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Whitney Saunders

Candidate for Juris Doctor, Roger Williams University School of Law

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Comments

Resisting Indigenous Erasure in Rhode Island: The Need for Compulsory Native American History in Rhode Island Schools

Whitney Saunders*

Before we begin, I want to take a moment to reflect on the lands on which we reside. We are coming from many places, physically and remotely, and we want to acknowledge the ancestral homelands and traditional territories of Indigenous and Native peoples who have been here since time immemorial and to recognize that we must continue to build our solidarity and kinship with Native peoples across the Americas and across the globe. Roger Williams University School of law is located here in Bristol, Rhode Island . . . and so we acknowledge and honor the Narragansett and Pokonoket people and Sowams, the original name of the land that our campus resides on.¹

INTRODUCTION

Rhode Island is home to the Narragansett Indian Tribe, a federally recognized Indian tribe, yet there is currently no legislation mandating Native American history be taught in elementary or

* Candidate for Juris Doctor, Roger Williams University School of Law, 2023. I would like to thank Professor James Diamond for his guidance during the writing process. I would also like to thank my friends, family, and the Roger Williams University Law Review for their encouragement and support.

1. Roger Williams University School of Law, Land Acknowledgment.

secondary schools.² Currently, Rhode Island's social studies curriculum does not require that schools teach about Native American history and leaves that decision up to individual school districts.³ The idea of requiring Native American history education in Rhode Island schools is a hot topic right now and it requires careful consideration. The only appropriate way for Rhode Island to address this issue is to require Native history and culture be taught in their schools.

In 2000, Rhode Island enacted the Genocide and Human Rights Education Act requiring the Rhode Island Department of Education to create a curriculum on genocide and human rights, including specific protocols for teaching the material.⁴ Eleven years later, Rhode Island's state legislature passed the Genocide Education in Secondary Schools Act (the Act), which asserted a need to honor genocide victims and make curriculum on genocide available.⁵ In 2016, then-Governor Gina Raimondo signed into effect additional legislation that required genocide and Holocaust education be taught in public middle and high schools, as opposed to just making curriculum available to educators.⁶ In 2021, the General Assembly passed the Rhode Island Holocaust and Genocide Education Commission Act, which created a permanent commission to distribute genocide and Holocaust information throughout Rhode Island, take inventory of current Holocaust and genocide programs, prepare additional materials, apply for funding for these programs, implement the 2016 law requiring Holocaust and genocide education in schools, and many other tasks related to Holocaust and genocide education in Rhode Island.⁷

While the enactment of these laws gives the impression that Rhode Island has made a notable effort to teach schoolchildren about some of history's worst atrocities, it has done a poor job of teaching about its own. Absent from any of the aforementioned

2. See Asher Lehrer-Small, "We Are Here": Debates Over Teaching History Exclude Native People, *Rhode Island Indigenous Parents Say*, *THE 74* (Nov. 23, 2021) <https://www.the74million.org/article/we-are-here-debates-over-teaching-history-exclude-native-people-rhode-island-indigenous-parents-say/> [<https://perma.cc/7WDF-A4CS>].

3. *Id.*

4. 2000 R.I. Pub. Laws 2491–92.

5. 2011 R.I. Pub. Laws 222–24, 295–97.

6. 2016 R.I. Pub. Laws 346, 377.

7. R.I. GEN. LAWS ANN. §§ 16-93.1-3(a), 16-93.1-7 (West 2022).

laws is a requirement that Native American history be included in the genocide and Holocaust curriculum.⁸ Native Americans and Indian Nations are central to the history of Rhode Island, New England, and the United States generally. It must be required then, that Rhode Island youth learn about the cruelties committed against Indian Nations nationally, but also the heinous acts committed against Native Americans right here, on Rhode Island soil.

Part I of this Comment provides historical context pertaining to the violence committed against Native Americans in the United States and Rhode Island. Part II explains the current requirements under the Act and explores the statutes that Washington, North Dakota, Montana, and Connecticut have enacted regarding Native American history in their schools. Part III proposes changes to the Act and suggests, in the alternative to amending, a hybrid model Rhode Island should adopt for enacting new legislation mandating Native American history in schools. Part IV also addresses arguments in opposition of requiring Native American history in schools.

BACKGROUND

A. *The United States*

The beginning of the Native American genocide dates to the late 1400s, when European conquerors found the New World. Pope Alexander VI played a significant role in Spain's conquest of the New World.⁹ Pope Alexander VI issued a Papal Bull that declared any land not inhabited by Christians be taken and exploited by Christians.¹⁰ Furthermore, the Papal Bull provided that "the Catholic faith and the Christian religion be exalted and be everywhere increased and spread, that the health of souls be cared for and that *barbarous nations* be overthrown and brought to the faith itself."¹¹ The "barbarous nations" to which the Pope referred were

8. *See id.* § 16-93.1-3(a).

9. *The Doctrine of Discovery, 1493*, GILDER LEHRMAN INST. OF AM. HIST., <https://www.gilderlehrman.org/history-resources/spotlight-primary-source/doctrine-discovery-1493> [https://perma.cc/V7RN-CTBD] (last visited Apr. 4, 2022).

10. *Id.*

11. *Id.* (emphasis added).

indigenous peoples already inhabiting the land the Europeans coveted.¹² This Papal Bull became known as the Doctrine of Discovery and was the basis for all land claims made by Europeans against Native Americans.¹³ In the early 1500s, the Spanish Crown disseminated *The Requerimiento*, a document which was to be read aloud to the Native Americans by the Spanish conquistadors before they could “legally” take the land from the Indians.¹⁴ *The Requerimiento* informed the Native Americans that God gave control of the whole human race to the Pope.¹⁵

The United States Supreme Court upheld the Doctrine of Discovery in *Johnson v. M'Intosh*.¹⁶ The issue in *M'Intosh* was whether Native American tribes could give a legally recognizable title of land to private individuals.¹⁷ The Court concluded:

[I]t has never been doubted, that either the United States, or the several states, had a clear title to the lands within the boundary lines described in the treaty, subject only to the Indian right of occupancy, and that the exclusive power to extinguish that right, was vested in that government which might constitutionally exercise it.¹⁸

Johnson v. M'Intosh was decided 300 years after the Doctrine of Discovery was established, and by holding that Native Americans only had a right to occupy the land, the Supreme Court continued to perpetuate the disenfranchisement of Native people and allowed the Doctrine of Discovery to be the basis for land claims in the United States.

