



The lay of the landscape in the 109th Congress

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Posted: January 28, 2005

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Analysis - part two

WASHINGTON - Chairman Richard Pombo, R-Calif., got his experience and his crack staff together in his first two-year stint as chairman. He now feels that it's time for him to move forward and take action on some of the most difficult issues in Indian country. Pombo has told anyone who will listen of his frustration with the long shelf life of problems Indians confront him with - grown men talk of their fathers and grandfathers trying to straighten out the same stubborn problems they're up against - and his goal for the 109th Congress is to move as many solution-oriented bills as possible. He will have help, of course, from like-minded members and the House Native American Caucus, still a force to be reckoned with. But Pombo is determined to make his mark on this issue area.

He expected to begin the week of Jan. 18, or shortly thereafter, by introducing a bill on federal recognition of tribes. Taking a bill that passed the Senate last year as a model, the new bill goes a bit further. The bill proposes a "date certain" recognition period for eligible tribes. Congress has delegated recognition powers to the Interior Department because the lobbyists, consultants and developers surrounding a vote should not determine whether a tribe is federally recognized; but the new bill, concluding that Interior is actually incapable of fulfilling the federal recognition process due to its innumerable other duties and allegiances, would appoint a commission or panel on recognition. Interior would make a final determination based on the alternative entity's recommendation. (Such a process would square with a headline-making proposition from former BIA Chief Kevin Gover.)

A sunset clause will establish a deadline date, possibly in 2007, for applying for federal recognition. The reasoning here is that the number of tribes with historical reasons to seek federal recognition is finite at this late date; and a sunset clause will shut down those enterprising tricksters who finance tribal recognition bids with casino riches in mind.

Pombo considers the bill an important reform measure and hopes to see it signed into law in 2005.

The chairman's secondary priority will be to clamp down on off-reservation gaming, especially the kind that crosses state lines. The practice has arisen as tribes with reservations less-than-ideally located for casino traffic have sought more optimum sites, often in metropolitan areas. In recent years tribes, casino developers and poor communities have all sought a piece of the Indian gaming action through off-reservation casinos.

Issues arise in Congress over the intent of the Indian Gaming Regulatory Act to foster economic development on reservations. In addition, state governments are seizing on the off-reservation issue to open up gaming compacts and get a bigger slice of the pie. On that precedent, economic concessions, concessions of sovereignty and of local government, have begun to look good in neighboring states. Tribes too, especially tribes with a vested interest in established casinos, have been known to resist off-reservation gaming.

Pombo believes there are gray areas in Indian gaming today because many contemporary developments in the booming industry simply couldn't have been considered, either in the Cabazon court decision that opened the door to Indian gaming or in the Indian Gaming Regulatory Act that authorized it. He hopes to get a draft bill going and eventually turn the gray areas into black and white.

A third priority for Pombo will be to reach a set of fair settlement propositions in the Cobell litigation over

mismanagement of the Individual Indian Money trust. The case is familiar enough to readers of these pages, but to quickly review: The class of IIM accountholders has taken the government to court over fiduciary mismanagement. The court process has gone largely against the government but shows signs of dragging on; a mediated settlement process, demanded by Congress, has gone nowhere.

Pombo believes the litigants simply aren't interested in settling with each other. But more and more tribal leaders tell him it can't go on. Meanwhile, a crackdown is coming on the federal budget in 2005, meaning Congress will be more reluctant than ever to pour money into litigation. Pombo's conclusion is that almost 10 years into the lawsuit, the time has come to close some of it down.

That can be done by offering a fair settlement to those members of the class who would accept it, while doing nothing to foreclose their option of sticking with the class in Cobell. The idea is that a fair-seeming settlement offer would appeal to some of those accountholders who would rather have money in their pocket now than wait until 2009 to find out exactly how much they should have had, then be in the courts until 2020 getting it.

Pombo's fourth major priority will be to pass an Indian health care reauthorization bill. He was bitterly disappointed when a bill long labored over in both chambers of Congress failed to become law last year, despite negotiations that went to the last hour and beyond. Now, in a new Congress, the bill will have to be introduced again.

The problems last year were that the Department of Health and Human Services kept revisiting fine points of language in the bill; the House Energy and Commerce Committee had a piece of the jurisdiction(s) over the bill by virtue of a Medicare/Medicaid section, yet was unfamiliar with Indian affairs and had a huge workload of other priority items on its plate; and the White House simply didn't push hard enough for the bill.

The challenge this year in both the House and the Senate will be to get the bill resurrected early and moving toward passage with the White House on board.

Beyond these overarching priorities, Pombo expects his committee to get involved in a number of regional issues - for example Homeland Security for tribes, Internet tobacco sales regulation, Internet gaming, tribal self-governance, tribal service contracting in federal parks and refuges, the BIA reorganization, and transportation.

On Internet tobacco sales and Internet gaming, he believes any law must treat tribes fairly, with no infringements on sovereignty.

He remains strongly in favor of the tribal self-governance program.

On the BIA reorganization, he expects to work with John Thune in the Senate and likely comply with issues he may raise.

Looking ahead to his third and final two-year term as Resource Committee chairman, in the 110th Congress of 2007 - 2008, Pombo hopes to complete his tenure on work of the future for tribes - wealth creation, economic development initiatives, tribal self-governance and other 21st century issues as they arise