

Testimony of The Honorable Nancy L. Johnson
before the

House Committee on Resources

March 31, 2004

Deficiencies in the BIA Federal Recognition Process

Mr. Chairman and members of the Committee, thank you for inviting me to testify today on the important subject of the Bureau of Indian Affairs' federal recognition process. This subject is creating tremendous controversy in my home state of Connecticut. While this issue has stirred grave concerns in numerous other states dealing with the federal recognition process, I wish to focus on the substantial impact it is having on my constituents in Connecticut.

Over the last two years, BIA has issued final determinations granting federal recognition to two groups in Connecticut: the "Historic Eastern Pequot" tribe, located in North Stonington, a town represented by my colleague Rep. Rob Simmons. The second was the Schaghticoke Tribal Nation, in the town of Kent in my district. The Schaghticoques have expressed interest in building a casino resort in Danbury or Waterbury in my district, or in Bridgeport, represented by my colleague Rep. Christopher Shays.

In addition, BIA will also soon issue a final determination on the petition on the Golden Hill Paugussett group, located in Colchester and Bridgeport.

It is an unfortunate reality that the tribal recognition process has become for many but a means to the end of profiting from casino gambling. Petitioning tribes make it publicly known that their ultimate interest is in casino gambling, and millions of dollars are flowing in from out-of-state gaming interests to fund recognition petitions. We cannot, as a matter of public policy,

fail to understand this nor the extraordinary impact recognition – often on very slender threads of evidence – is having on local governments and local taxpayers.

Casinos in Connecticut have far-reaching consequences. Our major highways are already choked during rush hour and would be completely overwhelmed with the 24-hours-a-day, seven-days-a-week traffic of a new casino in Bridgeport, Danbury, or Waterbury. Local cities and towns, already facing budget crunches, would be forced to pay for far more frequent road repairs and construction, traffic control, and increased fire and police protection. In effect, local property taxpayers would be forced to support the economic development decisions of “sovereign” entities that do not have to pay all the costs of their decisions, nor the cost of public education, which is primarily funded through local property taxes in Connecticut. When asked recently about the benefits of the existing casino in Ledyard, Connecticut to his community, the former mayor of Ledyard said there have been none. Yet the costs have been great.

The issue today, Mr. Chairman, is one of both ends and means. While Connecticut residents overwhelmingly oppose the goal of more casinos, they also now suspect the integrity of the recognition process. Their loss of trust in this process is a serious matter, and for good reason, they consider this process arbitrary at best, dishonest at worst.

Problems within the BIA process are well-known and have been documented by well-respected, independent agencies. In 2001, the U.S. General Accounting Office reported that the recognition process is characterized by inconsistency, unfairness, and delay. A subsequent report by the Interior Department Inspector General about the recognition process cites troubling irregularities, the use of political influence in what should be an objective process, and the questionable practice of recently-departed BIA officials lobbying for petitioning tribal groups.

Some of these problems are brought into stark relief in the case of the recognition of the Schaghticoke tribal group. In December 2002, the BIA issued a proposed finding that the recognition of the Schaghticoke group did not meet all seven criteria for federal recognition, and that its tenuous relationship with the State of Connecticut did not add evidentiary weight to the group's claim. On January 29, 2004, however, the BIA reversed itself and issued a final determination that the Schaghticoke tribe had satisfied the seven federal criteria for recognition. In reaching this conclusion, BIA contradicted its own reasoning in its proposed finding by determining that the tribal group's relationship with the state did, in fact, bolster their petition. In addition, the BIA argued in its final determination that the tribe had satisfied a previously unmet criterion while admitting insufficient evidence had been provided to justify it. This reversal left many of us in Connecticut bewildered and eager for answers. Since then, my colleagues in Connecticut and I have written to the GAO, to Interior Secretary Gale Norton, and to the Interior Department's Inspector General requesting an investigation and answers to the questions raised by this inexplicable reversal.

Shockingly, we received answers to some of our questions in the form of a disturbing decision memorandum, written by BIA staff two weeks before its final determination was handed down and only revealed this month. In it, BIA staff admit that the Schaghticoke group did not meet the criterion for continuous political influence for two periods encompassing 64 years of its history, an admission also reflected in the final determination. The memorandum says plainly, "The petitioner has little or no direct evidence to demonstrate that criterion 83.7(c)," the political influence criterion, "has been met between 1820 and 1840 and between approximately 1892 and 1936." The memorandum also admits that BIA precedent holds that the state's relationship with

the group, which has essentially been a symbolic function, does not add evidentiary weight to the group's claim.

Rather than deny the Schaghticoke petition in the final determination, as it had in the proposed finding and as the regulations and precedent would suggest, the BIA memorandum lays out a strategy to overturn existing precedent and abrogate federal regulations. The memorandum admits that BIA knew the petition did not meet the standards outlined in the “regulations and existing precedent,” and that they would have to be ignored or reevaluated in order to approve the petition. Indeed, the memorandum reads, recognition “would require a change in how continuous state recognition with a reservation was treated as evidence.” Two weeks after that memorandum was written, the BIA issued a final determination recognizing the Schaghticoke and opening the door to casino gambling in Western Connecticut.

My constituents in Connecticut, as well as many Americans across the country, are strongly opposed to further casino gambling in their area. But they also strongly object to the clearly faulty, unfair, and arbitrary process that seems to respond more to the millions spent by casino interests than to the law. The relatively paltry sums small towns can spend with local property taxes as their sole sources of financing are simply no match for the big money behind the big business of casino gambling.

I believe immediate action is necessary to restore the credibility, predictability, and integrity of the overall tribal recognition process and address what is, in my view, a flawed and illogical decision regarding the Schaghticoke tribal group. Specifically, I recommend the Department of the Interior do the following:

1. Invalidate the Schaghticoke decision and issue a new final determination that is consistent

with federal recognition regulations and existing precedent;

2. Impose an immediate moratorium on all BIA acknowledgment decisions pending a comprehensive review of BIA processes and the issuance of recommendations for improvement;
3. Take steps to bring into public view the financial and gaming interests behind federal recognition petitions; and
4. Examine how the federal process usurps the traditional power of local governments to control economic development, implement long-term planning policies, and provide public safety and education services.
5. Prohibit the liening of property claimed by a tribe as it dramatically undermines property values and paralyzes home and land sales throughout the affected region.

In conclusion, it is widely-held and well-documented that the BIA recognition process is faulty. Certainly, Connecticut residents have lost faith in that process and worry that it will result in new casinos in areas that neither want them nor can support them.

The question before this Committee and this Congress is what do to address this problem. Congress can no longer put off its responsibility to address questions of credibility, competency, and fairness within an agency under its jurisdiction. Only through clear, concrete and effective action can Congress right this ship; restore credibility to the process; and ensure that federal recognition petitions are dealt with objectively, consistently, and fairly for both petitioning groups and local communities.

Thank you for considering my testimony today.