

Citizens Equal Rights Alliance

MANY CULTURES

ONE PEOPLE ONE LAW

May 15, 2001

The Honorable Orrin Hatch
U.S. Senate
Washington DC

Dear Senator Hatch,

We request that the Judiciary Committee, in the exercise of its required oversight function, investigate the increasing problems of American citizens being deprived of their rights as American citizens by tribal governments exercising delegated power and authority from agencies of the United States Government.

There are tribal members, non-members and lawyers from CERA who are experts on this issue and would be willing to provide evidence and testimony to your investigation and to your Committee.

Unquestionably, there is no group of citizens who enjoy less constitutional protections in the United States than tribal members in relationship to tribal governments. The United States Supreme Court has held that tribal governments are not subject to the Amendments to the United States Constitution in the exercise of their sovereignty powers. See *Talton v. Mayes*, 163 U.S. 376,384 (1986)(regarding Fifth Amendment). In response, Congress passed the Indian Civil Rights Act of 1968, 25 U.S.C. §1302. Because the United States Supreme Court has held, however, that the Indian Civil Rights Act is not enforceable in Federal Courts, individuals subject to tribal courts cannot appeal those decisions to the Federal Court for review. As a result, the same tribal governments who create and control tribal courts in the absence of a separation of powers, are protected while the civil rights of tribal members and non-members are often trampled.

The United States bears a particular burden when an application is made to put land in trust for an Indian tribe. Because trust lands are removed from the control of state governments, the activities on those lands are no longer protected by the 14th Amendment to the United States Constitution which applies the Bill of Rights to the states. Similarly, for the reasons stated above, the Federal Courts cannot review the actions of tribal governments in the exercise of their sovereignty powers, meaning that when lands are put in trust the protections of the Constitution and the Bill of Rights no longer exist.

We believe that the Congress is without power to transfer lands into trust for Indian tribes, and thereby deprive the activities of citizens on those trust lands of the protections of the United States Constitution, unless appropriate arrangements are made to ensure that the full protection of the United States Constitution and the civil rights of all citizens continue to be protected following transfer of those lands into trust.

The heart of the problem is the system of tribal governments which are not required to meet the constitutional mandates of the United States Constitution, do not have a separation of powers between the legislative, judicial and executive branches, and which exclude participation by non-members even as those governments seek jurisdiction over the activities of non-members on reservation lands and trust lands. In the end, it is up to this judiciary committee to investigate the abuses that have occurred and to determine the appropriate steps that need to be taken to protect the rights of all American citizens, tribal member and non-member, both on and near reservations, and particularly with regard to trust lands and the application to put lands into trust on behalf of Indian tribes.

We are respectfully asking the Judiciary Committee to request that the President withhold his approval

of the proposed Department of Interior regulations, which will govern putting land in trust for Indian tribes, until the issues presented in the enclosed CERA Fact Sheet receive a fair hearing before the Judiciary Committee. We also request that the reservation area citizens of the CERA board of directors be invited to testify.

Sincerely,

Howard B. Hanson

Enclosures:

CERA Fact Sheet
Letter to Senator Orrin Hatch
Chairman, Senate Judiciary Committee
Letter to Attorney General Ashcroft
Letter to the President

Copies to:

The President
The Congress
The Secretaries of the Administration
The Governors and Attorney Generals
of the Fifty States
The Media

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