

106TH CONGRESS
2D SESSION

H. R. 5498

To permit landowners to assert otherwise available State law defenses against real property claims by Indian tribes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 18, 2000

Mr. EWING introduced the following bill; which was referred to the Committee on Resources

A BILL

To permit landowners to assert otherwise available State law defenses against real property claims by Indian tribes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DEFENSES TO INDIAN CLAIMS.**

4 Except as provided in section 2, in any action or
5 claim by or on behalf of an Indian tribe to enforce a real
6 property right, or otherwise asserting a claim of Indian
7 title or right regarding real property, the defendant may
8 assert any affirmative defense that would be available
9 under State law to a defendant opposing an analogous ac-
10 tion or claim that does not involve an Indian tribe.

1 **SEC. 2. EXCEPTION FOR GOVERNMENTAL DEFENDANTS.**

2 Section 1 shall not apply to any action or claim
3 against a governmental entity with respect to land that
4 is located within sovereign Indian country.

5 **SEC. 3. RULE OF CONSTRUCTION.**

6 (a) IN GENERAL.—Except as provided in subsection
7 (b), this Act shall be construed and applied without regard
8 to the interpretive judicial canon that remaining ambigu-
9 ities should be resolved in favor of the Indians when stand-
10 ard tools of statutory construction leave no indication as
11 to the meaning of an Indian treaty or statute.

12 (b) EXCEPTION.—Subsection (a) shall not apply to
13 judicial interpretation of an Indian treaty with respect to
14 a determination of whether land was reserved or set aside
15 by the Federal Government for the use of an Indian tribe
16 as Indian land.

17 **SEC. 4. DEFINITIONS.**

18 As used in this Act:

19 (1) INDIAN TRIBE.—The term “Indian tribe”
20 means any tribe, band, nation, pueblo, village, or
21 community that is recognized by the Secretary of the
22 Interior pursuant to section 102 of the Federally
23 Recognized Indian Tribe List Act of 1994 (25
24 U.S.C. 479a).

25 (2) SOVEREIGN INDIAN COUNTRY.—The term
26 “sovereign Indian country” means land—

1 (A) that is rightfully owned by, or is held
2 in trust by the Federal Government for, an In-
3 dian tribe;

4 (B) that was reserved or set aside for the
5 use of the Indian tribe as Indian land by the
6 Federal Government, and is either—

7 (i) outside the exterior geographical
8 limits of any State; or

9 (ii) within the exterior geographical
10 limits of a State that subsequently either—

11 (I) acknowledged Indian title to
12 the land involved when the land was
13 made a part of the State, if that State
14 is one of the original 13 States to
15 form the United States; or

16 (II) provided, either in the Act
17 providing for the State's admission to
18 the United States or in the State's
19 first constitution, that all lands held
20 by Indians within the State shall re-
21 main under the jurisdiction and con-
22 trol of the United States, in accord-
23 ance with article I, section 8, clause
24 17 of the Constitution of the United

1 States, if that State were admitted to
2 the United States after 1790; and
3 (C) for which the Indian title has not been
4 extinguished or the jurisdictional reservation re-
5 voked.

6 **SEC. 5. ATTORNEYS FEES.**

7 (a) IN GENERAL.—Except as provided in subsection
8 (b), in any action or proceeding that is subject to this Act,
9 the court shall allow the prevailing party a reasonable at-
10 torney's fee with respect to a claim presented by the op-
11 posing party that was frivolous, unreasonable, or without
12 foundation, or that the opposing party continued to liti-
13 gate after it clearly became so. A claim shall be deemed—

14 (1) legally frivolous, unreasonable, or without
15 foundation only if it rests upon a legal theory that
16 was clearly unavailable under existing case law; and

17 (2) factually frivolous, unreasonable, or without
18 foundation only if its proponent knew or should have
19 known of those facts that would require judgment
20 for the opposing party as a matter of law.

21 (b) EXCEPTION.—No attorney's fee shall be assessed
22 under subsection (a) against an Indian tribe seeking to
23 enforce a right to an interest in land if the court deter-
24 mines that the land involved is located within sovereign
25 Indian country.

1 **SEC. 6. TIMING OF APPLICATION.**

2 This Act shall apply to any action, claim, or right
3 described in section 1 that is pending, filed, or continuing
4 on or after the date of enactment of this Act, other than
5 a final money damages judgment to which no person has
6 a right to raise a challenge by any available procedure.

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