TESTIMONY
SENATE INDIAN AFFAIRS COMMITTEE
HON. ROB SIMMONS (CT-2)
May 11, 2005

Mr. Chairman and members of the Committee,

Thank you for holding this hearing, and for allowing Connecticut officials to testify on behalf of our home state. I'm glad to join my Connecticut colleagues from both houses of Congress and from both sides of the aisle. As with all issues that so deeply affect our home state, this is an issue where we, as a delegation, try to speak with one voice without regard to party affiliation.

I also want to thank our wonderful governor, Jodi Rell, for taking the time from her busy schedule to come to Washington to testify at this hearing. She has shown great interest and commitment to this issue since taking office. I know I speak with the entire delegation when I say thank you, Governor, for your leadership on this and so many other important issues facing our great state.

Mr. Chairman, there are few other matters as important to our state and my congressional district as that of a deeply flawed tribal recognition process.

Indeed, no other state in America has felt the impact of the Bureau of Indian Affairs' (BIA) broken recognition process than Connecticut. We are host to two of the world's largest casinos: Foxwoods Resort Casino run by the Mashantucket Pequot Tribe and Mohegan Sun run by the Mohegan Tribe. And with more groups seeking recognition over the past three years, we face the potential of at least two more casinos in the immediate future.

To be fair, Connecticut has seen both the benefits and the adverse effects of tribal recognition. One benefit is that Indian gaming has produced jobs at a time when defense contracting and manufacturing have been on the decline. Foxwoods Resort and Mohegan Sun purchase goods, provide services, and contribute upwards of $400 million a year into the state budget in slots revenue. Tribal members have also been personally generous with their wealth, supporting numerous community projects and charities.

But there is also a considerable negative impact. In Connecticut, recognition has meant the right to operate a casino that places pressure on small local municipalities who have no right to tax, zone or plan for these facilities. Small rural roads are overburdened with traffic, understaffed local police departments are routinely working overtime, and volunteer fire and ambulance services are overwhelmed with emergency calls. The small towns that host and neighbor these casinos are simply overwhelmed by this strain. My friend Nick Mullane, the

First Selectman of North Stonington, has testified in great depth numerous times before Congress about the unique burden towns such as his must bear.

In year's prior, many in Connecticut questioned the presence of tribal casinos because they wondered whether the federal process was fair. The people of Connecticut no longer wonder. They know the federal system is broken.

BIA's recent actions involving groups in Connecticut seeking status as Indian tribes under federal law demonstrate that the acknowledgement process is not objective and not based in the criteria set forth. This, of course, is not the fault of the petitioning groups, some of whom I have considered friends and neighbors for many years. It is the fault of the federal government. Congress must exercise our jurisdiction over these issues and act promptly before a serious problem grows worse.

Over the last three years, BIA has issued final determinations that would grant federal tribal status to two groups in Connecticut. The first of these was the "Historic Eastern Pequot" tribe, located in the town of North Stonington in my congressional district. The second was the Schaghticoke Tribal Nation, in the town of Kent in the congressional district of Ms. Johnson.

In this same time period, the BIA denied recognition to the Golden Hill Paugussett group, located in Colchester and Bridgeport, and the to the two Nipmuc groups, located in Massachusetts but targeting land in northeastern Connecticut – in my congressional district. Both the Golden Hills and the Nipmucs are now pursuing appeals to overturn the BIA's decision.

With such significant decisions pending before a federal body, it is our duty in Congress to ensure that a fair and objective procedure is used to make these decisions. This is an important point, Mr. Chairman. Under the Indian Commerce clause to the Constitution, Congress has plenary authority over Indian affairs. Indeed, this body has in the past recognized tribes. Congress has *never* delegated the authority to acknowledge tribes. Court decisions may have established that the executive branch has the responsibility to oversee Indian affairs, but no judicial decision has ever explicitly delegated to the executive branch the authority to decide the fundamental question of what groups will be granted federal recognition.

Moreover, Congress has never taken the constitutionally necessary step of defining and placing in statute the seven standards under which BIA is to rule on tribal acknowledgment petitions. Absent this statutory guidance from Congress, BIA has time and again flouted their own regulations. The seven criteria are viewed as mere suggestions or guidelines, easily ignored or bypassed when necessary to reach a desired result. Even the Inspector General of the Department of Interior, Earl Devaney, admitted as much when in issuing a report on the Schaghticoke decision he described the process as being "permissive and inherently flexible."

Indeed, there is no better example of this disregard for the regulations in place than in the case of the Schaghticoke decision. In an internal memorandum prepared by staff in the BIA's Office of Federal Acknowledgement for one of the top officials in charge of recognition, there was a road map or blueprint laid out as to how BIA could justifiably find in favor of the

Schaghticokes despite their own admittal that "based on the regulations and existing precedent" they did not meet the standard for recognition. The disclosure of this memo laid bare what we in Connecticut have known to be the case for some time, Mr. Chairman – officials at the BIA are more advocates and consultants to groups seeking recognition than they are impartial arbiters of tribal history and continuity.

