STATE OF NEW YORK

9124

IN ASSEMBLY

February 7, 2024

Introduced by M. of A. THIELE, WALKER, SEAWRIGHT -- read once and referred to the Committee on Judiciary

AN ACT to amend the Indian law, in relation to the reinstatement of state recognition and acknowledgement of the Montaukett Indian Nation

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings. The Montaukett Indian Nation seeks reinstatement of its recognition and acknowledgment by the state of New York. Such recognition and acknowledgment was improperly removed from the Montaukett Indian Nation in 1910 in the case of Pharaoh v. Benson, 69 Misc. Rep. 241(Supreme, Suffolk Co., 1910) affirmed 164 App. Div. 51, affirmed 222 N.Y. 665, when the Montaukett Indian Nation was declared to be "extinct".

The court ruled that "the tribe has disintegrated and been absorbed into the mass of citizens and at the time of commencement of this action there was no tribe of Montaukett Indians". This arbitrary ruling ignored earlier U.S. Supreme Court decisions defining Indian Nations according to criteria under which the Montaukett Indian Nation qualified as an existing sovereign tribe and giving Congress, rather than the courts, power to decide the status of an Indian.

In the first of these U.S. Supreme Court decisions, United States v. Roger, 45 U.S. 567 (1848), the court ruled that the primary criteria for Indian identity was evidence that an Indian had to have some genealogical connection with a recognized group that had existed before the arrival of the European white explorers, traders, and settlers. Verified evidence demonstrates that the Montaukett Indian Nation existed prior to the Doctrine of Discovery and, as a sovereign tribe, ruled from the end of the Island to what is today the town of Hempstead.

Subsequently, a decade before the Montaukett decision, in Montoya v. U.S., 180 U.S. 261 (1901), the U.S. Supreme Court further defined an Indian tribe as "a body of Indians of the same or similar race, united in a community under one leadership or government, and inhabiting a particular though sometimes well-defined territory". The Montaukett Indian Nation also met this criteria.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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Further, at the time of Pharaoh v. Benson decision, the judicial branches of state and federal governments had no authority to determine the status of an Indian tribe. Only the U.S. Congress had such power. In 1903, the U.S. Supreme Court ruled in the United States v. Rickert, 188 U.S. 432 (1903) that only Congress can determine when changes in customs are sufficient to invalidate tribal status.

The U.S. Supreme Court also ruled in Butts v. Northern Pacific Railroad (1911), that neither the lapse of time, allotment of a portion of the tribal lands in severalty, immigration of a majority of the tribe, nor the fact that the habits and customs of the tribe have changed by intercourse with whites authorize the courts to disregard tribal status. That same year, the U.S. Supreme Court again spoke to the question of judicial authority in cases involving tribal existence, holding in Tiger v. Western Investment Company, 221 U.S. 286 (1911) that only the U.S. Congress had the authority to determine changes in tribal status.

In 1994, the State Supreme Court, in the case of Breakers Motel, Inc. v. Sunbeach Montauk Two, Inc., subsequently described the Pharaoh case as being of "questionable propriety", a recognition by the State Supreme Court that the decision removing recognition and acknowledgment from the Montaukett Indian Nation was dubious.

This legislature finds that in Pharaoh v. Benson, the Court improperly ignored U.S. Supreme Court precedent and lacked jurisdiction to judge the status of the Montaukett Indian Nation. It is the purpose of this legislation to reverse this improper and illegal result by the reinstatement of acknowledgment and recognition by the State of New York to the Montaukett Indian Nation.

§ 2. Section 2 of the Indian law, as added by chapter 174 of the laws of 2013, is amended to read as follows:

§ 2. New York state Indian nations and tribes. The term "Indian nation or tribe" means one of the following New York state Indian nations or tribes: Cayuga Nation, Oneida Nation of New York, Onondaga Nation, Poospatuck or Unkechauge Nation, Saint Regis Mohawk Tribe, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Band of Seneca**, the Montaukett Indian Nation,** and Tuscarora Nation.

§ 3. The Indian law is amended by adding a new article 11 to read as follows:

ARTICLE 11

THE MONTAUKETT INDIAN NATION

Section 170. Reinstatement of state recognition and acknowledgment.
171. Leadership of Montaukett Indian Nation; elections; terms of office.
172. Qualifications of voters.
173. Qualifications for office.

§ 170. Reinstatement of state recognition and acknowledgment. Recognition and acknowledgement of the Montaukett Indian Nation by the state of New York is hereby reinstated.

§ 171. Leadership of Montaukett Indian Nation; elections; terms of office. In accordance with the tribal governance rules, customs and regulations of the Montaukett Indian Nation, a sovereign nation, the tribe shall have a chief or sachem, three tribal trustees, and a tribal secretary. The trustees shall be elected by a majority vote by ballot of lineal members of the nation eligible to vote at an annual tribal meeting which shall be held on the first Tuesday in April. All officers shall hold office for a period of two years.

§ 172. Qualifications of voters. No person shall vote at the election provided for in section one hundred seventy-one of this article unless

such person is at least eighteen years of age and is certified as a lineal member of the Montaukett Indian Nation in accordance with the nation's governance rules, customs and regulations.

§ 173. Qualifications for office. All officers shall qualify for office and perform their respective duties in accordance with the governance rules, customs and regulations of the Montaukett Indian Nation.

§ 4. This act shall take effect immediately.