

S. J. RES. 1

IN THE SENATE OF THE UNITED STATES

JANUARY 8, 1951

Mr. McCARRAN introduced the following joint resolution; which was read twice
and referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States
to restore the same rights to the Indian tribes which are
enjoyed by all citizens of the United States.

1 *Resolved by the Senate and House of Representatives of*
2 *the United States of America in Congress assembled (two-*
3 *thirds of each House concurring therein), That the following*
4 article is proposed as an amendment to the Constitution of
5 the United States, which shall be valid to all intents and
6 purposes as a part of the Constitution, in lieu of the third
7 paragraph of section 8 of article I thereof, when ratified by
8 the legislatures of three-fourths of the several States:

9 “ARTICLE —

10 “The Congress shall have power to regulate commerce
11 with foreign nations and among the several States.”

FELIX S. COHEN

SUITE 607, 810 18TH ST., N. W.

WASHINGTON 6, D. C.

LAW OFFICES

STERLING 2155

Memorandum on Repeal of Federal Authority over Non-Treaty Tribes

S.J. Res. 1 JOINT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES TO RESTORE THE SAME RIGHTS TO THE INDIAN TRIBES WHICH ARE ENJOYED BY ALL CITIZENS OF THE UNITED STATES. (Introduced by Senator McCarran on January 8, 1951.)

The authority of the Federal Government in Indian affairs comes mainly from two parts of the Federal Constitution: (a) the treaty-making power, under which almost 400 treaties (many of them still in force) were made with Indian tribes; and (b) the power of Congress to regulate commerce with Indians. Senator McCarran's proposed constitutional amendment would eliminate the power of Congress to regulate commerce with Indians, thus limiting Federal aid to those tribes that have outstanding treaties. There is no real prospect that Congress will pay any attention to this bill. Its only purpose seems to be to give Senator McCarran something he can point to in order to convince people that he is for Indian rights and against the Indian Bureau.

February 6, 1951.

S. J. RES. 4

IN THE SENATE OF THE UNITED STATES

JANUARY 7 (legislative day, JANUARY 6), 1953

Mr. McCARRAN introduced the following joint resolution; which was read twice
and referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States
to restore the same rights to the Indian tribes which are
enjoyed by all citizens of the United States.

1 *Resolved by the Senate and House of Representatives of*
2 *the United States of America in Congress assembled (two-*
3 *thirds of each House concurring therein), That the following*
4 article is proposed as an amendment to the Constitution of
5 the United States, which shall be valid to all intents and
6 purposes as a part of the Constitution, in lieu of the third
7 paragraph of section 8 of article I thereof, when ratified by
8 the legislatures of three-fourths of the several States:

9 “ARTICLE —

10 “The Congress shall have power to regulate commerce
11 with foreign nations and among the several States.”

88th CONGRESS
1ST SESSION

S. J. RES. 4

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States to restore the same rights to the Indian tribes which are enjoyed by all citizens of the United States.

By Mr. McCARRAN

JANUARY 7 (legislative day, JANUARY 6), 1953
Read twice and referred to the Committee on the
Judiciary

FELIX S. COHEN

810 18th STREET, N.W.
WASHINGTON 6, D.C.

CONFIDENTIAL

LAW OFFICES

STERLING 3-2155

February 5, 1953

Memorandum for Clients

From: Felix S. Cohen

Re: Repeal of Federal Authority over Non-treaty Tribes

S. J. Res. 4 JOINT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES TO RESTORE THE SAME RIGHTS TO THE INDIAN TRIBES WHICH ARE ENJOYED BY ALL CITIZENS OF THE UNITED STATES. (Introduced by Senator McCarran on January 7, 1953)

Senator McCarran's proposed constitutional amendment would put an end to the authority of Congress and the Indian Bureau over non-treaty tribes, and would radically curtail that authority over treaty tribes.

