

Treaty between the United States of America and the Kickapoo Tribe of Indians. Concluded June 28, 1862. Ratification advised, with amendment, by Senate, March 13, 1863. Amendment accepted May 5, 1863. Proclaimed by the President of the United States, May 28, 1863.

ABRAHAM LINCOLN,

PRESIDENT OF THE UNITED STATES OF AMERICA,

TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING :

June 28, 1862.

WHEREAS a treaty was made and concluded at the Agency of the Kickapoo Tribe of Indians, on the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and sixty-two, by and between Charles B. Keith, Commissioner, on the part of the United States, and the hereinafter named Chiefs, Headmen, and Delegates of the Kickapoo Indians, for and on behalf of said Indians, and duly authorized thereto by them, which treaty is in the words and figures following, to wit:

Preamble.

Articles of a Treaty made and concluded at the agency of the Kickapoo Tribe of Indians, on the 28th day of June, in the year of our Lord one thousand eight hundred and sixty-two, by and between Charles B. Keith, Commissioner, on the part of the United States, and the undersigned Chiefs, Headmen, and Delegates of the Kickapoo nation, on behalf of said nation.

Contracting parties.

ARTICLE I. The Kickapoo Tribe of Indians, believing that it will contribute to the civilization of their people to dispose of a portion of their present reservation in Kansas, consisting of one hundred and fifty thousand acres of land, to allot land in severalty to those members of said tribe who desire to have separate tracts of lands, and have adopted the customs of the whites, and to set apart for the others of said tribe a portion of said reservation, to be held by them in common, or (if a majority of them so elect) provide for them a suitable home elsewhere, to be held by them in common, it is therefore hereby agreed that the Commissioner of Indian Affairs shall cause the whole of said reservation to be surveyed in the same manner as the public lands are surveyed, and the quantity of land hereinafter mentioned to be set apart to those of said tribe who desire to have their land in severalty; and, if so elected by a majority of the others of said tribe, the quantity of land hereinafter mentioned to be by such others held in common, and the remainder of the land, after the special reservations hereinafter provided for shall have been made, to be sold for the benefit of said tribe.

Reservation to be surveyed.

Portion to be set apart.

See page 20.

Remainder to be sold.

ARTICLE II. It shall be the duty of the agent of the United States for said tribe to take an accurate census of all the members of the tribe, and to classify them in separate lists, showing the names, ages, and numbers of those desiring lands in severalty, and of those desiring lands in common, designating chiefs and heads of families respectively; each adult choosing for himself or herself, and each head of a family for the minor children of such family, and the agent for orphans and persons of an unsound mind and otherwise incompetent, as to which of these classes they will belong. And thereupon shall be assigned, under the direction of the Commissioner of Indian Affairs, to each chief, at the signing of the treaty, one half section; to each other head of a family, one quarter section; and to each other person, forty acres of land; to include in every case, as far as practicable, to each family, their improvements and a reasonable portion of timber, to be selected according to the legal subdivision of survey. When such assignments shall have been completed, certificates shall be issued by the Commissioner of Indian Affairs for the tracts

Census of the tribe to be taken.

See page 21.

Separate lists to be made.

Assignments of land.

Certificates to issue.

Lands to be exempt from taxation, &c.

Persons receiving certificates to relinquish, &c.

Patents in fee-simple when to issue to allottees.

Their shares of credits to be paid them.

See page 21.

They to become citizens of the United States.

Oath of allegiance and proof.

Provision for those members who wish to hold their lands in common.

Effect of assignment in common.

New home to be purchased, &c.

See page 21.

assigned in severalty, specifying the names of the individuals to whom they have been assigned respectively, and that said tracts are set apart for the perpetual and exclusive use and benefit of such assignees and their heirs. Until otherwise provided by law, such tracts shall be exempt from levy, taxation, or sale, and shall be alienable in fee, or leased, or otherwise disposed of only to the United States, or to persons then being members of the Kickapoo tribe, and of Indian blood, with the permission of the President, and under such rules and regulations as the Secretary of the Interior shall provide, except as may be hereinafter provided. And on receipt of such certificates, the person[s] to whom they are issued shall be deemed to have relinquished all right to any portion of the lands assigned to others in severalty, or to a portion of the tribe in common, and to the proceeds of sale of the same whensoever made.

