75 S.Ct. at 759 (quoting APA § 12, now codified at 5 U.S.C. § 559). A later Congress enacted the Immigration and Nationality Act of 1952 (I & N Act). Although the I & N Act did not override the APA’s judicial review modalities in so many words, the Supreme Court concluded that the neoteric statute’s deportation procedure superseded the APA’s judicial review modalities because (1) the presence in the I & N Act of an extensive review scheme, similar in material respects to the APA’s review mechanisms, would otherwise

be rendered meaningless, and (2) the I & N Act contained an explicit provision that the procedure which it prescribed “shall be the sole and exclusive procedure for determining the deportability of an alien.” See *Marcello*, 349 U.S. at 308–09, 75 S.Ct. at 760–61. These factors, together with some instructive legislative history, formed the basis for the Court’s determination that the subsequent Congress had “expressly” superseded the APA’s judicial review modalities in respect to deportation.³ *Id.* at 310, 75 S.Ct. at 761.

The Tribe’s reliance on *Marcello* is mislaid. To be sure, the Gaming Act, like the I & N Act, is a statute of general applicability that arguably constructs a comprehensive regulatory regime for a defined subject.⁴ But this single similarity does not provide a particularly persuasive parallel for present purposes.

Here, the Tribe points to nothing of consequence beyond the comprehensive nature of the Gaming Act. Unlike the deportation procedure delineated in the I & N Act, none of the provisions of the Gaming Act will be rendered meaningless if the Act excludes Maine. Moreover, unlike in the I & N Act, Congress has not declared the Gaming Act to be “exclusive” of other potentially applicable legislation. And, finally, unlike in the legislative history of the I & N Act, there are no signposts writ large in the debate over the Gaming Act. These differences serve both to distinguish the instant case from *Marcello* and to put the holding of that case into *793 perspective. See *Great Northern*, 208 U.S. at 466, 28 S.Ct. at 316 (explaining that the comprehensiveness of subsequent legislation, without more, will not satisfy a savings clause in an earlier statute). The point is not that Congress was derelict in employing one particular collocation of words as opposed to another, but, rather, that it chose not to include in the Gaming Act any indication that it meant to make the statute specifically applicable within Maine.⁵

[14] Though their arguments are unavailing when weighed on an evenly calibrated scale, the Tribe seeks to tip the balance by altering the calibration. To this end, it invites us to depart from the usual canons of construction and chart the statutory interface between the Gaming Act and the Settlement Act by resort to a special interpretive preference that the law sometimes accords to Indian tribes. See, e.g., *Amoco Prod’n Co. v. Village of Gambell*, 480 U.S. 531, 555, 107 S.Ct. 1396, 1409, 94 L.Ed.2d 542 (1987); *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 506, 106 S.Ct. 2039, 2044, 90 L.Ed.2d 490 (1986) (collecting cases); *Rosebud Sioux*

Tribe v. Kneip, 430 U.S. 584, 586–87, 97 S.Ct. 1361, 1362–63, 51 L.Ed.2d 660 (1977). We decline the invitation.

[15] The rule of construction to which the Tribe alludes reflects a strong federal interest in safeguarding Indian autonomy. *See, e.g.*, *Rosebud Sioux*, 430 U.S. at 586–87, 97 S.Ct. at 1362–63. But the rule is apposite only when Congress has blown an uncertain trumpet. If ambiguity does not loom, the occasion for preferential interpretation never arises. *See Catawba Indian Tribe*, 476 U.S. at 506, 106 S.Ct. at 2044; *Rosebud Sioux*, 430 U.S. at 587–88, 97 S.Ct. at 1363–64; *Narragansett Indian Tribe*, 19 F.3d at 691. When, as now, Congress has unambiguously expressed its intent through its choice of statutory language, courts must read the relevant laws according to their unvarnished meaning, without any judicial embroidery. So it is here: since there is no statutory ambiguity, the principle of preferential construction is not triggered.

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[16] The Tribe's last argument has a different spin. Under the Gaming Act, Class II gaming conducted on tribal lands must be sanctioned by the National Indian Gaming Commission. *See* 25 U.S.C. § 2710(b). While this litigation was pending, the Tribe adopted an ordinance authorizing the conduct of bingo and other Class II gaming activities on its reservation lands and submitted this proposal to the Commission. The Commission asserted jurisdiction and granted the request. The approval took the form of a letter dated July 19, 1995, in which the Commission's chairman opined that the Gaming Act applied in Maine. The Tribe asked the district court to take judicial notice of, and defer to, that determination. *See generally Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–43, 104 S.Ct. 2778, 2781–82, 81 L.Ed.2d 694 (1984) (discussing deference due to agency interpretations); *Strickland v. Commissioner, Me. Dep't of Human Servs.*, 48 F.3d 12, 16 (1st Cir.) (similar), cert. denied, 516 U.S. 850, 116 S.Ct. 145, 133 L.Ed.2d 91 (1995). The district court demurred. The Tribe assigns error. We discern none.

