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TESTIMONY OF JACQUELINE L. JOHNSON EXECUTIVE DIRECTOR OF THE NATIONAL CONGRESS OF AMERICAN INDIANS

ON H.R. 791

BEFORE THE HOUSE RESOURCES COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES
MAY 8, 2002

EXECUTIVE DIRECTOR

Jacqueline L. Johnson
Tlingit

NCAI HEADQUARTERS

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Good morning Mr. Chairman and Members of the Committee. My name is Jacqueline Johnson. I am the Executive Director of the National Congress of American Indians. Thank you for inviting us to testify before you on H.R. 791, a bill regarding certain Indian land disputes in Illinois. The National Congress of American Indians (NCAI) was established in 1944 and is the oldest, largest, and most representative national American Indian and Alaska Native tribal government organization. We appreciate the opportunity to participate on behalf of our Member Indian Nations in the legislative process of the United States Congress to provide this Committee with our views.

NCAI opposes H.R. 791 and requests that this honorable Committee, after giving the bill full and fair consideration, not report H.R. 791 to the full House of Representatives. In support of this request, we ask that NCAI Resolution #MSH-01-021 opposing H.R. 791, which passed at the 2001 Mid-Year Session of the National Congress of American Indians, be made a part of the record of this hearing.

We oppose H.R. 791 because it would extinguish any and all claims to land within the State of Illinois by three tribes whose claims arise from treaties entered into with the United States. The tribes are the Potawatomi Tribe of Kansas, the Miami Tribe of Oklahoma and the Ottawa Tribe of Oklahoma who entered into the 1829 Treaty of Prairie du Chien, the Treaty of Grouseland and the 1816 Treaty with the United Tribes of the Ottawas, Chipawas and Pottowotomees. The Indian tribes party to these treaties believed that the United States made solemn commitments, legally binding upon both the tribes and the United States. They believed that they would be able to live forever upon the lands reserved as their homelands from the vast areas they once occupied.

The faith of these tribes proved to be unfounded. The tribes never ceded these lands, but were forcefully driven from them, and the lands were sold to others by the United States. I will not address the particular facts of each of the three tribes named in H.R. 791. The particular history of each tribe and treaty named in this bill differ in each case. These circumstances underscore the inequity of sweeping all of the claims together and dealing with them in exactly the same manner in one piece of legislation.

I want to emphasize that there is an appropriate role for Congress in involvement in and oversight of Indian land claims, including land claims in Illinois, but that it is not at this early stage in the process. The federal courts and the legal process are there for a reason. Because Indian land claims are extremely fact-specific and based on treaties and historical circumstances, Congress is not in a good position to determine what is fair until there has been a full development of the record and an effort to settle by the parties. The best process is one that first allows the validity of the land claim to be legally tested (and we should note that land claims are very difficult to prosecute). If it becomes clear that a claim is a valid claim, then the tribe should have a chance to work with the state and local governments and the landowners through settlement discussions to come to a resolution. Everyone gets a hearing, all the issues are put upon the table, and the parties can forge relationships, resolve issues, and hopefully come to a resolution that everyone can live with.

Alternative dispute resolution is a very good option because the parties have the ability to create solutions to fit unique circumstances, and because the parties have a much better chance of co-existing over a long period of time with a negotiated resolution than with one that is dictated by a court or by Congress. This process has been working for the past twenty-five years and it has been effective in bringing to resolution a number of very significant Indian land claims. There has never been an Indian land claim that went all the way to a final judgment where a federal court has thrown non-Indians off their land. There are incentives for the parties to work together and come to a resolution. We would encourage Congress and the Administration to stay the course and continue to strive for equitable settlements of Indian land claims.

Congress must ratify any settlement involving Indian land. Thusly, Congress always retains ultimate control over the land claims process outlined above. The appropriate time for Congressional actions is after the parties have had a chance to develop the record and come to a resolution. In Illinois, that has not had a chance to occur. H.R. 791 would short-circuit both the legal and the settlement processes and would perpetrate even more injustices against these three tribes. Even if H.R. 791 were to become law, the tribes would be back here next year and for the next one thousand years attempting to resolve their claims. Congress cannot simply resolve Indian land claims in this one-sided fashion.

It is my hopes that there will be agreement among the parties in Illinois, that the tribes will receive fair resolutions of their claims, and that there will be no harm to people who have done no wrong. I sincerely believe this will happen if the parties sit down together and work to resolve the issues. I know that least one tribe has withdrawn its lawsuit, and that the others are working to resolve issues in the fairest way possible. However, I also think that the controversy that has been raised in Illinois should be placed in its proper context. Indian people were thrown out of their homes and their treaty lands were taken from them. Now we are going through some minor amount of legal discussion in Illinois regarding those lands and the fair resolution of the tribal claims. In balancing the equities, Congress should not choose to undermine the legal rights of the tribes.