ARTICLE III. At any time hereafter, when the President of the United States shall have become satisfied that any adults, being males and heads of families, who may be allottees under the provision of the foregoing article, are sufficiently intelligent and prudent to control their affairs and interests, he may, at the requests of such persons, cause the land severally held by them to be conveyed to them by patent in fee-simple, with power of alienation; and may, at the same time, cause to be paid to them, in cash, or in the bonds of the United States, their proportion of the cash value of the credits of the tribe, principal and interest, then held in trust by the United States, and also, as the same may be received, their proportion of the proceeds of the sale of lands under the provisions of this treaty. And on such patents being issued, and such payments ordered to be made by the President, such competent persons shall cease to be members of said tribe, and shall become citizens of the United States; and thereafter the lands so patented to them shall be subject to levy, taxation, and sale, in like manner with the property of other citizens: *Provided*, That, before making any such application to the President, they shall appear in open court, in the district court of the United States for the district of Kansas, and make the same proof and take the same oath of allegiance as is provided by law for the naturalization of aliens; and shall also make proof, to the satisfaction of said court, that they are sufficiently intelligent and prudent to control their affairs and interests; that they have adopted the habits of civilized life, and have been able to support, for at least five years, themselves and families.

ARTICLE IV. To those members of said tribe who desire to hold their lands in common, there shall be set apart from the present reservation of the tribe an undivided quantity, sufficient to allow one half section to each chief, one quarter section to each other head of a family, and forty acres to each other person; and said land shall be held by that portion of the tribe for whom it is set apart by the same tenure as the whole reserve has been held by all of said tribe under the treaty of 1854. And upon such land being assigned in common, the persons to whom it is assigned shall be held to have relinquished all title to lands assigned in severalty, and in the proceeds of sales thereof whenever made; or should a majority of the adult males of said class decide to remove to the Indian country south of Kansas, then, and in that case, their new home shall not be limited to the quantity above designated, but shall be as large as can be purchased with the proceeds of the sale of the tract to which they would have been entitled had they determined to remain upon the present reservation, computing the same at the rate of at least one dollar and twenty-five cents per acre: *Provided*, That the purchase of such new home shall be made by the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, and at such locality within said Indian country as he may select: *And provided, also*, That such new home shall be purchased and the Indians entitled removed thereto, at the cost of the United States, within the period of two years after the completion of the surveys

herein provided for. And such Indians shall be entitled to the benefits of their full proportionate share of all assets belonging to said tribe, in the same manner that they would have been entitled had such removal not been made.

ARTICLE V. The Kickapoo tribe of Indians, entertaining the opinion that it is the desire of the government and the people of the United States to extend railroad communication as far west as possible in the shortest possible time, and believing that it will greatly enhance the value of their lands reserved in severalty by having a railroad built, connecting with the eastern railroads running from the city of Atchison, in the state of Kansas, westerly in the direction of the gold mines in Colorado territory; and entertaining the opinion that the Atchison and Pike's Peak Railroad Company, incorporated by an act of the legislative assembly of the territory of Kansas, approved February 11th, 1859, has advantages for travel and transportation over all other companies, it is therefore provided that the Atchison and Pike's Peak Railroad Company shall have the privilege of buying the remainder of their land within six months after the tracts herein otherwise disposed of shall have been selected and set apart, provided said railroad company purchase the whole of such surplus lands at the rate of one dollar and twenty-five cents per acre; and when the selections shall have been made and assigned as aforesaid, it shall be the duty of the Commissioner of Indian Affairs to notify the president of said railroad company thereof; and if said railroad company signifies its consent to purchase said surplus lands, the Secretary of the Interior shall issue to said railroad company certificates of purchase, and such certificates shall be deemed and held in all courts as evidence of title and possession in said railroad company to all or any part of said lands, unless the same shall be forfeited as hereinafter provided. And if said railroad company make such purchase, it shall be subject to the following considerations, viz: They shall construct and fully equip a good and efficient railroad from the city of Atchison, in the state of Kansas, westerly, within six years, and as follows: The first section of fifteen miles of said road to be completed within three years from the date of said purchase, and the second section to a point as far west as the western boundary of said reservation within three years thereafter; and no patent or patents shall issue to said company or its assigns for any portion of said lands until the first section of said road shall be completed, and then for not more than one half of said lands; and no patent or patents shall issue to said company or its assigns for any of the remaining portion of said lands until said second section of said railroad shall be completed as aforesaid; and before any patents shall issue for any part of said lands, payments shall be made for the lands to be patented at the rate of one dollar and twenty-five cents per acre. And said company shall pay the whole amount of the purchase-money for said lands in the securities of the United States to the Secretary of the Interior, in trust for said Kickapoo Tribe of Indians, within six years from the date of such purchase; and when so paid the President is authorized hereby to issue patents therefor. Said company shall, in like manner, pay to the Secretary of the Interior, in trust as aforesaid, each and every year, until the whole purchase-money shall have been paid, interest from date of purchase, at six per cent. per annum, on all the purchase-money remaining unpaid. Said interest, and the interest due on the purchase-money after it is paid to the United States, shall be held in trust and paid to said Indians on the first day of April of each and every year; and in ten years from the ratification of this treaty there shall be paid by the United States to said tribe of Indians ten thousand dollars, as their first instalment upon the amount of said purchase-money, and ten thousand dollars each and every year thereafter until all is paid.

