

STATEMENT OF BEN NIGHTHORSE CAMPBELL
CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS
ON THE "INDIAN TRIBAL CONFLICT RESOLUTION, TORT CLAIMS AND RISK
MANAGEMENT ACT OF 1998" (S.2097)

JULY 15, 1998

GOOD MORNING AND WELCOME TO TODAY'S HEARING ON S. 2097, "THE INDIAN TRIBAL CONFLICT RESOLUTION, TORT CLAIMS AND RISK MANAGEMENT ACT."

THIS YEAR, THE COMMITTEE HAS HELD A SERIES OF HEARINGS ON TRIBAL SOVEREIGN IMMUNITY.

WE KNOW THAT SOVEREIGN IMMUNITY, WHICH IS HELD IN VARYING DEGREES BY THE FEDERAL AND STATE GOVERNMENTS AS WELL, IS NECESSARY BECAUSE A GOVERNMENT CANNOT OPERATE IF EVERY ACTION RESULTS IN A TRIP TO COURT. HOWEVER, IN THESE HEARINGS WE HEARD THE OTHER SIDE.

WITNESSES TOLD OF PROBLEMS ENCOUNTERED BY PEOPLE LIVING ON OR NEAR RESERVATIONS, INCLUDING ENROLLED MEMBERS OF TRIBES WHO CANNOT SUE THEIR TRIBAL GOVERNMENTS. SOME ARE OLD WAR STORIES AND SOME ARE PERSONAL GRIEVANCES THAT SHOULD NOT INVOLVE THE LEGAL SYSTEM. BUT THERE ARE SEVERAL REAL PROBLEMS THAT WE SHOULD ADDRESS.

THIS LEGISLATION IS PROPOSED TO RESOLVE TWO OF THESE PROBLEMS: COLLECTION OF STATE TAXES ON SALES TO NON-INDIANS AND THE ABILITY TO BE COMPENSATED FOR AN INJURY WHEN A TRIBAL GOVERNMENT IS RESPONSIBLE.

BEGINNING IN 1980 AND AS LATE AS 1991, THE SUPREME COURT HAS RULED THAT TRIBES HAVE A LEGAL OBLIGATION TO COLLECT STATE SALES TAXES ON

SALES TO NON-MEMBERS AND GIVE THOSE TAXES TO THE STATES. THERE ARE NOW OVER 200 STATE-TRIBAL TAX AGREEMENTS IN PLACE COVERING A WIDE VARIETY OF COMMODITIES. BUT IN CASES WHERE A TRIBE AND STATE DO NOT HAVE A TAX AGREEMENT, SOVEREIGN IMMUNITY PREVENTS THE STATE FROM TAKING THEIR CASE TO COURT.

S.2097 ENCOURAGES NEGOTIATIONS BETWEEN TRIBES AND STATES. BUT IF NEGOTIATIONS FAIL, THE BILL PROVIDES A MEDIATION PROCESS WITH THE FEDERAL MEDIATION AND CONCILIATION SERVICE. STATES GET WHAT THEY ARE OWED AND TRIBAL SOVEREIGNTY REMAINS INTACT.

THIS BILL ALSO ADDRESSES COMPENSATION FOR INJURIES WHEN A TRIBAL GOVERNMENT IS RESPONSIBLE. MANY TRIBES ARE COVERED COMPLETELY OR IN PART THROUGH THE FEDERAL TORT CLAIMS ACT OR PRIVATE INSURANCE COVERAGE. BUT WHERE THERE ARE GAPS IN THE COVERAGE THERE IS THE POTENTIAL FOR WRONGS NOT BEING COMPENSATED.

S. 2097 ADDRESSES THIS SITUATION BY DIRECTING THE SECRETARY OF THE INTERIOR TO ENSURE THAT THERE IS SUFFICIENT LIABILITY INSURANCE IN PLACE FOR TRIBES THAT RECEIVE TRIBAL PRIORITY ALLOCATIONS (TPA).

THERE HAVE BEEN ATTEMPTS TO RESOLVE THESE ISSUES BY WAIVING TRIBAL SOVEREIGN IMMUNITY. I HAVE OPPOSED THIS APPROACH — IT SOLVES ONE SET OF PROBLEMS BY CREATING ANOTHER. BUT I MUST SAY TO ALL THE TRIBAL REPRESENTATIVES HERE -- WE MUST ADDRESS THESE ISSUES. NOT JUST TO KEEP THE MORE DRASTIC LEGISLATIVE SOLUTIONS AT BAY, BUT BECAUSE IF

PEOPLE BELIEVE THEY CANNOT GET JUSTICE ON TRIBAL LANDS, THEY WILL NOT DO BUSINESS THERE. PRIVATE SECTOR INVESTMENT ON RESERVATIONS HAS WORKED ECONOMIC WONDERS IN SOME AREAS AND IS A MODEL FOR GETTING OUT OF POVERTY. IF THESE PROBLEMS PERSIST, THAT WILL ALL GO AWAY.

I WANT TO MAKE IT CLEAR FROM THE BEGINNING THAT S.2097 IS A WORK IN PROGRESS. I WELCOME ALL SUGGESTIONS ON HOW TO MAKE IT MORE EFFECTIVE. I AM CONFIDENT THAT WORKING TOGETHER IN THIS COMMITTEE, WE CAN DEVELOP REASONABLE AND RESPONSIBLE SOLUTIONS TO THE ISSUES BEFORE US.

DO ANY OTHER MEMBERS HAVE STATEMENTS THEY WOULD LIKE TO MAKE?