

## Calendar No. 638

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| 108TH CONGRESS }<br>2d Session } | SENATE | {<br>REPORT<br>108-310 |
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TO ACKNOWLEDGE A LONG HISTORY OF OFFICIAL DEPREDACTIONS AND  
ILLCONCEIVED POLICIES BY THE UNITED STATES GOVERNMENT RE-  
GARDING INDIAN TRIBES AND OFFER AN APOLOGY TO ALL NATIVE PEOPLES  
ON BEHALF OF THE UNITED STATES

JULY 15, 2004.—Ordered to be printed

Mr. CAMPBELL, from the Committee on Indian Affairs,  
submitted the following

### R E P O R T

[To accompany S.J. Res. 37]

The Committee on Indian Affairs, to which was referred the joint resolution (S.J. Res. 37) to acknowledge a long history of official depredations and ill-conceived policies by the United States Government regarding Indian tribes and offer an apology to all Native Peoples on behalf of the United States having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the joint resolution (as amended) do pass.

#### PURPOSE OF THE MEASURE

The purpose of S.J. Res. 37 is to acknowledge a long history of official depredations and ill-conceived policies by the United States Government regarding Indian tribes and offer an apology to all Native Peoples on behalf of the United States Government.

#### BACKGROUND AND NEED

Prior to the establishment of the United States, British and Spanish colonies established early relationships with Indian tribes through negotiated treaties. These treaties served as agreements between two sovereign governments and considered supreme law of the land.

After establishment of the United States constitution, the new U.S. government continued relations with Indian tribes by assuming the role of establishing treaties with tribes. Federal policy on relations with Indian tribes was also established in the U.S. Con-

stitution through the Commerce Clause,<sup>1</sup> legislation in the Indian Non-Intercourse Act of 1790,<sup>2</sup> and by United States Supreme Court cases such as *Johnson v. McIntosh*,<sup>3</sup> *Cherokee Nation v. Georgia*,<sup>4</sup> and *Worcester v. Georgia*,<sup>5</sup> on which is built the doctrine of the Federal trust responsibility.

From the earliest days of the Republic, there existed a sentiment that honorable dealings and peaceful coexistence were preferable to bloodshed. Indeed, Congress in 1787 provided in the Northwest Ordinance that “[t]he utmost good faith shall always be observed toward the Indians.” S.J. Res. 37 recognizes past dealings, both good and bad, between the United States Government and Indian tribes and that there were many treaties made between the Federal and Indian tribal governments.

However, the young Republic had a nearly unquenchable demand for land as immigrants entered our country and settlers spread west into lands traditionally occupied and used by Native peoples. Too often the United States Government did not uphold its responsibilities provided in its covenants with the Indian tribes and, as a result, Indian lands were taken away from tribes, relationships were strained, and distrust became the hallmark of the Federal-tribal relationship.

The relationship was further strained by the promulgation of several Federal policy initiatives set forth by the United States Congress through passage of the General Allotment Act of 1887,<sup>6</sup> also referred to as the Dawes Act, and legislation that called for the termination of the Federal-tribal relationship. These policies were meant to encourage assimilation of Indian people into mainstream America. The policies were disastrous in that they further deteriorated the Indian land base, eroded tribal cultures, and did nothing to improve the political, economic and social conditions of Indian tribes or Native people.

Nonetheless, there is a recognized need by those of goodwill for some type of reconciliation. However, before reconciliation, there must be an acknowledgment of past misdeeds and repentance. S.J. Res. 37 is intended to be the first step toward healing the wounds that have prevented the United States Government and Indian tribes from striking a positive, forward-looking relationship that will endure for decades to come.

The resolution is meant to provide the foundation for a new era of positive relations between the United States Government and Indian tribes and intended to help heal the divisions in our land and reconcile all Americans as one people, with one destiny.

The resolution acknowledges and honors the importance of Native Peoples to our land and our country—in the past and in the present day—and offers an official apology to the Native peoples for

<sup>1</sup>Article 1, Section 8, also known as the Commerce Clause, states that “The Congress shall have the power to . . . [t]o regulate Commerce with foreign nations and among the several states, and with the Indian tribes.”

<sup>2</sup>1 Stat. § 137 (1790); see also 25 U.S.C. § 177. The Indian Non-Intercourse Act prohibited all Indian land transactions that did not have Federal government approval. This policy, though reaffirmed and refined, continues to be current policy.

<sup>3</sup>21 U.S.C. § 543 (1823).

<sup>4</sup>30 U.S.C. § 1 (1831).

<sup>5</sup>31 U.S.C. § 515 (1832).

<sup>6</sup>24 Stat. 388, codified as amended by 25 U.S.C. §§ 331–334, 339, 341, 342, 348, 349, 354 and 381.

the official depredations and ill-conceived policies of the United States Government regarding Indian tribes.

Significantly, S.J. Res. 37 is not intended to fuel any continuing controversies, or engender or support any litigation or claims by or against the United States and Indian tribes. It is both the sponsors' intention and the Committee's understanding that S.J. Res. 37 does not, and should not be construed to, authorize or support any claim against the United States nor should it serve as evidence to support in any way a claim against the United States. In this regard, S.J. Res. 37, or any part of the resolution, is not intended for use as evidence pursuant to Federal Rule of Evidence 201 in any proceeding or proffered as applicable law to govern any judicial proceeding.

At the same time, it is both the sponsors' intention and the Committee's understanding that S.J. Res. 37 does not authorize or serve as a settlement of any claim against the United States by an Indian tribe or tribes.

#### LEGISLATIVE HISTORY

S.J. Res. 37 was introduced by Senator Brownback on May 6, 2004, for himself and for Senators Campbell and Senator Inouye. Senators Akaka, Daschle and Dodd were later added as additional cosponsors. On June 23, 2004, the Committee on Indian Affairs considered the resolution and ordered the resolution, in the form of a substitute amendment, reported to the Senate with favorable recommendation that it pass.

#### COMMITTEE RECOMMENDATION

The Senate Committee on Indian Affairs, in open business session on June 23, 2004, by a unanimous voice vote of a quorum present, considered the resolution and ordered the resolution, in the form of a substitute amendment, reported to the Senate with favorable recommendation that it pass.

#### COST AND BUDGETARY CONCERNS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed.

#### EXECUTIVE COMMUNICATIONS

There have been no executive communications received on this legislation.

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S.J. Res. 37. The resolution is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses. No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy. Little, if any, additional paperwork would result from the enactment of S.J. Res. 37.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by S.J. Res. 37, as ordered reported.