Atchison and Pike's Peak Railroad may buy certain lands.

Proviso.

See page 21.

Conditions of purchase.

ARTICLE VI. In case said railroad company shall fail to complete either section of said railroad in a good and efficient manner, or shall fail

Contract or purchase when to be null and void.

See page 21.

Patents to con-
tain what con-
ditions.

to pay the whole of the purchase-money for said lands within the time herein prescribed, or shall fail to pay all or any part of the interest upon the same each year as aforesaid, within thirty days from the date when such payment of interest shall fall due, then the contract or purchase shall be deemed and held absolutely null and void, and shall cease to be binding on either of the parties hereto, and said company or its assigns shall forfeit all payments of principal and interest made on such purchase, and all right and title, legal and equitable, of any kind whatsoever, in and to all and every part of said lands which shall not have been before the date of such forfeiture earned and paid for pursuant to the provisions of this treaty. And whenever any patents shall issue to said railroad company for any part of said lands, it shall contain the condition that the said company shall sell the lands described in such patent, except so much as shall be necessary for the working of the road, within five years from the issuing of such patent. And said company shall have the perpetual right of way over the lands of the Kickapoos not sold to it for the construction and operation of said railroad, not exceeding one hundred feet in width, and the right to enter on said lands and take and use such gravel, stone, earth, water, and other material, except timber, as may be necessary for the construction and operation of the said road, making compensation for any damages to improvements caused by obtaining such material, and for any damages arising from the location or running of said road, to improvements made before the road was located; such damages and compensation, in cases where said company and the persons whose improvements are injured or the property taken cannot agree, to be ascertained and adjusted under the direction of the Commissioner of Indian Affairs. And in case said company shall not promptly pay the amount of such damages and compensation, the Secretary of the Interior may withhold patents for any part of the lands purchased by them until payment be made of the amount of such damages, with six per cent. interest thereon from the date when the same shall have been ascertained and demanded; and in case said company shall not purchase said surplus lands, or having purchased, shall forfeit the whole or any part thereof, the Secretary of the Interior shall thereupon cause the same to be appraised at not less than one dollar and twenty-five cents per acre, and shall sell the same in quantities not exceeding one hundred and sixty acres at auction, to the highest bidder for cash, at not less than [the] appraised value: *Provided, however,* In case any of said lands have been conveyed to bona fide purchasers by said railroad company, such purchasers shall be entitled to a patent for said lands so purchased by them on payment of one dollar and twenty-five cents per acre therefor, under such rules and regulations as may be prescribed by the Secretary of the Interior. On the purchase of said lands by the said railroad company the same shall become a part of the state of Kansas, but none of said lands shall be subject to taxation until the patents have been issued therefor.

Statement of
amounts due the
Kickapoos under
treaties, and of
amounts received
to be made.

See page 21.