H.R. 791 would refer the named claims to the United States Court of Federal Claims with money damages as the only remedy. If, indeed, any of the treaty tribes or their successors in interest believes that money is the appropriate and preferred remedy, they are certainly entitled to support H.R. 791. NCAI has been advised that the factual situations of each claim differ and we strongly urge you to hear what the tribes testifying before you today have to say and to give their circumstances your respect.

Thank you for the opportunity of appearing before you today. We greatly appreciate the work of the Chairman and the Committee on Indian issues, and would request that our written testimony and the aforementioned resolution be made a part of the record.



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RESOLUTION #MSH-01-021

Title: To Oppose H.R. 791 and S. 533 Which Would Extinguish Indian Land Claims in the State of Illinois

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest, largest, and most representative national American Indian and Alaska Native tribal government organization; and

WHEREAS, H.R. 791 and S. 533 have been introduced by certain members of the Illinois congressional delegation to extinguish any and all claims to land within the state of Illinois by the Miami Tribe of Oklahoma, the Ottawa Tribe of Oklahoma and the Potawatomi Tribe of Kansas or their members or predecessors or successors in interest arising out of Article IV of the Treaty of Grouseland, Article II of the 1816 Treaty with the United Tribes of the Ottawas, Chipawas and Pottowotomees, or Article III of the 1829 Treaty of the Prairie du Chien; and

WHEREAS, the bills would also extinguish all claims for land within Illinois of the named tribes and allow treaty and aboriginal claims by the named tribes to be brought only against the United States as the defendant and only in the United States Court of Federal Claims with monetary damages as the only available remedy; and

WHEREAS, H.R. 791 and S. 533 are politically motivated targeted attacks against certain tribes to stop them from exercising their legal rights and pursuing justice based upon prior treaty commitments of the United States which are solemn promises and the supreme law of the land; and

WHEREAS, the Solicitor of the Department of the Interior has acknowledged the legitimacy of at least one of the Tribe's claims making H.R. 791 and S. 533 mere political tools introduced as a desperate effort to circumvent justice and impede potential fruitful discussions with the state of Illinois and fair resolution of the claim; and

WHEREAS, such targeted attacks will disallow Tribes to exercise their governmental authority to pursue claims to lands which were reserved to them in treaties with the United States, but are now illegally in the hands of non-Indians and allows the United States to breach its treaty commitments, thus eroding the sovereignty of all tribes as well as the value of the United States' promises and the relationship between the United States and the 561 Indian nations within its borders.

NOW THEREFORE BE IT RESOLVED that NCAI hereby opposes H.R. 791 and S. 533 and asks the sponsors of the bills to withdraw their legislation; and

BE IT FURTHER RESOLVED that if the sponsors fail to withdraw the legislation, NCAI hereby urges the Members of the House Resources Committee and the Senate Committee on Indian Affairs and all other Members of Congress to condemn this legislation as an egregious attack on tribal treaty and aboriginal rights and work to defeat the legislation in committee and otherwise; and

BE IT FINALLY RESOLVED that NCAI calls upon the Administration to oppose H.R. 791 and S. 533 and requests that the President of the United States veto such legislation if it ever comes before him to be enacted.

CERTIFICATION

The foregoing resolution was adopted at the 2001 Mid-Year Session of the National Congress of American Indians, held at Foxwoods Resort Casino in Mashantucket, Connecticut on May 13-16, 2001, with a quorum present.


Susan Masten, President

ATTEST:


Juana Majed, Recording Secretary

Adopted by the General Assembly during the 2001 Mid-Year Session of the National Congress of American Indians, held in Mashantucket, Connecticut on May 13-16, 2001.

DISCLOSURE REQUIREMENT
Required by House Rule XI, clause 2(g)
and Rules of the Committee on Resources

A. This part is to be completed by all witnesses:

1. Name: *Jacqueline L. Johnson*
2. Business Address: *301 Connecticut Avenue, Washington DC 20036 Suite 200*
3. Business Phone Number: *202.466.7767*
4. Organization you are representing: *National Congress of American Indians*
5. Any training or educational certificates, diplomas or degrees or other educational experiences which add to your qualifications to testify on or knowledge of the subject matter of the hearing:
6. Any professional licenses, certifications, or affiliations held which are relevant to your qualifications to testify on or knowledge of the subject matter of the hearing:
7. Any employment, occupation, ownership in a firm or business, or work-related experiences which relate to your qualifications to testify on or knowledge of the subject matter of the hearing:
8. Any offices, elected positions, or representational capacity held in the organization on whose behalf you are testifying: *Executive Director of NCAI, an organization representing over 200 Indian and Alaska Native tribes.*

B. To be completed by nongovernmental witnesses only:

1. Any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1999, from the Department of the Interior, the source and the amount of each grant or contract:
2. Any federal grants or contracts (including subgrants or subcontracts) which were received since October 1, 1999 from the National Congress of American Indians, including the source and amount of each grant or contract:
3. Any other information you wish to convey which might aid the members of the Committee to better understand the context of your testimony: