



STATE OF CONNECTICUT
EXECUTIVE CHAMBERS

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Testimony of M. Jodi Rell

Governor, State of Connecticut

U.S. Senate Committee on Indian Affairs

Oversight Hearing on Tribal Recognition

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Chairman McCain, Vice Chairman Dorgan and distinguished members of the Committee.

My name is Jodi Rell. I serve as Governor of the state of Connecticut. I thank you for scheduling this oversight hearing on tribal recognition and for inviting me here today. I also thank the members of Connecticut's Congressional delegation for their determined and unrelenting efforts, here in the halls of Congress and back home in Connecticut, to address the weaknesses and failings of the tribal recognition process. Their united leadership on this issue has been inspiring and is greatly appreciated by their constituents.

I appear before you today, giving my first congressional testimony as Governor of Connecticut, because this is such a critical issue to our state. Simply put, I strongly believe that a number of troubling, profound problems exist within the entire federal tribal recognition process and that legislative reform of this process is long overdue.

Let me unequivocally state that my concerns go directly to the issue of integrity and transparency of the recognition process itself, not to any particular tribe or their right to seek and receive recognition. To be sure, my state's history is inextricably intertwined with Native American history. In fact, the very word "Connecticut" is an Indian term which means "beside the long tidal river." We recognize and embrace our historical heritage and we have courteous, mutually respectful relationships with the Mohegan and Mashantucket Pequot Nations, both of which are located within the borders of our state.

Due to their own hard work and entrepreneurial spirit, these two tribal nations have thrived since receiving federal recognition several years ago. Their economic success has been nothing short of dynamic and has served as a catalyst for others, inside and outside of Connecticut, to seek recognition.

The process of federal recognition is admittedly lengthy and arduous - but for good reason. A successful petition for recognition, while serving as an official verification and validation of an historical group of people, will also dramatically and unalterably change the present day landscape of an entire community, region or state.

Connecticut is a relatively small state in geographical terms. Our state is as old as our nation itself and is densely populated. We have few vast expanses of open or undeveloped land, particularly in comparison to some of our Midwest and Western neighbors. Historical reservation lands no longer exist as such, and haven't for well more than two hundred years. They are now cities and towns, filled with family homes, churches, schools, shopping areas and the like.

It has been our experience in Connecticut that tribes simultaneously file land claims within the state as they pursue recognition with the federal government. Land claims place a cloud on the property titles of municipalities and their residents, resulting in many hardships and uncertainties. The land claims destabilize the housing market and compromise the ability of every homeowner or landowner within the claimed area to sell their properties free and clear in terms of title. In other words, someone living in a family home or on a family farm, which has been owned and passed down for several generations, may suddenly and startlingly be subject to an unforeseen land claim. Further, such a claim may not be based in fact, but rather on what a tribe contends its ancestral land to be.

This issue was very real to hundreds of thousands of Connecticut residents who lived under the constant threat of land claims by a group known as the Golden Hill Paugussetts, which claimed to be an Indian tribe. Approximately one quarter of the land area of our entire state was affected by this singular land claim, which languished for years as the Paugussetts sought multiple, and in the end unsuccessful, reviews of their recognition petition. For years, the land records of hundreds of thousands of homes, businesses, churches, town halls and schools in Connecticut were in danger of being clouded because of a specious recognition bid. I say specious because the state knew from the beginning - and the BIA finally figured out in the end -

that the Golden Hills Paugussetts did not in any way satisfy the necessary recognition criteria. We fought this recognition based on its shortcomings and inadequacies in the law, and we rightly prevailed. But the BIA has shown an increasing willingness to be “flexible” and “permissive” and to set aside the dictates of law and regulation in favor of granting recognition at all costs.

Let me say again, if a tribe can meet the requirements established by federal law to win federal recognition, it should be given all of the rights and privileges to which it is entitled. If a tribe cannot meet such criteria it should not be granted recognition – and yet it has, on two occasions, in Connecticut.

Given this, I cannot help but conclude that the process by which federal law is applied and recognition determination is made is broken. It is fatally flawed. It is inconsistent and often illogical. It is replete with conflicts of interest and disdain for adherence to the letter and spirit of law and regulation. It has resulted in a measurable loss of public confidence and an immeasurable lack of administrative integrity.

The two recent decisions impacting Connecticut, involving the Historic Eastern Pequot Tribe and the Schaghticoke Tribe, show the BIA’s disregard for the law and a recognition system in need of wholesale restructuring.

In the case of the Eastern Pequot and Pawcatuck Eastern Pequot Petitions, the BIA miraculously achieved what neither petitioner could do or wanted to do on its own. That is, the BIA found that both tribes were a single “historical” tribal entity even though the tribes themselves could not agree on this point and did not seek such joint designation. Recognition evidently could not have been achieved individually by these tribes, so the BIA simply merged the petitions and the tribes themselves in order to grant recognition.