ARTICLE VII. The Kickapoos having heretofore negotiated treaties with the United States containing various stipulations in their behalf, which they claim have not been fully complied with, it is hereby provided that a correct statement of the amount that was agreed to be paid by any and all treaty stipulations, of all the treaties heretofore made, and also of all amounts received by said tribe by virtue of such treaty stipulations, shall be made under the direction of the Commissioner of Indian Affairs; and in case any amount shall be found due or unpaid to said Indians, the same, together with all annuities which have not heretofore been kept up and paid, shall now be paid up in full to said tribe, together with all the interest thereupon.

Dwelling-house
to be erected for
each head of
family.

See page 21.

ARTICLE VIII. For the purpose of comfortably establishing the Kickapoo Tribe of Indians upon the lands to be assigned to them in severalty, the agent of said tribe, upon the ratification of this treaty, shall cause

to be erected for each head of a family a suitable dwelling-house, to be paid for out of the first moneys due said Indians, and not otherwise appropriated.

ARTICLE IX. It is hereby agreed that the Commissioner of Indian Affairs, with the concurrence of the Secretary of the Interior, shall appoint a commissioner whose duty it shall be to ascertain the amount of losses sustained by said Kickapoo nation by reason of the destruction of their timber, and the stealing of their horses, cattle, and other property by the whites and hostile Indians, and said amount, when so ascertained, shall be paid as follows, viz: the amount of losses sustained by the destruction of their timber shall be invested in the purchase and erection of a steam saw and grist mill, provided said sum shall not amount to more than eight thousand dollars; the residue, if any, shall be invested in six per cent. United States or state bonds and added to the fund now held in trust by the United States for said tribe; and to each member of said tribe shall be paid, in gold or silver, the amount he or she may have lost by reason of the stealing of horses, cattle, and other property: *Provided*, That said amounts shall not, altogether, exceed fifty thousand dollars. And if a larger sum shall be claimed and proved up, the amount shall be paid *pro rata*, and shall be in full of all demands arising from such causes.

Certain losses sustained by the Kickapoos, how to be ascertained and paid.

See page 21.

Not to exceed \$50,000 in the whole.

ARTICLE X. Whereas some years since a portion of the Kickapoos went down among the Southern Indians, and there is reason to believe that but few, if any, of them will ever return, and they having been notified of the provisions of this treaty, it is hereby agreed that they shall receive no benefits arising therefrom, unless they return to the present reservation of the Kickapoos within six months from the date of this instrument, in which case it is hereby agreed that forty acres each be allotted to them, with the understanding that they will occupy, improve, and cultivate the same, and in every respect to be governed by the same rules and regulations as is prescribed for the government of the lands reserved by the preceding articles.

Provision as to Kickapoos who heretofore went South.

See page 21.

ARTICLE XI. There shall be reserved six hundred and forty acres of land to be selected by the chiefs of said tribe of Kickapoos as a site for a saw and grist mill, three hundred and twenty acres where the mission-house now is, and one hundred and sixty acres where the house built for the agency now is, which, with the improvements thereupon, shall be disposed of when the objects for which they have been reserved shall have been accomplished, in such a manner and for such purposes as the Secretary of the Interior shall determine to be just and equitable for the benefit of the Kickapoos.

Reservation for saw and grist-mill.

See page 21.

ARTICLE XII. The fund now held in trust by the United States for said tribe of Indians for educational purposes shall be invested in six per cent. United States or state bonds, and the interest thereof expended annually, under the direction of the Commissioner of Indian Affairs, for agricultural, school, and other beneficial purposes for said Indians.

Investment of fund for educational purposes.

Interest, how applied.

See page 21.

ARTICLE XIII. Inasmuch as it was provided by the treaty between the United States and said Kickapoos, entered into on the 18th day of May, A. D. 1854, that the President may cause to be surveyed, in the same manner that the public lands are surveyed, the reservation provided for the Kickapoos, it is agreed that the expense of said surveys shall be paid by the United States, and all expenses incident to the negotiation and execution of this treaty, and not otherwise provided for, shall be defrayed by the Kickapoos; the same to be deducted from any funds applicable to that purpose now or hereafter held for them in trust by the United States; and the Commissioner of Indian Affairs, with the concurrence of the Secretary of the Interior, shall, from time to time, and as promptly as practicable, adopt such measures and institute all such proceedings as may be necessary and not otherwise provided for, in order to the full execution of all and every part of this treaty.