We all agree that legitimate groups need to be granted the federal status they deserve and accorded their sovereign rights, but the determination to acknowledge such tribes cannot and should not be made unless these groups clearly meet each of the seven criteria. To make certain these standards are met, I have introduced legislation that would codify each of these seven criteria, ensuring that "federal acknowledgement or recognition shall not be granted to an Indian tribe unless the Indian tribe has met all of the criteria listed." This law will provide an equitable process to groups that clearly meet all seven tests, while preventing claims from groups that fall short of one of these standards. No longer will the BIA be able to pick and choose or simply work around the criteria to find in favor of a petitioner, as they did in the case of the Schaghticokes.

And the problem is no longer limited to just our state. Indian recognition and the possibility it brings to open a casino has become a tremendously lucrative proposition to gambling interests and some developers. In 1999, federally recognized tribes reported about $10 billion in gaming revenue, which was more than Nevada casinos collected that year. By 2001, Indian gaming revenues rose to $12.7 billion. Last year it was $18.5 billion from tribes across 28 states – more than half the union. Predictably, wealthy individuals and corporations have begun to lobby on behalf of groups seeking federal recognition. More disturbing, individuals have gone directly from BIA into the private sector to lobby their ex-colleagues on behalf of these wealthy gambling interests. This is because BIA is currently exempt from the federal law that makes other federal officials – including members of Congress – wait at least one year before lobbying the federal government. If *any* federal agency needs this law it is the BIA. These officials need a "cooling-off period" during which they can put distance between their public service and private gain. The legislation I introduced on behalf of the Connecticut House delegation to put the seven criteria in statute would also end this troubling exemption and stop the rapidly spinning revolving door.

Mr. Chairman, as we will hear today from some of our distinguished guests, the revolving door issue is representative of a greater issue -- the ability of petitioners that are backed by powerful gambling interests to get to the front of the line. In March of last year, the *New York Times* detailed in a front-page story the ties between these powerful money interests and petioner groups. Included in this article was a reference to the business relationship between the most recent head of the BIA, David Anderson, and the primary backer of the aforementioned Nipmuc groups, Lyle Berman. Mr. Anderson and Mr. Berman were founding partners of what is now Mr. Berman's casino development company, Lakes Entertainment. Lakes Entertainment has provided nearly $4 million to the Nipmucs in their effort to obtain federal recognition.

Faced with questions from me and other members of our delegation, Mr. Anderson took the step of recusing himself from all federal recognition decisions and eventually resigned just one year into his tenure at the agency. Three months after his resignation, the president has yet to offer a nominee to take the helm at this troubled agency. Mr. Chairman, when the top official at the body tasked with making Indian recognition decisions must remove himself

from these decisions because of *his own* ties to gambling interests I think the problem becomes self-evident.

Before I close my remarks let me share one more story that I think illustrates the problem that brings us here today. As I mentioned earlier, there are two groups -- both known as the Nipmucs -- based in Massachusetts but seeking to build a casino in Connecticut. Although both of the competing groups saw their petitions turned down by the BIA last spring, each has appealed. It was revealed last fall that there was a letter on Department of Interior letterhead offering strategic advice to one band of the two groups as to how best to pursue federal recognition. The letter was unsigned and crafted in a very unprofessional manner and officials at the Interior Department were quick to deem it a forgery. I have no reason to believe it was not, but this episode along with that of the Schaghticoke decision memo I discussed earlier raises a larger point. When we see such flagrant acts of one-sided advocacy in favor of tribes, as we did in the Schaghticoke case, why wouldn't we believe that officials at this agency would pen such a letter? And more troubling, how are we to know what other documents or evidence in the system is fraudulent?

And therein lies the problem. When you combine tribes who are, in many cases, genuinely seeking to improve the lives of their members, gaming interests eager to exploit a growing market, and pliant BIA officials more interested in recognizing as many groups as possible than in objectively applying the rules provided, you are left with a corrupt system that tragically casts doubt on all recognition decisions.

In conclusion, Mr. Chairman, we want more control over the process. We want more transparency and definition to the process. We want relief provided to our localities for what can be a very expensive battle on a very uneven playing field. And we want to get the money out of the process to ensure that recognition decisions are obtained by who can meet a defined and consistently applied set of standards, not those who can plow the most money into an application.

The victims of the situation include all parties to the acknowledgment process – petitioning groups, states, local communities, and the public. By giving the recognition standards the power of law and closing the revolving door, we can begin to do so. This is the only way to ensure fair, objective and credible decisions.

Thank you for considering my testimony and allowing me to join this important hearing today.