

Statement of
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Before the

Subcommittee on Indian, Insular and Alaska Native Affairs
Committee on Natural Resources
U.S. House of Representatives

Legislative hearing on H.R. 2684, to restore a tribal economic development opportunity for the Alabama-Coushatta Tribe of Texas on terms that are equal and fair, and for other purposes

July 15, 2015

Chairman Young, Ranking Member Ruiz, and other Members of the Subcommittee, my name is Ronnie Thomas and I am the Vice-Chairman of the Alabama-Coushatta Tribe of Texas. I am testifying today in favor of H.R. 2684, a bill that settles our outstanding land claims against the United States in return for an economic development opportunity for our Tribe that will permit us to become more self-sufficient.

The Alabama-Coushatta Tribe is one of three federally-recognized tribes in the State of Texas. Our Reservation in Livingston, Texas now comprises approximately 10,282 acres and we serve more 1,193 tribal members, on and off the Reservation.

Before I explain the legislation you are considering, I want to express our Tribe's appreciation to Chairman Young and Congressman Brian Babin for introducing H.R. 2684, and for helping us move this bill through Congress.

I also want to thank Chairman Young for holding this hearing and to express our appreciation to five other Members of this Subcommittee—Congressmen LaMalfa, Denham, Cook, Ruiz, and Grijalva—for agreeing to co-sponsor our bill.

H.R. 2684 accomplishes two goals. First, it resolves our Tribe's land claims within Texas, by acknowledging the illegal loss of our homelands and ending all current land claims litigation. Second, this bill restores our ability to take advantage of the Indian Gaming Regulatory Act ("IGRA"), in the same manner as the Kickapoo Tribe of Texas, as well as the more than 500 federally-recognized tribes in the rest of our country.

Let me explain further.

Alabama-Coushatta Land Claims

Since time immemorial, our homelands have been in the Big Thicket region of southeastern Texas. In the early 19th century, our Tribe controlled millions of acres of land in this area and all of its abundant natural resources. For hundreds of years, we had exclusive and continuous possession of this acreage; and two separate federal tribunals—the Indian Claims Commission and the Court of Federal Claims—have formally recognized our aboriginal title to these lands.

The Indian Trade and Intercourse Act (“Nonintercourse Act”), 25 U.S.C. § 177, obligates the Federal government to protect aboriginal lands from third-party intrusions and trespasses. This Act also provides that no property interest of any kind may be acquired in the lands of any Indian tribe other than by treaty or convention entered into pursuant to the Constitution.¹ The Act voids any interest acquired in violation of this statutory provision.

The Federal government failed to discharge its fiduciary duty under the Nonintercourse Act to the Alabama-Coushatta Tribe in protecting our homelands. After Texas joined the Union in 1845, the Federal government took control of the Big Thicket and permitted settlers to arrive en masse and expel us from our ancestral lands. Unable to stop the onslaught of such settlers, the Tribe lost a land base nearly the size of Rhode Island and was left, at that time, with a Reservation of a little more than 1,000 acres.

We have been fighting ever since to correct this injustice.

When the Indian Claims Commission was created in 1946, tribes were required to file their claims within five years, by 1951. The Bureau of Indian Affairs (“BIA”) was assigned the responsibility to notify all tribes that they had five years to file their claims. However, the BIA failed to notify our Tribe of this deadline and so we did not file a claim within this five-year time period. For some reason, our notification was sent to the BIA Regional Office in Anadarko, Oklahoma and never reached us in Texas.²

In 1971, we intervened in a land claims case brought by the Caddo Tribe of Oklahoma before the Indian Claims Commission.³ In this litigation, the Caddo Tribe claimed areas that included lands where our Tribe held aboriginal title.

The Indian Claims Commission dismissed our claim in 1975, ruling that we did not file within the five-year timeframe required by the Indian Claims Commission Act of 1946.⁴ However, the Commission looked favorably on the merits of our land claims within the Big Thicket:

¹ 25 U.S.C. § 177.

² See H.R. Rep. No. 98-412, at 2 (1983).

