

**Statement of Robert C. “Bobby” Scott, Ranking Member
Committee on Education and the Workforce
Markup of the Tribal Labor Sovereignty Act (H.R. 511)
July 22, 2015**

Today, we are taking up the *Tribal Labor Sovereignty Act of 2015* (H.R. 511), legislation that would strip employees of the protections afforded by the National Labor Relations Act (NLRA) at *any* enterprise owned and operated by an Indian tribe and located on Indian lands. At issue in this bill are two solemn and deeply rooted principles:

- One is the rights that Indian tribes possess as “distinct, independent political communities, retaining their original natural rights in matters of local self-government.”
- The second is the right of workers to organize, bargain collectively, and engage in concerted activities for mutual aid and protection.

Rather than attempting to reconcile these competing principles, H.R. 511 chooses sovereignty for some over the rights of others. This bill strips hundreds of thousands of workers—most of whom are not members of tribes—of their voice in the workplace in one fell swoop.

This bill would take away workers’ rights even where treaties did not restrict the application of workplace laws such as the National Labor Relations Act.

By depriving workers of the right to organize and bargain collectively, this bill establishes a double standard. As a member of the International Labor Organization, the United States government is obligated to respect and promote the rights outlined in the ILO Declaration on Fundamental Principles and Rights at Work, including:

- Freedom of association and the effective recognition of the right to collective bargaining;
- And elimination of discrimination in respect of employment and occupation.

Democratic and Republican Administrations have insisted that our trading partners abide by and enforce these basic labor rights, and Congress has repeatedly ratified these obligations. But today, this Committee will vote on a bill that does just the opposite for American workers when it comes to freedom of association and the right to collective bargaining at tribal enterprises.

This legislation would jettison the balance between tribal sovereignty and workers’ rights that was adopted by the NLRB in 2004—under President Bush—and sustained by every court that has reviewed it since then.

The current legal framework respects treaty rights, respects tribal rights of self-governance in intramural matters, and accommodates the unique status of Indians in our society and legal culture. It is also based on precedents that have been upheld by appeals courts over the past 30 years.

The Congressional Budget Office has cautioned that by eliminating “the federal right of [tribal enterprise] employees to join together to improve wages and working conditions” this legislation would suppress wages.

H.R. 511 does this by eliminating “the right of affected employees to file a claim with the NLRB, individually or through a union, regarding the labor practices by tribal employers that prohibit or interfere with activities to improve wages and working conditions in enterprises on tribal land.”

Thousands of employees at commercial tribal enterprises are currently covered by collective-bargaining agreements. If H.R. 511 were enacted, it could undermine the enforceability of these labor contracts.

When a labor contract expires, a tribe could unilaterally terminate the established bargaining relationship with the union without legal consequence. Without a union, these jobs will likely revert to low-wage service jobs, instead of jobs that allow workers to climb the ladder to the middle class.

While tribes are sovereign, they must comply with many labor and employment laws of general applicability, such as the FLSA, OSHA, and FMLA. This legislation singles out the National Labor Relations Act, and promotes actions that would diminish the standard of living for workers employed in tribal enterprises.

Though some tribes fairly point out that they have tribal labor ordinances that protect workers’ rights to organize and collectively bargain, it is evident that other tribes do not. By taking an all-or-nothing-approach, this bill fails to ensure that workers have basic rights where there is no tribal labor ordinance or one that is ineffective.

Finally, we must consider that non-tribal employees of Indian tribal enterprises have no political rights to influence, or even participate in, the governance of the tribe. We know, for example, that some 600,000 workers are employed in tribal casinos, but 75 percent are not members of tribes. These workers have no say in the tribal laws governing their workplace environments. Given that tribes have sovereign immunity in state and federal courts, what safety net remains in place when rights are stripped under the NLRA?

Unfortunately, the *Tribal Labor Sovereignty Act* is fundamentally flawed, and is not fixable by amendment. For that reason, I urge a no vote.