Expenses of surveys to be paid by the United States.

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See page 21.

See page 21.

Reservation
ceded to the
United States.

ARTICLE XIV. It is further agreed that all rights, title, and interest of the Kickapoos in their present reservation shall cease, and the same is hereby ceded to and vested in the United States, subject to the limitations and for the purposes herein expressed and provided for.

Inconsistent
stipulations of no
effect.

ARTICLE XV. Any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect.

Effect of rejection,
&c., of any
article of this
treaty.

ARTICLE XVI. Should the Senate reject or amend any of the foregoing articles, such rejection or amendment shall not affect the other provisions of this treaty, but the same shall go into effect when ratified and approved.

Signature.

In testimony whereof, the said Charles B. Keith, commissioner as aforesaid, and the undersigned chiefs, headmen, and delegates of the Kickapoo Tribe of Indians, have hereunto set their hands and seals, at the place, on the day, and in the year hereinbefore written.

CHARLES B. KEITH, [SEAL.]

Commissioner on behalf of the United States.

CHIEF PAR-THEE, or the Elk Chief, his x mark. [SEAL.]

CHIEF PAH-KAH-KAH, or John Kennekuk,
his x mark. [SEAL.]

CHIEF MACK-A-TAIR-CHEE-QUA, or Black Thunder,
his x mark. [SEAL.]

KEN-NE-KUK, or Stephen Pension-eau,
his x mark. [SEAL.]

MAH-MAH-SHE-COW-AH, or Bear Track,
her x mark. [SEAL.]

PET- TI-QUAUK, or Rolling Thunder, his x mark. [SEAL.]

JOHN C. ANDERSON, [SEAL.]

TOTH-WAY, or Frank Cadue, his x mark. [SEAL.]

Executed in presence of—

JOHN E. BADGER.

H. C. PURSEL.

NELSON S. SHALER.

PASCHALL PENSIONEAU, his x mark, *U. S. Interpreter.*

W. D. BARNETT, *witness to signature of Paschall Pensioneau.*

Ratification,
with amendment.

And whereas, the foregoing treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the thirteenth day of March, one thousand eight hundred and sixty-three, advise and consent to the ratification of the same by resolution, and with an amendment in the words and figures following, to wit:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
March 13th, 1863.

Resolved, (two thirds of the Senators present concurring,) That the Senate advise and consent to the ratification of the "Articles of a treaty made and concluded at the Agency of the Kickapoo Tribe of Indians, on the 28th day of June, in the year of our Lord one thousand eight hundred and sixty-two, by and between Charles B. Keith, commissioner on the part of the United States, and the undersigned chiefs, headmen, and delegates of the Kickapoo nation, on behalf of said nation," with the following

Amendments.

AMENDMENTS:

See page 15.

Article 1, line 15, after "the" strike out "Commissioner of Indian Affairs," and insert in lieu thereof: *Secretary of the Interior*