³ *Caddo Tribe of Oklahoma v. United States*, 27 Ind. Cl. Comm. 8 (1972).

⁴ *Caddo Tribe of Oklahoma v. United States*, 35 Ind. Cl. Comm. 321, at 328 (1975).

It is our opinion, however, that the situation with regard to the Alabama and Coushatta Indians was considerably different. By the early 19th century in Louisiana and by 1845 in Texas the Alabamas and Coushattas had established extensive areas of use and occupancy which they continued to inhabit for a long time thereafter. . . . The relative inaccessibility of these areas discouraged use and occupancy by other Indians migrating from the north and deferred white settlement until many years after the United States had acquired these lands. The evidence here indicates that for a long time beginning before and ending after the United States acquired these areas the Alabamas and Coushattas effectively exercised control over these areas and over other Indians who may have ventured therein.⁵

Following this recognition of the Tribe's land claims, we petitioned Congress for redress of the Federal government's wrongdoing. In 1983, Congressman John Breaux of Louisiana agreed to help the Tribe (and a related tribe, the Coushatta Tribe of Louisiana) with our land claims. He introduced H.R. 1232 and worked to pass House Resolution 69, which was approved by the U.S. House of Representatives on November 1, 1983.

Using the Congressional Reference procedure, House Resolution 69 referred our land claims legislation to the U.S. Claims Court, to make findings of fact and conclusions of law regarding the validity of our Tribe's land claims and to recommend what monetary damages, if any, are due to the Tribe.⁶

On June 19, 2000, after 16 years of litigation, the U.S. Court of Federal Claims (formerly the U.S. Claims Court) ruled that the Tribe retained aboriginal title to 5.5 million acres of land in southeastern Texas.⁷ This original land base of 5.5 million acres included land within 11 Counties in southeastern Texas: Hardin, Jasper, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, and Walker. A substantial portion of this land is located within the 36th Congressional District of Texas, represented by Congressman Brian Babin.

The Court also ruled that the Federal government had completely failed in its legal duty to protect as much as 2.85 million acres of the Tribe's lands against encroachment by non-Indian settlers during the 109-year period from 1845—when Texas

⁵ *Id.* at 350-351.

⁶ H.R. Res. 69, 98th Cong., 1st Sess. (1983) referred H.R. 1232 to the U.S. Claims Court. This reference (designated as Congressional Reference No. 3-83) originally included the Louisiana claim of the Coushatta Tribe of Louisiana, but the Court handled this claim as a separate case. The Louisiana claim was settled by agreement between the United States and the Louisiana Coushatta and was enacted into law in 1988. *See* Pub. Law No. 100-411 (Aug. 22, 1988).

⁷ *Alabama-Coushatta Tribe of Texas v. United States*, 2000 U.S. Claims LEXIS 287 (Fed. Cl. June 19, 2000); *See also Alabama-Coushatta Tribe of Texas v. United States*, 1996 U.S. Claims LEXIS 128 (Fed. Cl. July 22, 1996).

became a state—to 1954, when Congress terminated the United States’ trust responsibility for the Tribe by transferring it to the State of Texas.

On February 19, 2002, the Alabama-Coushatta Tribe and the United States stipulated that the amount of compensation damages for third-party trespass due the Tribe under the Court of Federal Claims decision was \$270.6 million.⁸ These damages included: (1) \$262.6 million for oil and gas (\$150 million) and timber (\$112.6 million) removed by third-party trespassers during the 109-year period; and (2) \$8 million in surface rentals. On October 10, 2002, the Chief Judge of the Court of Federal Claims transmitted to Congress the Court’s decisions, reports, and recommendations.⁹

Under the Congressional Reference procedure, it is now up to Congress to consider and resolve this land claims matter, in light of the findings, conclusions, and recommendations of the Court.¹⁰

For more than a decade, our Tribe has urged Congress to acknowledge the findings of the Court of Federal Claims and to compensate the Tribe for the loss of our homelands. To date, Congress has not taken any action.

