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,

Since 1970, the federal government's policy with respect to Indian affairs has been focused on self-determination. That can be seen in the more than 150 federal laws enacted for the benefit of Indian Country since 1980. I started working for the Confederated Salish, Kootenai and Pend d'Oreilles Tribes in 1980 and saw first hand how the tribes put these tools to use building up not only an infrastructure to benefit tribal members, but also the surrounding region including non-Indians. What started as an alternative school and a college-without-walls slowly became a tribal high school and a coordinated network of tribal colleges spread throughout Indian Country (32 fully accredited colleges with at least 48 satellite campuses). Who benefitted? Native students from all over the country who came to Salish Kootenai College may have started by getting their GED's but often stayed in a welcoming environment to get technical certificates or higher degrees. Local businesses grew while meeting the needs of incoming students along with new entrepreneurial small businesses started by the tribes and hiring graduates who quickly moved into management positions. Town and tribal police forces shared concurrent jurisdiction along with county and tribal courts. As a non-tribal member, I paid my water bill to the tribal government, which provided great service. Coordination between tribes and state and local governments became stronger with trust building over time, strengthened by federal Indian legislation and accompanying funding. These are only a few of many examples of how self-determination policy has been implemented in every other state, but Maine.

It took me years to try to understand why, in Maine, some tribes drink poisoned water, few have entrepreneurial businesses, and the state cannot implement the education of K-12 children to include Wabanaki history although there has been a law on the books for nearly 20 years. Programs like REACH and the tribes and organizations comprising the Wabanaki Alliance have helped to illuminate what is happening and how things can be made better. From my vantage point, it comes down to respect for tribal sovereignty. The members of Indivisible Bangor are honored to support the Alliance's efforts to both strengthen and restore sovereignty.

In the March 31st hearing on H.R. 6707, Chief Francis explained how two provisions of the Settlement Act have resulted in complete uncertainty as to which federal laws intended to benefit Indian Country are applicable to the tribal nations in Maine, and they have resulted in the State being able to prevent application of any federal law by merely asserting that such federal law "affects" Maine law. In 2012, Congress passed amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act that would allow federally recognized tribal nations to submit requests for major disaster or emergency declarations directly to the President of the United States. The purpose of the amendments was to improve response times and recovery of

disasters in Indian Country while better respecting tribal sovereignty. In early 2020, when the COVID-19 pandemic hit the United States, the Penobscot Nation was not able to directly access assistance from FEMA.

The way I see it, when the Stafford Act funding was prevented from reaching the Wabanaki directly, thank goodness they had established a good working relationship with FEMA over the years, so the regional FEMA officials were quick to respond and did not wait for the State to request assistance. What I remember about the early "COVID-times," is once tribal members had gotten vaccines, they shared with non-tribal members related to tribal members or serving tribal members closely. This ripple effect protected not only tribal members, but also the greater community surrounding them when supplies were scarce. This benefit kept creating ripples of generosity as pressure on scarce supplies was relieved throughout rural Maine because of the tribal good will. This kept the state's supply available for more populated areas. This story was repeated near the Navajo Nation, around the Salish and Kootenai tribes, and throughout Indian Country's nearby communities. People who received Stafford funds for Native Tribes shared a scarce resource during troubled times. Please remember that in Maine, the Stafford Disaster Relief and Emergency Assistance Act was prevented from being in effect because the State of Maine government feared it would "affect" the state adversely.

Apparently, the State of Maine would be "affected" if Wabanaki people got included in the Violence Against Women Act. What's that about? Legislation was to provide to tribal courts special domestic violence criminal jurisdiction over non-Indian offenders who commit (1) domestic violence, (2) dating violence, or (3) violate a protection order on tribal lands. The Penobscot Nation has long had a tribal court and advocated to Congress for this restoration of limited criminal jurisdiction. How much sense does it make to prevent the tribal provisions of VAWA from applying in Maine since Maine was not expressly included in the law? None! Because of this short-sightedness and unfair treatment, they were not chosen to be a pilot project tribe and lost out on several million dollars that would have strengthened the tribal court and law enforcement and increased public safety efforts within the Penobscot community.