[17] It is transpicuously clear that, under *Chevron*, no deference is due if Congress has spoken directly to the question. *See Strickland*, 48 F.3d at 16. Here, we read section 16(b) of the Settlement Act as a clear and unambiguous expression of congressional intent. Furthermore, in light of section 16(b), the Gaming Act's failure to mention Maine

makes that statute, too, compelling evidence *794 of Congress's intent that it should not apply in Maine.⁶

[18] In this instance, moreover, there is another valid reason for declining to defer to the Commission. Deference is appropriate under *Chevron* only when an agency interprets a statute that it administers. *See CFTC v. Schor*, 478 U.S. 833, 845, 106 S.Ct. 3245, 3253, 92 L.Ed.2d 675 (1986). Here, the question of the Gaming Act's applicability cannot be addressed in a vacuum, and the Commission, whatever else might be its prerogatives, does not administer the Settlement Act. That role belongs to the Secretary of the Interior, *see, e.g.*, 25 U.S.C. §§ 1725, 1727(a), and has not been delegated by the Secretary to the Commission. Though the Commission may have expertise in the conduct of gaming activities on tribal lands, *see, e.g.*, *Shakopee Mdewakanton Sioux Community v. Hope*, 16 F.3d 261, 264 (8th Cir.1994), we cannot take it upon ourselves to assume, without any evidence, that Congress intended to entrust the Commission with reconciling the Gaming Act and other statutes in the legislative firmament.

[19] If more were needed—and we do not believe that it is—we note that deference is inappropriate when an agency's conclusion rests predominantly upon its reading of judicial decisions. *See, e.g.*, *Director, OWCP v. General Dynamics Corp.*, 980 F.2d 74, 78–79 (1st Cir.1992). In this instance, the Commission's jurisdictional analysis depends almost exclusively on decrypting and applying *Marcello* and *Narragansett Indian Tribe*. As courts, not agencies, have special expertise in interpreting case law, we are loath to defer to a determination that amounts to little more than the Commission's understanding of judicial precedents.

IV. CONCLUSION

To recapitulate, the Tribe and the State negotiated the accord that is now memorialized in the Settlement Act as a covenant to govern their future relations. Maine received valuable consideration for the accord, including the protection afforded by section 16(b). The Tribe also received valuable consideration, including land, money, and recognition. Having reaped the benefits, the Tribe cannot expect the corollary burdens imposed under the Settlement Act to disappear merely because they have become inconvenient.

We need go no further. We hold that Congress did not make the Gaming Act specifically applicable within Maine, and

that, therefore, the Tribe is not entitled to an order compelling the State to negotiate a compact for Class III gaming.

Affirmed.

Footnotes

- 1 Among other things, the Gaming Act, if it applied, would preempt various provisions of Maine's criminal law, including [17-A Me.Rev.Stat.Ann. §§ 953–954](#).
- 2 We found this passage of no help in the context of the Rhode Island Indian Claims Settlement Act of 1978. *See Narragansett Indian Tribe*, 19 F.3d at 700. The version of the bill to which the report applied originally contained a provision that explicitly exempted Rhode Island from the reach of the Gaming Act, yet, prior to enactment, Congress removed the exonerative provision. In that circumstance, we concluded that the report “shed[] no light on Congress's intent regarding the law it actually enacted.” *Id.* By contrast, the draft bill appended to the report did not contain any similar language regarding Maine (presumably because the legislators knew that the Settlement Act included a savings clause making such language unnecessary). Thus, unlike in the case of Rhode Island, no telltale chain of events taints the report's reference in respect to Maine.
- 3 The Court wrote that it could not ignore the background of the 1952 immigration legislation, its laborious adaptation of the Administrative Procedure Act to the deportation process, the specific points at which deviations from the Administrative Procedure Act were made, the recognition in the legislative history of this adaptive technique and of the particular deviations, and the direction in the statute that the methods therein prescribed shall be the sole and exclusive procedure for deportation proceedings.
Marcello, 349 U.S. at 310, 75 S.Ct. at 762. The Court then concluded:
Unless we are to require the Congress to employ magical passwords in order to effectuate an exemption from the Administrative Procedure Act, we must hold that the present statute expressly supersedes the hearing provisions of that Act.
Id.
- 4 The State argues that the Gaming Act is not comprehensive in the conventional sense. This argument is not totally without merit; the Gaming Act has no application to tribes that do not seek and attain formal federal recognition, *see 25 U.S.C. § 2703(5)*, tribes that do not exercise jurisdiction over their territories, *see id. § 2710(b)(1) & (d)(3)(A)*, tribal lands located in states that proscribe Class II and III gaming activities altogether, *see id. § 2710(b)(1) & (d)(1)*, or tribal lands on which federal law preterms gambling, *see id. § 2710(b)(1)*. We need not probe the point too deeply. For present purposes, we simply assume, favorably to the Tribe, that the Gaming Act, like the I & N Act, constitutes a comprehensive regulatory regime.
- 5 We find puzzling the Tribe's reliance on a line of cases, *see, e.g. CIA v. Sims*, 471 U.S. 159, 167, 105 S.Ct. 1881, 1886, 85 L.Ed.2d 173 (1985), decided under an exemption from the disclosure provisions of the Freedom of Information Act, [5 U.S.C. § 552\(b\)\(3\)](#) (providing that agencies need not divulge matters that are “specifically exempted” by statute), to support its *ipse dixit* that Congress need only enact a comprehensive statute to mute the call of section 16(b). That exemption merely incorporates by reference the secrecy provisions of other statutes, and, unlike section 16(b), plays no discernible role in construing the application of a subsequently enacted statute.
- 6 The Tribe construes the Gaming Act's silence as a latent ambiguity. We do not agree. Given the tenor of the preexisting statute, the sound of silence here is pregnant with meaning. Taken in context, that silence logically denotes Congress's intent not to make the Gaming Act specifically applicable within Maine.