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10 Botany Place Brunswick, Maine 04011

The Honorable Raul Grijalva
Chairman
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515
naomi.miguel@mail.house.gov

The Honorable Bruce Westerman
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515
ken.degenfelder@mail.house.gov

RE: Support for H.R. 6707, *Advancing Equality for Wabanaki Nations Act*

Dear Chairman Grijalva and Ranking Member Westerman,

Beginning in 1989, I had the privilege of serving for more than 20 years as outside legal counsel to the Passamaquoddy Tribe. Most of that period I served as the Tribe's General Counsel. In the course of that relationship, I naturally became deeply familiar with the terms of PL 96-420, the Maine Indian Claims Settlement Act (MICSA) and its State counterpart, the Act To Implement [MICSA], as well as with the day to day implementation of the two statutes.

The provisions of both laws are anomalous in the general body of law addressing the status and rights of the indigenous peoples of North America under the federal government. Given that the Native tribes addressed in these laws are federally-recognized Indian tribes to which the federal government holds legal obligations as a trustee, Subsections 6(h) and 16(b) of PL 98-420 stand out as the most curious, since their effect and evident purpose is to **deny** to the subject Maine tribes the benefit of "the laws and regulations of the United States which are generally applicable to Indians, Indian nations, or tribes or bands of Indians . . . " if the federal law "affects or preempts the civil, criminal or regulatory jurisdiction of the State of Maine . . . ."

The doctrine of federal preemption, of course, embodies the mandate of Article VI of the U.S. Constitution, that "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The very essence of Subsections 6(h) and 16(b) of the federal Maine Indian Claims Settlement Act is to elevate an entire library of state law to a position of supremacy over every federal law and regulation "which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands Indian reservations, Indian country, Indian territory or land held in trust for Indians," if those federal laws conflicts with the "civil, criminal or regulatory jurisdiction" of Maine state laws. At the very least, Section 16(b) of PL 96-420, the object of HR 6707, flies directly in the face of the foundational principles of federal Indian law in this country – that Congress, and not any State, holds plenary power "to regulate Commerce . . . with the Indian Tribes," under Article I, Sec. 8 of the U.S. Constitution.

Federal recognition of Indian tribes imposes a trust responsibility on the federal government to honor the "special status or right" of those tribes in its exercise of federal authority. That notion is at the heart of the decision of the U.S. District Court for Maine in the case of Passamaquoddy v. Morton, (1975), upheld by the U.S. Court of Appeals for the First Circuit, the very case that prompted the Maine Indian Claims Settlement Act.

It should go without saying that depriving a federally-recognized Indian tribe of the benefits of federal laws enacted specifically for those tribes, is perverse on its face, and purely punitive in its application. That is the case whether its Congressional enactment satisfies the U.S. Constitution or not. I urge this Committee and this Congress to enact HR 6707.

Sincerely,

Gregory W Sample

cc: Representative Jared Golden, aaron.sege@mail.house.gov
Representative Chellie Pingree, evan.johnston@mail.house.gov