President Andrew Jackson was a strong proponent for Indian removal and encouraged members of Congress to enact the

12. *See id.*

13. *Id.*

14. *The Requerimiento [Requirement], Council of Castille, 1510*, NAT'L HUMANS. CTR., <https://nationalhumanitiescenter.org/pds/amerbegin/contact/text7/requirement.pdf> [<https://perma.cc/P6PP-C8GC>] (last visited Apr. 4, 2022).

15. *Id.*

16. *Johnson v. M'Intosh*, 21 U.S. 543 (1823).

17. *Id.* at 572.

18. *Id.* at 584–85.

Removal Act of 1830.¹⁹ This Act allowed the President to give land west of the Mississippi River to Native American tribes who “consented” to abandoning their native homelands.²⁰ The U.S. government attempted to incentivize the Native Americans to give up their land by offering financial assistance, other types of aid, and promising the tribes the government would protect them if they moved west.²¹ The U.S. Government also bribed and threatened the tribes to give up their land.²² President Jackson succeeded in his mission: by the end of his presidency, seventy Indian removal treaties had been signed into law, and approximately 50,000 Indians moved west of the Mississippi River.²³

Indian removal continued and, in 1836, the federal government drove the Creek tribe from their land and forced them to Oklahoma.²⁴ When 15,000 Creeks made the trek to Oklahoma, nearly one in four perished.²⁵ In 1838, not many Cherokees had left their lands in Georgia for the newly named “Indian territory” west of the Mississippi.²⁶ Displeased by the Cherokees’ failure to leave Georgia, President Van Buren sent in several thousand soldiers and forced the Cherokee into corrals at bayonet point.²⁷ The Cherokee were forced to march over 1,200 miles to their new home.²⁸ Diseases plagued the Indians and more than 5,000 Cherokee Indians died.²⁹ The forced removal of Indians to Oklahoma became known as the Trail of Tears, and the journey spanned nine states and over 5,000 miles.³⁰

The boarding school era of Native American history marks perhaps some of the grossest and most merciless acts committed by the

19. *Indian Treaties and the Removal Act of 1830*, U.S. DEP’T OF STATE OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1830-1860/indian-treaties> [<https://perma.cc/GEN8-V4G2>] (last visited Apr. 4, 2022).

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Trail of Tears*, HISTORY (Jul. 7, 2020), <https://www.history.com/topics/native-american-history/trail-of-tears> [<https://perma.cc/TQ7C-ECW6>].

25. *See id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

federal government. In 1819, the United States enacted the Civilization Fund, which allowed the federal government and various churches and Christian organizations to work together to “Christianize” and “civilize” Native Americans.³¹ The Civilization Fund authorized Christian groups to “introduce among the Indians ‘the habits and arts of civilization,’ and allowed the President ‘to employ persons of good moral character to instruct them in the mode of agriculture suited to their situation, and for teaching their children in reading, writing, and arithmetic”³² The Commissioner of Indian Affairs was given the authority to promulgate regulations on Native Americans to “secure the attendance of Indian children of suitable age and health at schools established and maintained for their benefit.”³³ The Bureau of Indian Affairs withheld food, clothing, and financial support from Native American parents and guardians who did not send their children to these federally established schools.³⁴

Indian boarding schools were designed to “kill the Indian and save the man.”³⁵ The most notable was the Carlisle Indian School in Carlisle, Pennsylvania.³⁶ Upon arrival to Carlisle or other Indian boarding schools, Indian children were forced to cut their hair—which was traditionally kept long—as well as change their clothing, stop speaking in their native tongue, and convert to Christianity.³⁷

The Termination Era represents yet another failure of the United States federal government. During this time, Congress enacted a series of laws to end the guardian-ward relationship that existed between the Native American tribes and the federal

31. Allison M. Dussias, *Let No Native American Child Be Left Behind: Re-Envisioning Native American Education for the Twenty-First Century*, 43 ARIZ. L. REV. 819, 827–28 (2001).

32. *Id.* at 827 (quoting Civilization Fund Act, ch. 85, 3 Stat. 516-17 (1819)).

33. Andrea A. Curico, *Civil Claims for Uncivilized Acts: Filing Suit Against the Government for American Indian Boarding School Abuses*, 4 HASTINGS RACE & POVERTY L.J. 45, 56 (2006) (quoting Act of Mar. 3, 1891, ch. 543, 26 Stat. 989, 1014).

34. *Id.*

35. Lindsay Glauner, *The Need for Accountability and Reparation: 1830-1976 The United States Government’s Role in the Promotion, Implementation, and Execution of the Crime of Genocide Against Native Americans*, 51 DEPAUL L. REV. 911, 952 (2002).

36. *Id.* at 941.

37. *Id.* at 941–42.

government.³⁸ In 1953, Congress enacted House Concurrent Resolution 108, which “called for all Indians in certain states as well as specific tribes located throughout the country to be ‘freed from Federal supervision and control.’”³⁹ Following House Concurrent Resolution 108, “Congress passed individual termination acts which ended federal recognition of approximately 110 tribes and bands in eight states.”⁴⁰ As a result of the Termination Acts, these tribes stopped receiving many of the benefits that came along with being federally recognized as an Indian; tax exemptions, specific aid programs for Indians, and land.⁴¹ The federal government’s termination policy did not end until 1969 when President Nixon took office.⁴²

After decades of erasure, an appalling range of statistics highlight the disparate and unequal treatment of Natives. These statistics emphasize the gap between Native Americans and other groups in the United States and demonstrate why students need to learn about the history of Native Americans to understand how this gap was created. Currently there are 574 federally recognized tribes and 326 federally recognized Indian reservations, far fewer than what would have been.⁴³ As of 2019, there were approximately 5.7 million individuals who identified as American Indian and Alaskan Native alone, or in combination with another ethnicity.⁴⁴ American Indians and Alaskan Natives have a median income of \$49,906; the median income for non-Hispanic white households is \$71,664.⁴⁵ American Indians and Alaskan Natives are subject to higher rates of suicide, substance use, diabetes, teenage

38. Michael C. Walsh, *Terminating the Indian Termination Policy*, 35 STAN. L. REV. 1181, 1188 (1983).

39. *Id.* at 1185 (quoting H.R. Con. Res. 108, 67 Stat. B132 (1953)).