In 2019, after nearly 40 years of second-class citizenship, tribes were invited by the leadership of the Maine Legislature to participate in a task force that would review and develop recommendations for modernizing the Maine Implementing Act. In that process, a Suffolk University research group found approximately 151 federal laws passed by Congress since October 1980 that may not apply in Maine if such law "affects" Maine law. These laws cover a range of topics and included some major laws intended to benefit Indian Country such as the Indian Civil Rights Act, the Indian Self-Determination Act, American Indian Religious Freedom Act, Indian Gaming Regulatory Act, Native American Graves Protection and Repatriation Act, Esther Martinez Native American Languages Preservation Act, Indian Healthcare Improvement Act, Tribal Law and Order Act, and the Violence Against Women Act.

Now, remember, this was a Maine *Legislative* Task Force that the Wabanaki were invited to that found sections 6(h) and 16(b) to be overly broad and had the potential to render inapplicable in Maine all of the 151 federal laws passed by Congress for the benefit of Indians. So, what will the Legislature do to remedy the situation?

Solution One: The Task Force believed that it may be possible to render sections 6(h) and 16(b) of the federal Settlement Act inoperable by enacting legislation that provides, as a matter of state policy, that federal laws enacted for the benefit of Indian country "*do not affect or preempt the laws of the State of Maine* because *state law would specifically condone application of that federal law within the State*" and that doing so "*will go a long way toward allowing Maine's tribes to enjoy the same rights, privileges, powers and immunities as other federally recognized Indian tribes within the United States.*" This has led to Maine Legislature's LD 1626.

Solution Two: The legislation includes provisions implementing the recommendation of the Task Force that "*all federal laws enacted for the benefit of, or that accord special status or rights to, Indians and Indian tribes do not affect or preempt Maine law"*. The Task Force found sections 6(h) and 16(b) to be overly broad and had the potential to render inapplicable in Maine all of the 151 federal laws passed by Congress for the benefit of Indians, but an outright elimination of these sections requires Congressional action. This has led to H.R. 6707.

If enacted, the legislation would significantly modernize the Maine Implementing Act and restore back to the Penobscot Nation many of the inherent rights, privileges, powers and immunities exercised by most federally recognized tribal nations in the country.

> I emphasize a quote from Chief Francis here: *To be clear, we are not asking Congress to change the overall jurisdictional framework that exists between the Wabanaki Nations and the State; that is a separate effort we are working on with the Governor and State Legislature. H.R. 6707 only addresses the application of future laws passed by Congress to benefit Indian Country. The language of H.R. 6707 shifts the burden from the Wabanaki Nations having to educate Congress and obtain inclusion of language expressly covering us in every bill to the State who we believe is better equipped to ask for exclusion of any laws that it sees as problematic. The State actively monitors legislation pending in Congress and history shows is able to obtain colloquies and other legislative statements expressing the intent of Congress to exclude the Wabanaki Nations.*
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> ***We understand that the State of Maine may not want some federal beneficial acts to apply in Maine. But, we believe that debate should occur while the bill is pending in Congress, and not be left to interpretations of whether Maine law is affected after enactment. Shifting the burden of the Settlement Act to require that the Wabanaki Nations be expressly excluded from any federal law provides certainty to the stakeholders and is more consistent with the general intent of Congress when they pass such laws to benefit all of Indian Country***.
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> *H.R. 6707 does not impact the application of any existing federal law to the Wabanaki Nations. We understand that we will have to address any existing laws, such as the Stafford Act, on a case-by-case basis to be included. Should Congress pass any future amendments to the Stafford Act that provide new benefits to Indian Country, we would expect those new benefits to apply to us, unless we are expressly excluded. But, any existing provisions of current laws will not apply to*

us unless we come back to Congress and obtain language expressly making such provisions applicable.

Since 1970, the federal government's policy with respect to Indian affairs has been focused on self-determination. That can be seen in the more than 150 federal laws enacted for the benefit of Indian Country since 1980. The continued passage of federal laws to benefit Indian Country shows that the policy of self-determination is working; it is working for tribal nations and for those surrounding communities.

Let's make it so, in Maine.

Sincerely,
Barbara A Baker,
Speaking on behalf of 23 active members of Indivisible Bangor living in communities surrounding Bangor, Maine in the un-ceded territory of the Wabanaki.

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