The authority of the Federal Government in Indian affairs comes mainly from two parts of the Federal constitution: (a) The treaty-making power under which almost 400 treaties (many of them still in force) were made with Indian tribes; and (b) the power of Congress to regulate commerce with Indians. Senator McCarran's proposed constitutional amendment (identical with S. J. Res. 1 in the 82d Congress, commented on in my memorandum of February 6, 1951) would eliminate the power of Congress to regulate commerce with Indians, and thus invalidate all laws based upon that power (including laws limiting attorney contracts, leasing, and tax-exemption).

There is no real prospect that such an amendment to the constitution will actually pass. There is a chance that hearings might be called on this bill. Such hearings, if held, might afford an opportunity for Indian tribes to put forward more effective ways of accomplishing Senator McCarran's stated purpose "to restore the same rights to the Indian tribes which are enjoyed by all citizens of the United States."

Trans. Blum
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United States Senate

COMMITTEE ON THE JUDICIARY

May 6, 1954

File

Association of Indian Affairs
58 East 86th. Street
New York City, N.Y.

Gentlemen:

Herewith are several copies of S.J. Res. 4.

Public hearings are scheduled on this bill at
424 Senate Office Building, Washington, D.C. at 10:00 A.M.
o'clock, Tuesday May 11th. 1954.

I regret that you are given such short notice,
but I am taking this over from another staff member who
found himself with two hearings scheduled at the same hour.
I tried to contact you by long distance telephone, but the
Information Operator stated there was no such association
listed by the Association name at that address. Therefore,
I am taking the only the only other opportunity to notify
you available to me.

We would be very happy to have you appear either
as a spectator or as a witness, expressing your views either
formally or informally as you wish. If, however, you wish to
submit testimony please call me long distance and let me know,
or by mail, so I can allot time for your presentation.

With every good wish, I remain

Very cordially yours

James L. Miller
JAMES L. MILLER

Professional Staff

Telephone - National 8-3120
Then ask for Senate Judiciary
Committee

JLM/reym

Testimony of Richard Schifter

on S.J. Res. 4

Before a Subcommittee of the Senate Committee on the Judiciary

May 11, 1954

Every society, every economy rests on a framework of law. In the case of our Indian communities, that framework is provided chiefly by the Federal Government, through treaties, Federal statutes, and Interior Department regulations. These treaties, statutes and regulations are based mainly on two provisions of the Federal Constitution, the treaty clause and the Indian commerce provision. It is the purpose of S.J. Res. 4 to strike the latter provision from our Constitution.

The effect of this proposed constitutional amendment would be to take suddenly from our Indian communities their legal underpinning. Where non-treaty tribes are involved, present Federal authority would terminate completely. Where the tribes involved did conclude treaties with the Federal Government, Federal authority would be limited to those aspects which can be derived from the treaties. If we consider that Indian treaty-making ended in 1872, when Indian communities were quite different from what they are today, we can recognize that these treaties are not geared to present-day conditions and cannot furnish the basis for a modern legal system. With the treaties outdated and the statutes and regulations swept away, S.J. Res. 4 would suddenly overthrow the existing order on Indian reservations. We believe that such an event would be a serious calamity both for the Indians affected and for the States in which they are situated.

It is often said that the Federal Government has done such a poor job in the field of Indian affairs over the past 150 years, that it might as well get out entirely. We believe that the premise for this conclusion is only partly true.

It is indeed true that for many decades following the establishment of Indian reservations, the Federal Government followed a ruinous policy in Indian affairs. Deliberate attempts were made to break up Indian tribes, to stamp out Indian culture. In order to accomplish these larger goals, Indian Bureau agents would try to break down individuals through authoritarian rule, by running their lives literally from the cradle to the grave. The result was degeneration and demoralization on the Indian reservations.

Indians were brought up to lean on the Indian Bureau agent for support, to look to him for guidance, to become completely dependent.

The results of this policy are still vividly in evidence today. But the policy itself has changed. The conscience of our country caused the old policy to be reversed.