40. *Id.* at 1186.

41. *Id.* at 1187.

42. *Id.* at 1191.

43. *Frequently Asked Questions*, BUREAU OF INDIAN AFFS., <https://www.bia.gov/frequently-asked-questions> [https://perma.cc/6HRE-FTQ3] (last visited Mar. 5, 2022).

44. *Profile: American Indian/Alaska Native*, U.S. DEP’T OF HEALTH & HUM. SERVS. OFF. OF MINORITY HEALTH, <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlid=62> [https://perma.cc/W52Z-ZK6R] (last modified Jan. 11, 2022).

45. *Id.*

pregnancy, liver disease, hepatitis, and sudden infant death syndrome.⁴⁶

B. *Indigenous History in Rhode Island*

Native American tribes have inhabited the State of Rhode Island for centuries.⁴⁷ The two main tribes in Rhode Island when the settlers arrived were the Wampanoag and the Narragansett.⁴⁸ There were between 70,000 to 100,000 Native Americans residing in New England at the start of the seventeenth century.⁴⁹ In the mid-1670s, war broke out between the Wampanoags, the Narragansetts, and the European settlers, known as King Phillip's War or the Great Narragansett War.⁵⁰ King Philip, who was known as Metacom or Metacomet, was the chief of the Wampanoag tribe.⁵¹ There were two main causes of the war: first, English colonizers were using up resources and disrupting the native peoples' way of living; second, the English executed three Wampanoag Indians for murdering an Indian interpreter for the English, John Sassamon.⁵²

The Wampanoags attacked the village of Swansea and, along with the Narragansetts, dealt significant blows to the English, though they were ultimately unsuccessful.⁵³ The English won the war and much of the Native land became English land.⁵⁴ Many of the Indians became slaves and indentured servants.⁵⁵ In fact, Rhode Island's founder, Roger Williams, led the charge on establishing a committee that "urged the town [Providence] to sell the

46. *Id.*

47. *Native Americans*, R.I. DEP'T OF STATE, <https://www.sos.ri.gov/divisions/civics-and-education/for-educators/themed-collections/native-americans> [<https://perma.cc/RZN3-K8QQ>] (last visited Mar. 5, 2022).

48. *Id.*

49. *New England Native American Groups*, NAT'L GEOGRAPHIC SOC'Y, <https://www.nationalgeographic.org/encyclopedia/new-england-native-american-groups/> [<https://perma.cc/VT38-3G6U>] (last visited Mar. 5, 2022).

50. Jason W. Warren, *King Phillip's War: British-Native American Conflict*, ENCYCLOPEDIA BRITANNICA (May 20, 2020), <https://www.britannica.com/event/King-Phillips-War> [<https://perma.cc/UYE6-YUES>].

51. *Id.*

52. *Id.*

53. *King Philip's War Begins*, HISTORY, <https://www.history.com/this-day-in-history/king-philips-war-begins> [<https://perma.cc/SKW7-BBKS>] (last updated Sep. 20, 2021).

54. Warren, *supra* note 50.

55. *Id.*

‘surrenderers’ into servitude and divide the profits.”⁵⁶ Enslavement after the war affected more than one third of the surviving Narragansett, Wampanoag, and other tribes that were living in Connecticut and Massachusetts at the time.⁵⁷ King Philip’s war is known as one of the most metamorphic events in the early history of Rhode Island and the United States.⁵⁸ King Philip’s war signified the end of Native Americans retaining any form of authority in New England.⁵⁹

Today, Rhode Island is home to the Narragansett Indian tribe and the Pokanoket Tribe.⁶⁰ The Pokanoket Tribe currently has over 300 members living in Rhode Island and Massachusetts.⁶¹ The Pokanoket Tribe is not recognized at the federal or state level and they reside in the East Bay Community of Potumtuk, also known as Mount Hope, located in Bristol.⁶² Potumtuk is a sacred site for the Pokanoket people as it is where Metacomet was killed at the end of King Philip’s War.⁶³ In the 1950s Rudolph Haffenreffer donated the land of Potumtuk to Brown University and the Haffenreffer Museum of Anthropology was later built.⁶⁴ In August 2017 the Pokanokets set up an encampment to reclaim Potumtuk.⁶⁵ The Tribe reached an agreement in September 2017 which transferred a portion of the land into a trust to preserve and maintain

56. Margaret Newell, *Our Hidden History: Roger Williams and Slavery’s Origins*, PROVIDENCE J. (Aug. 20, 2020, 5:00 PM), <https://www.providencejournal.com/story/opinion/2020/08/29/our-hidden-history-roger-williams-and-slaverys-origins/42468467/> [<https://perma.cc/XA2K-55H3>].

57. *Id.*

58. Caroline Safreed, *King Philip’s War*, SIMMONS COLL. LIBR. & INFO. SCIS. (Apr. 14, 2020, 7:54 PM), <https://simmonslibguides.com/c.php?g=1006240>.

59. *Id.*

60. *Federal and State Recognized Tribes*, NAT’L CONF. OF STATE LEGISLATURES, <https://www.ncsl.org/legislators-staff/legislators/quad-caucus/list-of-federal-and-state-recognized-tribes.aspx#federal> [<https://perma.cc/XA2K-55H3>] (last visited Mar. 3, 2022); POKANOKET TRIBE, <https://pokanokettribe.com> [<https://perma.cc/4VEJ-3Y8B>] (last visited Mar. 3, 2022).

