

Bureau of Indian Affairs – Discussion Draft Concerning BIA Tribal Recognition Process

Connecticut's senior elected leadership – the Governor, the Attorney General and all members of the Congressional Delegation – have voiced strong opposition to the changes being considered by the Bureau of Indian Affairs that would alter the procedures for establishing a federally recognized tribe. Certain changes would uniquely and negatively affect Connecticut.

GENERAL

- In June, Assistant Secretary of the Interior for Indian Affairs Kevin Washburn issued a “preliminary discussion draft” of revised regulations governing the Federal acknowledgment of Indian tribes.
- These revisions purport to be about efficiency. But they're really designed to achieve a dramatic change in policy.

HISTORY OF THE TRIBAL ACKNOWLEDGMENT ISSUE IN CT

- Acknowledgement petitions by Eastern Pequot, Schaghticoke, and Golden Hill Paugussett groups were all denied in 2004/2005. Each of the groups failed to satisfy some of the core acknowledgment criteria.
- Specifically, all of the groups failed to demonstrate: (1) continuity as a distinct social community and (2) continuous exercise of political influence or authority.
- Despite these deficiencies, the BIA *initially* issued decisions granting acknowledgment to Eastern Pequots and Schaghticoke *on the grounds that the CT's maintenance of reservations implied that the State recognized the groups as a political tribal entity and social community.*
- CT appealed to the Interior Board of Indian Appeals (IBIA) and the IBIA sided with CT. After reconsideration following the IBIA decisions, the Revised Final Determinations noted that *maintenance of state reservations provided no evidence of either political influence and authority or social community* and did not reflect a government-to-government relationship with the tribes.
- The Revised Final Determinations adopting the IBIA decisions were challenged in Federal court and have been upheld. In the case of the Schaghticoke, the 2nd Circuit upheld the decision and the Supreme Court denied Cert.

WHAT WOULD THE DRAFT REGULATION DO?

- The Draft would create an expedited favorable finding for groups that have maintained reservations recognized by the State since 1934, completely eliminating the need to demonstrate

political or social continuity throughout a group's existence since the ratification of the U.S. constitution in 1789. Existence of a state reservation since 1934 would result in near-automatic acknowledgement.

- For the first time in the history of the federal acknowledgment process, the Discussion Draft would allow groups that have previously been denied federal tribal status the ability to re-apply and to seek an expedited favorable finding without meaningful participation by the affected state or other parties.
- *NOTE:* This combination of changes is particularly egregious, since it would allow the BIA to use a *proxy* for political and social continuity when the absence of *actual* political and social continuity had been established after a thorough evidentiary process.
- The Draft would also eliminate IBIA review of acknowledgment decisions, eliminating an important procedural safeguard.
- The Draft favors petitioners over other interested parties in a variety of ways. (E.g., evidence must be read in a light most favorable to the petitioner, reduced opportunities for participation by interested parties, far less transparency.)

WHY ISN'T IT REASONABLE TO TREAT STATE RESERVATIONS AS A PROXY?

- In Connecticut, reservations have been maintained simply because there are descendants of the groups for which the reservations were first established.
- Using state reservations as a proxy for social community and political authority effectively collapses the acknowledgment decision into one based entirely on descent, a result that is contrary to the basic principles of tribal acknowledgment.
- And you don't have to take our word for it, since three groups have been denied federal recognition after long and thorough evidentiary processes – making clear that the existence of a state reservation could *not* be taken as a proxy.

HOW IS CONNECTICUT UNIQUELY AFFECTED?

- Of the total of more than 350 Indian groups that have petitioned for Federal Acknowledgment, only 10 have State-recognized reservations. Of these 10, three cannot qualify for expedited review because their reservations were established after 1934, one in New York has already been federally acknowledged, and one in Virginia recently received a proposed finding for Federal Acknowledgment. That leaves only five Indian groups that might have a valid claim for an expedited favorable finding under the proposed language.

- *Of these five groups four are located in Connecticut:* the previously denied Eastern Pequot Indians, the Schaghticoke Tribal Nation, and the Golden Hill Paugussett Tribe and the Schaghticoke Indian Tribe, whose petition is still pending. The fifth group is the Mattaponi Indian Tribe in Virginia, which has yet to submit a documented petition for Federal Acknowledgment.
- And there is no state other than Connecticut in which a tribe that has maintained a state reservation since 1934 has already been denied federal recognition. *Connecticut is the only state for which this regulation would result, automatically, in the reversal of a prior determination.*

WHAT WOULD BE THE EFFECT IN CONNECTICUT?

- If the Draft rule is promulgated in its current form final, previously denied Connecticut-based petitioners would almost automatically receive federal acknowledgment.
- Each of these groups have made or threatened land claims that cover substantial areas of the state of Connecticut. Such claims cloud title to private land in the claimed area, causing economic hardship. Such land claims frequently result in settlement agreements that award substantial monetary payments and land favorable for economic development.
- Federal reservations and trust lands would be created, exempt from state and local regulatory control, resulting in the loss of tax base, the need for increased services from local governments, and extraordinary new demands on the infrastructure of the State.
- In the past, all of the groups have expressed interest in developing casinos and pursuing land claim lawsuits in Connecticut if they obtain federal acknowledgment.

WHAT CHANGES DO WE ABSOLUTELY NEED FOR FAIRNESS TO CONNECTICUT?

- Eliminate the expedited favorable finding provision – or at minimum eliminate the existence of a state reservation or state recognition as the basis for obtaining an expedited favorable finding.
- Eliminate the provision allowing groups that have previously been denied recognition, after thorough evidentiary processes, to re-apply for the expedited favorable finding.