

THE INDIAN TRIBAL FEDERAL
RECOGNITION ADMINISTRATIVE
ACT

HON. ENI F.H. FALEOMAVAEGA

OF AMERICAN SAMOA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 1, 2009

Mr. FALEOMAVAEGA. Madam Speaker, I rise today to introduce the Indian Tribal Federal Recognition Administrative Procedures Act, a bill to provide for an improved administrative process for federal recognition of certain Indian groups.

The fact of the matter is the process by which the Department of the Interior to recognize Indian tribes is riddled with problems. And these problems exist in large part because the Congress itself has never by law established a process or criteria for the recognition of Indian tribes.

First, the Bureau of Indian Affairs' budget limitations over the years have, in fact, created a certain bias against recognizing new Indian tribes.

Second, the process has always been too expensive, costing some tribes well over \$500,000 when most of these tribes lack the resources and necessary finances. I need not remind my colleagues that Native American Indians are still facing severe challenges to education, economic activity and social development, and this administrative process perpetuates an already embarrassing situation for this country.

Madam Speaker, the courts have already acknowledged the unfair treatment of Indian groups because of the current federal recognition process. In 1996, in the case of *Greene v. Babbitt*, 943 F. Supp. 1278 (W.Dist. Wash), the federal court found that the existing process is "marred by both lengthy delays and a pattern of serious procedural due process violations." Deciding on the recognition process for the Samish Tribe in the State of Washington, the court recognized that it took over 25 years for the Department to make a decision. Writing for the court, Judge Thomas Zilly opined that "the Samish people's quest for federal recognition as an Indian tribe has a protracted and tortuous history . . . made more difficult by excessive delays and governmental misconduct" (p. 1281). Moreover, certain procedures mandated in the Administrative Process Act (APA) and by the U.S. Constitution were glossed over during the acknowledgement process.

Sadly though, the Samish's administrative and legal conflict—much of which was at public expense—could have been avoided were it not for a 30-year-old clerical error of the Bureau of Indian Affairs which inadvertently left the Samish Tribe's name off the list of recognized tribes in Washington. With a record like this, it is little wonder that many tribes have lost faith in the Government's recognition procedures.

Fixing the recognition process was also noted by former President Clinton. In a 1996 letter to the Chinook Tribe of Washington, the President wrote, "I agree that the current federal acknowledgment process must be improved." Despite some progress been made, President Clinton further added that "much more must be done."

And the most recent action of this administrative acknowledgment process gives no

hope to non-recognized tribes of a reasonable and timely process. The Bureau of Indian Affairs recently issued what it calls a proposed finding on the Brothertown of Wisconsin petition for federal acknowledgment. This tribe's petition was considered ready for consideration by the BIA in 1996—even so, the BIA did not take up the petition until 2008, 12 years later. In the proposed finding issued this August, the BIA proposed to turn down recognition of the tribe for several reasons. One of those reasons was a finding by the BIA that the tribe had been terminated by Congress in 1839. Now, a tribe that has been terminated by Congress cannot be recognized by the BIA. And yet, the BIA insists that this tribe complete this administrative process—at the cost of thousands of dollars to the government and the tribe—even though the BIA could not recognize the tribe even if it finds that the tribe meets the criteria for recognition. A process that requires such a thing makes no sense for the Federal Government or for tribes.

Madam Speaker, the legislation I introduce today provides the vehicle to fix the recognition process for Indian groups. It embodies a framework to lessen the adverse impact and the unfortunate burden on Indian groups seeking federal recognition.

Under this proposal, the administrative burden and responsibility for the federal recognition process is transferred from the Bureau of Indian Affairs, BIA, to an independent Commission on Recognition of Indian Tribes. The Commission shall consist of seven members appointed by the President with the consent of the Senate. This commission is tasked with reviewing and acting upon documented petitions submitted by Indian groups that apply for federal recognition.

Under this legislation, clear and consistent standards of administrative review of documented petitions for federal recognition are provided for. Moreover, this bill clarifies and identifies clear evidentiary standards for administrative review and also helps expedite the process by providing adequate resources to process documented petition.

Some have expressed concern that prior bills would open the door for more tribes to conduct gambling operations on new reservations. While I cannot say that no new gambling operations will result from this bill, I do believe that this bill will have only a minimal impact in the area.

I would like to remind my colleagues that: (1) unlike State-sponsored gaming operations, Indian gaming is highly regulated by the Indian Gaming Regulatory Act (IGRA); (2) before gaming can be conducted, the tribes must reach an agreement with the state in which the gaming would be conducted; (3) under IGRA, gaming can only be conducted on land held in trust by the federal government; (4) gaming can only be conducted at a level the state permits on non-Indian land; and (4) any gaming profits can only be used for tribal development, such as water and sewer systems, schools, and housing.

I want to emphasize this point—this is not a gambling bill, this is a bill to create a fair, objective process by which Indian groups can be evaluated for possible federal recognition.

Madam Speaker, this bill is not perfect in every form, but it is the result of many hours of consultation and years of work. I want to thank Chairman RAHALL and everyone involved in this endeavor. Many parties and

stakeholders have come together for the purpose of making sound, careful changes which recognize the historical struggles the unrecognized tribes have gone through, yet retaining some of the framework the Bureau of Indian Affairs has developed diligently over the years.

In conclusion Madam Speaker, I hope we can take final action and make much needed improvements to the Federal Indian Recognition process.

CONSTITUTION DAY

SPEECH OF

HON. JOHN B. LARSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 29, 2009

Mr. LARSON of Connecticut. Mr. Speaker, I rise in support of House Resolution 734, which expresses support for and honors September 17, 2009, as "Constitution Day." September 17 is the day that our United States Constitution was signed in 1787, by 39 delegates from 12 states, including from Connecticut, Samuel Huntington, Oliver Wolcott, and Roger Sherman, whose statue resides in the crypt of this Capitol building.

My home state of Connecticut has a strong and proud connection to the founding principles and documents of this country. Roger Sherman was the only man to sign the Articles of Association, the Declaration of Independence, the Articles of Confederation, and the Constitution. Connecticut itself is known as the Constitution State, for its enactment of the Fundamental Orders of Connecticut, the first written constitution of its kind.

The Fundamental Orders of Connecticut was adopted by the Connecticut Colony in 1639 and established a government for the Connecticut Colony, based on the yearly election of a governor and six magistrates, two from each town in the Colony. These officials were chosen by the count of a written vote, and all freedmen who resided in the colony and had taken an oath of fidelity were eligible to cast their vote.

The Fundamental Orders established limits on the powers of government, emphasizing the power of the people to elect their leaders and act against them should those leaders ignore their concerns. Further, it defined the operating procedures of a government established by the people, of the people, and for the people, ensuring each elected magistrate a vote in matters of governance, and the governor a vote only in the event of a tie.

Many of the principles in the eleven sections of the Fundamental Orders of Connecticut later were echoed in the familiar cadences of our great Constitution, which continues to represent the American ideal of a government consisting of a body of officials elected by the people to serve in their best interests.

It was Roger Sherman's "Connecticut Compromise", made during the Philadelphia Convention of 1787, which ensured fair representation for large and small states in the bicameral legislature which defines our body of Congress.

As a high school history teacher, I had the privilege of studying, learning, and teaching the Constitution. It is the innovation and undiminished endurance of the ideals of our Constitution for which I rise in support of