61. STUDENTS OF ROGER WILLIAMS UNIV., POKANOKET: THE FIRST PEOPLE OF THE EAST BAY, BRISTOL, RHODE ISLAND 5 (2020).

62. *Id.* at 8.

63. *Id.* at 9.

64. *Id.* at 2.

65. *Brown, Pokanoket Agree on Plan for Preservation and Inclusive Tribal Access to Bristol Land*, BROWN UNIV. (Sept. 25, 2017), <https://www.brown.edu/news/2017-09-25/agreement> [<https://perma.cc/E4HT-FRE6>].

conservation of the land and also allow access to the land by all Native American tribes in the area.⁶⁶

The Narragansett Indian tribe filed suit in 1975 against Rhode Island seeking the return of 3,200 acres of land.⁶⁷ The lawsuit was settled out of court and the Tribe only received about 1,800 acres of land.⁶⁸ In 1978 the tribe sought federal recognition and officially received recognition on April 11, 1983.⁶⁹ In October 2021, the sacred site of the Great Swamp Massacre, a battle during King Philip's war, was finally returned to the Narragansett Indian tribe after four years of negotiation.⁷⁰

Notably, many towns in Rhode Island get their names from Native American words and names. Block Island, arguably one of Rhode Island's best-known spots, was originally named Manisses.⁷¹ The name Manisses originally came from the Narragansett Indians, the first to live on the island.⁷² Manisses was quickly erased when Dutch explorer, Adrian Block, arrived on the island and named it after himself.⁷³ Aquidneck Island, home to Portsmouth, Middletown, and Newport, got its name from the Narragansett word for the island, Aquidnet.⁷⁴ Two of Rhode Island's most populated cities have names derived from Native American words: Pawtucket, meaning "at the falls," and Woonsocket, meaning "thunder mist."⁷⁵ Additionally, the villages of Yawgoo, Quonochontaug,

66. *Id.*

67. *Perseverance*, NARRAGANSETT INDIAN TRIBE, <http://narragansettindian-nation.org/history/perseverance/> [<https://perma.cc/UY3D-5SWY>] (last visited Jan. 22, 2022).

68. *Id.*

69. *Id.*

70. Brian Lightfoot Brown, *Long Overdue: Sacred Site Returned to the Narragansett*, INDIAN COUNTRY TODAY (Nov. 15, 2021), <https://indiancountrytoday.com/opinion/-long-overdue-sacred-site-returned-to-the-narragansett> [<https://perma.cc/33JE-XN2H>].

71. *History*, BLOCK ISLAND INFO, <https://www.blockislandinfo.com/island-information/history> [<https://perma.cc/S28M-GK2R>] (last visited Mar. 5, 2022).

72. *Id.*

73. *Id.*

74. See Ryan Belmore, *What's In A Name? The Origin of Newport Street Names and Landmarks*, WHAT'S UP NEWPORT (Feb 17, 2022), <https://whatsupnewp.com/2022/02/whats-in-a-name-the-origin-of-newport-street-names-and-landmarks/> [<https://perma.cc/WPC9-V444>].

75. *Pawtucket Falls*, NAT'L PARK SERV., <https://www.nps.gov/blrv/learn/historyculture/pawtucket-falls.htm#:~:text=Pawtuck->

Winnapaug, Watchuag, Shawomet, Scituate, Sakonnet, Quidnick, Pettaquamscutt, Ninigret, Nausauket, Moosup Valley, Misquamicut, Meshanticut, Matunuck, Conimicut, Chepiwanoxet, Canonchet, and Apponaug are all Native American words.⁷⁶ And the main road through Bristol, which is home to the state's only law school, is called Metacom Avenue, after the Wampanoag Sachem, Metacomet. Rhode Island is heavily influenced by Native American history and culture and yet there are currently no requirements to teach any of this history in Rhode Island schools.⁷⁷

II. CURRENT STATE OF LEGISLATION

A. *Rhode Island's Holocaust and Genocide in Secondary Schools Act*

The Holocaust and Genocide in Secondary Schools Act takes its definition of genocide from the United Nations Convention on Genocide. The Convention defines genocide as follows:

Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, such as: (i) killing members of the group; (ii) causing serious bodily or mental harm to members of the group; (iii) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (iv) imposing measures intended to prevent births within the group; and/or (v) forcibly transferring children of the group to another group.⁷⁸

The Act states that the Department of Education should provide to every school district, private school, mayoral academy, and charter school, materials that may aid the schools in creating curriculum on Holocaust and genocide education.⁷⁹ The Act further

et%20is%20an%20Algonquin%20word,mix%20of%20fresh%20and%20saltwater [https://perma.cc/AC9T-J39X] (last visited Apr. 4, 2022); ERASTUS RICHARDSON, HISTORY OF WOONSOCKET 26 (1876).

76. Charles Hillinger, *Indian History Leaves Prints in Rhode Island Names*, L.A. TIMES (May 4, 1986, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1986-05-04-vw-3567-story.html> [https://perma.cc/NM9U-8RRB].

77. Lehrer-Small, *supra* note 2.

78. R.I. GEN. LAWS ANN. § 16-93-2(1) (West 2021).

79. R.I. GEN. LAWS ANN. § 16-93-3(1) (West 2021).

states that each school district shall include in its curriculum a unit on genocide and Holocaust education and the schools are not limited to the materials provided by the Department of Education.⁸⁰

The Act also explains that school districts are not required to teach Holocaust and genocide materials every year in middle or high school but that the education shall be “utilized during appropriate times in the middle school and/or high school curricula.”⁸¹ The Act allows individual school districts to decide when it is appropriate to teach these topics but requires that students receive instruction on these topics by the time they graduate high school.⁸² The Act also explains that the instruction materials may include information on relevant genocides like “the Holocaust, Armenia, Cambodia, Iraq, Rwanda, and Darfur.”⁸³

The legislative findings of the Act explain that “education is primarily a state and local responsibility in the United States. It is states and communities, as well as public and private organizations of all kinds that establish schools and colleges and develop curricula”⁸⁴ The Act goes on to state that free education in the United States is designed to enable citizens to participate in economic, political, and social activities.⁸⁵ Lastly, the legislative findings conclude:

[G]iven the importance of the issue of genocide to the political affairs of the United States, as well as the responsibility of the state to educate its citizens, it is a fundamental responsibility of the State of Rhode Island to ensure that the critical subject of genocide is included as part of the curriculum in all public schools.⁸⁶

B. *Other States’ Models*

Other states have chosen to enact entirely separate legislation mandating Native American history in their schools and Rhode Island should follow their lead.

