

Statement of U.S. Rep. Nick J. Rahall, II
Chairman, Committee on Natural Resources
Legislative Hearing on H.R. 3742 and H.R. 3697
November 4, 2009

Today, the Committee meets on two bills, H.R. 3742 and H.R. 3697, each introduced by a co-Chairman of the House Native American Caucus.

H.R. 3742 was introduced by my good friend Dale Kildee, whose support for Indian tribes and tribal sovereignty is second to none in the Congress. H.R. 3697 was introduced by our colleague Tom Cole, who has also made a mark for himself in his support of Native American issues.

Earlier this year, the Supreme Court issued a decision in *Carcieri v. Salazar* that prohibits the Secretary of the Interior from taking land into trust for tribes that were not "under Federal jurisdiction" in 1934.

Seventy five years ago. A moment frozen in time.

In my view, this decision strikes at the heart of tribal sovereignty, the ability to provide governmental services for tribal members, and the exercise of tribal jurisdiction over its land. A land base is necessary for all governments, including Indian tribes. But for Indian tribes, the land must be placed into trust in order for the tribe to realize the fullest benefits of the land.

As a result of this Supreme Court decision, however, a dark cloud hangs over Indian Country. It is a cloud that may cast a pallor over land that is used for housing, protection of sacred sites, to build schools and health clinics, to provide for economic development, and for many other purposes.

Such confusion denies Indian tribes and tribal members of their rights guaranteed by treaties, statutes, and executive orders. Because of this decision, many tribes may face unnecessary litigation and other delays that tribes cannot afford.

I would also observe that although the Court did not define "under Federal jurisdiction", there have been attempts by some to equate that phrase with formal Federal recognition. Let me make this clear, Congress' constitutional authority over Indians is not conditioned

on formal Federal recognition.

Whether or not the Congress decides to exercise our jurisdiction over an Indian tribe does not mean that we do not have the power to do so. If the group is an Indian tribe, it is under our authority as vested by the Constitution. As such, Congress possesses jurisdiction over any tribe that exists, whether formally recognized or not by the Federal government. Attempts to equate the two concepts are clearly an attack on Congress' plenary authority over Indians.

I look forward to all the testimony today and especially the Administration's views on these bills and about the actions it is taking to ensure that the land into trust process continues in a timely fashion.