

S. 2188

CONGRESSIONAL RECORD
SENATE SPEECHES AND INSERTS
March 31, 2014

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. TESTER (for himself, Mr. Moran, Mr. Udall of New Mexico, Mr. Begich, Ms. Heitkamp, Mrs. Murray, Mr. Heinrich, and Mr. Walsh):

S. 2188. A bill to amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes; to the Committee on Indian Affairs.

Mr. TESTER. Mr. President, I rise today to introduce legislation to correct a historical wrong.

My legislation is a necessary amendment to the Indian Reorganization Act of June 18, 1934. It addresses a Supreme Court ruling that was, in my opinion, wrong.

On February 24, 2009, the Supreme Court issued its decision in the *Carcieri v. Salazar* case. In that decision the Supreme Court held that the Secretary of the Interior exceeded his authority in taking land into trust for a tribe that was not under Federal jurisdiction, or recognized, at the time the Indian Reorganization Act was enacted in 1934.

It has now been 5 years since that decision. This decision has had a significant impact on tribes in every part of this country, whether it is the Poarch Band of Creek Indians, which is facing spurious litigation over its status as a tribe; the Samish Tribe of Washington, which has been waiting 4 years for a *Carcieri* determination; or the Little Shell Tribe of my home State of Montana, who could be affected by this ruling if they are granted Federal recognition, as they should be.

Moreover, the *Carcieri* decision has spawned more harmful litigation, including *Salazar v. Patchak*, where the Supreme Court ruled that individuals have 6 years to challenge a tribe's trust land acquisition, and *Big Lagoon Rancheria v. California*, where the Ninth Circuit essentially ruled that there is no time limit on challenging a tribe's status or its trust land acquisitions.

The legislation I am introducing today is a necessary step in the process to reaffirm the Secretary's authority to take land into trust for tribes, regardless of when they were recognized by the Federal Government. The amendment ratifies the prior trust acquisitions of the Secretary, who, for the past 75 years, has been exercising the authority to take lands into trust, as intended by the Indian Reorganization Act.

Perhaps the most serious impact for tribes if Congress lets this decision stand is the creation of two classes of tribes—those who were recognized as of 1934, whose rights and status are secure, and those who were recognized after 1934, whose rights and status can be perpetually challenged. Allowing two classes of tribes is unacceptable and is contrary to prior Acts of this Congress. In 1994, Congress passed the Federally Recognized Indian Tribe List Act to ensure that all tribes are treated equally, regardless of their date of recognition.

Finally, I know that there are a number of my colleagues who have an interest in this legislation and would like to see changes to this bill. I want to let you know that I stand ready to work with each of you to craft a bill that the Senate can enact and that will end this problem of two classes of tribes forever.

I want to thank Senators MORAN, UDALL of New Mexico, BEGICH, HEITKAMP, MURRAY, HEINRICH, and my fellow Montana Senator WALSH, for their support on this legislation. My cosponsors are well aware of the impact this decision has had on our tribal communities. Affected tribes deserve our timely consideration of this bill. I urge my colleagues to join me in supporting its passage.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2188

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REAFFIRMATION OF AUTHORITY.

(a) Modification.—

(1) IN GENERAL.—The first sentence of section 19 of the Act of June 18, 1934 (commonly known as the “Indian Reorganization Act”) (25 U.S.C. 479), is amended—

(A) by striking “The term” and inserting “Effective beginning on June 18, 1934, the term”; and

(B) by striking “any recognized Indian tribe now under Federal jurisdiction” and inserting “any federally recognized Indian tribe”.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect as if included in the Act of June 18, 1934 (commonly known as the “Indian Reorganization Act”) (25 U.S.C. 479), on the date of enactment of that Act.

(b) Ratification and Confirmation of Actions.—Any action taken by the Secretary of the Interior pursuant to the Act of June 18, 1934 (commonly known as the “Indian Reorganization Act”) (25 U.S.C. 461 et seq.), for any Indian tribe that was federally recognized on the date of that action is ratified and confirmed, to the extent such action is subjected to challenge based on whether the Indian tribe was federally recognized or under Federal jurisdiction on June 18, 1934, as if the action had, by prior Act of Congress, been specifically authorized and directed.

(c) Effect on Other Laws.—

(1) IN GENERAL.—Nothing in this section or the amendments made by this section shall affect—

(A) the application or effect of any Federal law other than the Act of June 18, 1934 (25 U.S.C. 461 et seq.), as amended by subsection (a); or

(B) any limitation on the authority of the Secretary of the Interior under any Federal law or regulation other than the Act of June 18, 1934 (25 U.S.C. 461 et seq.), as so amended.

(2) REFERENCES IN OTHER LAWS.—An express reference to the Act of June 18, 1934 (25 U.S.C. 461 et seq.), contained in any other Federal law shall be considered to be a reference to that Act as amended by subsection (a).