80. § 16-93-3(2).

81. *Id.*

82. *Id.*

83. § 16-93-3(1).

84. R.I. GEN. LAWS ANN. § 16-93-1(3) (West 2021).

85. § 16-93-1(5).

86. § 16-93-1(7).

1. *Washington*

In 2005, Washington enacted House Bill 1495 that states, “each school district board of directors is encouraged to incorporate curricula about the history, culture, and government of the nearest federally recognized Indian tribe or tribes, so that students learn about the unique heritage and experience of their closest neighbors.”⁸⁷ The bill further explains that “school districts near Washington’s borders are encouraged to include federally recognized Indian tribes whose traditional lands and territories included parts of Washington, but who now reside in Oregon, Idaho, and British Columbia. School districts and tribes are encouraged to work together to develop such curricula.”⁸⁸ In 2015, Washington amended the legislation to require curriculum about “the history, culture, and government of the nearest federally recognized Indian tribe or tribes, so that students learn the unique heritage and experience of their closest neighbors.”⁸⁹ The 2015 bill states that school districts can satisfy the requirements of the bill by using materials developed and available free of charge by the Office of the Superintendent of Public Instruction, and the bill also allows school districts to modify the curriculum in order to include materials that have a regionally specific focus or to incorporate the curriculum into existing curricular materials.⁹⁰ The State of Washington took this education mandate a step further in 2018 and passed Senate Bill 5028, that required “*Since Time Immemorial: Tribal Sovereignty in Washington State*” (STI) be integrated into all teacher preparation programs.⁹¹ STI is a curriculum that is approved by tribes and is completely online and available for free.⁹² STI allows the material to be taught flexibly but places extreme importance on inquiry and

87. H.B. 1495, 59th Leg., 2005 Reg. Sess. (Wash. 2005).

88. *Id.*

89. WASH. REV. CODE ANN. § 28A.320.170(1)(a) (LexisNexis 2022).

90. § 28A.320.170(1)(b).

91. S.B. 5028, 65th Leg., 2018 Reg. Sess. (Wash 2018).

92. *Since Time Immemorial: Tribal Sovereignty in Washington State*, WASH. OFF. OF SUPERINTENDENT OF PUB. INSTRUCTION, <https://www.k12.wa.us/sites/default/files/public/indianed/tribalsover-eighty/training/STI%20Poster%20ADAd%204-20.pdf> [https://perma.cc/4GAV-YVB6] (last visited Mar. 7, 2022).

centers the perspective and context of the material on tribal ways of knowing.⁹³

2. *North Dakota*

In April of 2021, Governor Burgum signed into law a bill that requires North Dakota schools to teach “North Dakota studies, with an emphasis on geography, history, the federally recognized Indian tribes in the state, and agriculture of this state in the fourth and eighth grades.”⁹⁴ The bill further states that “in order to be approved by the Superintendent of Public Instruction, each public and non-public high school shall provide instruction or make available to each student . . . one unit of United States history, including Native American tribal history.”⁹⁵ Prior to the 2021 enactment, state law gave discretion to individual schools on whether they wanted to teach about Native American history.⁹⁶ The original author of the bill, Ruth Buffalo, argued that passage of the bill will “help work towards building community, you know reaching a better understanding of our neighbors and also you know ultimately it is going to bring healing.”⁹⁷

3. *Montana*

In 1972, Montana amended its state constitution to include Article X, Section 1, Subsection 2, which states, “the state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.”⁹⁸

Although this amendment attempts to place an emphasis on teaching tribal history, the decision was still left up to individual teachers to decide whether they wanted to include Native American

93. *See id.*

94. S.B. 2304, 67th Leg. Assemb., Reg. Sess. (N.D. 2021).

95. *Id.*

96. Kolby KickingWoman, *Required: North Dakota Passes Native Education Bill*, INDIAN COUNTRY TODAY (Apr. 6, 2021), <https://indiancountrytoday.com/news/required-north-dakota-passes-native-education-bill> [<https://perma.cc/SU37-KV9L>].

97. *Id.*

98. MONT. CONST. art. X, § 1(2).

history in their classrooms.⁹⁹ Finally, in 1999, Montana enacted the Indian Education for All Act.¹⁰⁰ The Indian Education for All Act set out educational requirements for Montana public schools to ensure that Montana children have the opportunity to learn about Native Americans and their history and culture.¹⁰¹ The Indian Education for All Act requires:

- (a) [E]very Montanan, whether Indian or non-Indian, be encouraged to learn about the distinct and unique heritage of American Indians in a culturally responsive manner; and (b) every educational agency and all educational personnel will work cooperatively with Montana tribes or those tribes that are in close proximity, when providing instruction or when implementing an educational goal or adopting a rule related to the education of each Montana citizen, to include information specific to the cultural heritage and contemporary contributions of American Indians, with particular emphasis on Montana Indian tribal groups and governments.¹⁰²

Montana's law also states:

It is also the intent of this part, predicated on the belief that all school personnel should have an understanding and awareness of Indian tribes to help them relate effectively with Indian students and parents, that educational personnel provide means by which school personnel will gain an understanding of and appreciation for the American Indian people.¹⁰³

99. Adrian Jawort, *Montana Schools Try to Keep Indian Students Engaged by Teaching Indian Culture to All*, INDIAN COUNTRY TODAY (Sept. 13, 2018), <https://indiancountrytoday.com/archive/montana-schools-try-to-keep-indian-students-engaged-by-teaching-indian-culture-to-all> [https://perma.cc/X487-5KPZ].

