102d Congress, 2d Session - - - - - - - - - - Senate Document 102-22

VETO—S. 2342

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

RETURNING

WITHOUT MY APPROVAL S. 2342, A BILL WHICH WOULD WAIVE THE SIX-YEAR STATUTE OF LIMITATIONS ALLOWING THREE SIOUX INDIAN TRIBES TO BRING AN OTHERWISE TIME-BARRED CHALLENGE TO THE 1972 MISSISSIPPI SIOUX INDIAN JUDGMENT FUND ACT

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To the Senate of the United States:

I am returning herewith without my approval S. 2342. This bill would waive the 6-year statute of limitations, allowing three Sioux Indian tribes—the Sisseton-Wahpeton Sioux Tribe, the Devils Lake Sioux Tribe, and the Sisseton-Wahpeton Council of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation—to bring an otherwise time-barred challenge to the 1972 Mississippi Sioux Indian Judgment Fund Act.

The 1972 Act apportioned to each of the three Tribes, and to a then-undetermined class of Sioux Indians who are not members of those Tribes, a percentage share of the proceeds from a 1967 judgment against the United States. The judgment rested on a finding that the United States had not paid adequate compensation to the Tribes in the 1860's for lands ceded to the United States. The nonmember Indians are persons who are not now eligible for membership in any of the three Tribes, but who can trace their lineal ancestry to someone who was once a tribal member.

The Tribes were active participants in the administrative and legislative process leading to the 1972 Act, and they endorsed the Act and its distribution of the judgment. Nonetheless, in 1987, 15 years after enactment and 9 years after the statute of limitations had run, the Tribes sued the United States, challenging the Act's distribution to the nonmembers. The U.S. Court of Appeals for the Ninth Circuit affirmed a lower court's decision to dismiss the case, finding no excuse—legal, equitable, or otherwise—for the Tribes' failure to challenge the 1972 Act in a timely fashion, and the U.S. Supreme Court declined to review the Ninth Circuit's decision. *Sisseton-Wahpeton Sioux Tribe, et al.* v. *United States,* 895 F.2d 588 (9th Cir. 1990), *cert. denied,* U.S. , 11 S. Ct. 75 (1990).

I find no extraordinary circumstances or equities to justify an exception to the long-standing policy of the executive branch, which my Administration fully embraces, against *ad hoc* statute of limitations waivers and similar special relief bills. Also, there must be some definite, limited time during which the Government must be prepared to defend itself, and some finality to the pronouncements of the courts, the Congress, and the agencies.

Moreover, a waiver for the Tribes in this case would mean the waste of the considerable judicial and litigation resources that were expended in bringing the case to final resolution, and would require additional litigation that would otherwise be avoided. Thus, enactment of this bill would be inconsistent with Executive Order No. 12778 of October 23, 1991, which embodies my resolve to eliminate unnecessary, wasteful litigation.

In addition, I am concerned that enactment of this bill would be unfair to other tribes, and would serve as a highly undesirable and potentially expensive precedent. Many other tribes were the recipients of settlement fund distributions, and many distributions, like

the one challenged by the Tribes here, included payments to non-member Indians. Some of those tribes doubtless are dissatisfied with the terms of their distribution, but they are barred from a challenge by the statute of limitations. Numerous other Indian claims, totaling hundreds of millions of dollars, have been dismissed on statute of limitations or other jurisdictional grounds. In both categories of cases, tribes could rightfully claim that for purposes of fair treatment, they, too, should be allowed by the Congress to litigate the merits of their claims.

I note that S. 2342 received little, if any, consideration by the House of Representatives prior to its passage by that body. Instead, the bill was discharged from committee without hearings and brought immediately to the House floor. Had there been a full review of this proposal, I am confident that the outcome would have been different.

For these reasons, I cannot approve S. 2342.

GEORGE BUSH.

THE WHITE HOUSE, *June 16, 1992.*

President of the Senate pro tempore.