The change took place in 1929. I want to emphasize this date because this has been a bi-partisan matter. A basically sound constructive policy was adopted during the Hoover Administration under Indian Commissioner Rhoads. This policy has been followed, by and large, since that time, even though certain administrators may have deviated from it from time to time. It is quite clear today that the present Indian Commissioner, Mr. Glenn Emmons, is committed to this same sound, constructive policy.

Thus it was only in 1929 that Indian communities started the hard road back to self-reliance and self-respect. The new policy was essentially one of integrating Indians into our economy, of raising their standard of living, teaching them how to run businesses and earn a livelihood on their own, of handling their own affairs.

As can be readily understood, Bureau administration did not change overnight. Officials who had been used to acting as petty dictators could not suddenly become counselors and teachers. In many instances, Bureau officials insisted on continuing to run Indian affairs full-blast or terminating Federal participation entirely. The Indians, frightened by the latter alternative, would then accept the former.

But the new policy did gradually seep down to the Indian reservations with the result that many Indians began to learn how to handle their own affairs. Enlightened and sympathetic officials understood that the plan was to educate Indians to handle their own affairs and to withdraw Federal participation gradually.

While some progress has been made in recent decades, we must recognize that we cannot, in less than one generation, undo the many mistakes of the past. Nor have we really done enough to put the Indians on their feet. There is still a great deal of poverty among Indians and of ignorance concerning business matters.

What Indians and their friends ask of Congress today is that you do not throw the baby out with the bath water, that you do not terminate Federal participation in Indian affairs abruptly just because of the mistakes that have been made in the past. Indians do not want complete,

immediate termination of Federal participation in their affairs. Nor do they want the Indian Bureau to handle their affairs indefinitely. They want a gradual tapering off, during which time they can learn to handle their own affairs.

The practical effect of the amendment would be two fold: (1) it would end present Federal services to Indians, chiefly in the field of health and education, (2) it would end the trust and tax-exempt status of their land.

The termination of present Federal services would throw a burden on the states populated by Indians which they are simply unable to meet. The probable result would, therefore, be that Indians will go without these services or with services of a highly inadequate nature.

The ending of the trust and tax-exempt status of Indian land would, as our past experiences show, lead to the rapid loss of that land. Much of Indian land is highly desirable to many groups and individuals. And most Indians have not reached the degree of sophistication in the white man's business world that would enable them to withstand the high-pressure approach of people urging them to sell their land at an unfair price.

The loss of their land to the Indians would ultimately be a great loss to the community and to the taxpayers. Indians are, by and large, poor today. They have never had the opportunity to participate fully in the growth and development of our economy. The cheapest way of integrating them into our economy would be to rehabilitate as many as possible on their land. That indeed is the program announced by the present Commissioner. The relatively cheap method of integrating them on their land contrasts sharply with the potential cost of handling the problems of our Indian population if a large portion of their land were lost. A group of Indian landless wanderers or slum-dwellers in our Western States would be of far greater cost to their communities in the long run than would be an intelligent plan of economic integration.

In summary, let me say, therefore, that the answer to the problems raised by conditions on our Indian reservations is a concerted program of economic improvement, necessarily with Federal assistance, and not immediate Federal withdrawal.

Additional:

Constitutional Amendment S.J. Res 1 (McCarran) Introduced Jan 8 1951 *Oppose*
Proposes amending U.S. Constitution (Commerce clause) to eliminate
power of Congress over commerce "with the Indian tribes."

Repeal of Congressional Power to Regulate Commerce with Tribes, 1951-1954. 1951-1954. TS The Association on American Indian Affairs: Publications, Programs, and Legal and Organizational Files, 1851-1983: Legislation 321: 3. Mudd Library, Princeton University. Indigenous Peoples of North America, link.gale.com%2Fapps%2Fdo%2FANLNHU733407268%2FINDP%3Fu%3Dumich_law%26sid%3Dbookmark-INDP. Accessed 19 June 2025.