100. *Id.*

101. Mark Cater et al., *Montana is Failing its Constitutional Promise to Teach Native American History*, AM. CIV. LIBERTIES UNION (July 22, 2021), <https://www.aclu.org/news/racial-justice/montana-is-failing-its-constitutional-promise-to-teach-native-american-history/> [https://perma.cc/2JC3-NBR4].

102. MONT. CODE ANN. § 20-1-501(2)(a)–(b) (2021). Some sections may have multiple versions due to amendments by multiple acts.

103. § 20-1-501(3).

In July of 2021, the American Civil Liberties Union of Montana filed a lawsuit on behalf of several Indian tribes as well as students and parents seeking an order that requires the Board of Public Education to set standards for the Indian Education for All program, require the Superintendent of Public Instruction to ensure that schools meet these standards, and require schools to accurately report how they are spending their allocated funds for the Indian Education for All program.¹⁰⁴ The complaint alleges that a 2015 evaluation of the Indian Education for All program found that “Montana did not have sufficient standards, reporting requirements, or accountability for spending the funding” allocated for the program.¹⁰⁵ The complaint alleges several other issues including minimal implementation in several schools, allocated funds being spent in ways that do not advance the program, schools not spending the allocated funds at all, and a lack of standards or requirements for schools to cooperate with tribes to develop the curriculum or ways to report how working with tribes went.¹⁰⁶

4. *Connecticut*

In 2021, Connecticut passed legislation making Native American history mandatory in public schools, beginning in the 2023–2024 school year.¹⁰⁷ Connecticut’s bill states that “each local and regional board of education shall include Native American studies as part of the social studies curriculum for the school district [...]. Such Native American studies curriculum shall include but need not be limited to a focus on the Northeastern Woodland and Native American Tribes of Connecticut.”¹⁰⁸ The legislation states the curriculum may consist of material provided by the State Board of Education or other appropriate materials so long as it complies with

104. Amy Beth Hanson, *Montana Tribes Sue Over Indian Education Compliance*, AP NEWS (July 22, 2021), <https://apnews.com/article/religion-education-montana-a93ff2db8d888ab446e3aa586752bc68> [https://perma.cc/Z45A-U94F].

105. *Id.*

106. *Id.*

107. Susan Haigh, *Push for Native American Curriculum in Schools Makes Gains*, AP NEWS (Sept. 14, 2021), <https://apnews.com/article/education-race-and-ethnicity-racial-injustice-laws-connecticut-f6a9eb4604f5deab2d37b280dc557e9a> [https://perma.cc/X7KE-PXSQ].

108. 2021 Conn. Acts 595 (Spec. Sess.).

state subject-matter and content standards.¹⁰⁹ In terms of funding, the statute states local or regional boards of education are able to accept grants, gifts, and donations designated for Native American curriculum.¹¹⁰ The 2021 legislation is to continue for every school year after its original commencement during the 2023–2024 academic year. Prior to the 2021 legislation, Connecticut’s statewide content and subject matter requirements only encouraged school boards to include education pertaining to Native American history.¹¹¹

III. PROPOSED CHANGES

Rhode Island should amend the Act to require Native American history be taught as part of the Holocaust and genocide curriculum. Alternatively, Rhode Island should enact separate legislation mandating Native American history in Rhode Island history and social studies courses.

A. *Amending the Holocaust and Genocide in Secondary Schools Act*

First, Native Americans are a racial group and, therefore, fall under one of the four protected classes under the United Nations Convention on Genocide, which the Act uses to define what genocide means. The United States Census defines Native Americans as “person[s] having origins in any of the original peoples of North and South America and who maintain[s] tribal affiliation or community attachment.”¹¹² Native Americans are counted as a distinct racial group on the United States census, which is the official method of calculating the country’s population and demographics. Therefore, Native Americans are clearly a racial group, and are protected under the United Nations Convention on Genocide. Furthermore, the Census definition refers to maintenance of tribal affiliation or community attachment, both of which many Native Americans uphold.

109. *Id.*

110. *Id.* at 596.

111. CONN. GEN. STAT. ANN. § 10-16b (West 2019) (amended 2021).

112. *Race*, U.S. CENSUS BUREAU, <https://web.archive.org/web/20220306082349/https://www.census.gov/quickfacts/fact/note/US/RHI625219> [<https://perma.cc/RM4U-LRE4>] (last visited Mar. 7, 2022).

Second, several of the acts committed against Native Americans and Indian Nations satisfy the Act's definition of genocide. The first type of action that qualifies under the Act is killing members of a racial group.¹¹³ Native Americans and members of Indian Nations have been specifically targeted and killed since this country was founded.¹¹⁴ As discussed earlier in this comment, the United States was founded on the Doctrine of Discovery.¹¹⁵ The Doctrine of Discovery allowed European settlers to do whatever was necessary to take land from the Native Americans, including massacring them.¹¹⁶ The killings of Native Americans in the name of the Doctrine of Discovery was done with the intent to destroy, in part or in whole (as required by the Act's definition of genocide), tribes because European settlers wanted the land for themselves, and eliminating tribes inhabiting the land was the easiest way to obtain it. The very principle on which our nation was founded was intended to destroy a racial group and this was the beginning of genocide against Native Americans and Indian nations.

The Indian Removal period that President Andrew Jackson spearheaded is another example of distinct and targeted killing of Native Americans.¹¹⁷ As mentioned previously, President Jackson was an advocate for the Removal Act of 1830, which allowed the President to give land west of the Mississippi River to Native American tribes as long as they would "consent" to leaving their native homelands east of the Mississippi River.¹¹⁸ The federal government tried to con the tribes into giving up their land by offering financial assistance and promising the tribes that the federal government would protect them, and the tribes eventually gave in, but not without perish.¹¹⁹ Tribes were forced to move west and walk several thousand miles to their new homes.¹²⁰ Several thousand Indians died during this trek due to disease and famine.¹²¹ The government claims this removal was to give white settlers land east

113. R.I. GEN. LAWS ANN. § 16-93-2 (West 2021).

114. *The Doctrine of Discovery, 1493*, *supra* note 9.

115. *Id.*

116. *Id.*

117. *Indian Treaties and the Removal Act of 1830*, *supra* note 19.

