

HEARING ON RULINGS OF THE UNITED STATES SUPREME COURT
AFFECTING TRIBAL GOVERNMENT POWERS AND AUTHORITIES

MS. CANTWELL. Thank you, Mr. Chairman, for the opportunity to learn from the testimony of legal scholars regarding recent Supreme Court rulings that have worked to curtail tribal sovereignty. I would also like to thank Professor Robert Anderson and the Honorable Ron Allen for making the trip from Washington state to be with us today.

The testimony from these experts, and others here today, is critical to our ability to help clarify the authority of tribal governments.

United States policy towards Native Americans has certainly been marked with inconsistencies, dramatic shifts, and reversals. In the 19th century, Native Americans were pushed onto reservations, and then saw the reservations broken up to force assimilation. The twentieth century saw a repeat of this cycle, with the government recreating reservations and then later trying to terminate the federal relationship with tribes.

But in 1970, President Nixon announced a commitment to a new federal policy of tribal self-governance and self-determination. Since then, presidential administrations and Congress have affirmed self-governance and self-determination in their policymaking.

At the same time, Supreme Court decisions have been moving in the opposite direction, finding that tribal sovereignty, particularly over non-Indians in tribal communities, is inconsistent with tribes' "dependent status." These recent rulings are inconsistent not only with the legislative and executive trends towards self-governance, but also with Supreme Court precedent itself. Indeed, the fundamental principle of Indian law, which was set by *Worcester v. Georgia* in 1832, is that Indian tribes maintain their sovereign rights except when explicitly limited by treaty or federal law.

I am concerned that these Court rulings undermining tribal sovereignty are making for, once again, an inconsistent federal relationship with tribes.

Tribal governments are responsible for providing the same services to their communities as local, county, and state governments. It is imperative that tribal governments be empowered with the authority and resources to serve the people in their jurisdiction. Tribal governments need the power to tax and to enforce laws, and Supreme Court rulings have negatively affected their power to do both.

Reservation boundaries often include a mix of tribal and non-tribal members and a mix of trust and fee simple land. If the courts rule that tribal jurisdiction depends on qualities like status of the land within the reservation boundary, tribal membership, or race, then we must seriously consider the implications of these limits on jurisdictional authority. This is obviously a very complex issue, but we must ensure that tribal governments can provide critical services to the people in their jurisdictions, such as law enforcement.

Again, I am pleased that the committee is hearing from the scholars and experts appearing today, and thank you all for sharing your insights with us.