

# STATE OF NEW YORK

6919

2023-2024 Regular Sessions

## IN ASSEMBLY

May 9, 2023

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:

1 Section 1. Legislative findings. The Montaukett Indian Nation seeks  
2 reinstatement of its recognition and acknowledgment by the state of New  
3 York. Such recognition and acknowledgment was improperly removed from  
4 the Montaukett Indian Nation in 1910 in the case of Pharaoh v. Benson,  
5 69 Misc. Rep. 241(Supreme, Suffolk Co., 1910) affirmed 164 App. Div. 51,  
6 affirmed 222 N.Y. 665, when the Montaukett Indian Nation was declared to  
7 be "extinct".

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

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

23 Subsequently, a decade before the Montaukett decision, in Montoya v.  
24 U.S., 180 U.S. 261 (1901), the U.S. Supreme Court further defined an  
25 Indian tribe as "a body of Indians of the same or similar race, united

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

LBD11003-03-3

1 in a community under one leadership or government, and inhabiting a  
2 particular though sometimes well-defined territory". The Montaukett  
3 Indian Nation also met this criteria.

4 Further, at the time of Pharaoh v. Benson decision, the judicial  
5 branches of state and federal governments had no authority to determine  
6 the status of an Indian tribe. Only the U.S. Congress had such power. In  
7 1903, the U.S. Supreme Court ruled in the United States v. Rickert, 188  
8 U.S. 432 (1903) that only Congress can determine when changes in customs  
9 are sufficient to invalidate tribal status.

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

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

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

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

32 § 2. New York state Indian nations and tribes. The term "Indian nation  
33 or tribe" means one of the following New York state Indian nations or  
34 tribes: Cayuga Nation, Oneida Nation of New York, Onondaga Nation, Poos-  
35 patuck or Unkechaugue Nation, Saint Regis Mohawk Tribe, Seneca Nation of  
36 Indians, Shinnecock Indian Nation, Tonawanda Band of Seneca, the  
37 Montaukett Indian Nation, and Tuscarora Nation.

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

#### 40 ARTICLE 11

##### 41 THE MONTAUKETT INDIAN NATION

#### 42 Section 170. Reinstatement of state recognition and acknowledgment.

##### 43 171. Leadership of Montaukett Indian Nation; elections; terms of 44 office.

##### 45 172. Qualifications of voters.

##### 46 173. Qualifications for office.

47 § 170. Reinstatement of state recognition and acknowledgment. Recogni-  
48 tion and acknowledgement of the Montaukett Indian Nation by the state of  
49 New York is hereby reinstated.

50 § 171. Leadership of Montaukett Indian Nation; elections; terms of  
51 office. In accordance with the tribal governance rules, customs and  
52 regulations of the Montaukett Indian Nation, a sovereign nation, the  
53 tribe shall have a chief or sachem, three tribal trustees, and a tribal  
54 secretary. The trustees shall be elected by a majority vote by ballot of  
55 lineal members of the nation eligible to vote at an annual tribal meet-

1 ing which shall be held on the first Tuesday in April. All officers  
2 shall hold office for a period of two years.

3 § 172. Qualifications of voters. No person shall vote at the election  
4 provided for in section one hundred seventy-one of this article unless  
5 such person is at least eighteen years of age and is certified as a  
6 lineal member of the Montaukett Indian Nation in accordance with the  
7 nation's governance rules, customs and regulations.

8 § 173. Qualifications for office. All officers shall qualify for  
9 office and perform their respective duties in accordance with the gover-  
10 nance rules, customs and regulations of the Montaukett Indian Nation.

11 § 4. This act shall take effect immediately.