118. *Id.*

119. *Id.*

120. *Trail of Tears*, *supra* note 24.

121. *Id.*

of the Mississippi, but in reality it was to kill off Native Americans and the federal government knew that would happen if they forcibly removed tribes from their land.

This forcible removal of Indians from their land also satisfies another type of action under the Act's definition of genocide; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part. Forcing thousands of Native Americans to walk thousands of miles in harsh weather conditions is a prime example of deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part. The removal of Indians from their land was done with the intent to destroy the tribes in part or in whole. There is no possible way to spin the removal of Indians into anything but genocide.

Furthermore, the United States has caused serious bodily or mental harm to members of Native American tribes, another type of genocide under the Act. The most notable example of causing bodily and mental harm to Native Americans is the Boarding School Era. Native American boarding schools began in the 1800s and did not end until the mid 1900s.¹²² Native American children were taken from their families and forced to attend these schools, and the schools' only goal was to destroy Indian culture and make the children more "American." The children had to forget everything they knew about being an Indian and that is the most severe mental harm to which one can be subjected. Indian children were also abused physically and sexually while at these schools and that resulted in severe mental trauma that many communities are still dealing with today. Forcing Indian children to forget their native identity and subjecting them to abuse was done for the sole purpose of trying to eliminate Native American heritage and culture, and that is clearly a form of genocide.

The Boarding School Era is an example of forcibly transferring children of the group to another group and is a form of genocide under the Act. Indian parents had no choice but to send their kids to these schools. Forcing these children to attend boarding schools run by Christian missionaries is an example of a forcible transfer and is genocide under the Act's definition. Indian boarding schools

122. Glauner, *supra* note 35, at 440–41.

were created with the intent to destroy, in whole or in part, Native Americans and erase them from existence.

Almost every type of action defined as genocide under the Act is satisfied when we look at American history and what was done to the Indians. As a matter of law, under the United Nations Convention on Genocide, what happened to the Native Americans and Indian Nations in the United States is genocide and therefore should be taught in Rhode Island schools as part of the Holocaust and genocide curriculum.

As written, the Act does not require any specific genocide be taught to Rhode Island children. The law provides only that “the curriculum materials may include information on relevant genocides, including the Holocaust, Armenia, Cambodia, Iraq, Rwanda, and Darfur.”¹²³ Native American history is not even listed as an example of genocide that could be taught in Rhode Island schools, despite its occurrence not just in the United States generally, but in this state specifically. It is shameful that the General Assembly failed to acknowledge the genocide that occurred on Rhode Island land and continues to disenfranchise Indians.

As discussed above, the Act asserts it is the state’s responsibility to educate its citizens. But the Act fails to address that states have a responsibility to give their citizens a complete and accurate education as to what genocide is if they are going to require instruction on the Holocaust and other forms of genocide. Failing to include Native American history as part of the curriculum does the complete opposite. The tragedies that happened to the tribes and Indian Nations in the United States is genocide as defined under the Act and therefore the Act must be amended to require Native American history be taught to Rhode Island’s youth.

There are currently no specific genocides required under this law which makes it easy for schools to avoid addressing the harsh realities of our nation’s history. The Act provides examples of various genocides that have happened around the world but fails to acknowledge the genocide that has taken place in our own country once again invalidating the Indian experience. By mandating Native American history be taught as part of the genocide curriculum, not only would the State of Rhode Island be acknowledging what happened to tribes and Indian Nations, but Rhode Island would

123. R.I. GEN. LAWS Ann. § 16-93-3(1) (West 2021).

also be furthering the goal of the legislation by ensuring that the critical subject of genocide is accurately included as part of the curriculum in all public schools.

Amending the current legislation is the most straightforward approach the General Assembly can take. The Act clearly already exists and the intent behind the legislation is well-grounded, but as discussed above needs slight tweaking to include Native history. Amending the Act would be less time-consuming and save the state money. Further, amending the Act would allow this curriculum to get into schools faster and would allow more students to be educated on Native American genocide.

B. *Adopting Education-Specific Legislation in the Alternative*

An alternative to amending the Act is enacting entirely new legislation that mandates Native American history be taught in Rhode Island schools.

1. *Adopting a Hybrid Model*

Rhode Island should take components from the Washington, Connecticut, and North Dakota models to form its own legislation. Starting with Washington state's mandate, the teaching of Native American studies is required not just encouraged. Requiring the education be mandatory is the single most important element of enacting new legislation because it does not allow discretion of individual teachers and schools as to whether they want to teach the curriculum. If Rhode Island allows individual teachers and schools to decide whether to teach about Native Americans, there is a significant likelihood the curriculum will not be taught at all.

Since Time Immemorial is a program that has been approved by the tribes in Washington. Rhode Island should have their native studies materials approved by tribes in Rhode Island. As mentioned previously, there is one federally recognized tribe in Rhode Island, the Narragansett Indian Tribe, as well as the Pokanoket Tribe. It would be quite simple for curriculum developers to meet with members of the tribes and have them review the curriculum. Having the tribes approve the curriculum ensures that their history, culture, and practices are represented appropriately and adequately. Allowing the tribes to be involved in creating curriculum is also a good way to honor them and start repairing the State of

Rhode Island's relationship with the Narragansetts and Pokanokets. Furthermore, the *Since Time Immemorial* program is completely free to educators. Rhode Island should provide resources to educators that are completely free as funding is often a concern for teachers and schools when it comes to new requirements. If schools do not have to fret about allocating certain funds to this specific program, it will reduce the stress on educators and will likely ensure that the curriculum is taught because teachers have access to free resources, and they do not have to spend time trying to find programs or materials for their lesson plans.

Second is Connecticut's model. As mentioned, Connecticut's legislation gives discretion to the schools pertaining to the actual material being taught. Connecticut requires that the materials cover Northeast Woodland and Native American tribes of Connecticut, but it need not be limited to those tribes. Rhode Island should certainly include a similar provision. While Rhode Island has only one federally recognized tribe, there are several other tribes that once called Rhode Island, and education on those tribes should be encouraged and not excluded from studies. Rhode Island should require that lessons be taught on the Narragansett and Pokanoket tribes, but the legislation should also mandate lessons be taught on tribes that were once located in Rhode Island.

