

ADDITIONAL AND DISSENTING VIEWS

H.R. 1385 extends recognition to six tribes in the Commonwealth of Virginia that seek recognition as the descendants of historic tribes that had treaty relations with the colonists of Virginia and the King of England. Before the House proceeds further with this bill, several key issues should be thoroughly addressed.

First, more information is needed as to who the present-day tribes and their members petitioning for recognition are. Two hearings (one in the 111th Congress on H.R. 1385 and one in the 110th on similar legislation) have not cleared this up. This leads to a related question: is every member of these tribes an Indian descendant of one of the historic tribes of Virginia? The answer to this question is unclear because the Committee has neither analyzed nor received from the Department of the Interior a reasonable analysis of the records necessary for a fully informed decision to recommend that the full House pass H.R. 1385. Apart from this incomplete record, the appropriateness and justification for recognizing six Indian tribes in Virginia have not been fully considered. There also seems to be a lack of justification for considering the petitions of the Virginia groups prior to the petitions of other groups. About nine groups that submitted petitions seeking recognition under the Bureau of Indian Affairs' regulatory process have completed their petitions; in this respect, they are more prepared for a final determination than the Virginia tribes. There seem to be few, if any, objective criteria for considering recognition bills in the Committee.

More hearings are in order for H.R. 1385 before sending it to the House Floor. In the hearing held on March 18, 2009, the Committee received a lot of testimony from a witness for the six petitioners, from the Governor of Virginia, a historian, and the Department of the Interior. All provided interesting, often passionate, statements. It was especially troubling to learn of a dark era in the Commonwealth's history when racial integrity laws suppressed the identification of Indian Virginians. Although the Department provided no position on the bill in its brief statement on H.R. 1385, the Administration witness did remark that all six groups have petitioned for recognition with the BIA, but none have completed this process. This means the Department lacks completely documented petitions from the six tribes.

H.R. 1385 contains ample lists of congressional findings about the history of the six groups, but there is no requirement to verify that members of these tribes are Indian people who descend from historic Virginia tribes. The definition of "tribal member" in H.R. 1385 does not even require the individual to be of Indian ancestry. According to information provided to the Committee, the tribes' policies or laws generally require Indian ancestry to be members. The legislation, however, does not require that the Secretary of the

Interior verify that the groups' members actually descend from historic Virginia tribes. The House should consider amending the bill to require that any entity recognized as a tribe must be able to document that its members are Indian people who descend from the historic tribes residing in the area that is now present-day Virginia.

A final and broader concern with H.R. 1385 is that what Congress does with this bill could well affect the Committee's ongoing work to address the Supreme Court decision in *Carcieri v. Salazar*. Members of the Committee who were present for the April 1 hearing on this matter learned that the Supreme Court held that the Secretary of the Interior has no authority to acquire lands into trust for tribes not under federal jurisdiction in 1934, except when authorized by a specific Act of Congress. As a result, the Secretary can no longer acquire lands in trust without a specific Act of Congress for tribes recognized after 1934, and the trust status of the lands of such tribes might be open to challenge.

The six Virginia tribes were not under federal jurisdiction in 1934. Thus, anything done with H.R. 1385, could set a precedent for resolving *Carcieri*. Under H.R. 1385, lands placed in trust for the Virginia tribes will be secure; meanwhile, lands held in trust or proposed for trust by other tribes recognized many years ago, are not secure. This kind of inconsistency in federal Indian policy is the kind that led to the *Carcieri* controversies in the first place.

If the solution to *Carcieri* is to deal with each and every post-1934 tribe's trust land application separately in Congress, then H.R. 1385 is appropriate. If the solution is to provide the Secretary of Interior with appropriate authority to acquire lands in trust, then H.R. 1385 is not appropriate.

While the Committee has held a hearing on *Carcieri*, there seems to be no consensus on how to resolve it. We have received no testimony from the Department, and none of the tribes, states, counties, cities, private land owners and other concerned interests have had an opportunity to testify in the Committee as of the time the report for H.R. 1385 is filed.

It would be wise to postpone Floor action of any recognition bills until the Committee acquires a better understanding of the impacts of *Carcieri* and what to do about it.

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