

TESTIMONY
OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
TO THE SUBCOMMITTEE ON INDIAN, INSULAR AND ALASKA NATIVE AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
HEARING ON
H.R. 3744
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Chairman LaMalfa, Ranking Member Torres, and Members of the Subcommittee – my name is John Tahsuda, I am the Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior (Department or Interior). Thank you for the opportunity to provide the Department’s views on Chairman Bishop’s bill, H.R. 3744, the Tribal Recognition Act of 2017. This bill revises the existing Federal administrative acknowledgment process, requiring any petitioning Indian tribe to be formally recognized by an Act of Congress.

Currently, there are three main ways for an Indian group to gain federal recognition. First and foremost, groups may seek recognition by the Congress through the legislative process. Second, Interior presently has the statutory authority to recognize groups with its Office of Federal Acknowledgement through the formal Part 83 of Title 25 of the Code of Federal Regulations (25 CFR Part 83 or Part 83), Federal Acknowledgment of American Indian Tribes process, which were revised in 2015. Lastly, in limited circumstances, tribal recognition may occur through the federal courts. Historically, federal recognition of Indian tribes was not grounded solely in delegated authority from Congress.

The Department believes Congress has the authority to revise and amend the federal administrative recognition process. The Department thus does not take issue with Congress’s decision to set criteria for the recognition of Indian tribes when recognition occurs through a process created by authorizing legislation, and supports those provisions of H.R. 3744.

We welcome the opportunity to engage this Committee in ways to improve the transparency, efficiency, and accountability of the overall process.

H.R. 3744

H.R. 3744, the Tribal Recognition Act of 2017, replaces the current Part 83 process for the Department’s recognition of Indian tribes, placing the primary decision-making authority in the hands of Congress rather than the Department. The Secretary of the Interior would no longer have the authority to recognize a tribe under Part 83, unless expressly authorized by Congress, and the Part 83 process would no longer result in a federal recognition decision.

Interior’s role, per the legislation, would be to assist in determining tribal status by continuing to provide its historical and technical expertise. The Assistant Secretary for Indian Affairs (AS-IA)

would maintain the important function of notification and review, as is laid out in Section 6 of the legislation. The AS-IA's duties primarily focus on the implementation of guidelines for the preparation of documented petitions. Notification of the group in question, as well as states, local Tribes, and the public would occur, as well as conducting preliminary reviews of petitions and notifying the group of any deficiencies or omissions. The AS-IA would then review individual petitions and request additional research conducted on behalf of the petitioner before delivering the completed petition to Congress. Once the findings are delivered, it is the duty of the Committees of jurisdiction to commence the process for formal recognition.

We recognize that there have been frustrations with implementing the existing rules. The Department believes there is great merit in examining the overall federal acknowledgement process and identifying ways to bring increased transparency and consistency to the current standards. Congress may authorize and codify revised standards and criteria to resolve the broader questions surrounding the Part 83 process. It is the Department's current position that affirmative Congressional recognition more directly aligns the formal recognition of tribes with the assignment of rights derived by the recognition decision.

The Department would like to work with the Committee to address a concern with language in the bill suggesting that Congress has exclusive authority over Indian affairs. We look forward to further conversations with this Committee about the Tribal Recognition Act of 2017 and other legislative proposals specific to Indian country.

Conclusion

The Department of the Interior appreciates the Chairman's work on this important issue and supports the goals of improving the overall administrative recognition process as reflected in H.R. 3744. As indicated above, we welcome any further opportunities to engage this Committee and the Congress on ways to improve the transparency, efficiency, and accountability of the federal administrative recognition process. We stand ready and able to work with you.

Thank you for the opportunity to testify today. I look forward to answering your questions.