More recently, the decision by the BIA to recognize the Schaghticoke Tribe demonstrates what state officials and many citizens have long known. The BIA is awarding federal recognition to Indian tribes, regardless of evidence to the contrary. In December of 2002, the BIA issued a proposed finding that the Schaghticoke Tribe did not meet all seven criteria for recognition and the group’s tenuous relationship with state of Connecticut did not add evidentiary weight to its claim. On January 29, 2004, little more than a year later, however, the BIA reversed itself and issued a final determination finding that the tribe’s relationship with Connecticut did strengthen their petition. An investigation of this astonishing reversal revealed a memo written by BIA staff just two weeks before the final determination. In the memo BIA staff admits that the

Schaghticoke group did not meet the criterion for continuous political influence for two periods encompassing 64 years of its history. The memo also exposed that the BIA had full knowledge that the tribe had not met the seven mandatory criteria for recognition as established in regulations and precedent. The BIA, therefore, by its own written words, acknowledged that the Schaghticoke Tribe would not have been granted federal recognition if the BIA had followed federal law and existing precedent on recognition.

More recently, the BIA acknowledged that it used a flawed calculation method that mistakenly overstated the percentage of Schaghticoke-to-Schaghticoke marriages during the 19th Century. The error resulted in the recorded Schaghticoke intra-marriage rate falling to less than 20 percent, far lower than the required minimum of a 50 percent intra-marriage rate. Even with its own acknowledgement of this latest error, the BIA has not taken any visible action to reevaluate its flawed recognition of the tribe.

On another note further highlighting the failings of the BIA, a letter dated October 30, 2003, was uncovered that was sent from the Department of the Interior to the Hassanamisco Nipmuc petitioning group, a Massachusetts tribe with land claims in Connecticut. The letter was printed on DOI letterhead and identified as emanating from the "Office of the Secretary." It is addressed to a former BIA employee, who is, at present, the lead researcher for the Hassanamisco Nipmuc Band. The letter clearly outlines numerous ways in which the former BIA employee could manipulate the recognition criteria to ensure the success of his group's petition. The letter was unsigned and I am presently awaiting the results of an investigation by the Secretary of the Interior on the authenticity of the letter.

All three of the recognition petitions raise troubling concerns about the very integrity and administration of the BIA. Why has the BIA taken such an aggressive approach to federal recognition? Some say that its dual mission as Indian advocate and impartial decision-maker on recognition petitions are inconsistent and incompatible. Others believe that it has little oversight from Congress and that it would greatly benefit from an extension of ethics laws to its operations.

Regardless, as the recent unbalanced decisions by the BIA demonstrate, there must be more control over the recognition process. There needs to be a more transparent and open process. I recommend the following:

- Codify the Recognition Criteria. It is time for the Congress to step in and reform the system by statute. The seven mandatory criteria for recognition of Indian tribes must be codified in statute. Congress should make it clear that the seven mandatory criteria set forth in the regulations are, in fact, mandatory – not mere guidelines.
- Impose a Moratorium. Impose an immediate moratorium on all BIA acknowledgement decisions pending a comprehensive review of the BIA recognition process to ensure that the process is fair to *all* interested parties.
- Eliminate the “Revolving Door” Exemption. The exemption from the federal “revolving door” policy for the employees of BIA must be eliminated. This exemption allows former BIA officials to represent and lobby the BIA on behalf of groups seeking recognition immediately after they leave the agency.
- Examine Impact of the Current Process. Examine how the federal process is usurping the powers of state and local governments to control local economic development, plan for the long term, and provide public safety services.
- Prohibit the Liening of Property by Tribes. Prohibit the ability of tribes to place liens on property to which they lay claim. This power presently allows for tribes to hold communities and states hostage and undermines property values paralyzing home sales throughout the affected region.
- Invalidate the Schaghticoke Decision. I am aware Congresswoman Nancy Johnson has proposed legislation to repeal the recognition of the BIA’s final determination recognizing the Schaghticoke tribe, in light of new evidence and grounds for appeal. I further support efforts by the Connecticut congressional delegation and Connecticut’s Attorney General in seeking a ruling by the BIA to invalidate the Schaghticoke final decision and, if appropriate, remand the Schaghticoke application to the BIA for further consideration or forward the Schaghticoke application to the Secretary of the Department of the Interior for further review.

In conclusion, the BIA is a bureaucracy run amok. Connecticut, I am sure, is not alone in expressing frustration and anger about the current failed process. Legitimate tribes should have a legitimate opportunity to seek federal recognition. But the criteria and laws in granting

recognition must be clearly and stringently adhered to by the BIA. Transparency must rule the process. The highest ethical standards for BIA employees must be put into place and met. All parties involved in a recognition petition deserve to be treated fairly in accordance with BIA regulations and federal law. Rules should not simply be changed in order to achieve a desired result.

I thank you for your time, and on behalf of the people of Connecticut, I ask that you consider the impact the current unrestrained recognition process is having on our state and others and that you adopt legislative and policy changes suggested to you today. Thank you.