Alabama-Coushatta Land Claims Litigation

Frustrated by a lack of progress in Washington on our land claims, the Tribe sued the United States in U.S. District Court for the Eastern District of Texas on February 29, 2012.¹¹

The primary purpose of this lawsuit was to prevent the Federal government from continuing to breach its fiduciary duties to the Tribe by actively facilitating the exploitation of natural resources—especially oil, gas and timber—on the Tribe’s aboriginal lands.

Through various regulatory agencies—including the Department of the Interior and the Department of Agriculture—the Federal government exercises regulatory authority over portions of the Tribe’s aboriginal lands. In particular, the National Park Service regulates activities in the Big Thicket National Preserve, and the U.S. Forest Service oversees the Davy Crockett National Forest and the Sam Houston National Forest. Leasing of Federal oil and natural gas resources on these lands is administered by the U.S. Bureau of Land Management.

Our Tribe believes that the United States is continuing to breach its fiduciary duties to the Tribe by approving permits, leases, and other requests by private parties to

⁸ Joint Stipulation on Damages, *Alabama-Coushatta Tribe of Texas v. United States*, Congressional Reference 3-83 (Fed. Cl. Feb.19, 2002).

⁹ Letter from The Honorable Edward J. Damich, Chief Judge, U.S. Court of Federal Claims, to Jeff Trandahl, Clerk, U.S. House of Representatives, October 10, 2002.

¹⁰ See 28 U.S.C. §§ 1492 and 2509.

¹¹ Complaint, *Alabama-Coushatta Tribe of Texas v. United States*, No. 2:12-cv-83 (E.D. Tex. Feb. 29, 2012).

extract oil and natural gas and harvest timber for commercial purposes within these aboriginal lands. Among the relief requested in this case, we seek a permanent injunction preventing the United States from facilitating the exploitation of resources within our original homelands, including the future sale of timber or the issuance of permits or leases for oil and natural gas exploitation, in a manner that fails to consider and accommodate our Tribe's aboriginal title rights.

This case was dismissed on a preliminary basis because the Tribe did not include in its complaint the specific permits and federal decisions being challenged.¹² Specifically, the Fifth Circuit Court of Appeals said:

The Tribe's complaint fails to point to any 'identifiable action or event.' Instead, the complaint brings a challenge to the federal management of the natural resources on the land in question. The complaint contends only that all of the leases, permits, and sales administered by multiple federal agencies, including any ongoing action by these agencies that encroach on the Tribe's aboriginal title, are unlawful. These are allegations of past, ongoing and future harms, seeking 'wholesale improvement' and cover actions that have yet to occur. Such allegations do not challenge specific 'agency action.'¹³ (internal citations omitted).

The Tribe has the right to fix this pleading issue and refile this lawsuit; however, the Tribal Council has refrained from doing so while this legislation to settle the Tribe's land claims is pending before the Congress.

Alabama-Coushatta Restoration Legislation

The Alabama-Coushatta also have faced challenges as a Tribe regarding our recognition as a sovereign entity by the United States.

In 1954, Congress decided to terminate our Tribe's Federal recognition by enacting the Alabama and Coushatta Termination Act.¹⁴ This Act terminated "the Federal trust relationship to [the Tribe] and its members," and transferred this relationship (and its accompanying duties) to the State of Texas.¹⁵

The period after the Termination Act was a particularly difficult one for our Tribe. The State of Texas taxed our lands and exploited our natural resources. Our people lived primarily in poverty, without the benefit of Federal laws to help and protect Indian tribes

¹² The U.S. District Court dismissed this case on procedural grounds on April 22, 2013. *See Alabama-Coushatta Tribe of Texas v. United States*, No. 2:12-cv-83 (E.D. Tex. April 22, 2013). This dismissal on procedural grounds was affirmed by the U.S. Court of Appeals for the Fifth Circuit. *Alabama-Coushatta Tribe of Texas v. United States*, No. 13-40644 (5th Cir. July 9, 2014) (hereinafter "Fifth Circuit Opinion").

¹³ *Fifth Circuit Opinion* at 9.

¹⁴ 25 U.S.C. §§ 721-728.