- Article 2, lines 1 and 2, strike out "Agent of the United States for said tribe to take," and insert in lieu thereof: *Secretary of the Interior to cause to be made.* See page 15.
- Article 3, lines 12, 13, and 14, strike out the following: "paid to them, in cash or in the bonds of the United States," and insert in lieu thereof: *set apart and placed to their credit severally.* See page 16.
- Article 4, line 39, strike out the words "at the cost of the United States." At the end of article 4 insert: *deducting therefrom the necessary expenses of their removal.* See page 16.
- Article 5, line 34, after the word "lands" insert: *within sixty days thereafter, and shall make, execute, and deliver to the Secretary of the Interior the bonds of the said company in a penal sum equal to double the value of said surplus lands as heretofore ascertained, with the condition that the said bonds shall become void whenever the said company shall comply with the conditions of the treaty.* See page 17.
- Article 5, line 39, strike out "title and" and insert: *the right of.*
- Article 6, line 11, strike out "shall" and insert: *may.* See page 18.
- " " lines 12, 13, and 14, strike out the words "and shall cease to be binding on either of the parties hereto," and insert: *if the Secretary of the Interior shall so determine.*
- " " line 57, after the word "same" insert: *not including improvements.*
- " " line 72, after "payment" strike out "of" and insert: *to the United States in trust for said Kickapoos of the appraised value thereof (exclusive of their improvements) and not less than.*
- Strike out Article 7. See pages 18, 19.
- Strike out Article 8.
- Strike out Article 9.
- Article 10, lines 11 and 12, strike out "six months from the date of this instrument," and insert in lieu thereof: *one year from the ratification of this treaty.* See page 19.
- Article 11, lines 13, 14, and 15, strike out "the Secretary of the Interior shall determine to be just and equitable for the benefit of the Kickapoos," and insert in lieu thereof: *may be provided by law.* See page 19.
- Strike out Article 12. See page 19.
- Article 13, line 7, after "United States" insert: *out of the proceeds of the sales of said lands.* See page 19.
- " " lines 12, 13, 14, 15, 16, and 17, strike out the following words: "and the Commissioner of Indian Affairs, with the concurrence of the Secretary of the Interior, shall, from time to time, and as promptly as practicable, adopt such measures and institute all such proceedings as may be necessary and not otherwise provided for in order to the full execution of all and every part of this treaty."
- Attest: J. W. FORNEY, *Secretary.*

And whereas the foregoing amendment having been fully interpreted and explained to the hereinafter named chiefs, headmen, and delegates of the Kickapoo Tribe of Indians, they did, on the fifth day of May, one thousand eight hundred and sixty-three, give their free and voluntary assent to the same, in the words and figures following, to wit: Amendment assented to.

And whereas the foregoing amendments have been submitted and fully interpreted to the undersigned, chiefs, delegates, and headmen of the Kickapoo nation, and we, being thereunto duly authorized, do hereby, for and on behalf of said nation, agree to and ratify the said treaty and the amendments thereto as above set forth.

TREATY WITH THE KICKAPOO INDIANS. JUNE 28, 1862.

In testimony whereof we have hereunto set our hands and seals this fifth day of May, A. D. 1863.

CHIEF PAR-THEE, or the Elk, his x mark. [SEAL.]

CHIEF PAH-KAH-KAH, or John Kennekuk, his x mark. [SEAL.]

CHIEF MACK-A-TAIR-CHEE-QUA, or Black Thunder, his x mark. [SEAL.]

PET-TI-QUAUK, or Rolling Thunder, his x mark. [SEAL.]

KEN-NE-KUK, or Stephen Pen-sion-eau, his x mark. [SEAL.]

MAH-MAH-SHE-COW-AH, or Bear Track, her x mark. [SEAL.]

JOHN C. ANDERSON, [SEAL.]

Executed in presence of—

JOHN E. BADGER.

N. S. SHALER.

WILLIAM FOSTER.

PASCHALL PENSIONEAU, his x mark. *U. S. Interpreter.*

H. C. PURSEL, *witness to signature of Paschall Pensioneau.*

I hereby certify that the foregoing treaty between the United States and the Kickapoo Tribe of Indians, concluded on the 28th day of June, 1862, together with the foregoing amendments thereto made by the Senate of the United States on the 13th day of March, 1863, were read and fully explained by me to said Indians through Paschall Pensioneau, the United States Interpreter, and that the chiefs, headmen, and delegates above named, on behalf of said tribe, this day in council assembled, did freely accept and consent to said treaty, together with said amendments, and subscribe their names and affixed their seals thereto in my presence.

Given under my hand this 5th day of May, A. D. 1863.

CHARLES B. KEITH, *U. S. Indian Agent.*

Proclaimed by
the President of
the United
States.

Now, therefore, be it known that I, ABRAHAM LINCOLN, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in their resolution of the thirteenth of March, one thousand eight hundred and sixty-three, accept, ratify, and confirm said treaty, with the amendment as aforesaid.

In testimony whereof I have hereto signed my name and caused the seal of the United States to be affixed.

[L. s.] Done at the city of Washington, this twenty-eighth day of May, in the year of our Lord one thousand eight hundred and sixty-three, and of the Independence of the United States the eighty-seventh.

ABRAHAM LINCOLN.

By the President:

F. W. SEWARD, *Acting Secretary of State.*