

Testimony of Dr. Joe Shirley, Jr., President

The Navajo Nation

HR 5608 the Consultation and Coordination with Indian Tribal Governments Act

April 9, 2008

Good morning Chairman Rahall, ranking member Young and members of the Committee. Thank you for the opportunity to testify before you this morning concerning HR 5608, the Consultation and Coordination with Indian Tribal Governments Act.

As I sit before you today, I am filled with a sense of sadness and anger that in 2008, one hundred and forty years after the Navajo Nation signed our treaty with United States, we are forced to discuss the necessity of legislation that mandates that the federal government engage in meaningful discussions with tribal governments. That such legislation is needed is beyond question. Decisions are routinely made in Washington that effect the daily lives of Native Americans with little meaningful consultation with tribal governments. We are left to adapt to the vacillating policy choices made by Washington bureaucrats regardless of our individual needs or priorities. Unfortunately for most tribal governments, adapting to these changes usually means that we make do with less as our needs continue to grow.

The relationship of the Native Nations to the federal government is supposed to be one of sovereigns. Each government sitting down with its representatives and engaging in discussions as equals. The concept of the government-to-government relationship should mean that the federal government includes tribal governments in the decision making process. That we are heard and listened to; and that our opinions and concerns have meaning. That there is a belief that Native Americans and tribal governments probably understand better than someone sitting in an office a thousand or more miles away what our needs are, where money can best be spent, and

what policies would be the most effective. That we are so often ignored in the decision making process is insulting enough. However, when we are forced to gather, hat in hand, to parade or needs in front of another group of bureaucrats only to have our requests tossed aside as inconvenient realities, or just another program that fails to meet certain expectations, is both demeaning and infuriating. The worst of all situations is when tribal delegations are convened to inform us of a decision already made just so the agency can check off its tribal consultation box. After more than 200 years of failed policies on the part of federal government towards the Native Nations, I believe we have earned the right through death of hundreds of thousands of my brothers and sisters to have our opinions concerning our needs and wishes heard.

In April 2004, President Bush issued Executive Order 13336. The purpose of this Executive Order was to recognize the unique challenges faced by Native American students in meeting the demands of the No Child Left Behind Act. Placed within the context of education the Order recognized the unique status of the Native Nations with the federal government, the need for government-to-government relationships, and the right of tribal governments to their sovereignty and self-determination. The Order called for the creation of an inter-agency working group composed of the heads of various federal agencies to develop a plan that implements the order. Yet, even with this commitment to educational needs of our children, the President's budgets routinely give short shrift to school construction and education programs for Native American students.

In September 2004, President Bush issued a memorandum to the heads of the executive departments and agencies concerning the government-to-government relationship with tribal governments. This memorandum did recognize the unique legal and political between the federal government and Native Americans, and affirmed the Executive Orders issued by

Presidents Nixon and Clinton concerning self-determination and the need for consultation and coordination with tribal governments. The memorandum reiterated a commitment on the part of President Bush to work with tribal governments on a government-to-government basis reaffirmed a respect for tribal sovereignty and self-determination. To that end, the memorandum called for all departments and agencies to work with tribal governments based on these principles.

The effectiveness of these repeated statements of policy on the part of the federal government is at best arguable. However, it is clear that these repeated statements have not gone far enough. Executive Orders and memorandums do not carry the full force of law. Presidents for decades have paid lip service to the idea of tribal sovereignty and self-determination with little practical effect. However, that is not to say that there has been no progress. Some departments and agencies have developed tribal consultation policies, although they have been uneven in their application or adoption across entire departments we have seen some progress. Both the Department of Health and Human Services (DHHS) and the Department of the Interior (DOI) have developed tribal consultation policies to some degree.

The DHHS tribal consultation policy, initiated in 2005, mandated that all operating divisions within the DHHS develop their own policies, but not all have done so. The DHHS policy allows tribal governments to formally engage in annual tribal consultation session with the DHHS regional offices. The Indian Health Service (IHS) revised their consultation policy in 2006 to reflect the new DHHS policy; as a result, there has been greater participation within the budget process.

Of course, greater participation through a tribal consultation policy does not necessarily equate to meaningful consultation. One need only look to the Bureau of Indian Affairs

(BIA)/Tribal Budgetary Advisory Council (TBAC) to see the ineffectiveness of tribal consultation. Several times each year tribal leaders gather around the country to discuss their budgetary needs and priorities with BIA officials. This process culminates each year with a meeting in a Washington area conference facility where tribal leaders come in to ask the BIA for help to protect our resources, our culture, our existence. Leader after leader stands before a lectern for their allotted time giving a short presentation that seeks to encapsulate the effect of hundreds of years of exploitation and injustice. Each presentation boils down to the same litany of heartbreaking concerns: a lack of healthcare for babies and mothers, a lack of resources, no jobs, high crime, drug and alcohol dependence, not enough schools, not enough teachers, no water, no food, environmental contamination, the list goes on and on. While the tribal leaders pour out their hearts talking about the needs of their people, BIA bureaucrats sit there impassively listening. All the while, the BIA officials know that the budgetary decisions have already been made, and that “consultation” is nothing more than a pretense to being able to say that we listened and took notes but other priorities governed the process. Other priorities. When our people and our culture are threatened, other priorities reined. Consultation in my mind is more than sitting there and listening; consultation is acting on the information.

Chairman Rahall, your legislation would be a welcome change to what has become the standard Washington refrain. If passed, HR 5608 would for the first time mandate that each agency develop a policy for engaging in meaningful and accountable consultation. More importantly, this legislation would create an oversight process to ensure that the federal agencies are complying with this consultation policy. The legislation would recognize the relationship between the federal government and the Native Nations as one of government-to-government, that we as tribal governments have a right to sovereignty and a right to self-determination. That

there exists a trust relationship recognized in treaties, statutes, and executive orders that the federal government should act in our best interests. That the Native Nations should have a say in the decisions that are made on our behalf. It would seem on its face to be such a simple proposition, engage those who will be effected by policy decisions in the decision making process. I commend you for introducing this legislation and support its passage.