¹⁵ 25 U.S.C. § 722.

recognized by the United States. And we did not have access to economic development opportunities available to Federally-recognized tribes.

The treatment we received by the State of Texas during this period was an ironic outcome as our Tribe aided in Texas' formation. At a critical time, we helped Sam Houston and his allies win the war for Texas independence, by defeating the Mexican army under Santa Anna. And as a gesture of gratitude, Houston later acknowledged our Tribe's lands in East Texas and promised that our rights would always be respected by Texas.

This promise was not kept by the State.

In the 1980's, we petitioned Congress to restore our Federal recognition. In 1987, Congress passed the Alabama-Coushatta Restoration Act.¹⁶ This Act restored "Federal recognition of the tribe and ... the trust relationship between the United States and the tribe."¹⁷

Unfortunately, this Restoration Act was passed at a time when Indian gaming was just emerging and Federal regulation—such as IGRA—had not yet been approved by Congress. Among several issues, states were concerned about a possible lack of regulation of Indian gaming.

Before IGRA's enactment, the State of Texas did not allow for gaming of any kind other than charitable bingo. Given the circumstances of the time, language was added to our Restoration Act that has been interpreted as effectively preventing the Tribe from gaming under IGRA.

Today, however, is a new day. IGRA was passed in 1988 and has successfully served as the vehicle to regulate Indian gaming for 25 years now. And Texas has expanded gaming to include a statewide lottery and pari-mutuel wagering at horse and dog tracks. Additionally, the Kickapoo Tribe in Texas operates a large and successful Class II gaming operation near Eagle Pass in west Texas. The Kickapoo Tribe was restored by Congress in 1983 without any type of restriction on Indian gaming.¹⁸

It only seems fair that our Tribe should enjoy the same rights as other tribes, including rights under IGRA.

Support for H.R. 2684

H.R. 2684 seeks to resolve all outstanding issues between the Alabama-Coushatta Tribe and the United States. This legislation would restore the ability of our Tribe to take advantage of the benefits and rights of IGRA, by amending our Restoration Act for that

¹⁶ 25 U.S.C. §§ 731-737.

¹⁷ 25 U.S.C. § 733(a).

¹⁸ See Texas Band of Kickapoo Act, Public Law 97-429, 25 U.S.C. §§ 1300b-11-1300b-16.

purpose. In return, the Tribe would agree to settle its outstanding land claims and dismiss any pending land claims litigation against the United States.

This legislation also does not add to the Federal deficit by authorizing any Federal expenditures. In return for obtaining the economic opportunities that Class II Indian gaming would provide to our Tribe, our members have acknowledged that, given current budgetary restrictions, Congress is in no position to appropriate \$270.6 million dollars to compensate our Tribe for the loss of its homelands.

The Alabama-Coushatta Tribal Council conducted meetings in the spring of 2013 with our members to discuss the provisions of this legislative proposal. As a result of these meetings, a significant majority of the tribal membership voted to support settling our land claims if the Tribe is able to obtain the right to engage in gaming pursuant to IGRA.¹⁹

Limited economic development opportunities combined with dwindling government funding sources place the Tribe in the same predicament facing many State, county, and city governments that are struggling to provide basic services to their people. The potential loss of governmental funding will cause a reduction in essential services and an increase in unemployment.

Meanwhile, Federally-recognized tribes throughout the United States with gaming operations as a source of revenue have the means to offset these dwindling government funding sources. This permits these tribes to continue to provide for the housing, healthcare, education, and other needs of their members.

This type of economic self-sufficiency is what our Tribe is seeking, in requesting an amendment to its Restoration Act and in settling its outstanding land claims against the United States.

For all these reasons, the Alabama-Coushatta Tribe strongly supports H.R. 2684, and urges the House Committee on Natural Resources to pass this bill as soon as possible.

Thank you for considering our views on this important legislation. I am happy to answer any questions you may have for me.

¹⁹ See Alabama-Coushatta Tribal Council, Resolution in support of H.R. 1144, ACITC Resolution #2013-36 (June 12, 2013).