Connecticut further allows discretion about how the material is taught. Connecticut allows educators to use materials produced by the State Board of Education and it allows teachers to use other materials if those materials comply with state subject-matter standards. By providing this discretion it allows teachers to get creative with their lesson plans and does not completely take away teachers' freedom to teach the way they would like. Connecticut's law does not give discretion about whether to teach the topic at all, it just provides discretion as to how the material is taught and that is a crucial distinction.

Rhode Island should also include a provision like North Dakota's, which states the instruction should be done in fourth and eighth grade. While those specific grade years are not necessary, Rhode Island should include a provision that recommends specific years in which Native American history should be taught. A recommendation like this will help teachers decide when it is appropriate to provide these materials to students and make the process of implementing a new requirement a lot easier.

While Montana has made notable efforts to encourage Native American studies in schools, Rhode Island should not model its legislation off Montana's because Montana does not make teaching Native American studies mandatory. Montana students face extreme difficulty in getting access to education pertaining to Native American history because it is not mandatory. It would also be a very difficult, expensive, and time-consuming process to attempt to amend Rhode Island's state constitution, rather than just enacting new legislation dealing with this specific educational requirement.

In sum, Rhode Island can look to Washington, Connecticut, and North Dakota for guidance when enacting legislation making Native American studies in schools mandatory. Rhode Island should enact legislation that requires Native American history be taught in secondary schools and should leave discretion up to the individual schools and teachers as to how they would like to teach the material. Rhode Island should not just encourage educators to teach about Native American studies because when given that option, educators can prioritize other subjects and the erasure of Native Americans, and their culture will just continue. Rhode Island should provide a general timeframe, so schools and teachers know when it is appropriate to introduce these materials to schoolchildren. Indian tribes are an important part of Rhode Island history and Rhode Island has a duty to teach its children a full and accurate history of not only the state, but America and that duty can be fulfilled by requiring Native American history be taught to Rhode Island's children.

C. Arguments in Opposition

The first and likely most popular question would be why do we need to amend our current legislation or create new legislation to include Native American studies? Well, Rhode Island owes it to Native Americans to inform our youth about the genocide that happened to Indian tribes. The reasoning behind why Rhode Island enacted the Holocaust and Genocide Education in Secondary Schools Act according to Senator Goldin was:

[G]iven the hate and bigotry that is common in public discourse today, it is especially important to educate students about the incredible damage that prejudice and intolerance have caused throughout history. The best way to ensure

our future generations never repeat these actions is to teach them about the impact the Holocaust and other genocides have had in our world.¹²⁴

Esther Kalajian, a member of the Armenian National Committee of Rhode Island further stated that “through this established curriculum and the continued work of the commission, RI’s students will not only receive instruction on historical facts but also gain important skills to participate in civil discourse, appreciate diversity of thought, and abide by inclusive principles.”¹²⁵

This same reasoning applies to learning about Native Americans and their history. Rhode Island students cannot “appreciate diversity of thought” and “abide by inclusive principles” if the education they are receiving is not complete. Rhode Island students need to learn about the horrors that happened to Native Americans on Rhode Island soil. The atrocities against Indians are part of the “prejudice and intolerance” to which Senator Goldin refers. As Senator Goldin stated, the best way to ensure our future generations never repeat the same conduct is to teach them about it. We cannot prevent future and continued erasure of Native Americans if our students do not have an accurate account of Native American history.

The second major counterargument is that there is a lack of funding for new educational requirements. The Smithsonian’s National Museum of the American Indian has launched Native Knowledge 360 Degrees (NK360°).¹²⁶ The aim of NK360° is to improve how students are taught about Native American History and culture.¹²⁷ NK360° is focused on elevating and emphasizing indigenous voices and perspectives.¹²⁸ NK360° has a ten-part series for teachers that aids teachers and provokes them to think about how

124. *RI Governor Signs Law Creating Genocide and Holocaust Education Commission*, ARMENIAN WKLY. (Aug. 4, 2021), <https://armenianweekly.com/2021/08/04/ri-governor-signs-law-creating-genocide-and-holocaust-education-commission/> [<https://perma.cc/47UA-HMEN>].

125. *Id.*

126. Anna Diamond, *Inside a New Effort to Change What Schools Teach About Native American History*, SMITHSONIAN MAG., (Sept. 18, 2019), <https://www.smithsonianmag.com/smithsonian-institution/inside-new-effort-change-what-schools-teach-about-native-american-history-180973166/> [<https://perma.cc/D55S-A53T>].

127. *Id.*

128. *Id.*

they teach Native American studies in their classrooms.¹²⁹ This ten-part framework contradicts narratives that have been carried out in schools through text books and other materials.¹³⁰ The best part about NK360° is that there are online lesson plans available for teachers to use free of charge.¹³¹ The Museum is continuing to develop NK360° and adding additional lesson plans for teachers.¹³² The Museum's website also contains additional resources for educators free of charge, such as the online exhibits section.¹³³ The State of Rhode Island could also collaborate with local and state libraries as well as the many college and university libraries across Rhode Island to establish a program for teachers to have free access to Indigenous studies materials.

CONCLUSION

Rhode Island's educational requirements, or lack thereof, are failing Rhode Island students. Rhode Island can begin to mend their relationship with Native American nations by amending the Holocaust and Genocide in Secondary Schools Act to mandate Native American studies in schools. The atrocities committed against Native Americans nationwide and in Rhode Island are genocide under the Act's definition and need to be recognized by the State of Rhode Island, and furthermore, need to be taught to Rhode Island's youth.

Alternatively, the Rhode Island General Assembly should enact entirely new legislation, by following the models of Washington, Connecticut, and North Dakota, requiring Native American history be taught in schools. The culture and history of Native Americans is woven in everyday life in Rhode Island by the towns we live in, the roads we drive on, and the land on which our houses sit. Rhode Island must acknowledge the vicious acts committed against Native Americans in its curriculum because Native Americans are still here and deserve recognition.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*