

STATEMENT BY SENATOR LIEBERMAN ON TRIBAL RECOGNITION

Committee on Indian Affairs

Oversight Hearing on the Tribal Recognition Process

May 11, 2005

Mr. Chairman, thank you for holding this hearing today on the process of tribal recognition. My home state of Connecticut is not alone in finding this a critical issue, where the stakes are high for local communities, for people seeking recognition and for those tribes that have gained recognition. All have a vital stake in ensuring the legitimacy and credibility of the process.

To most others, tribal recognition means casino gaming, and, as such, is among the top issues of concern cited by the public. In fact, many see acutely the linkages between this issue and other priority concerns, such as suburban sprawl and traffic congestion and the overall quality of life in their local communities.

That is why it is urgent for the federal government to undertake a complete overhaul of the badly broken federal tribal recognition process. If we are going to treat groups seeking recognition fairly, while making decisions that so clearly affect the economics and quality of life in so many local communities across the country, we must ensure the Bureau of Indian Affairs renders every single one of its decisions according to clearly defined recognition criteria that everybody sees and understands.

Now, let me state clearly at the outset of this hearing as I have done in the past, that I do not oppose the recognition of historic Native American tribes. That is one of the reasons that I find so troubling recent decisions by the Bureau of Indian Affairs, decisions that so clearly demonstrate that the tribal recognition process is dysfunctional. Recent

Native American tribal recognition decisions in Connecticut, for example, on when and how to satisfy recognition criteria have been murky at best. Lacking clear transparency needed to foster and sustain strong public confidence, BIA decision making has lost an enormous amount of public credibility. Neither Native American groups and tribes, nor the general public can afford or accept a process that smacks of outright manipulation and abuse of government authority.

The public's widespread belief in the nexus between tribal recognition and casino-openings is well-founded. There are, at present, 411 Native American casinos in the United States, operated by 223 tribes in Connecticut and 27 other states. More than half of the 341 federally recognized Native American tribes operate casinos in the United States.

Connecticut has two casinos operated by the Mashantucket Pequot Tribal Nation and Mohegan Tribe. To be sure, both tribes have created approximately 20,000 jobs, and contribute more than \$400 million to Connecticut's budget, based upon each tribe's 25 percent share of slot revenues under tribal-state compacts. Still, these benefits come with community impacts and costs that continue to alarm Connecticut's citizens, costs that give them a real stake in the process.

In November 2001, the General Accounting Office evaluated the Bureau of Indian Affairs tribal recognition process, and its findings delineate a process that is subject to manipulation and abuse. In its report, the GAO found that "the basis for BIA's tribal recognition decisions is not always clear". Furthermore, the report went on to state:

"[...] while there are set criteria that petitioners must meet to be granted recognition, there is no clear guidance that explains how to interpret key aspects of the criteria. For example, it is not always clear what level of

evidence is sufficient to demonstrate a tribe's continuous existence over a period of time - one of the key aspects of the criteria. As a result, there is less regulatory certainty about the basis for recognition decisions.”

The GAO's critique was echoed, in part, by the Interior Department's Inspector General and even the past Assistant Secretary for Indian Affairs.

Where standards are unclear and interpretive rules are uncertain, arbitrariness and abuse are nearly inevitable.

Two recent BIA decisions, one recognizing the Eastern Pequot and the other the Schaghticoke, make the problem perfectly clear. The Eastern Pequot decision actually involved recognition petitions from two different groups, each of which insisted that they comprised two totally separate tribes. Completely on its own motion, the BIA nonetheless created a new tribe by merging the two petitioners into one tribe. The BIA affirmatively reached out and created a new tribe when no one was requesting it, using legal analysis for this unprecedented decision that defies logic. In particular, the BIA relied on Connecticut's historic recognition of the tribe to fill gaps for “specific periods [of time] where the other evidence in the record concerning community or political influence would be insufficient by itself.” This decision remains on appeal.

The Schaghticoke decision concerns the BIA's reversal of a preliminary decision to deny federal tribal recognition by again using the State of Connecticut's recognition to “bridge the gap” of obviously lacking evidence regarding continuous political activity. In the aftermath of this decision, my colleague, Senator Dodd, led a request for the Interior Department's Inspector General to investigate the Schaghticoke decision. Although the IG's August 2004 report found no actual malfeasance or wrongdoing, the BIA subsequently

revealed that it made a critical error in calculating the marriage rate between Schaghticoke tribal members during the 19th century. New marriage figures calculated by the BIA dropped the Schaghticoke intra-tribal marriage rate below the threshold that automatically satisfies one of the seven federal recognition criteria. The BIA refused all Connecticut lawmaker requests for immediate reversal of its decision, and this case also remains on appeal.

If the Eastern Pequot and Schaghticoke recognition decisions are upheld, local residents will have to bear the economic and social costs associated with the prospect of two new casinos that will forever change their quality of life. Because of the enormous implications, it's not too much to ask that the BIA process be free of any perceived decision-making bias before issuing tribal recognition decisions.

Senator Dodd and I tried to fix the federal tribal recognition process problems cited in the GAO's report by introducing legislation that would have created a more fair and open tribal recognition process. We remain unwavering in our commitment to reform the process so that these critical decisions are based on fair, consistent, and accurate procedures, and have reintroduced The Tribal Recognition and Indian Bureau Enhancement (TRIBE) Act to enact these reforms:

- Codify existing criteria used to make recognition decisions, and require that all Native American tribes met all outlined criteria before being granted federal recognition as a sovereign nation;
- Require BIA to provide notice of pending petitions to a wide range of interested groups, including the general public, other tribes, counties, towns, and states where the petitioning group is located;

- Allow BIA to hold formal hearings where interested parties can present evidence, examine witnesses, and rebut evidence in the record; and
- Increase BIA budget from \$900,000 to \$10 million annually to drastically reduce the pending petition backlog. A related bill would provide financial assistance to towns and tribal groups who cannot afford to participate in BIA proceedings.

Our legislation is a balanced effort to fix the acknowledged problems in the BIA's tribal recognition process. BIA must provide adequate procedures to ensure its legitimacy, and have the increased resources and staff needed to follow these procedures fully. The TRIBE Act will benefit both Native American tribes and the communities most directly affected by the growth of casino gambling. All stakeholders must be provided the financial tools to participate meaningfully in the recognition process.

I want to again stress that the TRIBE Act does nothing to affect already recognized federal tribes nor hinder their economic development plans. We want these procedural reforms to fix the shortcomings identified in the GAO report, which are undermining the legitimacy of the entire process.

Senator Dodd and my legislation dictates no outcomes. It simply makes necessary reforms to ensure a fair process that is more accessible and more transparent to all affected parties.

In closing, I urge my colleagues on both sides of the aisle to support this legislation. The tribal recognition process is a critical matter not only for Connecticut, but for many other states. Mr. Chairman, your committee has the opportunity to fix a broken process and I thank you for this opportunity to urge you to do so.

